

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. 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.

**RECORD ON APPEAL
VOLUME XI OF XVI**

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Certificate of Counsel

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1 A. I said who.

2 Q. Can a trustee, after Mr. Barringer's death,
3 make distributions of principal to Mrs. Barringer?

4 A. Uh-huh (affirmative.)

5 Q. Is that correct?

6 A. Which exact page now are you on?

7 Q. Well, let's look at item 4, this would be
8 page 118.

9 A. Okay. That is a lot helpful -- lot more
10 helpful if you give me that than just leave me out
11 there looking.

12 Q. Yeah. And this will be paragraph F.

13 A. Ah. There we go.

14 Okay. So 113. Okay.

15 Q. No. 118.

16 A. 118. Okay. Okay.

17 Q. Paragraph F.

18 A. Right. Trustee shall authorize -- yeah. I
19 see that.

20 Q. Okay. Over on page 120- --

21 A. Are you doing the one at the bottom or the
22 top, 113?

23 Q. The one at the top, and it's -- again, it's
24 118.

25 A. 118. Where do you see the trustee -- the

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1 trustee shall be authorized, blah, blah, blah; is that
2 what you asked me to look at?

3 Q. Yes, sir.

4 A. Okay.

5 Q. Yeah.

6 A. Okay. I got it. Okay. Now, 18?

7 Q. All right. Well -- well, let's just ask a
8 question there.

9 Is it possible for the trustee to
10 distribute any type of principal to Mrs. Barringer?
11 When it says convey principal, there is an
12 ascertainable standard, right, but --

13 A. Second to the ascertainable standard.

14 Q. Yeah --

15 A. Taking into con- -- more than that, taking
16 into consideration any other means of support she may
17 have to the knowledge of the trustee.

18 Q. Right. But as far as the type of
19 principal, there is no restriction on that, correct?

20 A. The type of principal?

21 Q. Yeah.

22 A. Well, it's got to be a property of the
23 trust. Or actually income, most likely it would be
24 income.

25 Q. Yeah. But it could be principal?

1 A. Yeah. Yeah.

2 Q. And over on page 123.

3 A. Uh-huh (affirmative.)

4 Q. Paragraph B.

5 MR. TYLER: Again, Alan, is this the
6 Neill McBryde depo page 123?

7 THE WITNESS: I'm assuming you are
8 sticking to the same pages, so --

9 BY MR. MEDLIN:

10 Q. Yeah. All right. Similar --

11 A. All right. I do have it.

12 Q. Okay. And if we look at page 122.

13 A. Okay.

14 Q. No. I'm wrong. I'm sorry, Neill. 125.

15 Sorry to misguide you.

16 A. Okay.

17 Q. Paragraph F.

18 A. Uh-huh (affirmative.)

19 Q. And the last sentence of that paragraph,
20 that allows the trustee to distribute principal to the
21 children, correct?

22 A. The primary beneficiary and his or her
23 descendants, at such time as the time of trustee's
24 discretion to determine. Okay.

25 Q. All right. So again, the trustee could

1 distribute principal to the children?

2 A. Under that document, if the trust is in
3 place, that is what the estimate says.

4 Q. So I think you may have been referring to
5 this earlier, Mr. McBryde, but if in fact the assets
6 are distributed either to Mrs. Barringer or the
7 children, there may be nothing in the trust at the
8 time of Mr. Barringer's -- Mrs. Barringer's death,
9 correct?

10 A. Yes. It's an ascertainable standard, isn't
11 it?

12 Q. So -- and, again, as you pointed out a
13 minute ago, the trust considers the wife and the
14 children very important in making distribution
15 decisions, right?

16 A. In this trust, under the end circumstances
17 of the execution, that would be true.

18 Q. So the trustee could give stock to
19 Mrs. Barringer under that power of distribution of
20 principal, correct?

21 A. Meet -- if it meets the standards and all
22 the fiduciary decisions that have to be made on any
23 distribution to a beneficiary of the trust.

24 Q. Yes, sir. And under those same standards
25 and fiduciary duties, could make distributions of

1 stock to the children?

2 A. Yes.

3 Q. So Mr. Barringer is willing to let trustees
4 give controlling interest in the stock before
5 Mrs. Barringer died to someone?

6 MR. TWOMBLEY: Object to the form of
7 the question.

8 THE WITNESS: Is this a question?

9 BY MR. MEDLIN:

10 Q. Yes. Did you discuss the possibility that
11 a trustee might decide to distribute stock to a child?

12 A. Why should I?

13 Q. I'll take that as a no.

14 A. I -- I -- I -- as to the trusts in
15 question, it's clear what they wanted to do with the
16 assets that might immediately or at any point come
17 into that trust.

18 Q. Right. But this would happen before the
19 assets --

20 MS. PAYLOR: Let him finish his
21 answer, please.

22 BY MR. MEDLIN:

23 Q. Were you finished with your answer?

24 A. And I'm not quite sure what you are saying
25 because this is not the other two trusts. Or am I

1 missing something?

2 Q. Mr. Barringer gave trustees the power to
3 distribute stock if stock happened to be in the trust,
4 correct?

5 A. Totally separate trust than the one we are
6 talking about.

7 Q. Really?

8 A. Yes. Is this --

9 Q. Doesn't this trust take care of Mrs.
10 Barringer while she's alive before she gets her power
11 of appointment to exercise?

12 MR. TWOMBLEY: Object to the form.

13 THE WITNESS: Oh. Yeah. I mean, I
14 think they feel comfortable with respect to
15 the conditions now existing. But remember
16 what the other trust does at a descendant's
17 death.

18 BY MR. MEDLIN:

19 Q. While Mrs. Barringer is still alive, the
20 trustee can make distributions of principal to
21 Mrs. Barringer; is that correct?

22 A. With the only -- okay. Again, I'm not
23 going to -- I want to make sure you haven't switched
24 trusts on me.

25 MS. PARLOR: Which trust are you in?

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1 MR. MEDLIN: The one that we've been
2 in, Alice. Starts at page 112.

3 MS. PAYLOR: Thank you.

4 THE WITNESS: This is the -- okay.
5 Paul Barringer II Revocable Trust. And --
6 and it's basically his revocable trust,
7 right?

8 BY MR. MEDLIN:

9 Q. Yes, sir.

10 A. Yeah. Because -- and then you have
11 Mrs. Barringer. So, okay.

12 So where -- this is the Paul Barringer II
13 Revocable Trust. And we have been talking about for
14 purposes of the provision in the documents, that --
15 the other two trusts. Is this -- I'm just trying
16 to -- you got so many trusts, I got two sets of them.
17 Is this the same one we've been talking about.

18 Q. Yes, sir. I'm focusing only on the
19 revocable trust now.

20 A. Okay. I'm not sure what you are saying.
21 We -- we know what is in the -- in the other documents
22 that you all are concerned about. But what is the
23 juxtaposition here? I'm just trying to -- the wife
24 hadn't died.

25 Q. My question is --

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1 A. And he hasn't died. Right?

2 Q. Well --

3 A. That is what you are talking about.

4 Q. No. I'm talking about after he died,
5 Mrs. Barringer is still alive.

6 A. Right.

7 Q. She can make distributions of principal to
8 her, correct?

9 A. Yes.

10 Q. A trustee can make distribution of
11 principal to the children, correct?

12 A. Who is the trustee?

13 Q. I thought we just went through that on
14 page 132, item 11A.

15 A. I'm trying to see -- you are moving to a
16 question, but I'm not sure you're connecting them the
17 way that I think you are trying to that -- as to serve
18 as trustee of this trust should determine where --
19 this is -- this is. Yeah. Okay. Hold on.

20 You didn't give me a question yet. What is
21 your question? What -- what you are trying to say, I
22 mean, that is what I'm trying to figure out.

23 Q. Yeah. What I'm trying to say is, under
24 this revocable trust, this 1998 revocable trust of
25 Mr. Barringer --

1 A. Uh-huh (affirmative.) Uh-huh
2 (affirmative.)

3 Q. -- the trustee has the power to distribute
4 principal to Mrs. Barringer --

5 A. Okay.

6 Q. -- is that correct?

7 A. Again, I haven't it (inaudible comment)
8 Mr. Barringer if that is what this says.

9 Q. Right. And the document also says that the
10 trustees had the power to distribute principal to the
11 children; is that correct?

12 A. That is true.

13 Q. And so principal is any tangible asset.
14 Like stock could be principal if stock is in the
15 trust, correct?

16 A. Yeah. But you've got to use your fiduciary
17 discretion as to whether any of that stock should be
18 distributed, and if so, to whom, and under what
19 circumstances. The mere power to receive something
20 under the trust does not mean the proper exercise
21 fiduciary discretion in making said distributions.

22 Q. But also, subject to the ascertainable
23 standard, I believe you mentioned earlier too --

24 A. Right.

25 Q. -- just to round that out, correct,

1 Mr. McBryde?

2 A. Right. Right.

3 Q. All right. So the trustee also has the
4 power to sell under the trust; is that correct?

5 A. That is correct.

6 Q. So the trustee could sell the stock. There
7 is no restriction in the trust that you recall that
8 restricts the trustee from selling the stock?

9 A. As long as it's the prudent exercise of
10 fiduciary discretion, taking into account all the
11 circumstances and the intention of the grantor of the
12 trust as reflected in any other provisions of the
13 trust.

14 Q. Okay.

15 A. And the actual fiduciary obligations to
16 best reserve the property, even if it could be
17 distributed.

18 Q. All right. Well, I think you already --

19 A. (Crosstalk.)

20 Q. -- answered this --

21 A. Yeah.

22 Q. Sorry. I interrupted -- keep interrupting
23 you, Neill. I am so sorry.

24 A. No. That is fine. That is fine. I don't
25 need to add more at the moment.

1 Q. Okay. So Mr. Barringer gave his trustee,
2 according to your documents, the power to give stock
3 to Mrs. Barringer, the power to give stock to the
4 children, or for that matter the power to sell stock
5 to a third party?

6 A. Right.

7 Q. Do you think he understood that he was
8 giving that power to his trustees, including BB&T?

9 A. Well, he would assume maybe that they
10 actually -- having worked with banks, and you have
11 to -- unless you file -- I think you've got to have a
12 successor corporate trustee, don't you? I can't
13 remember exactly. You've got a safety feature there
14 that they are going to have to sign off on it,
15 effectively.

16 Q. He did not want Mrs. Barringer to have
17 control over the company stock if it was in the
18 trust --

19 MS. PAYLOR: Object to the form.

20 BY MR. MEDLIN:

21 Q. -- according to the language -- let me
22 finish and then you object. I'll try to restate it a
23 little better, in fact.

24 According to your document, 1998 revocable
25 trust, Mrs. Barringer would not have any stock to

1 appoint if any stock was distributed or sold by the
2 trustee and it was gone from the trust; is that
3 correct?

4 MR. TWOMBLEY: Objection to the form
5 of the question.

6 MS. PAYLOR: Object to the form.

7 THE WITNESS: You know, you just -- a
8 hypothetical, if the trust provisions in
9 their entirety and the fiduciary discretion
10 that would be required to sell closely held
11 stock, it has always a separate look, that
12 at least it -- unless you missed something
13 and didn't tell me, it seems that there
14 could be that possibility if all the
15 circumstances met the fiduciary
16 requirements.

17 BY MR. MEDLIN:

18 Q. Okay. Thanks, sir.

19 Mrs. Barringer, on the other hand, did not
20 have such a power while he was alive; is that correct?

21 MR. TWOMBLEY: Object to the form.

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: Again, that is a --
24 that -- he is dead.

25 BY MR. MEDLIN:

1 Q. He is dead, and Mrs. Barringer is still
2 alive. She does not while she is alive have any power
3 over the stock if stock is in the trust; is that
4 correct?

5 A. He's got the power to say where it goes.

6 Q. But that happens when, Mr. McBryde?

7 A. When she dies.

8 Q. Okay. Now, when she dies, she can appoint
9 to descendants, according to you; is that correct?

10 A. Not according to me --

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: -- according to the
13 documents.

14 BY MR. MEDLIN:

15 Q. Okay. Well, thank you.

16 And descendants would include what
17 relatives?

18 A. Descendants, children, grandchildren,
19 great-grandchildren, great-great-grandchildren.

20 Q. Okay. Was that anywhere in your notes?

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: Object to the form of
23 the question.

24 THE WITNESS: I'm -- I'm not even
25 going to honor that question as being even

1 worth it. You know exactly what I said.
2 They knew that she was given that power.
3 They knew everything about that trust. And
4 you are simply just making up my
5 hypotheticals. If you've got somebody that
6 said she was deaf and dumb or he was deaf
7 and dumb, maybe you'd have something to
8 say. But this is just -- this is just --
9 just --

10 BY MR. MEDLIN:

11 Q. What I am doing --

12 A. -- repetitive.

13 Obviously, everything is subject to proper
14 execution with full knowledge of all material facts.
15 And that is what they had. That is what they did.
16 The fact that they could have done something else,
17 while both him and she were living or by -- when he
18 was living alone, that is in the equation.

19 There was -- this was a directed change
20 that they wanted to make and were fully informed. The
21 fact that it's not tight as a tick was not there while
22 she is living, is not -- not even material because
23 this is for long-term taking care of -- of how the
24 property ought to go after both their deaths.

25 Q. Did you explain to Mr. Barringer that his

1 trustees could either distribute or sell company stock
2 while Mrs. Barringer was still alive?

3 A. No. But, you know, he knew what leverage
4 he had and relationship he had and what could be done.
5 And so I -- you -- you can't solve all the problems,
6 if there is a problem, and say, well, why did he do
7 that?

8 Well, we know why he did -- at least we
9 understand that he understood why he wanted to allow
10 for the children's interest after both of their deaths
11 to go to one or more of the descendants in some form,
12 in trust or otherwise. And that is what was included.

13 Q. As an estate planner, you strive to explain
14 to your clients what their documents do; is that
15 correct?

16 A. Yeah. And I have no question but that he
17 knew that or I might -- I mean, we moved very fast,
18 but on the other hand, he was -- at this point, they
19 were directed on this issue, and they took care of
20 that issue.

21 Now, if I had been -- come back to them a
22 year from now or six months or -- from then and we
23 visit it again, maybe there would be more changes.
24 But they were the changes that they made at that point
25 in time to solve that problem. They did not say,

1 let's scrap all of our planning and start over. They
2 just -- that is not what that was about.

3 Q. Nor was that my question, Mr. McBryde, but
4 I appreciate it.

5 A. I think it answers it.

6 Q. Well...

7 If -- well, let me ask you this: Are you
8 aware of any voting agreement that Mr. Barringer had
9 entered into with his children before December 4th,
10 1998?

11 A. I tend to think that I -- we were involved
12 a little bit on that. I can't tell you -- that is not
13 in my field of inquiry because that is not germane to
14 what we did and were asked to do and told them we were
15 doing, so -- but I can't say that I was -- I knew
16 there were issues about the voting. And, in fact, may
17 have gotten involved in it at some point, in some way,
18 but it was not material for this purpose.

19 Q. Were you aware that -- were you aware how
20 the stock in Coastal Lumber was owned among the family
21 in December 1998?

22 A. I would have known to the extent I needed
23 to know because, again, I was involved enough to have
24 been involved with that issue, but not in a manner
25 that would -- that would say that would override

1 taking care of what they wanted to do now in
2 conjunction with this trust.

3 Q. Were you aware that his three children
4 owned equal amounts of stock in December of 1998?

5 A. I -- I may have. Again, that is not the
6 factual issues that we have been dealing with. And if
7 I did, I would, again, put it in the same category as
8 that is -- we had plenty of time to take care of all
9 the other things that were on his plate, and this was
10 the plate that they wanted to get completed now and
11 get it done by December.

12 Q. Were you aware that his stock ownership in
13 Coastal Lumber was significantly less than any of his
14 individual children in December of 1998?

15 A. I would not be surprised if I had that
16 information.

17 Again, that's not been germane to the
18 question at hand in this particular trust inquiry. So
19 the same ground rules apply there, that if you waited
20 to have a perfect environment, every -- every little
21 issue resolved before you made a decision to change
22 the method or to change the dispositive scheme on a
23 portion of your estate, you'd be in constant gridlock
24 with yourself.

25 Q. So once, say a -- well, let's just say,

1 each of the three children at that time, I'll
2 represent to you, according to that voting agreement,
3 said that they owned 59,521 shares of that stock each.

4 If that stock had been gifted to them
5 earlier, which I believe your notes refer to, could
6 Mr. Barringer just take them back?

7 A. I have no opinion on that. I have not
8 looked at that. I was not asked to research that or
9 address that.

10 Q. Well, generally, once somebody makes an
11 irrevocable gift, they cannot get the property back;
12 is that correct?

13 A. I don't know the circumstances. I haven't
14 seen the documents. I don't know of any -- there
15 could be side agreements, I mean, you know maybe, but
16 I don't.

17 Q. Well --

18 A. You are moving the focus away from the
19 trust that they did and that they could make decisions
20 on and that as between the two of them, they --

21 Q. I think my focus is -- I think my focus is
22 exactly on the trust because we are trying to
23 determine what he owned when he executed the trust and
24 he might have understood was going to be subject to
25 his wife's power of appointment. Don't you think that

1 is relevant?

2 MR. TWOMBLEY: Object to the form.

3 THE WITNESS: No. I think it's
4 relevant that he knew that with respect to
5 the passage of whatever is left, if he got
6 run over by a truck or died of cancer or
7 whatever he -- you know, whatever his
8 situation was, that this issue had to be
9 addressed and was addressed.

10 I -- I was with him long enough to
11 know that there are going to be lots of
12 issues coming up for and have been fertile
13 ground for maybe more lawyer work, but that
14 is not what we were asked to do. We did
15 what we were asked to do and did what...

16 BY MR. MEDLIN:

17 Q. Do you know why the Barringers did not
18 return to your firm to take care of those subsequent
19 issues?

20 A. I have -- I have no idea.

21 MR. TWOMBLEY: Object to the form --

22 THE WITNESS: We did work afterwards,
23 by the way.

24 BY MR. MEDLIN:

25 Q. Yes. I understand. The answer certainly,

1 Mr. McBryde.

2 When a client makes a valuable gift, do you
3 make sure a gift tax return is filed?

4 A. They have accountants. They have -- they
5 know exactly what to do, and the accountants, I assume
6 either should have done it if there was a transaction
7 where that happened. And I have no idea what you are
8 talking about for the purposes of this.

9 Q. Well, let's say part -- let's say part of
10 your planning is for your client to give away
11 \$100 million hotel.

12 Would you advise that client, if you
13 participated in the gifting process, that a gift tax
14 return ought to be filed?

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: I was not ever called
17 upon to do any gift tax return work that I
18 remember.

19 BY MR. MEDLIN:

20 Q. Yeah. Would you ever tell a client that
21 the client needed to go see a different tax lawyer or
22 a CPA to get a gift tax return done?

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: That was not even
25 within the scope of my employment as their

1 attorney for the purposes of this matter.

2 BY MR. MEDLIN:

3 Q. Yeah.

4 A. And they were -- they're big boys. I mean,
5 we are talking about substantial wealth that they had
6 managed somehow to be without lawyers and doing most
7 of it. And I know they did have CPA's, and I assume
8 they were all over it, or should have been.

9 Q. And, again, Neill, I am in no way implying
10 that there was some responsibility of yours in this
11 estate plan to advise them to give -- to have a gift
12 tax return done.

13 MS. PAYLOR: Objection to the form.

14 BY MR. MEDLIN:

15 Q. I'm sorry if you got that inference.

16 I'm just asking as a general question, as a
17 practitioner who was --

18 A. We did not have the ability to and we are
19 not asked to be engaged in that respect.

20 Q. I understand. But as a lawyer when you're
21 participating in a plan --

22 MS. PAYLOR: I object to this line of
23 questioning, Alan. This has --

24 MR. MEDLIN: Well, you can after I
25 finish.

1 MS. PAYLOR: -- nothing to do with
2 the case. It's not relevant --

3 MR. MEDLIN: It has a lot to do with
4 the case, so let me finish --

5 MS. PAYLOR: Mr. Tyler has already
6 told you that he wants to finish this up.
7 And why you are going off on red
8 herrings --

9 MR. TYLER: Yeah, you --

10 MS. PAYLOR: -- and fishing
11 expeditions, I have no earthly idea. Let's
12 get back to relevant questions.

13 MR. TYLER: You said earlier -- or
14 you suggested it was because Neill was
15 giving, you know, lengthy responses. He's
16 actually tightened up a lot of the
17 responses. Now it's just that you are
18 asking these irrelevant and somewhat
19 bizarre lines of questions over and over
20 again. So let's --

21 MR. MEDLIN: Yeah. This is a very
22 relevant question. This is a very relevant
23 question to the case. Ms. Paylor knows
24 that. But I'm going to move on.

25 MS. PAYLOR: It's not. Not -- his

1 opinion is not.

2 MR. MEDLIN: I'm moving on.

3 MS. PAYLOR: Thank you.

4 MR. TYLER: Good. Thank you.

5 BY MR. MEDLIN:

6 Q. In your affidavit, you talk about
7 Mr. Barringer's trust and the power of appointment he
8 gave Mrs. Barringer; is that correct? Or your
9 affidavits I should say more correctly.

10 MR. TYLER: All right. Where is
11 that? Oh, there it is, right there.

12 THE WITNESS: What page? You got it?

13 MR. MEDLIN: I'm talking about --
14 your affidavits, don't you? You've got the
15 power of appointment and Mr. Barringer's
16 revocable trust?

17 MS. PAYLOR: What page are you on?
18 Where is the document?

19 MR. MEDLIN: I am on page -- starting
20 on page 288 of our documents, affidavit,
21 top right-hand corner, Mr. McBryde.

22 MR. TYLER: What page in the
23 affidavit?

24 THE WITNESS: 288.

25 MR. MEDLIN: Well, I'm saying it's

1 throughout the affidavit that he recently
2 prepared.

3 THE WITNESS: Oh, you are talking
4 about the affidavit itself.

5 MR. MEDLIN: Yes, sir.

6 THE WITNESS: Okay. Okay. Which
7 number? Okay.

8 MR. MEDLIN: All right. So...

9 MR. TYLER: What is the pending
10 question, Alan?

11 BY MR. MEDLIN:

12 Q. The question is, his affidavit refers to
13 the power of appointment that he says the documents of
14 Mr. Barringer gave to Mrs. Barringer.

15 A. Yes.

16 Q. Is that correct?

17 A. Yep.

18 Q. Is there anywhere in your affidavit where
19 you talk about Mrs. Barringer's revocable trust that
20 gave similar powers of appointment to Mr. Barringer
21 according to your understanding of the documents?

22 A. I'm not sure what you are saying. It
23 speaks for itself, what this one says. And that was
24 what we were addressing because Mr. Barringer died
25 first.

1 Q. Well, this is simply a yes or no question,
2 I think, Mr. McBryde. If I understand it, you don't
3 refer to her trust and the power of appointment she
4 gives him under her trust; is that correct?

5 A. That is right. Because he's dead, and I'm
6 working with the real life of how they got to where
7 they got with respect to the trust as the result of
8 his death.

9 Q. I understand. And, in fact, you are filing
10 affidavits in a lawsuit that's current now. So I
11 understand that.

12 When did you explain to Mrs. Barringer that
13 she was giving him a power of appointment?

14 A. That would have been at the execution of
15 the documents. And also, I won't preclude, because I
16 had no reason to address it, that she didn't see the
17 document I earlier sent or at least the -- the -- the
18 version that was sent regarding the letter and the
19 attachment to the letter explaining exactly what we
20 have done before we met and I went over it with them.

21 Q. Normally, if you want somebody to read a
22 letter, you put their name on there as an addressee,
23 correct?

24 A. Well --

25 MS. PAYLOR: Object to form.

1 MR. TWOMBLEY: Object to the form of
2 the question.

3 BY MR. MEDLIN:

4 Q. So you did not --

5 A. It all depends on the circumstances. If I
6 know I got to be the one to tell them, I -- I
7 rightfully was trying to get it done fast and -- by
8 December. And so we moved fast, but she -- you know,
9 there were no secrets about that, so there is nothing
10 to talk about other than she knew exactly where things
11 were at this point in time.

12 Q. How much time did you spend explaining
13 those documents to Mr. and Mrs. Barringer on
14 December 4th, 1998?

15 A. I have no idea.

16 Q. Have you got some billing words we can look
17 at?

18 A. I might. When was it? A long time ago. I
19 doubt if we have billing records now.

20 Q. Okay. If you do, subject to discussion
21 with your counsel and Mr. Twombley, can we get those?

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: I'll have to check. I
24 might say, don't count on them being
25 accurate. I'm such a high billing rate

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1 lawyer, I have to cut them off. So,
2 anyway.

3 BY MR. MEDLIN:

4 Q. Do you charge by the hour, Mr. McBryde?

5 A. I do indeed. Well, for the most part, yes.

6 Q. The number of hours --

7 A. Huh?

8 Q. So the number of hours you spend discussing
9 estate plans with clients would be shown as an hourly
10 amount on your bills?

11 A. When it's all said and done. It's just
12 maybe less than what I would like to charge because it
13 took more time with the clients than you would like.

14 Q. Right. You may cut your bill, but you know
15 how many hours you spent on that plan and how much
16 time you spent doing the various aspects of estate
17 planning, correct?

18 A. Yes.

19 MR. TWOMBLEY: Object to the form --

20 MS. PAYLOR: Object to the form.

21 MR. TWOMBLEY: -- of the question.

22 Misstates his direct testimony.

23 MR. MEDLIN: He just answered "yes."

24 BY MR. MEDLIN:

25 Q. Did you explain to Mr. Barringer that he

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1 had a power of appointment under Mrs. Barringer's
2 trust?

3 A. Oh, yes. That was -- that is in the
4 document. That is in the -- what they both signed.

5 Q. I didn't ask what was in the document,
6 Mr. McBryde. I asked if you explained that.

7 MR. TYLER: He said, "Oh, yeah." I
8 heard him say, "Oh, yeah." He answered the
9 question.

10 THE WITNESS: Yes.

11 MR. TYLER: Let's take another break.
12 It's been another hour.

13 And let's stay on the record as you
14 tell me, how much longer do you have?

15 MR. MEDLIN: I'm still going to go
16 through a lot of questions, and we are
17 making good progress, though, for now.

18 MR. TYLER: That is good. Because
19 you are absolutely running out of time.

20 THE WITNESS: Yeah.

21 MR. MEDLIN: Well --

22 MR. TYLER: Five minutes.

23 MR. MEDLIN: We may disagree with
24 that, but let's take a five-minute break
25 for Mr. McBryde.

1 THE VIDEOGRAPHER: The time on the
2 monitor is 3:28 p.m. We are off the
3 record.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time on the
6 monitor is 3:35 p.m. We are back on the
7 record.

8 MR. TYLER: Listen, before we get
9 started, this is Scott Tyler. I've talked
10 to Mr. McBryde about his schedule, and
11 given this some thought and considered the
12 nature of the questioning that we have been
13 subjected to, which -- and we can agree to
14 disagree, but in my view is repetitive,
15 irrelevant, mostly hypothetical.

16 When I -- again, when I talked to
17 Bill Hogan about how long this deposition
18 was going to be, he said two to four hours.
19 You are already over four hours.

20 So at this point, again, considering
21 Mr. McBryde's schedule, say, Alan, you
22 know, we'll give you some additional time,
23 let's say about an hour. But,
24 respectfully, I guess I'd suggest that, you
25 know, you look at your outline and consider

1 that you may not get another chance to
2 question Mr. McBryde.

3 And, again, you may disagree, but
4 certainly you may not get another chance.
5 So you might want to consider what are the
6 important questions and what are the
7 particularly relevant questions and ask
8 those now, and then perhaps we can conclude
9 this thing in a reasonable amount of time.

10 MR. MEDLIN: Well, thank you for the
11 notice, Scott. And I'm going to try to
12 move as quickly and efficiently as I can.

13 MR. TYLER: Okay. Thank you. But I
14 just want to let you know.

15 MR. MEDLIN: I appreciate it.

16 BY MR. MEDLIN:

17 Q. Mr. McBryde, are you ready to get back?

18 A. Yes.

19 Q. Okay. Thank you.

20 Would you look at your NMbryde documents
21 page 86, 0086?

22 A. Which one?

23 MS. PAYLOR: Is this in your
24 notebook?

25 THE WITNESS: Oh, yeah. Yeah, yeah,

1 yeah. Last Will and Testament of Paul
2 Barringer?

3 BY MR. MEDLIN:

4 Q. Yes. Yes, sir.

5 A. Okay. At least I got that.

6 Q. All right. If you look at Item 3 in the
7 bottom.

8 Would you read Item 3 out loud, please,
9 Mr. McBryde?

10 A. All of the residue and remainder of my
11 property of every kind --

12 (Reporter asks for Clarification.)

13 BY MR. MEDLIN:

14 Q. Neill, read that out loud a little more
15 slowly for the court reporter, please.

16 A. All of the residue -- rest, residue and
17 remainder of my property of every kind and description
18 and wherever located, including any lapse avoid
19 devise, but not including any property over which I
20 may have a power of appointment, I devise to the
21 acting trustee or trustees of Paul B. Barringer II
22 Revocable Trust executed by me immediately prior to my
23 execution of this will on the 4th day of December
24 1998, as the same may from time to time be amended or
25 prior to my death to be held, managed and distributed

1 in accordance with the terms and provisions of such
2 agreement as the date of my death.

3 Q. Okay. So, thank you.

4 Now, beginning with the last line on
5 page 86, there is a parenthetical. It starts,
6 parenthesis, "but not including."

7 Are you with me on that?

8 A. But not including any property over which I
9 may have a power of appointment.

10 Q. Yeah. What does that mean?

11 A. Just what it says. There can be powers of
12 appointment granted any time, any place, after the
13 will is executed.

14 Q. And as of that day, Mr. Barringer,
15 according to you, knew he had a power of appointment
16 under Mrs. Barringer's revocable trust?

17 A. Right.

18 Q. And he declined to exercise it on that very
19 day, correct?

20 A. (Reading document to self.)

21 Yeah. This is -- this is his current --
22 this is his then current last will and testament. And
23 I have no idea what has been executed since then
24 and -- but that is exactly -- it would -- it would
25 apply, I think.

1 Q. Yeah. So according to your testimony, he
2 knew he had a power of appointment on that day because
3 she gave him one under her revocable trust, and on
4 that very day he declined to exercise it in his will;
5 is that correct?

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: The same objection.

8 THE WITNESS: Yeah. Or at least at
9 that point without separate addressing it,
10 that was not done.

11 BY MR. MEDLIN:

12 Q. Sure. And do you think Mrs. Barringer knew
13 that his will declined to exercise the power of
14 appointment her revocable trust supposedly gave her?

15 MR. TWOMBLEY: Object to the form of
16 the question.

17 MS. PAYLOR: Object to the form.

18 THE WITNESS: I -- I can't answer
19 that question.

20 MR. MEDLIN: If you --

21 MR. TWOMBLEY: Let him finish,
22 please.

23 THE WITNESS: Because this is --
24 we -- you know, we went over generally, the
25 powers of, and so I would think -- I can't

1 remember specifically addressing this, but
2 we didn't -- you know, when you go over
3 these trusts, you go over them and state
4 what they said and you assume that they
5 take it in at that point.

6 BY MR. MEDLIN:

7 Q. You explained to Mr. Barringer that he was
8 declining to exercise the power of appointment that
9 Mrs. Barringer was giving him that same day?

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: Say -- say that again
14 in another way.

15 BY MR. MEDLIN:

16 Q. Did you explain to Mr. Barringer that his
17 will declined to exercise the power of appointment
18 that Mrs. Barringer's revocable trust gave him?

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: I would think he
21 would -- he would remember. Yes.

22 BY MR. MEDLIN:

23 Q. Well, I asked you if you explained it to
24 him.

25 A. It's material. I want to go over every

1 piece of this document normally. I mean, powers to
2 get. Never do that.

3 But all the dispositive provisions, we
4 would have noted it. And that is -- it's actually
5 pretty -- yeah. It's not a -- not a particularly long
6 trust, and you don't take into account (inaudible.)

7 So I would think we touched on it and --
8 but I would think we did. And I start out and say,
9 okay, Item 1, do you want to be buried? You know,
10 this is typical.

11 And of course, we had -- you know, we had
12 to have a session with them, so I think he probably
13 would have known. But I'd have to ask him. But not
14 now, it's a little late but...

15 Q. And hopefully, Mr. McBryde, it will be a
16 very long time before you or I get the opportunity to
17 ask him.

18 A. Yep. I hope for that. I'm older than you
19 are.

20 Q. I hope for that, too.

21 A. I'm even more hopeful.

22 Q. I'm hoping that for both of us.

23 A. Yeah. So I have -- I have no reason to
24 believe he didn't read that and know that and for
25 whatever reason we weren't going to -- look, we were

1 so glad to get done what we could get done on the
2 issues that counted.

3 Q. So real quickly, you just mentioned Item 1.
4 And I think you said you read to your clients. Do you
5 put burial provisions in the will? Is that a common
6 practice?

7 A. Yeah.

8 Q. What if the will doesn't get probated until
9 after somebody is buried?

10 A. It at least tells the family what you
11 wanted to do.

12 Q. What if they don't see the will until --

13 A. Now, will they still cremate you? Yeah,
14 when they see what the fees are.

15 MS. PAYLOR: I mean, this is --

16 BY MR. MEDLIN:

17 Q. Look at page 99.

18 MR. TWOMBLEY: Alan, is this -- I --
19 you know, you can use your time however
20 you'd like, but, I mean, is this really
21 what you want to spend your last hour on
22 with Mr. McBryde?

23 MR. MEDLIN: Yes, it is actually.

24 Yes, it is. Thank you.

25 MR. TWOMBLEY: Please proceed.

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1 Please proceed.

2 BY MR. MEDLIN:

3 Q. Page 99, Mr. McBryde.

4 A. I've got 99.

5 Q. All right. Is there similar language in
6 Mrs. Barringer's will, that she declined to exercise
7 the power of appointment that Mr. Barringer gave her
8 that same day?

9 MR. TWOMBLEY: Object to the form of
10 the question.

11 THE WITNESS: No. I don't think.

12 BY MR. MEDLIN:

13 Q. All right. Let's look at the last line of
14 page 99. And let's look at the same sort of
15 parenthetical language.

16 A. Page 99.

17 Q. Yes, sir.

18 MR. TYLER: Again, I think you need
19 to reference the Neill -- or the NMcBryde
20 depo page 99. I think you're --

21 THE WITNESS: Yeah. I got it. Okay.

22 Are you No. 2 or 3?

23 BY MR. MEDLIN:

24 Q. Item 3.

25 A. Okay.

ROA 004657

1 Q. Parenthetical.

2 A. All of the rest, residue and remainder of
3 my property of every kind and description and wherever
4 located, including any (reading to self.)

5 (Reporter asks for clarification)

6 MS. PAYLOR: She can't take you down,
7 Mr. McBryde.

8 MR. TYLER: Either say it out loud or
9 say it quiet.

10 THE WITNESS: All right. All of the
11 rest, residue and remainder of my property
12 of every kind and description and wherever
13 located, including any elapse or forward
14 devised, but not including any property
15 over which I may have a power of
16 appointment I devise to then acting trustee
17 or trustees of the Merrill Barringer
18 Revocable Trust executed by me immediately
19 prior to my execution of this will on 4 --
20 4 day of December 1998, is the same may
21 from time to time being amended prior to my
22 death, be held, managed and distributed
23 according to the terms and provisions of
24 such trust agreement.

25 BY MR. MEDLIN:

1 Q. All right, sir. Thank you.

2 And let's go back to the parenthetical that
3 starts on the very last line of the page that you just
4 started reading from, page 99 of Neill McBryde dep.

5 A. Okay.

6 Q. What does that parenthetical mean?

7 A. Which paragraph?

8 Q. But not including any property over which I
9 may have a power of appointment.

10 A. Right.

11 Q. Because she did expressly decline to
12 exercise the power.

13 MS. PAYLOR: Object to the form.

14 MR. TWOMBLEY: Object to the form of
15 the question.

16 THE WITNESS: Okay.

17 BY MR. MEDLIN:

18 Q. Do you agree?

19 A. That is what it says.

20 Q. Okay. So Mr. and Mrs. Barringer were
21 together with you when these documents were being
22 executed?

23 A. Right.

24 Q. And you discussed all these important
25 provisions with them so that they could understand

1 them?

2 A. Yeah. I mean, this is the stock exchange
3 except for also in the attachment to the letter and to
4 the letter transmitting the documents.

5 Q. They understood that the other spouse was
6 declining to exercise his or her power of appointment
7 in those wills then, correct?

8 A. At that point in time, yes.

9 Q. Okay. So they would know that?

10 A. I would think that was -- that is -- that
11 is where they were.

12 Q. All right.

13 A. That didn't mean -- I don't know what you
14 are getting at. It means that they still -- well, he
15 is dead. But now the surviving spouse still has
16 rights.

17 Q. I'm simply asking the question that I asked
18 you, Mr. McBryde.

19 A. Okay.

20 Q. All right, sir. Is an estate planning
21 document always reflective of the testator's intent?

22 A. I am not sure what you are saying.

23 Q. Is it possible for the document to get
24 intent wrong?

25 MR. TWOMBLEY: Object to the form of

1 the question.

2 THE WITNESS: It all depends on what
3 the then intent was. Can the intent
4 change? Yes. You need to get documents
5 redone? Yes. And that is what keeps us in
6 business.

7 BY MR. MEDLIN:

8 Q. At the time --

9 A. (Crosstalk.)

10 Q. I'm sorry, again, Mr. McBryde. I
11 apologize. I stepped on you once again. I'm sorry.
12 Are you finished?

13 A. Yeah.

14 Q. Okay. Thank you.

15 So at the time of execution, does that
16 document always reflect the present intent of a
17 client? Can the document have mistakes in it?

18 MR. TWOMBLEY: Object to the form.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: Yes. It can have
21 mistakes. It can have mistakes because the
22 articulation requested by the -- by the
23 client was not what they intended or their
24 minds change just before or just after and
25 they don't make any changes as required or

1 wanted.

2 BY MR. MEDLIN:

3 Q. Mr. McBryde, we're all human, so I know we
4 all make mistakes. But I'm assuming on occasion, your
5 document might not accurately reflect the intent of a
6 client?

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 MS. PAYLOR: Object to the form.

10 THE WITNESS: Probably, unlike you,
11 every now and then you have provisions and
12 you correct them as you go along if you
13 think they are material.

14 BY MR. MEDLIN:

15 Q. I'm not sure if you were saying I don't
16 correct my mistakes when I find them or if I think I
17 don't make mistakes but --

18 A. Well, that is better. Better still.

19 Q. I make plenty of mistakes, Mr. McBryde.

20 Earlier this morning when you were
21 answering Mr. Twombley's question, if I heard you
22 correctly, you said among the communications you had
23 with Mr. Barringer, there was correspondence back and
24 forth. I don't see any correspondence from
25 Mr. Barringer in your file.

1 Are we missing something there?

2 A. I said -- I think I was referring to before
3 and afterwards in the sense that we had other things
4 that we were asked to address here and there, and that
5 would not be included or representative of something
6 that had to be referenced to or included in the will
7 and trust.

8 Q. But you are not aware of any -- I'm sorry
9 again. Please -- please finish.

10 A. No. All I'm saying is I -- I did not go
11 back and attempt to look at all of the other
12 correspondence that we might have had before and
13 afterwards if it were not directly germane to the
14 trust. And -- but nothing -- but nothing that our
15 communications and sitting with them and looking at
16 what we had saw -- I didn't pick up anything like
17 that. But we could have missed it, in which case I --
18 you know, tell me what it is and I'll see if we can
19 take care of it. But I'm not aware of -- of any
20 issues that you talk about that's outside that would
21 have impacted the trust and will.

22 Q. Yeah. We're not aware of anything either,
23 Mr. McBryde. I was just following up on what I heard
24 you say.

25 A. Yeah. Yeah. There are a few other things,

1 but they just weren't germane.

2 Q. Okay. Thank you, sir.

3 A. Just looking at it.

4 Q. Now, you referred earlier to Mr. Twombly's
5 question about the --

6 A. Excuse me.

7 Q. Mr. McBryde, do you need to deal with that?
8 We can take a break.

9 A. No. No. She is expecting me within the
10 time frame we mentioned.

11 Q. Okay.

12 A. Okay. Go ahead. I was -- I'm sorry. Just
13 repeat.

14 Q. Yes, sir. You were talking about the
15 pour-over will, pouring over probate assets into the
16 revocable trust, and you talked about, of course, that
17 would be in addition to what was already in the
18 revocable trust; is that correct?

19 A. I think so. Yes.

20 Q. So --

21 A. I don't remember the particular elusion,
22 but, yes, on that premise, go forward.

23 Q. Yeah. Well, and again, I apologize. I'm
24 paraphrasing in sort of terminology I think you and I
25 use.

1 But are you aware at the time of the
2 execution of the documents that Mr. Barringer had
3 funded his revocable trust with any asset other than a
4 Xerox of a money?

5 A. I was not aware one way or the other.

6 Q. Yeah. And I'm showing my age, Mr. McBryde.
7 By "Xerox," I mean copy.

8 A. Yes, it said that in that.

9 Q. So how does one fund a revocable trust?

10 MR. TWOMBLEY: Object --

11 THE WITNESS: How does one fund it?

12 MR. TWOMBLEY: -- to the form of the
13 question. I mean, just...

14 THE WITNESS: You mean this revocable
15 trust?

16 BY MR. MEDLIN:

17 Q. Yeah. What did you tell, for example, the
18 Barringers to do if they wanted to put property into
19 the revocable trust?

20 A. You've got to make the proper transfer
21 document, have it executed and manage to accept it by
22 the trustee, and that -- and whatever is needed. It
23 could be a deed, it could be something else. And the
24 trust doesn't have to pay tax -- doesn't have to file
25 tax returns because it's going to flow through to the

1 creator of the revocable trust.

2 Q. But how would you explain to the Barringers
3 to add property to the revocable trust, say if they
4 wanted to put a house into the revocable trust? What
5 would you tell them to do?

6 A. I'd pull the documents out. I'd look to
7 see what was appropriate and should be done, whether
8 it impacts any of the other estate planning documents.
9 And then I'd tell them to transfer. I'm not sure if
10 transferring a home into a revocable trust is
11 something I see a whole lot of. But if there's good
12 reason, I suppose it's good reason, but I'd have to be
13 convinced of that.

14 Q. But if they wanted to do it after they left
15 your office, you wouldn't explain to them what to do
16 in the future?

17 A. If they are going to go do things and they
18 don't know what they are doing, then they got -- you
19 know, they are being lawyers, and they got a fool for
20 a client. So, no.

21 And that is why you have a -- we did not
22 have an in-depth, continuing relationship for whatever
23 reason after, which although we still did stuff for
24 them a little bit. That is not -- you know, I don't
25 -- I don't say that I'll take good care of you now for

1 the rest of your life even if you never talk to me
2 again if I see something -- something -- I don't take
3 on that obligation either.

4 Q. So --

5 A. I don't think you do either.

6 Q. Did you, by any chance, tell them how they
7 might transfer stock into the revocable trust later
8 on?

9 A. Well, that was not something I was asked to
10 do, and they didn't come back and ask me to do it at
11 any point, and therefore -- and they didn't -- you
12 know, basically we weren't really acting as a lawyer.
13 I will have to check, but I'm pretty sure the few
14 things we did had nothing to do with the estate
15 planning documents afterwards. They had to do with
16 some of the entities and so on.

17 So, no, we don't say, anything that
18 happens, by the way, you have to call us first. That
19 is crazy.

20 Second, they wouldn't do it, unless --
21 particularly if they are moving to other counsel. I
22 have no idea if and when they got other counsel, but
23 I'm sure they did.

24 Q. But you explained to them that they could
25 add property to the revocable trust after they left

1 your office?

2 A. Sure. I mean, yeah.

3 Q. And did you tell -- and did you tell them
4 how --

5 A. No.

6 Q. -- to do that?

7 A. No.

8 Q. All right. So --

9 A. It's nice if all your relationships are
10 such that you can just have a continuing, don't worry,
11 I'm going to remind you of everything you need to do,
12 even if you are not going to see me again, and haven't
13 even paid you yet for what you did. And he did end up
14 paying me. So I am not sure what you are saying. The
15 relationship continues on as long as there is a
16 relationship.

17 Q. How would you tell a client to transfer
18 stock into a revocable trust?

19 MS. PAYLOR: Object to the form. He
20 said he didn't do it. Let's move on.

21 THE WITNESS: Move on.

22 MR. TYLER: You've got 30 minutes.

23 BY MR. MEDLIN:

24 Q. Answer the question, please, Mr. McBryde.

25 A. How do you -- you can -- you can transfer

1 stock to a revocable trust, absolutely, trustee of the
2 revocable trust.

3 Q. Can I do it just by --

4 A. For tax purposes, it takes nothing because
5 it's ignored.

6 Q. Can I just handwrite on the schedule of
7 property and that does it?

8 MR. TWOMBLEY: Object --

9 THE WITNESS: Come on, man.

10 MR. TWOMBLEY: -- to the form of the
11 question.

12 THE WITNESS: If you've got stock,
13 you've got to transfer it on the
14 certificate. That's just a waste of time
15 to ask that question.

16 (Reporter asks for Clarification.)

17 BY MR. MEDLIN:

18 Q. Yeah. I asked the question, Mr. McBryde,
19 because Mr. Twombley produced to us earlier a page
20 with handwritten stock on it that wasn't produced from
21 your office.

22 All right. So let's move on.

23 MR. TWOMBLEY: Wait, what -- what --
24 what are you --

25 MR. MEDLIN: I'm trying to move on,

1 Ashley. So we'll talk about that --

2 MS. PAYLOR: What are you talking
3 about?

4 MR. MEDLIN: Nothing to do with you,
5 Scott.

6 BY MR. MEDLIN:

7 Q. So earlier when you were talking to
8 Mr. Twombly this morning, you were talking about the
9 reasons for a power of appointment, that circumstances
10 can change.

11 Is my recollection correct on that,
12 Mr. McBryde?

13 A. Absolutely.

14 Q. And one of those you mentioned was tax?

15 A. Sure. Down the road taxes or somebody
16 where you got a huge gain coming in and you want to be
17 aggressive and you want to get it to the person who is
18 going to pay no tax on it, with no understanding but
19 ability to get everybody even, for example. But, more
20 likely, it's going to be more obvious reasons,
21 divorce, litigation, IRS matters, illness, blah, blah,
22 blah, all those -- all those things. Or just bad
23 things happen to one or more family members, either
24 caused by them or otherwise, that make it imprudent
25 for them to be the appointee --

1 Q. Okay.

2 A. -- or the trust for their benefit.

3 Q. And if I recall correctly, and I believe
4 you were referring to Mr. Twombly's documents,
5 page 124, but you mentioned specifically that that
6 special power of appointment was for tax reasons, or
7 did I misunderstand you?

8 MS. PAYLOR: Object to the form.

9 MR. TWOMBLEY: Object to the form of
10 the question. It Completely misstates the
11 testimony and has been asked and answered.

12 BY MR. MEDLIN:

13 Q. You've got that handy, Mr. McBryde?

14 A. What's the page number, 124?

15 Q. 124, I believe, in Mr. Twombly's
16 documents.

17 MR. TWOMBLEY: The red numbers,
18 right?

19 THE WITNESS: Okay. There we go.

20 BY MR. MEDLIN:

21 Q. I tell you what, Mr. McBryde, to be
22 efficient, let's just move on. I apologize for
23 sending you on that chase.

24 Under Mrs. Barringer's special power of
25 appointment, could she create another power of

1 appointment?

2 A. Could she create another power of
3 appointment?

4 Q. Yes, sir. I mean --

5 A. It might have tax consequences, but I can't
6 think of why it would not be -- you could not exercise
7 a legitimate recognized power to create a trust that
8 had provisions that gave up special power of
9 appointment. Unless I'm missing something, unless
10 there is a rule against perpetuities issue, which I
11 don't think so.

12 Q. Right. Which, in fact, could sort of
13 create a Delaware tax trap opportunity?

14 A. Yeah. I mean, you know, you -- it's not
15 something you don't do without looking at your state
16 and what the state of the law is and blah, blah, blah.

17 Q. Thank you, sir.

18 Did you ever tell Mr. Barringer and
19 Mrs. Barringer that the powers of appointment that he
20 created would allow a change of control of his
21 company?

22 MS. PAYLOR: Object to the form.

23 MR. TWOMBLEY: Object to the form of
24 the question.

25 THE WITNESS: No.

1 BY MR. TWOMBLEY:

2 Q. Thank you.

3 I think you pointed out this morning that
4 other than that one paragraph dealing with specific
5 gifts to the wife's children, Mr. and Mrs. Barringer's
6 estate plan that you created were essentially
7 reciprocal, had the same provisions? Is that a fair
8 statement?

9 A. They were -- I'm not going to go beyond
10 that they in wording are reciprocal, but I think that
11 is a general term -- there was generally the same
12 provisions in each. Their circumstances were
13 different in terms of the assets that might be
14 involved, but in terms of the technique and what they
15 were doing.

16 Q. You're good at this, Mr. McBryde. You've
17 anticipated my next question.

18 She did not own any Coastal Lumber stock,
19 did she?

20 MR. TWOMBLEY: Object to the form --

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: -- of the question.

23 THE WITNESS: Do I know who?

24 BY MR. MEDLIN:

25 Q. Mrs. Barringer --

1 A. (Crosstalk) but I'm sorry.

2 Q. I'm sorry. Can you hear me now?

3 A. Yes.

4 Q. At the time you were preparing their estate
5 plan back in 1998, Mrs. Barringer did not own any
6 Coastal Lumber stock.

7 A. Okay.

8 Q. That is one of the differences in the asset
9 ownership you were just referring to, correct?

10 A. Right.

11 MS. PAYLOR: Object to the form.

12 MR. MEDLIN: All right. Where are
13 you, Scott, on kicking me out?

14 MR. TYLER: About 24 minutes. 15
15 would be better.

16 MR. TWOMBLEY: Yeah, 15 would be
17 better based on --

18 MR. MEDLIN: Do you want to give me
19 an exact time?

20 MR. TYLER: 4:25.

21 MS. PAYLOR: 4:30.

22 MR. MEDLIN: I'm kidding. You said
23 24 minutes. I was trying to bring some
24 levity.

25 Well, I've got way more than that, so

1 here is what I am going to do based on your
2 recommendation. I'm going to start asking
3 him questions about his affidavit, and I
4 want to keep going on. But I understand
5 you are going to choose to take your client
6 away whenever you do that; is that correct,
7 Scott?

8 MR. TYLER: What did you ask me?

9 MR. MEDLIN: I said I've got a good
10 bit more than 24 minutes worth of questions
11 or, you know, 15.

12 MR. TYLER: Are they on the nature of
13 the questions that you've been asking over
14 the past 40 minutes?

15 MR. MEDLIN: They are of the nature
16 of the questions that we think are quite
17 relevant and are going to make a big
18 difference in this case.

19 MR. TYLER: I'm sure. All right.
20 So --

21 MR. MEDLIN: So --

22 THE WITNESS: Well, 4:30 is hard for
23 me as far as I'm concerned.

24 MR. TYLER: Yeah. So what is the
25 question? You have until 4:30.

1 MR. MEDLIN: Well, again, then we'll
2 agree to disagree. But if you want to take
3 Mr. McBryde at 4:30 and we want to ask more
4 questions, we'll just go to the court and
5 figure that out. Is that suitable?

6 MR. TYLER: I guess so.

7 MR. MEDLIN: Okay. All right. So
8 let's go to your affidavit again,
9 starting -- well, actually, I keep saying
10 affidavit, Mr. McBryde. I mean affidavits.

11 Starting over on page 288, this is in
12 the McBryde documents from this morning.

13 MR. TYLER: Can you just give us the
14 page in the affidavit?

15 MR. MEDLIN: Yeah, I just did. 288 I
16 think is the right page.

17 MR. TYLER: No, I'm sorry. We just
18 don't have the version with that page
19 number on it. The very page of the
20 affidavit, you know, 1 through 10 or
21 whatever it is.

22 MR. MEDLIN: I see. So you have an
23 affidavit without --

24 THE WITNESS: Yeah. I got depo -- my
25 material depo --

1 MR. TYLER: We are looking at
2 Ashley's version.

3 THE WITNESS: Yeah.

4 MR. MEDLIN: Okay. Well, what I'm
5 going to try to do then for Ashley and
6 Alice and Chip is, I'm trying to -- I'm
7 going to try to refer to both the page
8 number Bates stamp of our documents and the
9 actual page number that you had in the
10 affidavit, Mr. McBryde. Does that make
11 sense?

12 THE WITNESS: Okay.

13 BY MR. MEDLIN:

14 Q. Okay. So this would be on page 290 but on
15 page 3 of your affidavit.

16 A. Okay.

17 Q. All right. In paragraph 12, you say, if
18 relief was granted, then the '98 wills and trust would
19 be the operative wills and trust. And that's based on
20 your assertion in the prior paragraph that our client,
21 Ms. Luzak, has asked to set aside all wills subsequent
22 to the 1998 document; is that correct?

23 A. That is No. 11 where that's said.

24 Q. 11 and 12 together.

25 A. Yes.

1 Q. So who said that? Who told you that?

2 A. Well, I was looking at how that was put
3 together -- oh, you mean, in '11 or '12?

4 Q. Yeah. Who told you that Kathy Luzak was
5 trying to set aside all the wills and trusts of Paul
6 Barringer after your 1998 documents?

7 A. I assume that counsel for -- not our
8 counsel but other counsel have -- were made aware of
9 it.

10 Q. But you put it in the affidavit. You've
11 had to learn it from somewhere.

12 A. Yeah, I got -- I got comfort that that was
13 in fact correct.

14 Q. Okay. How did you get that comfort is what
15 I'm asking?

16 A. Well, that is what I'm saying, from counsel
17 for Mrs. Barringer.

18 Q. All right. Thank you.

19 Okay. So in paragraph 14, you talk about
20 having reviewed Judge Mullen's order and the
21 testamentary exception to attorney-client privilege.
22 That should be the bottom of page 3, right where you
23 were, Neill.

24 A. Right.

25 Q. Okay. What is your definition of

1 testamentary exception? What do you understand that's
2 privileged or not under the testamentary exception?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 MS. PAYLOR: Objection.

6 THE WITNESS: I think it speaks for
7 itself, doesn't it?

8 BY MR. MEDLIN:

9 Q. I'm asking you.

10 A. Well, it just means that there is no
11 attorney-client South Carolina recognize that the
12 testamentary exception to the attorney-client
13 privilege, and therefore, we can get that information.

14 Q. Okay. Let's look at paragraph 16.

15 A. Okay.

16 Q. You say in the affidavit, it is intended to
17 cover matters -- only to cover matters covered by
18 Judge Mullen's order and nothing more?

19 A. For purposes of this -- this information,
20 this affidavit, yes.

21 Q. Yeah. What does that mean?

22 A. I --

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: It means that it only
25 covers matters by Judge Mullen's order, and

1 therefore, they were aware -- or counsel
2 for the other side is aware that -- of what
3 that is, and therefore, we know that that
4 is included in -- in what would be included
5 here, that it's okay.

6 BY MR. MEDLIN:

7 Q. Are you talking about what she would allow
8 you to do as you understand the testamentary
9 exception?

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 MR. TYLER: Yeah. And I'm going to
13 object to these as well as the witness'
14 attorney. I mean, the purpose of this is
15 to indicate that there is no intent or
16 implied waiver of the privilege. That
17 is -- that is what this was intended to
18 cover, and so there is no such --

19 BY MR. MEDLIN:

20 Q. Yeah. Well, do you agree with Scott's
21 answers, Mr. McBryde? Is that a --

22 A. I do.

23 Q. -- satisfactory answer for you? Okay.

24 Paragraph 17, you say there is no intended
25 or implied waiver of the attorney-client privilege; is

1 that correct?

2 A. That is correct.

3 Q. Okay. Whose privilege is that? Is that
4 your privilege?

5 MR. TWOMBLEY: Object to the form of
6 the question. Calls for a legal
7 conclusion.

8 MR. TYLER: Yeah. I'm going to
9 object to that as well. I mean, again, the
10 whole point here is there is no waiver of
11 the privilege, whomever it belongs to.

12 MR. MEDLIN: Well, I want to know who
13 Mr. McBryde thinks it belongs to.

14 THE WITNESS: Anybody where you would
15 say it doesn't.

16 MR. MEDLIN: You know, he's writing
17 things in the affidavit. I'm just trying
18 to figure out what he is trying to say,
19 which I think is fair.

20 MS. PAYLOR: I'll make my objection
21 that I have already made on the grounds of
22 relevance. All he was saying is what his
23 lawyer just said, and why you want to keep
24 going into it when it has nothing to do
25 with your case. I think, you know, you're

1 just prolonging the deposition.

2 MR. MEDLIN: I disagree.

3 BY MR. MEDLIN:

4 Q. Mr. McBryde, would you answer the question?

5 A. Well, I answered it.

6 MR. MEDLIN: I don't know that he
7 answered, Mr. Tyler. I thought you did.

8 MR. TYLER: Why don't you repeat the
9 question.

10 BY MR. MEDLIN:

11 Q. The question is: Do you, Mr. McBryde, have
12 the attorney-client privilege or is that
13 Mrs. Barringer's privilege as the personal
14 representative of the estate? Let me ask it that way?

15 MR. TWOMBLEY: Object to the form of
16 the question. Calls for a legal
17 conclusion.

18 MR. MEDLIN: I'm just trying to
19 figure out why he put what he said in
20 there.

21 THE WITNESS: We don't want to impair
22 any attorney-client privilege in a way
23 that's required.

24 MR. TWOMBLEY: And, Alan, I, you
25 know, just disagree that that is what you

1 are trying to do. It probably goes without
2 saying. But go ahead. I don't want to
3 interfere.

4 MR. MEDLIN: Well, I don't know that
5 you know what I'm trying to do, but you're
6 welcome to disagree with it anyway. I
7 appreciate that.

8 BY MR. MEDLIN:

9 Q. Let's look at paragraph 20. We talked
10 earlier, Mr. McBryde, that the pour-over of the will
11 and the revocable trust worked in this way: Probate
12 assets could be directed to the revocable trust at
13 Mr. Barringer's death; is that correct?

14 A. I think that is correct.

15 Q. Yeah. And, in fact, under the language of
16 his will, all of his residuary estate would pass into
17 the revocable trust; is that correct?

18 A. Yep.

19 Q. All right. So what can pass would be a
20 probate asset; would you agree?

21 MR. TWOMBLEY: Object to the form of
22 the question.

23 THE WITNESS: It would -- it would
24 apply to probate assets, which could be
25 distributed and would be distributed under

1 this arrangement to the revocable trust.

2 BY MR. MEDLIN:

3 Q. So in your affidavit in paragraph 20, for
4 those assets to be poured over, other than the certain
5 personal property, which you do exclude, you say they
6 would have to be only assets in his individual name?

7 MR. TWOMBLEY: Object to the form of
8 the question. Misstates the affidavit and
9 the testimony.

10 BY MR. MEDLIN:

11 Q. Your affidavit, Mr. McBryde, says --

12 A. Sure. That's intended to state that
13 anything can be poured over --

14 MR. TYLER: Hold on.

15 MR. TWOMBLEY: Yeah, let's let him
16 finish the question.

17 THE WITNESS: Okay. Finish the
18 question.

19 BY MR. MEDLIN:

20 Q. I'm finished. You were answering it just
21 fine. Thank you.

22 MR. TYLER: I was trying to avoid you
23 talking over each other for the court
24 reporter's benefit but --

25 MR. MEDLIN: Thank you.

1 MR. TYLER: I'm going to have to ask
2 you to repeat it because I don't think he
3 knows what it was.

4 BY MR. MEDLIN:

5 Q. All right. So, Mr. McBryde, according to
6 your affidavit, the assets that are in Mr. McBryde's
7 (sic) individual name would pass to the revocable
8 trust?

9 MR. TWOMBLEY: Object to the form of
10 the question.

11 THE WITNESS: And you are getting
12 late because you called him Mr. McBryde.
13 He's still the descendants.

14 BY MR. MEDLIN:

15 Q. No, I'm asking you, Mr. McBryde. But I do
16 not want you to be a descendants any time soon.

17 MR. TYLER: Answer the best you can.

18 THE WITNESS: You have to repeat the
19 question now. It got interrupted twice.

20 BY MR. MEDLIN:

21 Q. Are you ready for the question I'm going to
22 ask --

23 MR. TWOMBLEY: He's ready. Yes.

24 BY MR. MEDLIN:

25 Q. According to your affidavit, the assets

1 that get poured over into the revocable trust of
2 Mr. Barringer, are those assets in his individual name
3 and only those assets in his individual name; is that
4 correct?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 THE WITNESS: In his individual name,
8 where is that -- where did you add "only"?
9 You said "and only." I don't see "and
10 only."

11 BY MR. MEDLIN:

12 Q. You're absolutely right. I apologize. I
13 misread that out of the corner of my eye.

14 Any assets in his individual name?

15 A. Excluding certain personal property.

16 Q. Yes, sir.

17 A. That is the typical. There may be some
18 exceptions, but that is basically the general rule.

19 Q. Okay. Can a will pour over assets that are
20 not in the testator's individual name?

21 A. Administration including any assets -- no.
22 We didn't say necessarily inclusive. We are saying as
23 to those assets for sure they're pouring --

24 Q. All right. Tell me -- give me some -- give
25 me an example of some assets that can pass under a

1 pour-over clause in a will that aren't in the
2 individual name of a testator?

3 A. Too late to get my mind working on that
4 one. But any asset coming into the probate estate and
5 not otherwise used to liquidate it -- and not real
6 estate, I don't think, because we are talking about
7 personal property -- is going to go into the revocable
8 trust when the estate is closed, by the time the
9 estate is closed. If not, otherwise you use for
10 estate administration.

11 Q. Right. So an asset gets into the probate
12 estate because it was owned individually by the
13 testator, correct?

14 A. Right.

15 Q. And are there other assets that can become
16 part of the probate estate other than maybe an
17 insurance beneficiary designation to the estate?

18 A. Well, IRS refunds. You have lots of
19 things. A wrongful death action that the estate
20 gets -- gets money from.

21 Q. Right. Wouldn't those be brought in the
22 name of the testator, not in somebody else's name?

23 A. It all depends, say what the action is.

24 Q. All right. So let's look at page 6, your
25 numbering page 293 of the -- of the Bates numbers.

1 You start explaining under Purpose of a
2 Power of Appointment, paragraphs 27 through 36, about
3 how powers of appointment work; is that correct?

4 A. Yeah. It goes on to 36. 33, isn't it --
5 yeah, I guess you can say. It depends on how far you
6 want to go. 36.

7 Q. Yeah. So you are basing that not on the
8 facts of the Barringer case, you are basing that on
9 your expertise, correct?

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 MS. PARLOR: Object to the form.

13 THE WITNESS: Some of the -- yeah,
14 some of what I say is just a general rule
15 or application. And then we get to 30, if
16 you have anything, the purpose of the power
17 of the appointment is to confer authority
18 from Mrs. Barringer to designate at the
19 time of her death who is receiving the
20 majority of the remaining assets of
21 Mr. Barringer's estate. I think that is
22 correct.

23 BY MR. MEDLIN:

24 Q. Okay. Paragraph 34, you say that one
25 reason that we may use powers of appointment is that

1 there may be subsequent economic and other life
2 changes.

3 A. Yeah. This goes right to the point of --
4 of power of appointment as was given, and
5 Mrs. Barringer is right on point, that she is going to
6 have the power to appoint the property.

7 Q. Yeah. And that would include the
8 development of serious financial needs, paragraph 35?

9 A. No. 35 is -- for example -- yeah, it says,
10 for example, individual and otherwise fiduciaries
11 might experience significant economic and other life
12 changes in between person that describes spousal death
13 -- yes.

14 Q. Okay. And so one of those --

15 A. That doesn't mean it is. That doesn't mean
16 it is. It may be that every one of them are rascals
17 and not going to receive anything. This is just
18 what's possible.

19 Q. Maybe you are in financial trouble and you
20 don't want to give them assets that will go to
21 creditors?

22 A. Nobody is going to jail for, you know,
23 marijuana or whatever. Or married a total terrible
24 person, or remarried, and you are not about to let
25 that slip out. You know, you can come up with a

1 thousand examples.

2 MR. MEDLIN: Scott, let me make a
3 proposal to you because I do not wish to
4 keep Mr. McBryde. I'm at appoint now where
5 if I move on to my next set of questions,
6 it's going to take a considerable period of
7 time. I understand you want him out of
8 there at 4:30. We don't agree. We'd like
9 to keep going. But if you are going to
10 take him out, we'll have to deal with the
11 judge, if you agree with that. And if we
12 decide we don't want to quit asking
13 questions -- but right now I don't want to
14 quit asking questions.

15 So is that acceptable to you?

16 MR. TYLER: I'm sorry. I'm not sure.
17 What's the proposal?

18 MR. MEDLIN: Well, the proposal is --
19 Neill wants to be out of there by 4:30.

20 THE WITNESS: Yeah, I do.

21 MR. MEDLIN: He has got something
22 that he needs to do. I've got lots more
23 questions to ask. You've told me you are
24 going to take him out of there at 4:30.

25 And so rather than having spent the

1 last five minutes getting started on a
2 bunch of questions that are going to take
3 much longer than five minutes, I think
4 you -- you're going to take him out, and we
5 disagree, we have more questions, and it
6 may well be we have to get the judge to
7 decide it; is that correct?

8 MR. TYLER: I guess that is a fair
9 assessment.

10 MR. MEDLIN: Yeah. In other words,
11 you are not going to let -- you are not
12 going to let Neill stay here if I tell you
13 I'm going to keep asking him questions for
14 a while because I have more questions.

15 MR. TYLER: No. We have been at this
16 since 9 a.m., and your questioning has been
17 at least five or six hours by itself --

18 MR. MEDLIN: Okay.

19 MR. TYLER: -- more than we were told
20 it was going to take. So, no, we are done.
21 Sorry, I can't accommodate more at this
22 time.

23 MR. MEDLIN: All right. And you do
24 not agree that Mr. Barringer (sic) would
25 return without having to go to the judge?

1 MR. TYLER: Mr. McBryde?

2 MR. MEDLIN: Excuse me. I've done
3 that twice now, Neill. Mr. McBryde.

4 MR. TYLER: It is not our intent to
5 voluntarily put him up for further
6 questioning.

7 MR. MEDLIN: All right. Okay. Well,
8 we are going to agree to disagree on the
9 record, and we may reach out to you outside
10 of this to see if you've had a change of
11 mind. But if not, we'll all deal with it
12 appropriately. Is that agreeable?

13 MR. TYLER: Please contact me any
14 time.

15 MR. MEDLIN: I will.

16 Neill, I'm sorry to keep you so late.
17 I hope you make your appointment.

18 THE VIDEOGRAPHER: This concludes the
19 videotape deposition of Neill McBryde. The
20 total number of media used is one. The
21 time on the monitor is 4:28 a.m. -- I mean,
22 p.m. And we are off the record.

23 MS. PAYLOR: Wait a minute. Before
24 we go off the record with the court
25 reporter, can we please straighten out the

1 exhibit issue?

2 MR. TWOMBLEY: Yeah, our notebook is
3 Exhibit 1 and you have notebook Exhibit 2,
4 right, Alan?

5 MR. MEDLIN: Actually, I'm not sure
6 which number our exhibits of our notebook
7 is.

8 MR. TWOMBLEY: Well, we disagree that
9 our notebook is an exhibit and yours is an
10 exhibit from the other depositions, right?

11 MR. MEDLIN: Sure. And in that case,
12 we will those two.

13 MR. TWOMBLEY: Just for the purpose
14 of clarifying the record in case that we
15 are ever have an appeal and this becomes
16 the a record on appeal to be very clear
17 that Exhibit 1 was the initial -- the
18 notebook that Mr. Twombley used in initial
19 examination, and that it was Bates labelled
20 across the top in red numbers 1 through
21 156, and that should be marked as Exhibit
22 1. And the second notebook which the
23 plaintiff provided would be marked as
24 Exhibit 2.

25 MR. TWOMBLEY: I think that is fair

1 and to be a little more specific Exhibit 1
2 would have the header centered at the top
3 McBryde depo with the Bates number, and
4 Exhibit 2 which would be our document would
5 have right-hand corner, N.McBryde death
6 with the Bates numbers.

7 (Reporter asks for clarification)

8 I think I got everybody's memorize I
9 so I would like to tell you what I think
10 the orders are if somebody can tell me if
11 they object. I Ashley Twombly, I would
12 like being a copy of the deposition and the
13 video, and plaintiff would also like the
14 transcript and a video. And there is no
15 other others other than that. She does not
16 order one. Just just me on behalf of
17 Merrill Barringer and you know.

18 MR. MEDLIN: Gilreath law firm on
19 behalf of the plaintiff we want the
20 transcript and the video.

21 THE VIDEOGRAPHER: Okay. Thank you.

22 MR. TYLER: This is Scott Tyler we
23 like a copy for Mr. McBryde to read and
24 sign.

25 (Deposition adjourned at 4:31 p.m.)

REPORTER'S CERTIFICATE

I, LESHANDA CASS-BYRD, CSR No. B-2291, RPR,
Registered Professional Reporter, certify that the
foregoing proceedings were taken before me at the time
and place therein set forth, at which time the witness
was put under oath by me;

That the testimony of the witness, the questions
propounded, and all objections and statements made at
the time of the examination were recorded
stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes to taken.
I further certify that I am not a relative or employee
of any attorney or the parties, nor financially
interested in the action.

I declare under penalty of perjury under the laws
of North Carolina that the foregoing is true and
correct.

Dated this April 2, 2021.



LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
HAMPTON BARRINGER LUZAK,	)	
Plaintiff,	)	DEFENDANT'S JOINT MOTION FOR
v.	)	SUMMARY JUDGMENT AS TO ALL
MERRILL U. BARRINGER,	)	OF PLAINTIFF'S
Defendant	)	REMAINING CAUSES

TO: PLAINTIFF AND PLAINTIFF'S COUNSEL:

Pursuant to Rule 56, SCRPC, Defendant Merrill U. Barringer hereby moves this Court for an order entering summary judgment in her favor as to all of Plaintiff's remaining causes of action on the following grounds:

1. Under well settled law, “[w]hether a contract to exercise [a power of appointment] is enforceable depends on the categorization of the power of appointment. The courts have drawn a distinction between testamentary powers and presently exercisable (inter vivos) powers. If the donee may exercise only by will, a contract to exercise is not enforceable. The policy behind this result stems from the presumed intent of the donor: by giving the donee a power exercisable only by will, the donor must have meant for the donee to be able to wait until the moment before the donee's death before finally deciding whether and how to exercise the power of appointment. A contract to exercise (entered into during the lifetime of the donee), if

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enforceable, would contradict the donor's intent by eliminating effectively the ability of the donee to change his mind during the time period after contracting and before death.” See Medlin, S. Alan (1988) "A Primer on Powers," Hofstra Property Law Journal: Vol. 2 : Iss. 1 , Article 6.

2. In addition, Plaintiff’s claims as to the 2012 stock transfer and any purported damages related to the same are barred by the doctrine of *res judicata*. Plaintiff’s claims regarding the events in 2012 are also barred by the applicable statute of limitations.

3. Defendant is also entitled to summary judgment because Plaintiff lacks standing to pursue her claims.

4. Defendant is also entitled to summary judgment pursuant to the equitable doctrines of laches, estoppel, and/or the doctrine of condonation.

5. Defendant is also entitled to summary judgment as to Plaintiff’s damages claims, which were stricken by Order of the Court dated June 7, 2021, because such claims are derivative, and Plaintiff does not have standing to assert those claims here, and in no event could Merrill Barringer be responsible for Plaintiff’s damages. While these damages have already been struck and are no longer in this case, the Court should strike them again specifically on behalf of the named Defendant.

6. Finally, to the extent that Plaintiff claims her husband’s lost wages or benefits as her damages in this action, Defendant is entitled to summary judgment, as Plaintiff cannot claim these damages herself in this will contest case as a matter of law.

This motion is supported by the pleadings on file, depositions, and affidavits on file with the Court. The motion will be supplemented by a memorandum of law prior to a hearing on this motion. Because Plaintiff cannot set forth or point to specific facts showing that there is a genuine issue of material fact, Defendant is entitled to summary judgment as a matter of law.

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Defendant also incorporates the background statements and citations to the record set forth in earlier motions and the legal arguments made in earlier memoranda submitted to the Court.

Respectfully submitted,

TWENGE + TWOMBLEY LAW FIRM

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Beaufort, South Carolina

August 8, 2021

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ROA 004699

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITCivil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT MERILL U.
BARRINGER'S MOTION FOR SUMMARY
JUDGMENT AS TO PLAINTIFF'S FIRST
AND FOURTH CAUSES OF ACTION****TO: DEFENDANT AND HER COUNSEL:**

Reserving all rights, Plaintiff addresses Defendant's Motion for Summary Judgment as to Plaintiff's First and Fourth Causes of Action, but in the interests of economy and efficiency, hereby incorporates all of Plaintiff's prior and concomitant responses, memoranda, arguments, affidavits, and exhibits. This memorandum will address the relevant issues, but reference is made to the filings in the prior and concomitant motions, including Exhibit references.

*A. Tortious/Intentional interference with an inheritance**1. Recognition of the cause of action*

The tort of intentional interference with an expected inheritance or gift is recognized by the RESTATEMENT (SECOND) OF TORTS § 774B (1979). Courts in about half of the states have recognized intentional interference with inheritance, and so has the United States Supreme Court in *Marshall v. Marshall*.¹

Although no South Carolina appellate court has yet formally adopted intentional interference with an inheritance, there is no South Carolina case rejecting the adoption of

¹ 547 U.S. 293 (2006). There are few, if any, cases in which a court from another state rejects outright the adoption of tortious or intentional interference with an inheritance.

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intentional interference with inheritance.² Moreover, South Carolina law indicates support for adopting intentional interference with inheritance and gifts. In *Douglass v. Boyce*,³ the South Carolina Supreme Court based its decision on another ground and stated that it did not need to decide whether to recognize intentional interference with an inheritance. The Court deferred that determination to another day. However, the Court observed that South Carolina recognized intentional interference with prospective contractual relations and that intentional interference with an inheritance was based on analogous elements.

In *Wellin v. Wellin*,⁴ a federal case based on South Carolina law, the wife contended that South Carolina state law did not recognize that tort. The federal court stated that a lack of definitive state law on point required the court to attempt to reach the same result as the state court confronted with the same facts. Thus, the federal court had to predict what the South Carolina Supreme Court would do in this case. In so doing, the court was "authorized to consider all available legal sources, including restatements of the law, treatises, law review commentaries, decisions from other jurisdictions whose doctrinal approach is substantially the same, and the 'majority rule'" in addition to "well considered dicta" and "recent pronouncements of general rules and policies by the state's highest court."

Based on its consideration of these factors, the federal court (Judge Norton) concluded that the state would adopt intentional interference with an expectancy.

Despite the strong indications from the state supreme court and a respected federal court that this state will recognize intentional interference with an inheritance, this is a novel issue, which the trial court should not reject on summary judgment.

² *Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) ("this opinion must not be understood as either adopting or rejecting the tort of intentional interference with inheritance").

³ 344 S.C. 5, 542 S.E.2d 715 (2001).

⁴ 135 F. Supp. 3d 532 (D.S.C. 2015).

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2. *No requirement of an adequate remedy at probate and, even if there were, Plaintiff does not have an adequate remedy at probate*

It cannot be known whether South Carolina, when it formally adopts intentional interference with an inheritance, will require that a victim first demonstrate that there is no adequate remedy at probate. Thus, this cannot be presently imposed as a requirement. There may be no adequate remedy at probate if, for example, an irrevocable transfer is made during lifetime that resulted from the tortious interference of the tortfeasor. The tortious interference remedy serves a two-fold purpose: penalty and deterrence. However, even if such a requirement existed, Plaintiff does not presently have an adequate remedy at probate for Plaintiff's damages. Plaintiff has already suffered damages from Defendants' tortious interference, and the remedy of tortious interference with an inheritance affords her the remedy for those damages.

3. *Facts demonstrating Plaintiff's expectancy*

As demonstrated by the voluminous records and evidence shown in the pleadings, documents, memoranda, and exhibits, including affidavits, from the prior summary judgment motions, which are incorporated herein, Paul Barringer's plan for the company always involved treating his children equally, especially with respect to control of the company.⁵

4. *Facts Supporting Intentional Interference with an Inheritance*

As the South Carolina Supreme Court noted in *Douglass v. Boyce*,⁶ the elements of intentional inheritance with an inheritance are as follows: "(1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages." The voluminous evidence, such as in the memoranda and exhibits from the previous motions to

⁵ Once Victor Barringer spun off a separate company, Mr. Barringer demonstrated an intent to treat his daughters equally with respect to control of the company. The voluminous evidence of the intent for equal treatment is found in Plaintiff's pleadings, memoranda, documents, affidavits, and exhibits, incorporated herein.

⁶ 344 S.C. 5, 542 S.E.2d 715, n.4 (2001).

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dismiss and summary judgment motions, incorporated herein, demonstrates that Defendants committed intentional interference with an inheritance, with the damages being not only the loss of Plaintiff's right to her equal share of voting control but also damages to the value of Plaintiff's stock beginning in 2012.

The facts show that Merrill Barringer acted in conjunction with other individuals to obtain the voting stock of Paul Barringer to the exclusion of Plaintiff. Among those acts were the actions taken to first remove Kevin Luzak from the company to clear the way for the furtive transfer of the stock. The evidence shows that Merrill Light, Paul Barringer, Merrill Barringer and Merrill Light's long-time attorney John Jolley attended the telephonic special board of directors meeting held on June 28, 2012 at the office of John Jolley.⁷ Merrill Barringer was thus in the room with Paul Barringer participating in the special board meeting.

Defendant Barringer testified in her deposition that only she could influence Paul Barringer and that it was easy. Asked by her own attorney, Defendant Barringer admitted that she tried to influence Paul Barringer to hire Travis Bryant, who would replace Kevin Luzak.⁸ Pl.s Resp. to MBL Summ.. J. at Ex. M – M. Barringer dep., p. 102, lns. 9-22. Defendant Barringer was at that board meeting to correct Paul Barringer. Id. at Ex. J, M. Barringer dep., p. 26, lns. 20-22.

During the meeting, Paul Barringer was coached by Merrill Light and Merrill Barringer and possibly others who were in the room with him during the meeting. Independent director Mike Hagler wrote on the day of the meeting immediately thereafter about the coaching of the infirmed Paul Barringer as follows:

⁷ See Pl.'s Resp. in Opp'n to Def. Merrill B. Light's Mot. for Summ. J. filed 11/9/2020 (hereafter "Pl.s Resp. to MBL Summ. J.") at Ex. QQ- Light 1374; id. at Ex. J - M. Barringer dep. p. 26:6-23; id. at Ex. I, M. Light dep. pp. 342:14 – 343:8.

⁸ "To your knowledge did anyone try to convince Paul that he needed to hire Travis or try to improperly influence him to hire Travis? . . . Only me."

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...On more than one occasion during the meeting, Paul actually cast his vote in the opposite way he meant to cast the vote until he was corrected and coached by whoever was in the room with him. The remaining board members and the company's attorney heard Paul being coached in the background. And, to further complicate matters; if Merrill, for some unknown reason was coaching Paul, is she conflicted out?

Pl.s Resp. to MBL Summ. J. at Ex. F - M. Hagler ltr., 6/28/12 – Hampton Luzak 203.

During the meeting Mike Hagler spoke up about the surreptitious coaching of Paul Barringer that he detected, by stating, “Merrill, I’m curious. Again, I’m stuck in the middle of this. Why are we having to whisper to Paul everything he is being asked to do?” Pl.s Resp. to MBL Summ. J. at Ex. PP – Transcript of board hearing – Hampton Luzak 706, lns. 9-11). The transcript shows that both Merrill Light and Merrill Barringer were present with Paul Barringer. Mr. Hagler further stated:

And, again, as uncomfortable as this is, as much as I don’t want to bring it up, I’m concerned about confusion mentally. I’m concerned about misunderstanding of facts and I’m concerned that we’ve got two votes that have been taken, both times of which even while voting there was confusion on the yays and the nays, and that there are people discussing how to do A and B with Paul who seemed to be confused before he makes his vote or his discussion.

Id. at Hampton Luzak 708, ln. 25 – 709, ln. 7.⁹

Merrill Barringer in her deposition testified about the June 28, 2012 special board of directors meeting and confirmed that she was present during the meeting. She also testified that she instructed Paul Barringer on what to say during the meeting which resulted in the firing of Kevin Luzak as CEO of CFRC. Specifically, when asked if she was talking to her husband during the telephonic board meeting, she responded, “I was just making sure of what he said. If I could correct him in any manner or if he – just to hear how was doing with that.” Pl.s Resp. to

⁹ A week later, Hampton Luzak, on July 6, 2012, wrote the board of directors and addressed the collusive coaching by stating: “In the e-mail [Mike Hagler] sent to Merrill [Light] after the board meeting, he made note of my father’s obvious confusion and his inability to distinguish fact, and was uncomfortable about what he thought was a great deal of ‘coaching’ of my father during the board call by my mother and my sister.” Pl.s Resp. to MBL Summ. J. at Ex. O, Hampton Luzak 213.

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MBL Summ. J. at Ex. J – M. Barringer dep., p. 26, lns. 20-22. She testified that she went to the board meeting, which she rarely did, to make sure he did not forget something and to correct him if he made a mistake. Pl.s Resp. to MBL Summ. J. at Ex. M, p. 80, lns. 19-21. She testified that she and Paul Barringer agreed that Kevin Luzak should be fired (id. at p. 80, lns. 6-8), and that “there wasn't anything that I wanted him to change and so I just was there in preparation in case he needed to ask me something or I could give him some thoughts on it but he handled it himself.” Id. at p. 81, lns. 3-8.

After Plaintiff's husband, Kevin Luzak was fired as CEO of CFRC by the concerted efforts of Merrill Light, Merrill Barringer and possibly others, Paul Barringer's voting stock was transferred to Merrill Light as trustee of her revocable trust.

The above cited facts show that Merrill Barringer and Merrill Barringer with John Jolley acted in effecting the firing of Plaintiff's husband as CEO. The purpose of these actions was to exclude Hampton Luzak from obtaining any of the remaining voting shares of Paul Barringer, thereby injuring Plaintiff.

5. Plaintiff is not barred by any statute of limitations

As discussed more thoroughly in Plaintiff's memorandum opposing Defendant's motion for summary judgment as to the fifth cause of action, which is incorporated herein, Plaintiff did not have standing to assert any cause of action involving the revocable trust until her father's death. Moreover, Plaintiff did not discover Defendant's involvement in the tortious interference until her deposition on March 14, 2019.

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B. Attorney's fees and costs

South Carolina Probate Code section 62-1-111 and South Carolina Trust Code section 62-7-1004 empower a court to assess costs and fees in probate and trust matters. Moreover, the remedy for tortious interference could include punitive damages and perhaps attorney's fees. As clearly demonstrated in the incorporated memoranda, etc., Defendant's actions and tortious conduct entitles Plaintiff to costs and fees from Defendant.

Conclusion

Substantial evidence exists, through the pleadings, depositions, affidavits, and discovery on file, to show there is a genuine issue of material fact such that Plaintiff must prevail, especially when all the evidence and all reasonable inferences must be viewed in the light most favorable to Plaintiff.

Reserving all rights, Plaintiff respectfully prays that this Court deny Defendant's motion for summary judgment.

Respectfully submitted,

THE GILREATH LAW FIRM P.A.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253
		2019-CP-07-01294

IN THE MATTER OF ESTATE OF PAUL
BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,

Plaintiff,

v.

MERRILL U. BARRINGER,

Defendant

**DEFENDANT’S REPLY IN SUPPORT
OF HER MOTIONS FOR SUMMARY
JUDGMENT ON PLAINTIFF’S
SECOND AND THIRD CAUSES OF
ACTION**

Defendant Merrill Barringer (“Mrs. Barringer”) submits this Reply in support of her motions for summary judgment on Plaintiff’s second and third causes of action, and in reply to the memorandum in opposition filed by Plaintiff on August 6, 2021.¹

I. Introduction²

It is undisputed that, in his 1998 revocable trust, Mr. Barringer granted his wife of nearly 60 years, Mrs. Barringer, a power of appointment over any assets remaining from his estate upon Mrs. Barringer’s death. It is undisputed that the power of appointment expressly authorizes Mrs.

¹ Plaintiff asserts that there is no new evidence since the Defendant previously moved for summary judgment. That is false. The author of the 1998 estate planning document, Neil McBryde, Esq., has been deposed since that time, and Defendant relies upon his testimony in support of her motions for summary judgment. Moreover, John Jolley, Esq., and Plaintiff’s husband Kevin Luzak, have also been deposed, and their testimony likewise supports Mrs. Barringer’s motions and was not before the Court when Defendant previously moved for summary judgment.

² For purposes of this motion, Defendant assumes—without in any way conceding—that all the wills, trusts, and gifts Mr. Barringer made in between 2012 and 2016 are unwound, as Plaintiff contends they should be, and that his December 4, 1998 estate plans control.

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Barringer complete discretion when deciding which child will receive assets from Mr. Barringer's estate, and which children will not receive any. It is also undisputed that powers of appointment such as the one granted by Mr. Barringer to his wife are commonly used in estate planning, and that Mr. Barringer was advised by legal counsel before executing each version of his estate planning documents that contain the power of appointment. Why, then, does Plaintiff ask this Court to forbid Mrs. Barringer from exercising the power of appointment that her husband granted to her in his 1998 estate planning documents? On what grounds does Plaintiff ask that this Court intervene in, and upset, the written estate plans of the Barringers, and strip away a valuable right granted to Mrs. Barringer by her husband of nearly 60 years?

In her Complaint, Plaintiff alleged, "upon information and belief," that Mr. and Mrs. Barringer entered into "a binding contract" that barred Mrs. Barringer from ever revoking her 1998 estate plan, i.e., from ever exercising the power of appointment that Mr. Barringer expressly granted to her. See Compl. ¶¶ 137-43. Plaintiff also alleged, again "upon information and belief," that proof of this contract could be found in Mrs. Barringer's estate planning documents, which had not yet been produced at the time that the Complaint was filed, id. ¶ 142, and that Mr. Barringer "relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her." Id. ¶ 138. But Mrs. Barringer subsequently produced her estate planning documents, and (unsurprisingly) they contain **absolutely no evidence** of a contract or a promise not to exercise the power of appointment that her husband expressly granted to her, nor do they contain any evidence of a contract or a promise not to revoke her 1998 will and trust.

In her memorandum filed on August 6, 2021, Plaintiff continues to argue that Mrs. Barringer contracted with Mr. Barringer, or promised Mr. Barringer, not to exercise her power of appointment, see Memo at 7, and that Mr. Barringer "relied on that contract." Memo at 11.

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Plaintiff, however, does not identify any evidence of a contract or a promise relating to the power of appointment, much less a writing signed by Mr. Barringer as is required under South Carolina Code Section 62-2-701. Instead, Plaintiff makes the frivolous arguments that Mrs. Barringer somehow promised never to exercise her power of appointment (1) by declining to exercise it in prior versions of her estate planning documents that were executed at the same time that Mr. Barringer executed his estate planning documents, and (2) by never discussing the power of appointment at family meetings that were held when Mr. and Mrs. Barringer remained on good terms with both their daughters. Neither of these arguments is supported by the law or common sense, and neither argument comes close to creating a genuine issue of material fact for trial.

Notably, in her memorandum filed on August 6, 2021, Plaintiff makes a new argument, not alleged in her Complaint, and also not supported by any evidence, that “Paul Barringer never intended to give Defendant a power of appointment.” Memo at 6. This new argument raises an obvious question: how is it possible for Mr. Barringer to both grant Mrs. Barringer a power of appointment in reliance on Mrs. Barringer’s contract or promise never to exercise such power and never intend to grant Mrs. Barringer a power of appointment in the first place? Plaintiff will say anything to try to win her litigation campaign, regardless of whether she has facts to support it, and now apparently even when her arguments are logically inconsistent.

Of course, Plaintiff’s two scenarios are mutually exclusive. Indeed, if the record contained any evidence of a contract or a promise between Mr. and Mrs. Barringer relating to the power of appointment, it would necessarily follow that Mr. Barringer was aware that he had granted Mrs. Barringer a power of appointment, and Plaintiff would not resort to making this new argument. But there is no evidence of such a contract or promise, much less a writing signed by Mr. Barringer

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as is required by South Carolina Code Section 62-2-701, and Plaintiff therefore makes this new Hail Mary argument that is wholly inconsistent with the theory that she alleged in her Complaint.

Mrs. Barringer is entitled to summary judgment on Plaintiff's second and third causes of action. Mr. Barringer granted Mrs. Barringer a power of appointment in estate planning documents that Plaintiff concedes were free from undue influence, incapacity, or mistake (the 1998 version). Plaintiff has identified no evidence whatsoever of a contract or a promise that would prevent Mrs. Barringer from exercising such power. And eliminating all doubt as to whether Mrs. Barringer is entitled to summary judgment is Section 62-2-701, which the South Carolina legislature passed to preclude claims precisely such as Plaintiff's second and third causes of action.

Finally, even if Section 62-2-701 does not preclude Plaintiff's second and third causes of action, Plaintiff has no evidence to support her claim, and certainly no evidence to meet the burden of proof applicable if Section 62-2-701 does not apply. Regardless, Defendant is entitled to summary judgment.

II. The law is well-settled that mutual or "symbiotic" wills do not create a contract not to revoke absent language clearly stating such an intention.

At bottom, Plaintiff's argument is that Mrs. Barringer should be legally barred from exercising her power of appointment because she and Mr. Barringer supposedly executed mutual or "symbiotic" wills during Mr. Barringer's lifetime in which they each chose (at the time the will was signed) not to exercise their respective powers of appointment. In arguing that Plaintiff can prove a contract not to revoke under each of the three subsections of Section 62-2-701, Plaintiff relies only on the mutual or "symbiotic" wills of Mr. and Mrs. Barringer and the provision in which Mrs. Barringer declines to exercise her power of appointment. See generally Memo at 10-12.

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Section 62-2-701 forecloses Plaintiff's argument. See S.C. Code § 62-2-701 ("The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."). As explained in the Reporter's Comment to this statute,

[I]n a case in which the joint will failed to actually express an agreement of nonrevocability, Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract.

Id., Reporter's Comment (internal citation omitted). The language that Plaintiff relies on in support of her argument that Mrs. Barringer irrevocably promised never to exercise her power of appointment is the following:

All of the rest, residue, and remainder of my property of every kind and description, and wherever located, including any lapsed or void devise **(but not including any property over which I may have a power of appointment)**, I devise to the then acting Trustee or Trustees of The Merrill U. Barringer Revocable Trust"

Mrs. Barringer Will dated December 4, 1998, attached hereto as Exhibit A (emphasis added). This language merely reflects Mrs. Barringer's choice not to exercise her power of appointment **in that will, in 1998**; it does not say or otherwise imply that Mrs. Barringer has entered into a contract or agreement never to exercise the power of appointment at any point in time in the future. This language certainly does not say that Mrs. Barringer has renounced her right to revoke her estate plans. Because the Barringers' wills do not "actually express an agreement of nonrevocability," and "the promise not to revoke . . . is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract," Plaintiff's claims fail as a matter of law, and Mrs. Barringer is entitled to summary judgment.

Moreover, even before the South Carolina legislature passed Section 62-2-701 and required a signed writing for claims such as those asserted by Plaintiff, the South Carolina Supreme Court

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squarely rejected the argument that mutual wills create a contract or otherwise limit the right of the testators to amend their estate plans later.³ As the South Carolina Supreme Court held in Looper v. Whitaker:

The wills of husband and wife executed at the same time, before the same witnesses, and strictly reciprocal in their terms, are not, **in the absence of a recital that they are made pursuant to a contract**, in themselves sufficient evidence of an enforceable contract between the testators for the execution of the wills.’

It may be said in agreement that it is within common knowledge that many married couples make reciprocal wills; but it does not follow from that alone, or from the agreement to do so, that each spouse is thereby bound against revocation or subsequent alteration of his or her will, without notice to the other.

231 S.C. 219, 229, 98 S.E.2d 266, 271–72 (1957) (emphasis added) (internal citation omitted).

The Looper Court held: “An agreement to make ‘mutual’ or reciprocal wills, such as those here, is far short of a contract to keep them in force.” Id., 231 S.C. at 221, 98 S.E.2d at 266; see also Lamberg v. Callahan, 455 F.2d 1213, 1218 (2d Cir. 1972) (“But if plaintiffs are to succeed, mere proof of an agreement to execute mutual wills is not enough. The crucial issue is whether, in addition, the Woods agreed that the mutual wills would not be revoked.”). The Supreme Court’s holding in Looper, like Section 62-2-701, is fatal to Plaintiff’s claims.

Likewise, in Dicks v. Cassels, 100 S.C. 341, 84 S.E. 878 (1915), the Plaintiff sought to enforce an alleged contract based on mutual wills, just as Plaintiff attempts to do here. The South

³ The Reporter’s Comment to Section 62-2-701 notes that, prior to the statute, “South Carolina case law was said to require that contracts concerning succession be proved by ‘clear, cogent, and convincing evidence.’” S.C. Code § 62-2-701, Reporter’s Comment. The Comment then explains: “While Section 2-701 fails to codify the stated higher standard of proof per se, the provision’s requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect.” Id.

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Carolina Supreme Court explained why courts should carefully scrutinize these types of claims and should require “definite, certain, clear, and convincing” evidence of such a contract:

To establish an agreement such as is claimed by the plaintiff here, the proof must be definite, certain, clear, and convincing. A person has a right ordinarily to leave his property to whom he pleases. He has a right any time to make a will disposing of his property, and later on he can revoke this will in toto or change or modify the same by new will or codicil. It is a fixed principle of law that a will is revocable whenever the maker desires to change. . . . The maker of the will is dead, and the degree of proof establishing a contract whereby a will is made that cannot be revoked by the maker ought to be clear and convincing, certain and definite, and scrutinized and received with the greatest of care; for it practically deprives the owner of property of any interest in the property except to enjoy it for life. **It is a most serious thing for the court to decide that a person cannot dispose of what is his by deed or devise, and because at one time he intended a certain person to be the beneficiary under his will and after his death to have his property, that later he cannot change his mind and substitute another or others.** As persons advance in life they change their views as to a number of things, and it frequently happens that a wealth of affection and favors have been wasted on persons, and the recipient he favors proves weak, unresponsive, unworthy, or ungrateful.

Id., 84 S.E. at 879 (emphasis added). In Looper, the South Carolina Supreme Court likewise held:

But such a contract, especially when it is attempted to be established by parol, is regarded with suspicion, and not sustained, except upon the strongest evidence that it was founded upon a valuable consideration and deliberat[e]ly entered into by the decedent. The evidence to sustain it should be received and scrutinized with the greatest care. The terms of such an agreement should be definite and certain and established by evidence clear and convincing.

Looper, 231 S.C. at 227, 98 S.E.2d at 270 (internal citation omitted); see also Lamberg, 455 F.2d at 1218 (explaining that the reason for applying a higher standard of proof for claims to enforce an alleged contract not to revoke a will “lies in the serious and far-reaching consequences of such an agreement, which may have the effect of preventing the surviving spouse from altering his or her estate plan to suit intervening changes in circumstances”).

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As explained by the Supreme Court of Nevada in a case seeking to enforce an alleged contract based on mutual wills:

Implicit in every testamentary expression is a reservation of right to change as circumstances involving status or responsibility may alter or as affection may from time to time direct. That the common testamentary wish of two people is jointly expressed does not in reason or common sense destroy its ambulatory character in this regard. **In the absence from the instrument of any expression of or reference to an agreement not to revoke, no promise to such effect, can be implied solely by reason of the reciprocal nature of the testamentary provisions.** We may not then convert this revocable testamentary expression into mutual irrevocable promises to devise.

First Nat. Bank of Nev. v. Friednash, 302 P.2d 281, 283 (Nev. 1956) (internal citations omitted) (emphasis added).

III. Plaintiff cannot circumvent Section 62-2-701 by repackaging her contract claim as a constructive trust claim.

Plaintiff argues that, even if she cannot enforce a contract between her parents pursuant to Section 62-2-701, she can achieve the same result through her claim for constructive trust. Plaintiff relies on two cases in support of this argument: Chapman v. Citizens & S. Nat. Bank of S.C., 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990), and Satcher v. Satcher, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002). See Memo at 12-14. Neither case helps Plaintiff.

A. Chapman applies the law that existed before Section 62-2-701 and, in any event, is easily distinguishable.

In her motion for summary judgment on Plaintiff's second cause of action, Mrs. Barringer explains why Chapman does not apply here. See Motion dated June 14, 2021, at 4-8. Mrs. Barringer will not rehash these arguments here, other than to note:

- Many states have passed a law comparable to Section 62-2-701 (which is derived from the Uniform Probate Code), and in every case identified by the undersigned that addresses the issue, the court has held that a plaintiff cannot circumvent the "signed writing" requirement in the statute by repackaging the claim as one for constructive

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trust. Mrs. Barringer cites seven of these cases in her motion for summary judgment on Plaintiff's second cause of action, see Motion at 5-6, and Plaintiff simply ignores **all of them** in her response memorandum. These cases are all based on the principle that "equity follows the law," which is a principle recognized by the South Carolina Supreme Court. Quail Hill, LLC v. Cty. Of Richland, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) ("Simply stated, equity follows the law.").

- Chapman did not apply Section 62-2-701 because the wills at issue were executed before the effective date of the statute. In her response memorandum, Plaintiff does not dispute this.
- In Chapman, the Court found an enforceable promise based on letters written by a wife to her husband in which the wife expressly promised her husband that she would not exercise her power of appointment. The Court found that the husband executed his last will "**in reliance** on Mrs. Chapman's promise that she would not exercise the power of appointment." Chapman, 302 S.C. at 477-78, 395 S.E.2d at 451-52 (emphasis added). By contrast, Plaintiff has no evidence that Mrs. Barringer made any promise to Mr. Barringer regarding her power of appointment, much less a promise made in writing, or that Mr. Barringer relied on that promise before he gave Mrs. Barringer a power of appointment on December 4, 1998.

In her memorandum, Plaintiff argues that, under Chapman, she can prove that Mrs. Barringer irrevocably promised never to exercise her power of appointment through her "silence." Even if Plaintiff could rely on "silence," Plaintiff does not identify any specific conversation or conversations where Mrs. Barringer, through her silence, should be deemed to have promised Mr. Barringer that she would never exercise the power of appointment that he granted to her. See generally Memo. Rather, Plaintiff vaguely references "numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant." Memo at 11. But even if Mr. Barringer made comments about "his intent for equal control" or his desire and plan for "equal control" during a time when Mr. and Mrs. Barringer remained on good terms with Plaintiff, these conversations do not even remotely suggest that the Barringers had irrevocably promised each other never to change their estate plans, no matter how circumstances might change in the future with respect to their children. And the notion that, in these family meetings, Mrs. Barringer should have brought up the

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revocable nature of their estate plans generally or her power of appointment specifically is both preposterous and unsupported by any case from any jurisdiction in America. Indeed, Plaintiff does not cite any case from any jurisdiction where a court found a contract not to revoke based on silence, much less silence during a family discussion about “plans” for the future. Even if Mr. and Mrs. Barringer both “planned” to treat their kids equally in the future, and discussed their plan with their children, that in no way amounts to an irrevocable and binding agreement never to change the plan in the future. Plaintiff has not come forward with any evidence that anything that was ever said by anyone could amount to such a radical and far reaching irrevocable agreement.

Even Plaintiff’s husband, Kevin Luzak, whom she lists as a witness who will testify in support of her contract and promise allegations, admitted he has no knowledge of an agreement between Mr. and Mrs. Barringer to treat their children equally in the future no matter what type of behavior they engage in:

Q. You don’t have any evidence that they entered into any type of contract like that, correct?

A. **I don’t.**

Q. Or that they entered into **any type of agreement** or anything of that nature?

A. The fuzzier we get, the more hesitant I am to answer the question. So for the purposes of this so we can move on, which I know you want to do, **I’ll say no.**

Q. Okay. Well, I don’t want to move on. I want to find out what evidence you have, if you have any. I do not want to move on.

Q: If you have -- if you have any evidence that Paul and Merrill Barringer entered into **a contract, agreement, pinky swear, anything you want to call it, that they were going to treat their children equally in the future no matter what type of**

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behavior the children engaged in, I want you to tell me that.

MR. MACLOSKIE: Asked and answered.

BY MR. TWOMBLEY:

Q. Do you have any such evidence?

A. I -- I do not.

Kevin Luzak Depo. Tr., attached as Exhibit B, at 481:11 – 482:11 (emphasis added).

Moreover, Plaintiff's theory that she can prove a contract not to revoke based on nothing more than Mrs. Barringer's silence in unspecified family meetings discussing future "plans" is squarely at odds with both Section 62-2-701 and the earlier case law quoted above discussing the importance of requiring a plaintiff to provide "definite, certain, clear, and convincing" proof of a contract not to revoke. If Plaintiff were correct, then virtually every child in America—so long as their parents, when everyone remained on good terms, had discussed their plans to divide their assets evenly among their children—would be entitled to a jury trial on whether their parents had entered into a supposed contract never to revoke those plans. Such an outcome turns the policy of Section 62-2-701 on its head. See Unif. Probate Code § 2-701, Comment ("It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved.").

B. Satcher is inapposite.

In Satcher, a grandson brought an action against his grandfather's estate seeking title to a house and farm, which the grandfather had left to the grandson's uncle. The Court found that the grandson was entitled to the house under a promissory estoppel theory. Specifically, the Court found that the grandfather had promised the grandson that, if the grandson quit his job and moved in with his grandfather, the grandfather would leave the house to him upon the grandfather's death. The Court found that, "[i]n reasonable reliance on that promise, Chip moved to the house and

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provided Grandfather with companionship and other services for more than twenty years.” Satcher, 351 S.C. at 486, 570 S.E.2d at 539. The Court never mentioned, much less discussed, Section 62-2-701, presumably because the parties did not raise it.

Satcher has no relevance to this case. Plaintiff has not even asserted a claim for promissory estoppel, and in any event, Plaintiff has no proof that Mrs. Barringer made a promise to Mr. Barringer regarding her power of appointment, much less that Mr. Barringer relied on any such promise.

IV. Plaintiff’s new theory—that Mr. Barringer did not intend to grant Mrs. Barringer a power of appointment—is not alleged in the Complaint and, in any event, is baseless.

In her memorandum filed on August 6, 2021, Plaintiff argues that “Paul Barringer never intended to give Defendant a power of appointment.” Memo at 6. As noted above, this new argument is squarely at odds with the theory Plaintiff alleges in her Complaint—namely, that Mrs. Barringer promised Mr. Barringer that she would not exercise her power of appointment and that Mr. Barringer relied on that promise when he granted her the power of appointment. Plaintiff does not cite any law to support this new theory, and in fact, Plaintiff does not even mention this theory in the “Applicable law” section of her memorandum.

In her Complaint, Plaintiff does not challenge Mrs. Barringer’s power of appointment on this basis, see generally Compl., nor has Plaintiff sought leave to amend her Complaint to assert such a challenge. Thus, as a threshold matter, the Court should disregard this new theory.

Moreover, Plaintiff has no evidence that Mr. Barringer, a highly successful and intelligent businessman, did not intend to grant his wife a power of appointment by expressly granting her such a power in every version of his revocable trusts, including the version that Plaintiff concedes was executed at a time when Mr. Barringer was competent and not subject to undue influence or a mistake (the 1998 version). See, e.g., York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 81,

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749 S.E.2d 139, 146 (Ct. App. 2013) (holding that “a party who signed a contract is deemed to have read and understood ‘the effect’ of the contract”). Further, Mr. Barringer’s attorney recently testified (after Defendant previously moved for summary judgment) that he discussed different options for powers of appointment with Paul Barringer, and that the language found in Mr. Barringer’s 1998 will and trust was selected by Paul Barringer and “was clearly where [Paul Barringer] came out at the time of the execution.” McBryde Depo, attached as Exhibit C, at p. 38.

Mr. McBryde further explained:

Q. Okay. Well, let’s talk about that language, the -- the “to or among” and then “the manner in which she decides.” What does that mean?

A. It means that **she has sole** responsibility, **authority and discretion to decide if and when and how the children or descendants -- not limited to children -- will take the property** as -- and provide whatever provision she seems -- she deems appropriate in that process because it says “in trust or otherwise,” which means that it could be another trust of some consequence and duration. Maybe one of the children, grandchildren, great grandchildren or one child or whatever it could be.

Q. Okay. Is -- is -- is there anything in the language that requires the children to be treated equally?

A. The -- the whole purpose of this provision -- and this -- you know, this is such a standard estate planning technique in my -- I can -- I couldn’t tell you how many trusts I have had in that regard. **It doesn’t say at all, other than it has to go to descendant or descendants. There is no child designate, no child designated. So she has full authority to slice and dice and distribute and cause a trust to be created as long as she sets it forth as required in her will or codicil, making express reference to this document.**

Id., at 34:5 – 35:6 (emphasis added). Mr. McBryde concluded that he “would never allow a document like this to be executed if I had not discussed it and made clear to” Mr. Barringer. Id. at 37:20-22. Plaintiff has no evidence to the contrary.

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V. Conclusion

For the foregoing reasons, and for the reasons set forth in Mrs. Barringer's motions, Mrs. Barringer respectfully submits that this Court should grant Mrs. Barringer summary judgment on Plaintiff's second and third causes of action.

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August 9, 2021

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EXHIBIT A

Last Will & Testament of Merrill U. Barringer, dated December 4, 1998



Deposition of:
Kevin Luzak

July 14, 2021

In the Matter of:
Luzak, Hampton v. Light, Merrill

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1 Q. You don't know anything, correct?

2 A. This -- this particular exchange was
3 focussed on, I'm assuming, a filing that was made
4 in court that makes reference to a contract. So
5 my question relates -- or my query relates to the
6 nature of the contract. We're acknowledging that
7 there is a widespread of -- within the definition
8 of a contract. I'm not able to answer that
9 question because I don't know the nature of the
10 contract.

11 Q. You don't have any evidence that they
12 entered into any type of contract like that,
13 correct?

14 A. I don't.

15 Q. Or that they entered into any type of
16 agreement or anything of that nature?

17 A. The fuzzier we get, the more hesitant
18 I am to answer the question. So for the purposes
19 of this so we can move on, which I know you want
20 to do, I'll say no.

21 Q. Okay. Well, I don't want to move on.
22 I want to find out what evidence you have, if you
23 have any. I do not want to move on.

24 MR. MACLOSKIE: Asked and answered.

25 BY MR. TWOMBLEY:

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1 Q. If you have -- if you have any
2 evidence that Paul and Merrill Barringer entered
3 into a contract, agreement, pinky swear, anything
4 you want to call it, that they were going to treat
5 their children equally in the future no matter
6 what type of behavior the children engaged in, I
7 want you to tell me that.

8 MR. MACLOSIE: Asked and answered.
9 BY MR. TWOMBLEY:

10 Q. Do you have any such evidence?

11 A. I -- I do not.

12 Q. Okay. Will you turn to 19A of the
13 notebook?

14 A. Sure.

15 Q. Luzak 142.

16 A. Yes.

17 Q. I think you said this is a
18 presentation you made at one of the YPO things?

19 A. Oh, 19A. Sorry. Hang on.

20 Q. 19 --

21 A. I think -- I believe so, yes.

22 Q. Who authorized you to disclose all of
23 this financial information of CFRC to all these
24 people at the YPO?

25 MR. GILREATH: You got a page number?



Deposition of:
Neill McBryde

March 26, 2021

In the Matter of:
Luzak, Hampton v. Light, Merrill

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1 of the creditors of her estate.

2 So it's going to have to go to or among
3 whatever amount she provides the descendants.

4 Q. Okay. Well, let's talk about that
5 language, the -- the "to or among" and then "the
6 manner in which she decides." What does that mean?

7 A. It means that she has sole responsibility,
8 authority and discretion to decide if and when and how
9 the children or descendants -- not limited to
10 children -- will take the property as -- and provide
11 whatever provision she seems -- she deems appropriate
12 in that process because it says "in trust or
13 otherwise," which means that it could be another trust
14 of some consequence and duration. Maybe one of the
15 children, grandchildren, great grandchildren or one
16 child or whatever it could be.

17 Q. Okay. Is -- is -- is there anything in the
18 language that requires the children to be treated
19 equally?

20 A. The -- the whole purpose of this
21 provision -- and this -- you know, this is such a
22 standard estate planning technique in my -- I can -- I
23 couldn't tell you how many trusts I have had in that
24 regard. It doesn't say at all, other than it has to
25 go to descendant or descendants. There is no child

1 designate, no child designated.

2 So she has full authority to slice and dice
3 and distribute and cause a trust to be created as long
4 as she sets it forth as required in her will or
5 codicil, making express reference to this document.

6 Q. Now, let's talk for a minute about making
7 express reference in her will or codicil, thereto.

8 How would -- generally speaking, how would
9 someone exercise a power of appointment like we have
10 just reviewed in Mr. Barringer's trust?

11 A. It would be in her will that she would
12 exercise because it's power. It's a personal power.
13 And she would say, adding to the will, I'm given the
14 power, and she would recite that. And that's the way
15 it's commonly done. And I wish to distribute the
16 property in this manner and direct that it be done,
17 pursuant to the provisions of this trust.

18 I would right a title in that, but that's
19 the gist of it.

20 Q. I understand.

21 Now, does Mrs. Barringer have the ability
22 to -- to change her mind in the future as to how she
23 may or may not want to exercise the power of
24 appointment?

25 MR. MEDLIN: Object to the form.

1 THE WITNESS: Oh, yes. I mean,
2 basically, she can write a will every day.
3 I mean, amend a will any time she wants and
4 can change it back and forth and over time,
5 you know, it's not just -- it's not just a
6 provision that relates to the issues that
7 there are with -- in her view, and she has
8 sole authority to the children, her
9 grandchildren, her great grandchildren.

10 It also could be issues relating to
11 total change in the tax laws, or -- that
12 would cause a confiscation if she gave to
13 some -- or creditor problems or any kind of
14 issues that we all know can happen to any
15 generation of level individual who are
16 descendants.

17 BY MR. TWOMBLEY:

18 Q. What if she just gets upset at -- at one of
19 the descendants?

20 A. This is a -- this is the sole -- I mean,
21 that's one of the things you take -- take into
22 consideration when you draft these documents, and
23 it's -- it was discussed. I -- we will get into that
24 later. But I know it has been discussed here. It's
25 her primary -- it's her direct right in this case to

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1 decide. And -- and she does have to appoint it to --
2 at least the way I read it, to a -- a descendant.

3 Q. Sure. I understand. Okay.

4 A. In trust or otherwise, which I'm reading in
5 the rest of the language.

6 Q. Sure. Now, you -- you did reference or
7 mention that this is a common provision. Is this type
8 of provision in every couples' trust, or do some of
9 the couples choose not to have this type of provision?

10 A. It -- normally in a process, you would have
11 to tell them -- and we did here, too, for sure -- is,
12 Here are the options. This is one option. Another
13 option would be per stirpes. Another option would be
14 at the start, rearrange to get to the maybe one spouse
15 -- one child is not or it just to a grandchild. Or
16 basically, not exercise the power, which means it then
17 goes in accordance to the term.

18 So -- but yes. You know, it's discussed,
19 and this was discussed in this case.

20 Again, I -- I professionally would never
21 allow a document like this be executed if I had not
22 discussed it and made clear to -- just to the issue
23 you're stating, and besides it's clear in its right
24 actually.

25 Q. So -- so you mentioned that there were

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1 different options for including a power of appointment
2 or not including a power of appointment. How did you
3 decide which one to put in Paul Barringer's trust?

4 A. I don't -- I don't decide that. It's done
5 by consultation with, in this case Paul. And again,
6 this was in 1998, and I got a fairly good memory, and
7 I know what my process is. I have been through this
8 literally dozens of times.

9 And basically, you have to walk through the
10 very questions you've asked, does it apply here, does
11 it apply there, and they have to make a decision, and
12 you hope that it's the best decision. It's one that
13 they will be well informed with, and of course, these
14 documents can be amended and restated if necessary
15 over time.

16 But this was clearly where they came out
17 where Paul came out at the time of the execution.

18 Q. And so this -- this power of appointment
19 language would apply for the A Trust, the B Trust and
20 the residuary trust?

21 A. Correct.

22 MR. MEDLIN: Object to the form.

23 BY MR. TWOMBLEY:

24 Q. Now, Mr. McBryde, are you able to see my --
25 I guess you are able to see me on my screen. I'm

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253
		2019-CP-07-01294

IN THE MATTER OF ESTATE OF PAUL
BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,

Plaintiff,

v.

MERRILL U. BARRINGER,

Defendant

**DEFENDANT’S MEMORANDUM IN
OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AS TO PLAINTIFF’S
SECOND AND THIRD CAUSES OF
ACTION**

In response to Plaintiff’s Motion for Summary Judgment as to Plaintiff’s second and third causes of action, Defendant Merrill Barringer (“Mrs. Barringer” or “Defendant”) submits this memorandum and incorporates Defendant’s Motion for Summary Judgment on Plaintiff’s Second Cause of Action and Defendant’s Motion for Summary Judgment on Plaintiff’s Third Cause of Action filed June 14, 2021, and all exhibits and memoranda filed in support, as well as any other relevant pleadings, depositions, answers to interrogatories and admissions on file.

Third Cause of Action

In her Complaint as her Third Cause of Action, Plaintiff alleges Mr. and Mrs. Barringer entered into “a binding contract” that barred Mrs. Barringer from ever revoking her will, i.e., from ever exercising the power of appointment that Mr. Barringer expressly granted to her. See Compl. ¶¶ 137-43. It is undisputed that Mr. and Mrs. Barringer executed wills and revocable trusts in 1998. Mr. Barringer’s 1998 Revocable Trust gives his wife of nearly 60 years, Mrs. Barringer, a special power of appointment, permitting her, through her own will, to designate who among their

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descendants will receive Mr. Barringer's assets remaining at the time of her death. Mrs. Barringer's 1998 revocable trust gave Mr. Barringer a special power of appointment, permitting him, if he survived her, to designate who among their descendants, would receive Mrs. Barringer's remaining assets at the time of her death. Mrs. Barringer does not exercise any power of appointment in her 1998 Will.

Plaintiff submits she has offered proof in compliance with South Carolina Code Section 62-2-701¹, which sets forth the only 3 methods for proving such a contract. The first method is by a decedent's will containing material provisions of the contract. For the first method, Plaintiff relies on the following provision in the residuary clause of Mrs. Barringer's will:

All of the rest, residue, and remainder of my property of every kind and description, and wherever located, including any lapsed or void devise (**but not including any property over which I may have a power of appointment**), I devise to the then acting Trustee or Trustees of The Merrill U. Barringer Revocable Trust"

Mrs. Barringer Will dated December 4, 1998, (emphasis added). This language merely shows that Mrs. Barringer did not intend to exercise any power of appointment through the residuary clause in her will. In any event, the language above in Mrs. Barringer's 1998 Will does not say or imply that Mrs. Barringer entered into a contract not to ever change her will or not to ever exercise the special power of appointment granted to her by Mr. Barringer's revocable trust at the time of his death. It is NOT a material provision of a contract between Mr. and Mrs. Barringer.

Plaintiff agrees she cannot offer proof in compliance with the second method.

The third method requires a signed writing by the decedent evidencing the contract and extrinsic evidence to prove its terms. For the third method's signed writing requirement, Plaintiff first points to Mr. Barringer's 1998 will and revocable trust and Mrs. Barringer's 1998 will and revocable trust and revisits the same arguments she makes for method one. However, the

¹ The statute and comments are attached as Exhibit 1.

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referenced language is not evidence of a contract between Mr. and Mrs. Barringer. Plaintiff's argument is that Mrs. Barringer and Mr. Barringer executed mutual or "sympiotic" wills. The fact that Mr. and Mrs. Barringer executed these documents, which were drafted by the same lawyer, is not disputed. However, the wills and revocable trusts, do not contain contractual language and by their own language, contemplate that they may be amended. Further, section 62-2-701 clearly states: "The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."

The plaintiff has not submitted proof in compliance with S.C. Code § 62-2-701 and therefore cannot show she is entitled to judgment as a matter of law.

Second Cause of Action

Plaintiff argues that, even if she cannot enforce a contract between her parents pursuant to Section 62-2-701, she can achieve the same result through her claim for constructive trust. First, as Defendant has repeatedly argued in her briefing, Plaintiff cannot circumvent the "signed writing" requirement in the South Carolina Code with an equitable cause of action because "equity follows the law." Even if her constructive trust claim is allowed, Plaintiff has no evidence to support it and certainly cannot show she is entitled to judgment as a matter of law.

First, In Plaintiff's Memorandum Supporting Plaintiff's Motion for Summary Judgment filed August 6, 2021, she says that "Mrs. Barringer's 1998 Will makes an express promise by stating she would not exercise her power of appointment." This is inaccurate. Again, Plaintiff relies on the following provision in the residuary clause of Mrs. Barringer's will:

All of the rest, residue, and remainder of my property of every kind and description, and wherever located, including any lapsed or void devise (**but not including any property over which I may have a power of appointment**), I devise to the then acting Trustee or Trustees of The Merrill U. Barringer Revocable Trust"

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Mrs. Barringer's Will dated December 4, 1998, (emphasis added). This language merely shows that Mrs. Barringer did not intend to exercise any power of appointment through the residuary clause in her will. It does not contain an express promise stating she would not ever exercise the power of appointment given to her in Mr. Barringer's revocable trust.

Second, Plaintiff argues that, under Chapman v. Citizens & S. Nat. Bank of S.C., 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990), she can prove that Mrs. Barringer irrevocably promised never to exercise her power of appointment. As Defendant has previously outlined, because of the enactment of S.C. Code § 62-2-701, Chapman is no longer good law. Further, unlike the Plaintiff in the Chapman case, Plaintiff Luzak argues her mother made this promise through her "silence." Even if Plaintiff could rely on "silence," Plaintiff does not identify any specific conversation or conversations where Mrs. Barringer, through her silence, should be deemed to have promised Mr. Barringer that she would never exercise the power of appointment that he granted to her. Rather, Plaintiff vaguely references "numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant." Plaintiff does not cite any case from any jurisdiction where a court found a contract not to revoke based on silence, much less silence during a family discussion about "plans" for the future. In addition, any testimony from Plaintiff about alleged communications with her deceased father (or testimony from Plaintiff's husband) is barred by the South Carolina Dead Man's Statute. S.C. Code Ann. § 19-11-20.

Plaintiff has no evidence that she is entitled to a constructive trust, which requires clear and convincing evidence, as a matter of law.

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August 9, 2021

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ROA 004736

Code of Laws of South Carolina 1976 Annotated
Title 62. South Carolina Probate Code (Refs & Annos)
Article 2. Intestate Succession and Wills (Refs & Annos)
Part 7. Contractual Arrangements Relating to Death

Code 1976 § 62-2-701

§ 62-2-701. Contracts concerning succession.

Effective: January 1, 2014

[Currentness](#)

A contract to make a will or devise, or to revoke a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Credits

HISTORY: 1986 Act No. 539, § 1; 1990 Act No. 521, § 28; [2013 Act No. 100, § 1](#), eff January 1, 2014.

Editors' Notes**REPORTER'S COMMENT**

Section 62-2-701 allows the proof of a contract binding a decedent and concerning the succession to his estate, testate or intestate, only by way of some signed writing, either (1) his written, signed will containing the material provisions of the contract; (2) his written, signed will containing an express reference to the contract (extrinsic evidence proving its terms); or (3) a writing other than a will but signed by the decedent and containing evidence of the contract (allowing extrinsic evidence to prove its terms). The section's requirement of a signed writing to prove such contracts is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively.

Noting that the only concern of Section 62-2-701 is with the proof of contracts concerning succession, it should be recognized that the prior South Carolina law, concerning the formation of such contracts and the effects of such contracts' formation and the breach thereof, remains intact. See S. Alan Medlin, *The Law of Wills and Trusts* (S.C. Bar 2002) Sections 341, 342; W. Brown, Note: *Specific Performance of Oral Contracts to Devise*, 17 S.C.L. Rev. 540 (1965); and T. Stubbs, *Oral Contracts to Make Wills*, IX Selden Soc. Y.B. Part III, 10 (1948).

The policies basing Section 62-2-701 and [Sections 62-2-502](#) (execution of wills), 62-2-506 (revocation of wills), and 62-2-509 (incorporation of other matter by reference in wills) are the same. All of these sections are aimed at protecting the integrity of the process of succession to the estates of decedents in accordance with their own true wills. Each of these sections requires that the decedent's will be expressed either in some writing or by way of a physical act done to some writing; the writings are required in the expectation of increasing the reliability of the proof of the decedent's true will. See K. Walsh, Note: *The Statute of Frauds' Lifetime and Testamentary Provisions: Safeguarding Decedents' Estates*, 50 Ford. L. Rev. 239 (1981) (hereinafter Walsh).

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Section 32-3-10(4) of the 1976 Code does require contracts concerning land to be “in writing and signed by the party to be charged therewith.” Accordingly, contracts concerning the succession to land as an asset of a decedent's estate were, *Brown v. Golightly*, 106 S.C. 519, 91 S.E. 869 (1917), *White v. McKnight*, 146 S.C. 59, 143 S.E. 552 (1928), and will yet be required to be in writing and signed by the decedent, i.e., “by the party to be charged therewith (only in the sense that to charge the personal representative or other successor or assign of the decedent is to charge the decedent himself).”

In addition, prior South Carolina case law was said to require that contracts concerning succession be proved by “clear, cogent, and convincing evidence.” *Caulder v. Knox*, 251 S.C. 337, 346, 162 S.E.2d 262 (1968), *Brown v. Graham*, 242 S.C. 491, 131 S.E.2d 421 (1963). While Section 2-701 fails to codify the stated higher standard of proof per se, the provision's requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect.

Further, Section 62-2-701 provides that no presumption of the existence of a contract concerning succession arises from the mere execution of mutual wills or of a joint will. And while there is South Carolina authority, relying on the reciprocating nature of the terms of a joint will, together with surrounding family circumstances, for the satisfaction by implication of the clear, cogent, and convincing evidentiary standard as to the existence of a contract not to revoke the joint will, in a case in which the joint will failed to actually express an agreement of nonrevocability, *Pruitt v. Moss*, 271 S.C. 305, 247 S.E.2d 324 (1978), Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract.

Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract whose mere existence is proved by a signed writing. However, as a brake on the provision's liberality with respect to extrinsic evidence, Section 19-11-20 of the 1976 Code, the “Dead man's” statute, will continue to limit the admissibility of that extrinsic evidence which is subject to its application, this notwithstanding the enactment of Section 62-2-701. See *Brown v. Golightly*, supra.

Section 62-2-701 avoids the problems, both that of the possibly uneven application of the stated higher standard of proof of contracts concerning succession and that of the questionable breadth of application of the several pre-existing Statutes of Frauds provisions as to contracts concerning succession, quite simply by establishing a signed writing requirement specifically applicable to all such contracts. Presumably Section 62-2-701 will be construed as preempting the field, rendering all other such statutory and case law provisions inapplicable to such contracts in the future.

However, it may be questioned whether Section 62-2-701 should not be subject, in its operation, to the familiar legal and equitable exceptions to the operation of the other Statutes of Frauds provisions. See Section 62-1-103 and *Walsh*, supra, at 258-270. These include the remedies of restitution of monies advanced and the imposition of a constructive trust to force the restitution of other specific assets advanced by the promisee on an oral contract, and the effects of part performance of the oral contract by the promisee as well as equitable and promissory estoppel, either matter binding the promisor to the oral contract notwithstanding any applicable Statute of Frauds. One case has reached such a conclusion after the enactment of Section 62-2-701. See *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (S.C. App. 2002). See also *White v. McKnight*, supra, *Turnipseed v. Sirrine*, supra 57 S.C. at 578, *Riddle v. George*, 181 S.C. 360, 187 S.E. 524 (1936), *Bruce v. Moon*, 57 S.C. 60, 35 S.E. 415 (1900). See W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965).

For the enforcement of a contract concerning succession while the testator is still alive, see *Wright v. Trask*, 329 S.C. 170, 495 S.E. 2d 222 (S.C. App. 1997).

Notes of Decisions (8)

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Code 1976 § 62-2-701, SC ST § 62-2-701

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Current through 2021 Act No. 116, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

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ROA 004739

From: Bill Hogan <bhogan@gilreathlaw.com>
Sent: Wednesday, January 8, 2020 2:19 PM
To: Ashley Twombley <twombley@twlawfirm.com>; amedlin@sc.rr.com; Andrea Smith <andrea@twlawfirm.com>
Cc: Kevin Johnson <kjohnson@twlawfirm.com>; 'Alice Paylor' <apaylor@rosenhagood.com>; 'Bijan Ghom' <bghom@rosenhagood.com>; 'Charles Molster' <cmolster@molsterlaw.com>; 'Taylor Davis' <tdavis@rosenhagood.com>; 'Ensley Mahoney' <emahoney@rosenhagood.com>; 'Jim Gilreath' <jim@gilreathlaw.com>; 'Charles B. Macloskie, Esquire' <macloskielawfirm@hargray.com>; 'Kathie Kohlmayer' <kathie@gilreathlaw.com>; Andrea Smith <andrea@twlawfirm.com>
Subject: RE: Luzak v. Light; C/A #2016-CP-07-01919; 2019-CP-07-01253 & 01294

Ashley:

Per our conversation yesterday, we are in agreement with you having 60 days after the date of Judge Mullen's ruling on your expert report motion to disclose your experts to us with the understanding that we will be given sufficient time to conduct our discovery of your experts even if the 60 day disclosure period runs near or after the court's discovery deadline in the third Amended Scheduling Order of October 23, 2019. The date of Judge Mullen's ruling for the purpose of calculating the 60 day period should be the earlier of her oral, written or electronic notification of her decision.

--Bill Hogan

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From: Ashley Twombley [<mailto:twombley@twlawfirm.com>]
Sent: Monday, December 16, 2019 5:01 PM
To: Bill Hogan; amedlin@sc.rr.com; Andrea Smith

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ROA 004740

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Hampton B. Luzak v.	)	CASE NO. 2016-CP-07-1919
Merrill B. Light, et al.	)	
	)	
-and-	)	
	)	
Hampton B. Luzak v.	)	CASE NO. 2019-CP-07-1253
Merrill U. Barringer	)	CASE NO. 2019-CP-07-1294
	)	
	)	
	)	

January 31, 2020

Beaufort, South Carolina

B E F O R E:

The Honorable Carmen Mullen

A P P E A R A N C E S:

For the Plaintiffs:

James R. Gilreath, Esquire

S. Alan Medlin, Esquire

Charles B. Macloskie

For the Defense:

J. Ashley Twombly

Alice F. Paylor

Harley D. Ruff

Certified Transcript Provided For: Rosen Hagood

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1 not resist the conservatorship. We every month thought
2 that Mr. Barringer was incapacitated at that time. The
3 question was, was my client going to be the guardian and
4 the conservative or was it some lawyer that they picked was
5 going to be.

6 THE COURT: Okay.

7 MR. TWOMBLEY: So I wanted to make sure Your Honor was
8 aware of that.

9 MR. MEDLIN: And, Your Honor, that use of the term
10 resist is -- was intentional. They were preferring not to
11 have a conservator and certainly preferring Mrs. Barringer
12 to be conservator if there was a need for a conservator.

13 My client thought that if Mrs. Barringer wasn't
14 already protecting him then why would she start so.

15 THE COURT: Okay. All right.

16 So what about the scheduling order?

17 MR. TWOMBLEY: Yes, I now get to argue that they
18 flaunted Your Honor's order.

19 Your Honor, this -- this issue of expert reports
20 previously came up. We talked about it. We argued about
21 it. Your Honor decided that -- I am not sure what your
22 thought process exactly was. But I think you probably
23 thought that because of the complexity of the issues, the
24 timeframe involved, the number of experts that were going
25 to be needed, the amount of money involved, that it was in

1 everyone's best interest to have, you know, full and
2 complete expert reports. They resisted it. You overruled
3 them. You said we needed to do expert reports.

4 You know, the reports that they have done do not
5 satisfy any of the criteria that would be needed for an
6 expert report in federal court.

7 THE COURT: Right.

8 MR. TWOMBLEY: But ---

9 THE COURT: I know I ordered -- but also too they are
10 going to argue that obviously they don't have her estate
11 planning documents. And that is going to change anything
12 that ---

13 MR. TWOMBLEY: Well, obvious- ---

14 THE COURT: And probably other things too. But among
15 them.

16 MR. TWOMBLEY: Well, I think they could argue -- I
17 mean if their expert wanted to reserve an opinion because
18 they didn't have that document, that's fine. But I mean
19 let's just talk about their medical doctor, for example. I
20 mean she has not said one opinion that she is going to
21 offer at trial about ---

22 THE COURT: Did I order that everyone give -- every
23 expert given a written opinion in this case?

24 MR. TWOMBLEY: Yes, you did. You ordered that all
25 experts had to be identified and that each expert had to do

1 an expert report.

2 And, you know, Your Honor, I understand that, you
3 know, Your Honor may not have wanted them to do exactly
4 what would be required in federal court; but we need and
5 want and we would argue we are entitled to know at a
6 minimum the opinions that they are going to offer at trial
7 and what their basis for those opinions are. Because we
8 have to identify our own experts.

9 THE COURT: I understand.

10 MR. TWOMBLEY: And so, you know, we would just ask
11 that Your Honor enforce the order that you have already
12 enforced. I think they should have to, minimum, do expert
13 reports. And each report should have a full and complete
14 list of the opinions that the expert is going to offer at
15 trial, and the basis for those opinions. And I mean we
16 just think we are entitled to that at a minimum.

17 If we don't have that, Your Honor -- I mean they have
18 identified like five or six experts. We are -- nobody is
19 going to know what any expert is going to say. It is going
20 to necessitate every expert is going to have to be deposed,
21 complete and fully, because you're not going to know what
22 they are going to say. You don't know what opinion they
23 are going to offer at trial.

24 And so we would ask that you, you know, require them
25 to comply with the ---

1 THE COURT: Just so I am clear, because I am looking
2 at -- are we talking about an order -- and I don't even
3 have the date on -- well, here it is. I want to make sure.
4 The order signed on -- well, it doesn't even ---

5 MR. TWOMBLEY: October ---

6 THE COURT: Yeah.

7 MR. TWOMBLEY: --- 23rd, 2019?

8 THE COURT: It is a consent order. It was a consent
9 order.

10 MR. TWOMBLEY: Well, what happened is we had had a
11 hearing or tell -- I can't remember exactly what it was.
12 But the issue came up and you said that you thought ---

13 THE COURT: I like expert reports. I can tell you I
14 just -- it makes me feel comfortable. We do them in
15 construction cases. It is everybody knows what they are
16 going to say.

17 It is also, I think -- and I -- maybe everyone
18 disagrees with me. It helps with the coming up with the
19 new opinion three weeks before trial. Because we can hard
20 and fast say this is what you said and now what you are
21 saying is different. That is why I like them, personally.

22 I know they are not required in state court. I am
23 going to be honest with you, I can tell you that if you all
24 sent me a scheduled consent order, the only thing I cared
25 about was when this case was set for trial and whatever

1 ya'll agreed to is fine by me.

2 I try so hard not to micromanage how you schedule.
3 But I do agree in this case that I want an end in sight.
4 And that is kind of where I am concerned about at some
5 point we have got to bring this to a head.

6 I will say this. I don't think that anyone can render
7 an opinion -- and, no, maybe the doctor about competency is
8 different. You know, maybe a few of these experts. But --
9 and I don't even know what all -- or what types of experts
10 you have. But I can tell you this, I don't think anyone
11 needs to be writing an opinion or opining on something that
12 has anything to do with those documents, until they are
13 received, until they get them. And that could be, like I
14 said, if she chooses to turn them over, fine. It could be
15 after the Supreme Court or, you know, the Court of Appeals
16 says I am right. Or it could be never.

17 But until that determination is made, I don't think we
18 can live by the scheduling order. I mean I don't. I mean
19 that is all -- I am just being practical. So and I respect
20 that and see that.

21 But I am, like I said, I am real concerned about this
22 case going on for forever. So that is kind of my answer to
23 you. I hear your argument. I just think -- I just think
24 right now until we get this resolved -- because I think to
25 you all this is very important.

1 To me it is just about everything else has been
2 shared. Am I correct on this, or discovered?
3 If that fair to say, Ashley, do you think?
4 MR. TWOMBLEY: Yes -- yes, ma'am.
5 THE COURT: Okay.
6 MR. TWOMBLEY: I think so. And I -- I mean maybe they
7 have a different opinion. But I mean the vast majority of
8 their experts I mean their opinions ---
9 THE COURT: So what are they besides the doctor with
10 the ---
11 MR. TWOMBLEY: There's accounting experts.
12 THE COURT: Okay.
13 MR. TWOMBLEY: There is a forensic accountant expert.
14 THE COURT: Okay.
15 MR. TWOMBLEY: There is a medical doctor ---
16 THE COURT: Okay, and that is as to competency; is
17 that the doctor?
18 MR. TWOMBLEY: That is as to competency and capacity.
19 THE COURT: Forensic accountant, okay.
20 MR. TWOMBLEY: There is a trust and estate -- or a
21 fiduciary officer. And I guess, arguably ---
22 THE COURT: Who is that -- who is your -- have you
23 disclosed that yet or not?
24 MR. TWOMBLEY: Julia Walters.
25 THE COURT: Okay.

1 MR. TWOMBLEY: So, arguable, I think, Your Honor ---

2 THE COURT: Any other than those though; one, two,
3 three -- that is four. Is there anyone else?

4 MR. GILREATH: I think they are all in the notebook,
5 Your Honor.

6 THE COURT: Okay. I know. But I am not reading it
7 right now. I am asking you all. I am not going hunting
8 for it.

9 MR. TWOMBLEY: I thought -- I thought that was -- I
10 thought there were -- there was one more.

11 THE COURT: There is one more? You said that.

12 MR. TWOMBLEY: But I can't -- I would have to look.

13 THE COURT: Okay.

14 MR. TWOMBLEY: But I don't -- I think ---

15 THE COURT: Do you think anything matters to that is
16 what you are telling me?

17 MR. TWOMBLEY: I don't think so. I don't see how it
18 would have any -- any application at all.

19 THE COURT: Okay. And I am -- okay.

20 MR. GILREATH: Your Honor, can I just address some of
21 that?

22 THE COURT: Sure.

23 MR. GILREATH: All right. I have got a couple of
24 letters here I want to hand up. To start off with, this
25 thing about the experts and all that got -- it kind of got

1 in the scheduling order, and they were drafting the
2 scheduling order ---

3 THE COURT: You agreed to it, so again ---

4 MR. GILREATH: And they kept -- they kept saying they
5 wanted written opinions. And we protected the record on
6 that the best way we could is we wrote Your Honor ---

7 THE COURT: You agreed to it. I am reading it, the
8 scheduling order. And you agreed to it.

9 But keep going.

10 MR. GILREATH: We wrote Your Honor on May the 23rd.
11 And I have handed that letter up. And we said, we further
12 disagree that expert reports should be required as stated
13 in Defendant's proposed scheduling order since the expert
14 reports are not required under the South Carolina rules;
15 production of formal expert report would add significant
16 cost to both parties.

17 And then they still put it in the motion. Of course
18 we had -- we were wanting to get a scheduling order, and
19 they kept putting this thing in there about expert report;
20 so we put a footnote. And that is in the second document
21 which was on this motion for entry of third mini-scheduling
22 order.

23 And Footnote 1 says, plaintiff by letter - referring
24 to the plaintiff's -- that letter of May 23rd - objected to
25 the requirement of written expert reports. Plaintiff

1 respectfully maintains her objection to written reports and
2 reserves all rights to continue her objection.

3 And we pointed out that while that is the law in the
4 federal court we ---

5 THE COURT: I know all that. Mr. Gilreath, I know all
6 of that. But what I am saying is you agreed to it. You
7 signed it and agreed to it.

8 MR. GILREATH: We didn't have any ---

9 THE COURT: So let's get past that. Now are you
10 trying to say -- are you -- what you are trying to say is
11 now ---

12 MR. GILREATH: Your Honor, let -- well, let -- let me
13 tell you what happened. Can I?

14 THE COURT: Okay.

15 MR. GILREATH: Let me go through what happened. They
16 got a written opinion. We didn't have any choice but to
17 object to it. We put a footnote. We were trying to -- you
18 know, we were kind with a Hobson's choice.

19 But we filed our expert reports on time. They
20 complained. Dr. Alford filed a supplemental report that
21 said everything I guess he would say in a federal court.
22 The -- a few days. And we have given them that. That is
23 all he can give them. So we got it.

24 THE COURT: I understand that.

25 MR. GILREATH: And then the -- there is nothing to

1 supplement on Dr. Sanders' report.

2 THE COURT: And which expert is he?

3 MR. GILREATH: She said all she can say. Gillian
4 Walker really doesn't have anything he can write other than
5 what he wrote.

6 And most interestingly, from the forensic accountant,
7 Ellie Thomas, he can't prepare his report because we still
8 can't get the documents we want from CFRC in Georgia.

9 I went down there to Georgia. Went down there, all of
10 us on a plane. Argued in front of this judge. And he gave
11 me everything I wanted except for two things. He said you
12 need to further clarify that. So we got with Mr. Thomas,
13 and he gave us a list of what he needed.

14 We supplemented that. Served it on them. They came
15 back. They objected to all of it. And we have had a
16 conference on it. We can't get anywhere with them. So I
17 am getting ready to go back to Tallahassee in front of this
18 judge again, and I can't get the documents down there.

19 Now, their client, Ms. Light, controls this
20 corporation. And, you know, at one time we tried to get
21 you, if you remember, ---

22 THE COURT: Yeah.

23 MR. GILREATH: --- to order them to give us the
24 documents.

25 THE COURT: Right.

1 MR. GILREATH: And you said, well, that is a
2 corporation, you have got to go to Georgia -- well, I
3 mean -- I mean you have got to go to Florida.

4 I like to go to Florida; but I don't like to go to
5 Tallahassee, Florida. I can tell you. And I mean we have
6 got a judge down there and I think he is going to order
7 them again.

8 But the only thing I can figure out is there is
9 something in those documents they don't want us to see.
10 And we have been asking for them.

11 And we got -- we filed another motion to compel last
12 week. And we are trying to get it scheduled. That is not
13 real easy in Florida. Not quite as easy as it is up here.

14 So they are holding us up on that. That is going to
15 start -- you know, if the trial date were sitting out here
16 two summers from now I wouldn't be real worried about it.
17 But right now we have got a trial date in I think it is
18 July.

19 THE COURT: July of 2020.

20 MR. GILREATH: July. And we don't even have the stuff
21 to get our experts to do it. And the defendants, whose
22 lawyers are sitting in this courtroom right now, will not
23 give us the documents for our forensic fellow to do that.

24 THE COURT: But my question to you is what do you
25 want. I mean this obviously ---

1 MR. GILREATH: But he filed -- Elliott filed a report.
2 But he can't file a complete report.

3 MR. TWOMBLEY: And, Your Honor, I want to make sure I
4 am clarifying so you have confidence. No one is trying to
5 prevent anybody's expert from receiving new information in
6 the future that they legitimately did not have, like Mrs.
7 Barringer's estate planning documents or like some
8 information that might be ordered to be turned over by the
9 Florida court, to prevent them from changing an opinion
10 based on that.

11 THE COURT: Right.

12 MR. TWOMBLEY: But that -- but we -- we have got about
13 50,000 other documents that have been produced and other --
14 you know, other records in the case and depositions that
15 have been taken. And all that stuff is out there.

16 And if you would look at Dr. Sanders' expert report as
17 them -- but she is their competency expert. She doesn't
18 say anything that she is going to testify to at trial. And
19 that is not based on some new record. But if there is some
20 new record then, yes, I mean she could say I didn't have
21 that record at the time.

22 So, you know, whenever they are required to identify
23 their experts we just need to know what opinions they are
24 going to offer at trial and what the basis of those
25 opinions are.

1 MR. GILREATH: Your Honor, they are going to -- they
2 can take these people's deposition; and they will tell them
3 everything they know.

4 I mean we are not in federal court. You don't -- they
5 are trying to put us under the strict rules they have got
6 in federal court on enrichment and all that kind of stuff.
7 And that is just not the rules in state court.

8 And they file -- they file reports and said what they
9 know now. And that is what they are going to testify to,
10 as I understand it.

11 MS. PAYLOR: Your Honor, we are just entitled to
12 opinions. And once the competency person said -- she just
13 started reading some stuff from doctor's notes. She never
14 gave ---

15 THE COURT: An opinion?

16 MS. PAYLOR: --- her opinion. She didn't do anything
17 other than repeat the medical records that she has been
18 provided.

19 They want to limit their experts to their current
20 reports? We are fine with that. Because most of them
21 didn't give an opinion at all.

22 MR. GILREATH: I think Dr. Alford has given you all of
23 his opinions now. He supplemented his report and has given
24 all of his opinions. That is my understanding.

25 MS. PAYLOR: Mr. Alford, his is the best. I will say.

1 MR. GILREATH: And Gillian is going to say the same
2 thing that is in his report. That is all he can say.

3 Bill Hogan has been dealing with Sanders. He has been
4 dealing exclusively with her. I haven't been -- so I am a
5 little bit ---

6 THE COURT: I am just reading her -- her ---

7 MR. GILREATH: So I am a little bit ---

8 THE COURT: --- affidavit right now.

9 MR. GILREATH: --- of a disadvantage on that. Let me
10 see if that -- isn't her ---

11 THE COURT: I see your argument that basically what
12 Dr. Sanders says is I reviewed all this, I see what all the
13 doctors say, and that is about it. There is no ultimate
14 opinion, obviously.

15 And I see the argument.

16 All right. This is what I am going to do. I am going
17 to look at the scheduling order and probably adjust it
18 myself. Let's see what happens with these documents.

19 I know I can tell you hearing this though, really
20 these expert reports have nothing to do with what is coming
21 out of that except -- they just don't. So I think I can
22 give a little more time for some clarity.

23 You know, my goal is never to arrest written reports
24 out of these experts. Like I said, sometimes it is just
25 nice to have and so you can kind of have something to sit

1 on, particularly before a deposition.

2 But let me just work on the scheduling order. Okay.
3 And sit tight though. It is not going to be tomorrow, this
4 portion. I am just not.

5 Because I want to know what is going to happen with
6 this. I want to see, once I get your order, I sign it,
7 where we go; you appeal or do whatever, I just want to know
8 where we are at then. And then we will kind of revisit
9 this. Okay?

10 MS. PAYLOR: We also have the order of protection from
11 Mr. Gilreath, which we are not arguing about; but that
12 needs to be factored in.

13 THE COURT: So when is that?

14 MR. GILREATH: I have got to have -- I have got a big
15 abdominal hernia. I have got to go to the Cleveland
16 Clinic. I am going to -- we have got an order of
17 protection. Everybody has agreed to it.

18 THE COURT: Okay.

19 MR. GILREATH: And the chief judge signed it. I think
20 it -- it starts on March the 8th. My surgery is on the
21 11th. And I think it runs down to --

22 (WHEREUPON, counselors confer)

23 MR. GILREATH: --- April 23.

24 THE COURT: Okay. We will get ---

25 MR. GILREATH: And then Alice has got -- once my

1 protection runs we have got about two days when mine
2 starts, and then she has got three days that week. Se we
3 have got another -- that is a lost week right here.

4 THE COURT: Okay.

5 MR. GILREATH: Which is a problem but.

6 THE COURT: I am going to factor it in, obviously. I
7 can also tell you too ---

8 MR. GILREATH: That protection order is on record,
9 Your Honor.

10 THE COURT: Okay. It is on the record?

11 MR. GILREATH: Yeah.

12 THE COURT: So ---

13 MR. GILREATH: It is signed by -- who is the judge ---

14 THE COURT: Was it Buckner before -- was it before
15 Christmas it was Buckner. It if is now it was ---

16 MS. PAYLOR: I think it was Judge Jefferson actually.

17 THE COURT: She -- yes.

18 MR. GILREATH: Judge Jefferson -- Judge Jefferson
19 presiding.

20 MS. PAYLOR: But what I -- what I wanted to say was,
21 he doesn't want any depositions taken ---

22 THE COURT: During the time ---

23 MS. PAYLOR: --- while he is not here. Which we
24 understand.

25 THE COURT: I would think not.

1 MS. PAYLOR: So that means we can't take discovery ---
2 THE COURT: I hear you.
3 MS. PAYLOR: --- while he is gone. Okay.
4 THE COURT: I hear you.
5 MS. PAYLOR: Okay. That is all I wanted to ---
6 THE COURT: It sounds like you are going to be out at
7 least a month then is what I hear.
8 MS. PAYLOR: Six weeks.
9 THE COURT: Six weeks.
10 MR. GILREATH: And I am going to be out until April
11 or ---
12 THE COURT: Okay. Okay. Well, I can also tell you
13 too for scheduling this case for trial -- we don't have any
14 of the terms starting July yet, do we -- so we don't even
15 have the terms starting in July. And I can tell you right
16 now we are not trying this in July. I mean I know that.
17 I promise you I won't yank anyone in who is not ready.
18 I know you guys want to get it over with. But that is just
19 kind of where we are at. So we are going to have to find a
20 term of court to do this anyway.
21 So let's just not -- I don't want you all -- I am not
22 holding you to a July 20th trial term. And I am not
23 holding you right now to your disclosures where we are at.
24 Although we are going to flush them out. Because I agree
25 they need to be done. And even at a minimum I am reading

1 Sanders. So let me have some time with that.

2 Can you give me a proposed order -- can the plaintiffs
3 give me a proposed order on the motion to dismiss for both
4 cases?

5 MR. MEDLIN: Yes, Your Honor.

6 THE COURT: Not killing it, you know, just -- okay.
7 And I think I have already told you what I need from
8 everything else. So I think we are -- we know where we are
9 all at. At least I think we do.

10 Is that everything?

11 MR. MEDLIN: May I say, yes, Your Honor, I will give
12 you a proposed order on the motion to dismiss; ---

13 THE COURT: You will. All right.

14 MR. MEDLIN: --- and I won't be like a child.

15 MR. GILREATH: Your Honor, we are taking -- we are ---

16 THE COURT: Good.

17 MR. GILREATH: I mean we have been taking a lot of
18 depositions.

19 THE COURT: Listen ---

20 MR. GILREATH: We are going to take some more. We are
21 trying ---

22 THE COURT: I know you are working ---

23 MR. GILREATH: --- to get in as many as we can in ---

24 THE COURT: Yeah.

25 MR. GILREATH: --- in March.

1 THE COURT: I can assure you that I know you all are
2 working. That is clear. There is no ---

3 MR. GILREATH: But part of our problem -- the problem
4 we have got now is this problem -- our forensic guy who
5 does the numbers, he can't get what he needs from CFRC ---

6 THE COURT: I know.

7 MR. GILREATH: --- and the judge has -- the judge has
8 order them to give it to us. You know. And they are
9 playing hardball. You know, we are not dealing -- it's --
10 I don't know who is calling the shots over there. But we
11 are dealing with Hunt and Williams out of Richmond ---

12 THE COURT: Okay.

13 MR. GILREATH: --- which represents CFRC.

14 MR. MACLOSKIE: Judge, would you clarify your ruling
15 on the sanctions part of this.

16 MR. TWOMBLEY: And I think I ---

17 MR. MACLOSKIE: What do you want us to do?

18 THE COURT: I don't think I need to clarify it. I
19 have asked Mr. Medlin for a proposed -- yes, go ahead.
20 What do you want to say?

21 MR. TWOMBLEY: Oh, I'm sorry. I apologize. I am
22 happy to wait.

23 THE COURT: No, my understanding was you were going to
24 give me a proposed order on it awarding -- or giving what
25 you said, but also allowing that it doesn't go into effect

1 until and unless they refuse once it is on appellate
2 review; correct? That is my understanding of what I said.
3 But I hate saying it so ---
4 MR. MEDLIN: Ashley and I agreed ---
5 THE COURT: I could do that.
6 MR. MEDLIN: --- during the break to make sure if her
7 appeal is dismissed ---
8 THE COURT: Right.
9 MR. MEDLIN: --- she will have a time to produce the
10 documents ---
11 THE COURT: Right.
12 MR. MEDLIN: --- or then the sanctions ---
13 THE COURT: Exactly.
14 MR. MEDLIN: --- will kick in.
15 THE COURT: And come up with a time period. You know,
16 and it has got to be pretty quick.
17 MR. MEDLIN: Sure.
18 THE COURT: I mean I guess ---
19 MR. MEDLIN: Or if they lose on appeal ---
20 THE COURT: That's right.
21 MR. MEDLIN: --- if the court takes the appeal, same
22 thing.
23 THE COURT: Right.
24 MR. MEDLIN: And of course if they win on appeal then
25 it is moot.

1 THE COURT: Right.

2 It gives you an opportunity to do what you need to do
3 to be able to decide.

4 MR. TWOMBLEY: Right, as long as ---

5 THE COURT: And that is what you need.

6 MR. TWOMBLEY: As long as the order holds her in
7 contempt and enters a sanction, that is -- I agree one
8 hundred percent.

9 MR. MEDLIN: I don't know that we agreed to the
10 contempt part. Did we? That gives them an automatic path
11 to appeal.

12 MR. TWOMBLEY: Well, that is ---

13 MR. MEDLIN: We think they have to appeal in their own
14 right on the issue of the sanctions. If it is dismissed as
15 interlocutory they have to turn over the documents. We
16 didn't understand and certainly wouldn't want to agree,
17 Your Honor, or subject to you adding contempt to it;
18 because that clearly makes it appealable and then that will
19 take two years.

20 MR. TWOMBLEY: Well, Your Honor, it was my
21 understanding -- you correct me if I am wrong though. But
22 that you wanted to give Mrs. Barringer this opportunity
23 to ---

24 THE COURT: To appeal it.

25 MR. TWOMBLEY: --- exercise her rights under Whetstone

1 and that if she did that and she lost the appeal, there was
2 a substantive decision on the merits as to whether Your
3 Honor was correct or not, and she did not comply with that
4 order within five days or ten days, that she would be
5 sanctioned and the sanction would be that these are the
6 facts of the case. Which those facts are not correct in
7 our opinion, but.

8 So if it is just a sanction and we appeal the sanction
9 then the court just could say that is interlocutory,
10 dismissed; and then she doesn't get to exercise her right
11 under Whetstone. It has got to be contempt and then a
12 sanction with it. And that is what triggers her right to
13 go to the court ---

14 THE COURT: I guess I need to go look at that then.
15 Because I have got to tell you, I mean I have been through
16 this. You know, I know you disagree, Ashley; but ---

17 MR. MEDLIN: Your Honor, again ---

18 THE COURT: I am just looking -- you know, I hate to
19 predict what our Supreme Court or Court of Appeals is going
20 to do; but I think I am right. I wouldn't be ruling that
21 way if I didn't.

22 MR. MEDLIN: She has a remedy -- if they will take an
23 appeal on your sanctions ---

24 THE COURT: They can do it afterward.

25 MR. MEDLIN: --- then -- then we have it covered. If

1 not, then they can appeal at the end of the case.
2 Otherwise, with contempt they have under Whetstone a clear
3 path to delaying this trial for two years. And that is not
4 what I think we agree to.

5 MR. TWOMBLEY: But, Your Honor, it is important that
6 there -- that there is a distinction between the sanction
7 and the contempt. If it is just a sanction, then I think
8 the law is pretty clear that if she appeals that, there is
9 a good chance the court would just say it's not time for an
10 appeal and they would just kick it right back down.

11 THE COURT: I need to go look at it. Because I don't
12 know how -- how am I sanctioning her without finding her in
13 contempt?

14 MR. TWOMBLEY: I agree.

15 MR. MEDLIN: Because Rule 37 says you can do just
16 that.

17 MR. GILREATH: You have got the power -- you have got
18 power -- clearly got the power on 37. I mean you have got
19 broad power ---

20 MR. TWOMBLEY: And let's assume ---

21 MR. GILREATH: --- to sanction her.

22 MR. TWOMBLEY: Let's assume you do have the power.
23 You -- let's assume you do have the power to do that. It
24 is my understanding ---

25 MR. GILREATH: The question is ---

1 MR. TWOMBLEY: --- that you wanted to give her the
2 right under Whetstone to go and seek appellate review.
3 That is the whole -- the whole point here is to give her
4 the opportunity, and then if she does it then you bring --
5 if she loses on the merits then you bring the hammer down
6 with the sanction. I thought that was -- that was
7 certainly my under- ---

8 THE COURT: That might be -- I may need to rethink
9 that then.

10 MR. MEDLIN: And, Your Honor ---

11 THE COURT: I may need to rethink that.

12 MR. MEDLIN: Your Honor, that is not what we
13 understood. And ---

14 THE COURT: Okay.

15 MR. MEDLIN: --- if that is what you are going to do,
16 when you are making that scheduling order I suggest you
17 just add two more years into it.

18 THE COURT: I understand that. And that is what I
19 figured as well. That is why I said I am going to wait
20 until seeing what happens, in as this getting appealed and
21 taken. That was my exact reasoning behind that.

22 MR. TWOMBLEY: Well, one thing I would like to
23 make ---

24 THE COURT: Hold on a second.

25 MR. TWOMBLEY: Okay.

1 THE COURT: Let me just ---

2 MR. TWOMBLEY: Sure.

3 THE COURT: Let me just --

4 (WHEREUPON, pause for the Court)

5 THE COURT: As of right now I just want you, Mr.
6 Medlin, to give me a proposed order as you are -- as you
7 understand it. And let me take a look at it. And I am not
8 saying I am signing it. I am just saying give me a
9 proposed order.

10 MR. MEDLIN: Thank you, Your Honor.

11 THE COURT: Okay. And we will go from there.

12 MR. MEDLIN: I will do that.

13 THE COURT: It will give me time between now and when
14 you give it to me to figure out what it is I in fact want
15 to do. Okay.

16 Okay. Okay. All right. Anything else?

17 MR. TWOMBLEY: Nothing more.

18 MR. GILREATH: I don't think, Your Honor. Thank you.

19 THE COURT: So it sounds to me like what I need to do
20 for y'all is we are going to do some kind of scheduling
21 order. I am going to change it. It is going to be based
22 on what happens with these documents and how long it is
23 going to take. I need to look at what your expert
24 disclosures or reports say. I have got to tell you I have
25 to read them. I read the motions. I didn't read their

ROA 004766

1 reports; I didn't bother to. So I apologize. I should
2 have. Let me look at those. And give me this proposed
3 order. Because obviously this is what we have been arguing
4 about the whole day. And we will go from there. Okay.
5 (WHEREUPON, hearing concluded 1/31/20, 3:14 p.m.)

ROA 004766

ROA 004767

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF BEAUFORT

)

CIVIL ACTION NO: 2016-CP-07-1919

)

IN THE MATTER OF ESTATE OF PAUL
BRANDON BARRINGER, II

)

)

HAMPTON BARRINGER LUZAK,

)

)

Plaintiff,

)

)

v.

)

ORDER

)

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

)

ROA 004767

ROA 004768

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-1253
	)	2019-CP-07-1294
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	ORDER
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

The captioned cases were before the Court on January 31, 2020 for a hearing on the following Motions:

- Defendant Merrill U. Barringer's Motion to Dismiss under Rule 12, SCRPC (cases 1253 & 1294);
- Defendant Merrill U. Barringer's Motion to Reconsider Order filed October 28, 2019;
- Plaintiff's Motion for Sanctions Against Merrill U. Barringer;
- Merrill Barringer's Motion to Quash Subpoenas to Burr & Forman, Wells Fargo Bank and Ruff & Ruff;
- Ruff & Ruff's Motion to Quash Subpoena;
- Plaintiff's Motion to Compel Merrill Light seeking accounting records of Paul B. Barringer;

ROA 004768

ROA 004769

- Defendant Merrill Barringer's Motion to Compel Plaintiff's Responses to Third Set of Interrogatories; and
- Defendants' Motion to Compel Compliance with Scheduling Order, Motion to Modify Scheduling Order, and Limit Expert Testimony at Trial;

Present on behalf of the Plaintiff were James R. Gilreath, S. Alan Medlin, and Charles B. Macloskie. Present on behalf of Defendant Merrill Barringer was J. Ashley Twombly. Present for Merrill Light and Randy Light were Alice Paylor and Chip Molster. After considering the briefings and argument of counsel, the Court makes the following rulings:

MOTIONS TO DISMISS

In evaluating a motion to dismiss, the Court must base its decision solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Given the standard by which this Court is required to review motions to dismiss, I find that Defendant Merrill Barringer's Motion to Dismiss (filed in cases 1253 & 1294) are due to be denied on all grounds, with the following resolved by agreement: (1) the Plaintiff agrees by her Complaint she is not seeking temporary injunctive relief.

DEFENDANT'S MOTION TO RECONSIDER ORDER FILED OCTOBER 28, 2019

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

PLAINTIFF'S MOTION FOR SANCTIONS AGAINST MERRILL BARRINGER

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

MERRILL BARRINGER'S MOTION TO QUASH SUBPOENAS TO BURR & FORMAN, WELLS FARGO AND RUFF & RUFF

ROA 004769

ROA 004770

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

RUFF & RUFF'S MOTION TO QUASH SUBPOENA

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

**PLAINTIFF'S MOTION TO COMPEL MERRILL LIGHT SEEKING
ACCOUNTING RECORDS OF PAUL BARRINGER**

By Order dated August 28, 2018, the Court previously ordered production of the trust's banking statements from 2011 until the date of Mr. Barringer's death. Counsel for Ms. Light further reports the documents requested have been produced. The parties agreed to resolve any further issues related to the requested documents, and the motion was withdrawn.

**MERRILL BARRINGER'S MOTION TO COMPEL PLAINTIFF'S RESPONSES TO 3RD
SET OF INTERROGATORIES**

The motion to compel is denied. Defendant will clarify and resubmit the interrogatories to the Plaintiff.

**DEFENDANTS' MOTION TO COMPEL COMPLIANCE WITH SCHEDULING
ORDER, MOTION TO MODIFY SCHEDULING ORDER AND LIMIT EXPERT
TESTIMONY**

The Court will address these issues by separate order, which will modify the existing Scheduling Order.

AND IT IS SO ORDERED.

ROA 004770



Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-03-02 16:28:31 page 5 of 5

ROA 004772

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2016-CP-07-1919
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	MOTION TO LIMIT EXPERT
	)	TESTIMONY
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	)	

TO: JAMES R. GILREATH, ESQUIRE, WILLIAM M. HOGAN, ESQUIRE, CHARLES B. MACLOSKIE, ESQUIRE, AND S. ALAN MEDLIN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, HAMPTON BARRINGER LUZAK:

Merrill U. Barringer, Individually and as Personal Representative of the Estate of Paul Brandon Barringer, II (“Defendant”), hereby moves the Court for an Order limiting the testimony of all expert witnesses identified by Plaintiff to the specific opinions disclosed in each expert’s report. Defendants are entitled to know each opinion each expert will offer at trial, and have time to conduct discovery on those opinions and identify rebuttal experts where appropriate.

ROA 004772

ROA 004773

WHEREFORE, Defendant respectfully prays that this Court enter an Order limiting the testimony of all expert witnesses identified by Plaintiff to the specific opinions disclosed in each expert's report.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. ASHLEY TWOMBLEY
S.C. Bar #72916
LEE ANNE WALTERS
S.C. Bar #74984
311 Carteret Street
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Attorneys for Defendant Merrill U. Barringer

Beaufort, South Carolina

July 24, 2020

ROA 004773

ROA 004774

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS NONJURY

3
4 IN THE MATTER OF:)

5 ESTATE OF PAUL B. BARRINGER, II)

TRANSCRIPT

6 HAMPTON BARRINGER LUZAK,)

OF

7 PLAINTIFF,)

RECORD

8 VS.)

9 MERRILL B. LIGHT, MERRILL U. BARRINGER,
AS PERSONAL REPRESENTATIVE OF THE ESTATE)

2016-CP-07-1919

10 OF PAUL BRANDON BARRINGER, II, J.)

2019-CP-07-1253

11 RANDOLPH LIGHT, JR., MERRILL B. LIGHT)

2019-CP-07-1294

12 AS PUTATIVE TRUSTEE OF THE PAUL B.)

13 BARRINGER, II, REVOCABLE TRUST DATED)

14 DECEMBER 4, 1998, AND MERRILL B. LIGHT)

15 AS TRUSTEE OF THE MERRILL BARRINGER)

16 LIGHT REVOCABLE TRUST,)

17 DEFENDANTS.)18
19 August 27th, 2020
20 Beaufort, South Carolina

21 B E F O R E:

22 THE HONORABLE CARMEN T. MULLEN, Judge.
23
24
25

ROA 004774

ROA 004775

1 THE COURT: Okay.

2 MR. MACLOSKIE: ---of August, a Motion to Quash and
3 objections to the subpoena after we did our best to clarify.
4 So, so -- and, and Mr. -- I know I'm jumping the gun. But
5 this might go to the problem that all of us have, both sides
6 have, to, to set in place any kind of meaningful scheduling
7 order. Although I would like to have a meaningful
8 scheduling order, and I know you would too, but they're just
9 some problems that have come about that some of them, some
10 of them couldn't be helped, but most of them could be
11 helped. No question about it.

12 THE COURT: Okay. Okay. Well, Ashley, I can just tell
13 you also, at this point I am thinking that this motion is a
14 bit premature. I understand what you're saying. I
15 understand you want to know what's coming. But I feel
16 like -- I think everybody ultimately knows what they have to
17 prove or show to be able to prevail. And so I'm assuming
18 that someone's got to make that opinion and get us there.

19 So, at this point, I am happy to, you know, address
20 again a scheduling order if that's what you-all wish to do.
21 But I, I do think we need some depositions to start on some
22 expert witnesses and kind of get things moving along so we
23 all know what they're saying, and so you know how to answer
24 to it, Ashley. I, I do.

25 So, with that said, I think, again, I would rather

ROA 004775

ROA 004776

1 almost just, just mark this as premature at this point or I
2 can deny it either way. But, at this point, I think
3 eventually we'll be there. I just don't think, at this
4 point, we're ready to limit what these experts are saying,
5 okay, or at least force their hand.

6 okay?

7 MR. TWOMBLEY: Yes, ma'am.

8 THE COURT: Okay.

9 MR. TWOMBLEY: Yes, ma'am.

10 THE COURT: I appreciate it.

11 Okay. So, the next thing I have is the Plaintiff's
12 Motion to Compel Interrogatory Responses from Merrill
13 Barringer.

14 MS. PAYLOR: I think that was withdrawn.

15 MR. HOGAN: Yeah, one of those was withdrawn.

16 THE COURT: You think it was withdrawn?

17 MR. HOGAN: I think it's that one.

18 THE COURT: Okay.

19 MR. HOGAN: Yes.

20 THE COURT: Good. Okay. That's good. And then the
21 Motion for Sanctions against Merrill Barringer.

22 Is that the last one or is there one more motion after
23 that, Laura?

24 Is that it, y'all?

25 MR. HOGAN: Yeah, that's essentially the last one.

ROA 004776

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

ROA 004777
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

ORDER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

ORDER

This matter came before me on August 27, 2020 for a hearing on the following Motions:

- 1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);
- 2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

ROA 004777

ROA 004778

- 3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);
- 4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919); and
- 5) Luzak's Motion for Sanctions Against Merrill Barringer, filed 8-13-20 (1919).

1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);

In this motion, Defendant Merrill U. Barringer sought to obtain an order requiring the Plaintiff's husband, Kevin Luzak, to produce unredacted tax returns for the years 2010 to the present. Defendant Merrill U. Barringer asserted that Plaintiff had raised, as part of Plaintiff's damage claims, the issues of Kevin Luzak's lost compensation, the financial rates of return garnered by Kevin Luzak on various investments he had managed, and Luzak's investment advice. Defendant Barringer submitted supporting affidavits from a proposed expert, George Durant, CPA, arguing that Kevin Luzak's tax returns were a necessary starting point for analysis of Plaintiff's damage claims. Plaintiff countered that the redacted tax returns she produced were sufficient to allow the Defendant to analyze the lost wage claims related to Kevin Luzak's lost earnings. Plaintiff further countered that the investment return information could be found more fully in other financial documents besides the personal income tax returns filed jointly by Kevin Luzak and Plaintiff. Defendant Barringer replied that even if other financial documents may contain more detailed description of investments managed by Kevin Luzak, the Plaintiff's and Kevin Luzak's tax returns may show information on investments made by Plaintiff and her husband, and in any event, were necessary to properly defend against Plaintiff's alleged damages.

Given the claims raised by Plaintiff in this case and set forth in the damage reports of her proposed expert, Dr. Charles Alford, the Court rules that the jointly filed personal income tax returns

ROA 004778

ROA 004779

of Kevin Luzak and Plaintiff are relevant and shall be produced without redactions, except for personal identifying information under Rule 41.2, SCRCP. Understanding the personal and sensitive nature of individual income tax returns, I am ordering the parties to execute a protective order allowing only the attorneys and their experts in the case to review the Luzaks' tax returns.

2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

In this motion, Merrill Barringer seeks an order compelling Plaintiff to specify the specific page, paragraph and sentence of each document that Plaintiff alleges contains the "contract" or "promise" Merrill Barringer allegedly made never to change her 1998 will. Defendant argued that in her interrogatory responses, Plaintiff referenced over 1000 pages of documents, but failed to identify the page, paragraph and sentence of each document that contains the terms of the "contract" or "promise."

After hearing arguments, this Court denies the Defendant's request for further responses or clarification from Plaintiff.

3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);

Defendant Barringer moved to have the testimony of Plaintiff's experts confined to the opinions (if any) set forth in the expert reports submitted by Plaintiff's experts pursuant to this Court's prior scheduling orders. After hearing from the parties, Defendant's motion to limit expert testimony at this stage is premature and thus denied without prejudice.

4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919);

Plaintiff submitted to Defendant Merrill U. Barringer Plaintiff's Fifth Set of Interrogatories, which asked questions about the Defendant's procurement and distribution of a certain signed document titled "Physician's Certification of Competency" produced by Defendant Merrill

ROA 004779

ROA 004780

Barringer on February 12, 2020. After carefully considering the matter and hearing argument from counsel, the Court finds that Merrill Barringer should specifically respond to the interrogatories as to the unsigned and signed versions of the Physician's Certification of Competency.

5) Plaintiff's Motion for Sanctions against Merrill U. Barringer.

After reviewing this motion, the supporting materials, and arguments from counsel, this motion is taken under advisement. The Court will hold any decision on this motion in abeyance until such time as the Court deems appropriate.

IT IS SO ORDERED.

ROA 004780



Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-10-09 15:38:06 page 5 of 5

ROA 004782

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

ORDER

This matter came before me on August 27, 2020 for a hearing on the following Motions:

- 1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);
- 2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

ROA 004782

ROA 004783

- 3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);
- 4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919); and
- 5) Luzak's Motion for Sanctions Against Merrill Barringer, filed 8-13-20 (1919).

1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);

In this motion, Defendant Merrill U. Barringer sought to obtain an order requiring the Plaintiff's husband, Kevin Luzak, to produce unredacted tax returns for the years 2010 to the present. Defendant Merrill U. Barringer asserted that Plaintiff had raised, as part of Plaintiff's damage claims, the issues of Kevin Luzak's lost compensation, the financial rates of return garnered by Kevin Luzak on various investments he had managed, and Luzak's investment advice. Defendant Barringer submitted supporting affidavits from a proposed expert, George Durant, CPA, arguing that Kevin Luzak's tax returns were a necessary starting point for analysis of Plaintiff's damage claims. Plaintiff countered that the redacted tax returns she produced were sufficient to allow the Defendant to analyze the lost wage claims related to Kevin Luzak's lost earnings. Plaintiff further countered that the investment return information could be found more fully in other financial documents besides the personal income tax returns filed jointly by Kevin Luzak and Plaintiff. Defendant Barringer replied that even if other financial documents may contain more detailed description of investments managed by Kevin Luzak, the Plaintiff's and Kevin Luzak's tax returns may show information on investments made by Plaintiff and her husband, and in any event, were necessary to properly defend against Plaintiff's alleged damages.

Given the claims raised by Plaintiff in this case and set forth in the damage reports of her proposed expert, Dr. Charles Alford, the Court rules that the jointly filed personal income tax returns

ROA 004783

ROA 004784

of Kevin Luzak and Plaintiff are relevant and shall be produced without redactions, except for personal identifying information under Rule 41.2, SCRCP. Understanding the personal and sensitive nature of individual income tax returns, I am ordering the parties to execute a protective order allowing only the attorneys and their experts in the case to review the Luzaks' tax returns.

2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

In this motion, Merrill Barringer seeks an order compelling Plaintiff to specify the specific page, paragraph and sentence of each document that Plaintiff alleges contains the "contract" or "promise" Merrill Barringer allegedly made never to change her 1998 will. Defendant argued that in her interrogatory responses, Plaintiff referenced over 1000 pages of documents, but failed to identify the page, paragraph and sentence of each document that contains the terms of the "contract" or "promise."

After hearing arguments, this Court denies the Defendant's request for further responses or clarification from Plaintiff.

3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);

Defendant Barringer moved to have the testimony of Plaintiff's experts confined to the opinions (if any) set forth in the expert reports submitted by Plaintiff's experts pursuant to this Court's prior scheduling orders. After hearing from the parties, Defendant's motion to limit expert testimony at this stage is premature and thus denied without prejudice.

4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919);

Plaintiff submitted to Defendant Merrill U. Barringer Plaintiff's Fifth Set of Interrogatories, which asked questions about the Defendant's procurement and distribution of a certain signed document titled "Physician's Certification of Competency" produced by Defendant Merrill

ROA 004784

ROA 004785

Barringer on February 12, 2020. After carefully considering the matter and hearing argument from counsel, the Court finds that Merrill Barringer should specifically respond to the interrogatories as to the unsigned and signed versions of the Physician's Certification of Competency.

5) Plaintiff's Motion for Sanctions against Merrill U. Barringer.

After reviewing this motion, the supporting materials, and arguments from counsel, this motion is taken under advisement. The Court will hold any decision on this motion in abeyance until such time as the Court deems appropriate.

IT IS SO ORDERED.

ROA 004785

ROA 004786



Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-10-09 15:38:06 page 5 of 5

ROA 004786

ROA 004787

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	
	)	
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.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2019-CP-07-01253
COUNTY OF BEAUFORT	)	2019-CP-07-1294
	)	
IN THE MATTER OF:	)	
Estate of Paul Brandon Barringer, II	)	
	)	
Hampton B. Luzak,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Merrill U. Barringer,	)	
	)	
Defendant.	)	

ROA 004787

ROA 004788

ORDER GRANTING DEFENDANTS' MOTION TO BIFURCATE

This Court has considered Defendants' Joint Motion to Bifurcate Trial filed October 23, 2020. Based on the legal memoranda submitted and oral argument presented, the Court grants the motion. In accordance with SCRCP Rule 42(b), this Court has determined that a separate trial of the Second and Third Causes of Action set forth in Hampton Luzak v. Merrill Barringer, Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294, shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action alleged in Civ. Action Nos. 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253 and 2019-CP-07-01294.

IT IS SO ORDERED.

CARMEN T. MULLEN
Judge of the Fourteenth Judicial Circuit

_____, 2020

ROA 004788



Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-12-29 20:23:26 page 3 of 3

ROA 004790

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	
	)	
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.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2019-CP-07-01253
COUNTY OF BEAUFORT	)	2019-CP-07-1294
	)	
IN THE MATTER OF:	)	
Estate of Paul Brandon Barringer, II	)	
	)	
Hampton B. Luzak,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Merrill U. Barringer,	)	
	)	
Defendant.	)	

ROA 004790

ROA 004791

ORDER GRANTING DEFENDANTS' MOTION TO BIFURCATE

This Court has considered Defendants' Joint Motion to Bifurcate Trial filed October 23, 2020. Based on the legal memoranda submitted and oral argument presented, the Court grants the motion. In accordance with SCRCP Rule 42(b), this Court has determined that a separate trial of the Second and Third Causes of Action set forth in Hampton Luzak v. Merrill Barringer, Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294, shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action alleged in Civ. Action Nos. 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253 and 2019-CP-07-01294.

IT IS SO ORDERED.

CARMEN T. MULLEN
Judge of the Fourteenth Judicial Circuit

_____, 2020

ROA 004791

ROA 004792



Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-12-29 20:23:26 page 3 of 3

ROA 004792

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP0701919
ROA 004793

Hampton B Luzak
PLAINTIFF(S)

Merrill B Light et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Judge Mullen is hereby recused from this case.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/19/2021 .

Merrill Barringer Light Revocable Trust
Merrill B Light as Trustee
Merrill B Light As Putative Trustee
Paul B Barringer li Revocable Trust
Charles B Molster, III for Merrill B Light

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

ROA 004794

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ROA 004795



Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Electronic Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2021-02-19 13:14:30 page 3 of 3

ROA 004795

Thursday, April 15, 2021

Courtroom No. 1
Beaufort County
Fourteenth Judicial Circuit
102 Ribaut Road
Beaufort, South Carolina

The Honorable Bentley D. Price

Attorneys for the Plaintiffs:

Attorneys for the Defendants:

Reported by: Cathy J. Provost, RPR/RMR

ROA 004796

1 this. I'm going allow the discovery to continue in this case,
2 and ultimately we will wait to see what the Court of Appeals
3 says.

4 If the Court of Appeals dismisses it and sends it back,
5 regardless, at any point in time if I have to make the decision,
6 I'm going to continue to honor Judge Mullen's order to bifurcate
7 the trial. So just to let you know that that is what I'm going
8 to decide if it becomes my decision.

9 Are y'all prepared to name your experts as to the defense?

10 MR. TWOMBLEY: Your Honor, that gets back to this issue that
11 I brought up with you the first time we were together, and it's
12 really an elephant in the room regarding the identification of
13 experts related to 2012 and 2016.

14 And it is this, just to briefly try to summarize a long
15 history for you. We originally entered into a consent scheduling
16 order that required the plaintiffs to identify experts and to
17 submit an expert report, okay. We all understood that there was
18 going to be, at a minimum in these reports, a list of the
19 opinions generally that each expert was going to give at trial,
20 and the basis for them.

21 As soon as they filed their expert reports, some of which
22 did not contain any opinions at all, any opinions at all -- even
23 Judge Mullen read one of those reports from their medical expert
24 and said, She doesn't say anything, what's she going to say at
25 trial -- I filed a motion and said to the Court -- and this was

1 my opinion then and this is my opinion now -- I'll do whatever
2 Your Honor wants to do regarding experts. If you don't want us
3 to do expert reports that list what opinions they're going to
4 offer at trial, that's fine, it will go both ways. They don't
5 have to do it, and we don't have to do it.

6 It's my strong opinion that whenever, if we have to try the
7 2012-to-2016 claims, that the Court would regret that decision.
8 But I'm obviously willing to live by it. The Court's got the
9 discretion. So either the Court can say, Y'all have to do expert
10 reports that list opinions. That's fine. Or, in the
11 alternative, I want the Court to say, Okay, plaintiffs, you are
12 bound by the opinions that are in your expert reports as of the
13 time that you identified your experts.

14 And the reason I'm so concerned about this issue, Your
15 Honor, is as follows. We deposed one of their experts, and we
16 started off the deposition and said, Can you tell us what your
17 opinions are going to be at trial? And the expert says, Well, I
18 don't know what opinions I'm going to offer at trial because I
19 don't know what questions I'm going to be asked.

20 Well, if that's the current lay of the land, I mean,
21 hopefully it should be no surprise to the plaintiffs that the
22 defendants' experts are going to say that, hat our experts are
23 going to say, Well, we can't possibly tell you what our opinions
24 are, specifically any rebuttal opinions to rebut their experts'
25 opinions, because we don't know what they're going to be asked at

1 trial and what opinions are going to be offered at trial. And
2 then we don't know what our rebuttal -- it's going to create a
3 sea of madness at trial.

4 THE COURT: What was the ruling on the motion? Did Judge
5 Mullen rule either way, that they had to produce their opinions
6 in their expert reports?

7 MR. TWOMBLEY: Well, on the initial motion that I filed, she
8 said she would issue an order on that issue in the future when
9 she entered a new scheduling order, okay. And she never issued a
10 new scheduling order, and she never addressed that issue. And I
11 have repeatedly been bringing it up, saying that it needs to be
12 resolved.

13 Now, the plaintiffs are going to tell you, and they are
14 correct, that subsequent to all that I did file another motion
15 regarding expert reports and asked Judge Mullen to exclude some
16 of their experts from testifying at trial for various reasons
17 related to their expert reports. And Judge Mullen said that was
18 premature. And so they will argue, Well, she's already ruled on
19 the issue. But that is not correct.

20 If you go back and trace the history, there's two motions.
21 They ask for different relief. And the one's simply asking, Can
22 you please tell us, either tell us we do have to do expert
23 reports and they have to list the opinions that the experts are
24 going to offer at trial, or not.

25 And I'm happy, and I think all the defendants are happy, to

1 live by whatever the Court's decision is on that.

2 But I just would -- this is going to be, on the 2012-to-'16
3 claims, it's going to be an incredibly expert-intensive,
4 witness-intensive, document-intensive trial. The idea that the
5 experts are just going to be able to say, Well, I'm not going to
6 tell you what I'm going to say until we get to trial is, in my
7 opinion, going to make for a lot more work, a lot lengthier
8 trial, confusion of the jurors, motions in limine, motions in
9 limine in the middle of the trial about new opinions that are
10 offered and whether or not they meet various standards to offer
11 them. And, at a minimum, we ought to know what they're going to
12 say.

13 And again, if what they've got in their reports is what they
14 want to stand on, that is perfectly fine with me. Give us a
15 little bit of time, we'll know the lay of the land, and we can
16 identify our experts in a couple of months. But we just need an
17 answer to that question.

18 MR. TRAXLER: May I respond to that briefly?

19 THE COURT: Sure.

20 MR. TRAXLER: We've identified four experts. And I'm going
21 to ask my co-counsel who has been in this case a lot longer than
22 I have to correct me if I'm wrong. We've identified four
23 experts. We produced expert reports on them. There is one
24 expert that we are still struggling to get financial information
25 to from the other side so he can finalize his opinion. So that

1 one, that's a problem.

2 The other three experts, they've been given reports, they
3 have been deposed, they have testified as to their opinions.
4 We've given them the reports, and they have deposed them.

5 The one that Mr. Twombly is referring to is, I believe
6 she's, a urologist, a doctor. And he said, What are your
7 opinions? She said, I don't know, I guess it depends on what
8 you're going to ask me. But then she went on, and he asked her
9 for her opinion, and she gave him her opinions.

10 We are here today to stand by the expert reports that we
11 have given to them and the opinions that they have gotten in
12 depositions of our experts, except for Dr. Charlie Alberts is the
13 one who's going to need to tweak his depending on some updated
14 financial information and, Mr. Thomas, once we get the corporate
15 financial information that we need. Otherwise, we stand by.

16 This is not a hard issue for any court. They don't get to
17 be ambushed but opinions at trial, we get it. We stand with the
18 opinions that they have gotten from our witnesses through reports
19 and depositions.

20 THE COURT: All right.

21 MS. PAYLOR: Your Honor, so they've agreed now to give us
22 reports, to tweak whatever ones they've had. So I guess that
23 scheduling order, we would like to get that first, and then have
24 two months for us to name our experts and get reports so that we
25 know exactly where we are.

1 THE COURT: All right. So if we give you the expert opinion
2 and reports today, how long will it take y'all to be ready for
3 trial?

4 MR. TWOMBLEY: On the contract claims or on the entire
5 trial?

6 THE COURT: If I bifurcate it.

7 MR. TWOMBLEY: Oh, on the contract claims, we can be ready
8 in, you know -- honestly, Your Honor, I could try that case in
9 about the next 10 minutes.

10 THE COURT: Gotcha.

11 MR. TWOMBLEY: I mean, I do probably have one expert I want
12 to identify in that case who's going to give a very simple,
13 narrow opinion. And they can depose, and we can make him or her
14 available at any time they need to. They are entitled to be able
15 to do that. But other than that, there's nothing else to be
16 done.

17 And just one point of clarification. It wasn't Mr. Twombley
18 that said it can be tried in two or three days, as Mr. Medlin
19 said. That was Judge Mullen that said it could be done.

20 THE COURT: All right. Here's what we're going to do. I'm
21 going to wait on the Court of Appeals. But again, as I ordered,
22 I want y'all to continue to participate in discovery. I'm not
23 going to issue a scheduling order just yet because I don't know
24 how long the Court of Appeals takes. Lord knows. There's no
25 telling with them. We could be sitting here for another two

1 months. The only thing I know about the Court of Appeals is
2 where it is.

3 So we're just going to have to, unfortunately, allow y'all
4 to continue to move forward. But once that comes down, then I'm
5 going to, at that point in time, I'll make all the decisions.
6 And then, as I've indicated, I'm probably going to, depending
7 upon what the Court of Appeals does, I will make the scheduling
8 order at that time.

9 And if they do come back and say it's not appealable and
10 Judge Mullen orders stands as being bifurcated, I'm going to set
11 the other one for trial. And it will be fairly quickly, probably
12 in December. All right.

13 MS. PAYLOR: Thank you, Your Honor.

14 THE COURT: For the record, Charles Molster participated in
15 the trial, as well. He just wasn't able to be here. But he
16 could hear everything we did the Webex. But he wanted to be
17 accounted for the record.

18 (WHEREUPON, proceedings terminated at 12:20 p.m.)

19 (End of Transcript of Record)
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21
22
23
24
25

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ROA 004804

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June 21, 2021

Via Electronic and U.S. Mail

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RE: Luzak v. Light, et al.; Civil Action No.: 2016-CP-07-1919
Luzak v. Barringer; Civil Action Nos.: 2019-CP-07-01253 and 01294

Dear Counsel:

We have retained attorney Bruce Stone as an expert witness who we may call for trial on the contract not to revoke claims against Mrs. Barringer in Civil Action Nos.: 2019-CP-07-01253 and 01294. Enclosed is a supplemental disclosure including Mr. Stone's CV. We will make Mr. Stone available for deposition in July. If Plaintiff wants to depose Mr. Stone, please let us know dates/times at your earliest convenience so we can get that scheduled.

As you know from affidavits in this case, we have retained George W. DuRant, CPA. We expect George DuRant to testify as to any of Plaintiff's alleged damages that are allowed to be presented to the jury, including rebuttal of your experts Dr. Charles Alford and Ellie Thomas and the assumptions made by Kevin Luzak. If you want to take the deposition of George Durant, he is available for deposition during the week of July 19-23.

We also expect to call Dr. Beau Ances, who may rebut the testimony of your expert Dr. Sanders at trial. We will make Dr. Ances available for deposition if you want to take his deposition and will provide July dates to you this week. Disclosures and CVs for George DuRant and Dr. Ances are attached.

We do not believe the testimony of Mr. Durant or Dr. Ances will be relevant to the first phase trial set to begin on August 30, which is limited to Plaintiff's second and third causes of action in 2019-CP-07-01253 and 01294. However, we will make these witnesses available for

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depositions in July (specifically Mr. Durant is available the week of July 19). In addition, if Plaintiff wants to ask the Court to allow depositions of these 2 potential experts to go forward after the August 30 trial date, Defendants agree to consent to that request and to make the experts available during the month after the August 30 trial concludes.

With kindest personal regards, I remain,

Cordially,



J. Ashley Twombly

cc: Alice F. Paylor, Esquire
Bijan Ghom, Esquire
Charles B. Molster, III, Esquire

ROA 004805

Alice F. Paylor
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July 6, 2021

VIA EMAIL

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**RE: Luzak v. Light, et al.; Civil Action No.: 2016-CP-07-1919
Luzak v. Barringer; Civil Action Nos.: 2019-CP-07-01253 and 01294**

Dear Counsel:

I am writing you to inform you that we have retained Perry Woodside and Barry Gumb as rebuttal experts. Mr. Woodside and Mr. Gumb are both located at the Charleston office of Dixon Hughes Goodman LLP. They are expected to testify as to any of Plaintiff's alleged damages that are allowed to be presented to the jury, including rebuttal of your experts Dr. Charles Alford and Ellie Thomas and the assumptions made by Kevin Luzak.

While neither expert is expected to testify at the first trial set to begin on August 30 because that trial is limited to Plaintiff's second and third causes of action in 2019-CP-07-01253 and 01294, we will make these experts available to you prior to July 30 if you would like to take their depositions. We are also agreeable to what Ashley proposed in his June 21 letter—if Plaintiff wants to ask the Court to allow depositions of these 2 potential experts to go forward after the August 30 trial date, we will make the experts available during the month after the August 30 trial concludes.

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ROA 004807

Sincerely yours,

s/ Alice F. Paylor

Alice F. Paylor

AFP/tnd

Enclosure

cc: Charles B. Molster, III, Esquire (via e-mail only)
J. Ashley Twombly, Esquire (via e-mail only)
Lee Walters, Esquire (via e-mail only)

ROA 004807

ROA 004808

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2016-CP-07-1919

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' JOINT MOTION FOR
SUMMARY JUDGMENT AS TO ALL
OF PLAINTIFF'S REMAINING
CAUSES (OF ACTION)**

TO: DEFENDANTS AND THEIR COUNSEL:

In a motion e-filed on Sunday, August 8, 2021, at 6:37 p.m., Defendants seek a summary judgment on all remaining causes of action. They sought this exact remedy before, which Judge Mullen denied in this action in an order filed December 30, 2020. The order came after a hearing that took place over three days in November 2020. Rule 43(l), SCRPC, bars any "subsequent motion upon the same set of facts to another judge in that action" and therefore bars this summary judgment motion. Reserving all rights, and incorporating herein all of her previous relevant arguments, pleadings, memoranda, evidence, documents, affidavits, and exhibits, Plaintiff respectfully prays that this Court deny Defendants' motion. Plaintiff further reserves the right to file subsequent memoranda and responses.

Respectfully submitted,

THE GILREATH LAW FIRM P.A.

ROA 004808

ROA 004809

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Attorneys for Plaintiff Hampton Barringer Luzak

August 9, 2021
Greenville, South Carolina.

ROA 004810

ROA 004811

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITCivil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294**PLAINTIFF'S OPPOSITION TO
DEFENDANT MERILL U. BARRINGER'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND JUDGMENT ON THE
PLEADINGS****TO: DEFENDANT AND HER COUNSEL:**Introduction

Defendant Merrill U. Barringer's Motion for Partial Summary Judgment and Judgment on the Pleadings is apparently limited to Plaintiff's Fifth Cause of Action (Civil Conspiracy). In her complaint, Plaintiff alleges that "Defendant Merrill U. Barringer, and upon information and belief Merrill Light, Randy Light, Robert Slane and various agents or representatives of CFRC, including but not limited to Travis Bryant, conspired among themselves for the purpose of injuring Plaintiff Hampton Luzak." (§ 148).¹

The sole basis of Defendant's argument is that the statute of limitation expired before Plaintiff commenced this lawsuit on May 28, 2019.² Reserving all rights, Plaintiff responds that the statute of limitations had not expired because Plaintiff did not acquire standing to pursue her

¹ Special damages are no longer required in South Carolina pursuant to the Supreme Court's ruling in *Paradis v. Charleston County Sch. Dist.*, Op. No. 28030 (S.C. Sup. Ct., 05/19/2021) (Shearouse Adv. Sh. No. 17 at 18). Thus, the allegations in the complaint related to special damages are now not necessary for Plaintiff's civil conspiracy cause of action.

² Although Defendant asserts that Plaintiff's civil conspiracy cause of action is related solely to stock, Plaintiff's claim is broader than that. Nevertheless, for the reasons shown below, that issue is irrelevant for purposes of this response.

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claim until the Paul Barringer Revocable Trust became irrevocable, which occurred upon his death on May 30, 2019, in accordance with the South Carolina Trust Code.

Plaintiff did not have standing to bring the civil conspiracy cause of action prior to Paul Barringer's death

Under the South Carolina Trust Code,³ which governs this issue, Hampton Luzak did not have standing to bring any of her causes of action before Mr. Barringer died on May 30, 2016. South Carolina Trust Code § 62-7-603 gives a settlor plenary power over a revocable trust during his lifetime. Section 62-7-603 provides: “While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.” The reporter’s comment to this section addresses the effect on the beneficiaries of the settlor’s retained powers over a revocable trust, by stating: “This section has the effect of postponing enforcement of the rights of the beneficiaries of a revocable trust until the death of the settlor. . .” S.C. Code Ann. § 62-7-603, cmt. (1st ¶). The reporter’s comment further provides that a named beneficiary of a revocable trust does not have standing to assert any right of action under the trust during the settlor’s lifetime, even during the settlor’s incapacity. “Upon the settlor’s incapacity, any right of action the settlor-trustee may have against the trustee for breach of fiduciary duty will pass to the settlor’s agent or conservator.” S.C. Code Ann. § 62-7-603, cmt. (4th ¶).

The reporter’s comment to S.C. Code Ann. § 62-7-604, addressing post-mortem contests over the validity of a revocable trust and distributions of trust property therefrom, enunciates the principle that it is a settlor and his agents, not the named beneficiaries, who can act on behalf of a

³ As discussed more fully below, the purported stock transfer came from Mr. Barringer’s revocable trust: With Paul Barringer, as trustee and settlor, being a South Carolina resident, and Merrill Light, as a purported co-trustee also being a South Carolina resident, the principal place of administration of the Paul Barringer Revocable Trust is in South Carolina. South Carolina law would apply to the rights and powers of the settlor, trustee, and trust beneficiaries. See S.C. Code Ann. §§ 62-7-107 and -108.

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revocable trust during the settlor's lifetime, even upon the settlor's loss of capacity. The

Comment states:

A revocable trust does not become irrevocable upon a settlor's loss of capacity. Pursuant to § 62-7-602 . . . , the power to revoke may be exercised by the settlor's agent, conservator, or guardian, or personally by the settlor if the settlor regains capacity.

S.C. Code Ann. § 62-7-604, cmt. (3rd ¶).

Consistent with the above-quoted Reporter's Comment to § 62-7-604 that a conservator, not a named beneficiary, may act on behalf of an incapacitated settlor of a revocable trust, South Carolina Trust Code § 62-7-602(f) states: "A conservator of the settlor may exercise a settlor's powers with respect to distribution of trust property."

Plaintiff Hampton Luzak was not a trustee, co-trustee or settlor of the Paul Barringer Revocable Trust. She also was not a conservator of Mr. Barringer's estate during Mr. Barringer's lifetime, though she instituted conservatorship proceedings prior to his death, which were opposed by Defendants, who finally admitted that he needed a conservator. Paul Barringer died on May 30, 2016, before the conservatorship proceedings were completed or any judgment rendered. Hampton Luzak's only connection to the Paul Barringer Revocable Trust was that of a trust beneficiary.⁴

The purported stock transfer on September 11, 2012 was from Paul Barringer's revocable trust, of which Hampton Luzak was a beneficiary but not a trustee. As a result, under the South Carolina Trust Code, Hampton Luzak as a beneficiary of a revocable trust had no standing to assert any claims regarding the revocable trust, its transfers, its trustee, its distribution of assets, or a civil conspiracy related thereto, while Mr. Barringer was alive, even when Mr. Barringer

⁴ Although Defendant may argue that Plaintiff was not a beneficiary in later revocable trusts, those later trusts were never valid because of undue influence, mistake, fraud, civil conspiracy, and/or lack of capacity. Plaintiff was a beneficiary of any revocable trust validly created by Paul Barringer and thus acquired standing to pursue claims once he died.

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ROA 004814

became incapacitated. Paul Barringer retained the exclusive legal authority to pursue any claims regarding his revocable trust. The only persons besides Paul Barringer who had standing to act on behalf of his Revocable Trust or to challenge the trustee for breach of fiduciary duty would have been an agent of Paul Barringer or a conservator appointed by the South Carolina Probate Court; Hampton Luzak was neither.

During earlier litigation in the Eastern District of Virginia federal court concerning a 2010 shareholders' agreement of CFRC, Hampton Luzak's attorney asked for a copy of the Paul Barringer Revocable Trust while Paul Barringer was living to see if there were any stock transfer restrictions pertaining to the CFRC voting stock held by the Trust. Judge Trenga immediately questioned Mrs. Luzak's standing as a beneficiary to assert any claims on behalf of the Paul Barringer Revocable Trust, stating:

The Court: Why? I don't understand that. Why would Ms. Luzak have standing to contest a violation of Mr. Barringer's trust agreements?

Pl.'s counsel: I'm not saying we have standing to contest that...

See Ex. 4, Pl's Resp. Mem. In Opp'n to Def.'s Mot. to Dismiss Am. Compl. (filed 3/13/2017)⁵

Thereafter, the Federal District Court denied Plaintiff's discovery request, made while Paul Barringer was alive, to see the Revocable Trust documents.

Hampton Luzak's rights as a beneficiary under the Paul Barringer Revocable Trust did not arise until his death on May 30, 2016, and her complaint, filed on May 28, 2019, was not barred by any statute of limitations.⁶

Conclusion

⁵ Ex. 4 contains, from Luzak v. Light et al, 1:15-cv-501 (E.D. Va. 2015), Dkt. No. 266, Tr. of Dec. 11, 2015, p. 15, lns. 2-8.19, pp. 12-15 and 23-24 and Dkt. # 130, Order of Magistrate Judge Davis providing that "Discovery will be limited to the issues of the acquisition and the purpose of the acquisition of the stock in question".

⁶ Moreover, Hampton Luzak did not discover facts sufficient to put her on notice about Defendant Barringer's involvement in a civil conspiracy until Defendant Barringer's deposition on March 14, 2019.

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Reserving all rights, Plaintiff respectfully prays that this Court deny Defendant's motion for partial summary judgment and judgment on the pleadings.

Respectfully submitted,

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ROA 004816

ROA 004817

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITC. A. Nos.: 2019-CP-07-01253
2019-CP-07-01294**PLAINTIFF'S MOTION TO
RECONSIDER ORDER GRANTING
SUMMARY JUDGMENT AS TO
PLAINTIFF'S SECOND AND THIRD
CAUSES OF ACTION***Introduction*

Pursuant to Rule 59(e), Plaintiff moves to reconsider this Court's summary judgment order dated August 20, 2021. In that Order, this Court effectively reversed the prior denial of the very same summary judgment motion, and the very same arguments, by the Honorable Carmen T. Mullen, who had been presiding over this case, designated as complex, and who had been deeply involved in all aspects of this complex case, for approximately four years. This Court reversed Judge Mullen even though *Plaintiff had no less evidence*¹ for this repeat summary judgment motion than she had when Judge Mullen denied exactly the same (prior) summary judgment motion on November 4, 2020. Nor has the law changed since November 4, 2020. This is a summary judgment motion: all Plaintiff has to do is produce a sufficient amount of evidence — a minimal amount under the law² — to survive summary judgment. If Plaintiff had

¹ Plaintiff actually had more evidence in her favor for this repeat summary judgment motion than in the prior summary judgment action, as discussed below, especially related to the testimony of attorneys Neill McBryde and John Jolley.

² According to this Court, Plaintiff failed to demonstrate even a mere scintilla of evidence in support of the claims on which summary judgment was granted. Judge Mullen, on the other hand, specifically pointed out in her order dated November 4, 2020 that "there is evidence in support of Plaintiff's two causes of action at issue in the summary judgment motion, creating a genuine issue of material fact for jury determination." Plaintiff certainly had not

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a sufficient amount of evidence to create a genuine issue of material fact in the prior summary judgment, she has a sufficient amount now, without the need to second-guess Judge Mullen.³

This Court's order expressly identifies evidence that does create a genuine issue of material fact that precludes summary judgment. On page 6 of the order granting summary judgment, this Court stated: "At most, these documents suggest that, during a certain time period, Mr. and Mrs. Barringer treated their children equally in the past and intended or planned to treat them (sic) children equally with respect to certain assets in the future." (emphasis added).

Similarly, the Court's analysis of S.C. Code §62-2-701 suggests that the fact of the reciprocal wills is the only evidence of contractual intent, even while acknowledging a page earlier evidence that did create a genuine issue of material fact. Plaintiff has never argued, as implied in this Court's order, that the 1998 reciprocal wills constituted the sole evidence of a contract or promise. Plaintiff produced multiple examples of other indications of decedent's intent in addition to the reciprocal wills. The Court necessarily had to ignore all of this evidence

withdrawn any of her evidence, so the genuine issues of material fact on both causes of action that existed on November 4, 2020 still existed on August 20, 2021. This Court's order focused solely on "documents" as evidence, ignoring the testimony of witnesses on this very issue.

³ As in her prior memoranda, reserving all rights, Plaintiff, in the interests of economy and efficiency, hereby incorporates all of Plaintiff's responses, memoranda, arguments, affidavits, and exhibits from Defendant's prior summary judgment motion denied by Judge Mullen and from Defendant's present summary judgment motion on the second and third causes of action. This memorandum will address the relevant issues, but reference is made to the filings in the prior summary judgment motion and the present summary judgment motion, including Exhibit references. Included in Plaintiff's filed exhibits from the prior summary judgment motion and from this summary judgment motion, all incorporated herein, were 40 exhibits of estate planning related documents showing the constant, unchanging pattern of equal treatment with the frequent participation of and no resistance from Defendant Barringer, 26 medical-related documents showing Paul Barringer's mental problems and decline, affidavits from Hampton Luzak and Kevin Luzak showing Paul Barringer's unchanging intent for equal treatment and the lack of any resistance from Defendant Barringer, affidavits from estate planners Richard Allen and James Hardin (deposed by Defendant Barringer), debunking statements made by McBryde, communications from Defendant Randy Light and from those occupying positions as officer, director, and general counsel of the company, and excerpts from Defendant's deposition. Also included in Plaintiff's exhibits for this summary judgment motion were additional affidavits from Hampton Luzak and Kevin Luzak providing evidence of the lack of intent by Paul Barringer to give Defendant Barringer a power over voting stock, the existence of a contract not to exercise any such power of appointment, and a promise not to exercise any such power of appointment; in addition, Plaintiff included excerpts of the depositions of McBryde and Jolley that impeached their recollection and reliability. In opposition, Defendant Barringer *failed to provide any personal affidavit* to dispute any of the facts shown by Plaintiff's evidence.

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in order to grant summary judgment based solely on what “the documents” showed. In short, the Court opted to *weigh* the evidence instead of simply looking to see if evidence existed (by inference or otherwise) to support the Plaintiff’s claims.

The Court cites two cases as authority for being able to consider again the exact same summary judgment motion denied by Judge Mullen. The first, *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (S.C. App. 1989), is clearly inapposite. In its order, this Court quoted a sentence from *Weil* that demonstrates that it is inapposite: “[A] judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment.” *Id.* In *Weil*, a family court judge issued an order after a merits hearing with testimony, despite an earlier ruling from another judge denying summary judgment. Unlike the present case, the party in *Weil* was not seeking two bites of the summary judgment apple. Although Plaintiff in this case is confident she would prevail if given the opportunity to have a trial, she understands that a jury may disagree with her arguments at trial; however, this Court’s summary judgment order, coming to the opposite conclusion of Judge Mullen, precludes Plaintiff from even having a trial, unlike *Weil*. Judge Mullen’s denial of the prior summary judgment motion would have allowed Plaintiff to have a trial — regardless of the outcome. The second cited case, *Smith v. Breedlove*, 377 S.C. 415, 662 S.E.2d 67 (2008), did allow a second summary judgment, two years after the first, when substantial discovery occurred after the first summary judgment. Importantly, in *Smith*, no depositions had been taken before the first summary judgment. Summary judgment prior to completion of discovery is inappropriate. *Gionan v. Tenet Healthsystems of Hilton Head Inc.*, 383 S.C. 48, 677 S.E.2d 32 (Ct.App. 2005). At the second summary judgment motion in *Smith*, discovery had been completed.

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In contrast, Judge Mullen ordered that a material issue of fact existed. That material issue of fact did not disappear by the time of the second summary judgment, nor did the three depositions cited by this Court eliminate any issue of material fact or reduce the evidence in Plaintiff's favor to less than a scintilla. In fact, the depositions created additional genuine issues of fact and further evidence of the facts that were disputed at the time of Judge Mullen's order.

As discussed more fully below, the deposition of Neil McBryde, who drafted the 1998 documents, was devastating to Defendant Barringer. He had filed two sworn affidavits for the first summary judgment, and his deposition testimony contradicted his sworn affidavits as well as numerous other facts asserted by Defendant Barringer — not to mention calling into question his recollection and reliability. Thus, McBryde's testimony added nothing to Defendant Barringer's existing evidence from the prior summary judgment, but weakened the facts Defendant Barringer had relied on in the first summary judgment motion, therefore adding to the dispute over material facts at the time of the instant summary judgment.

As the Court noted, both parties submitted deposition testimony from John Jolley, who had nothing to do with the 1998 documents: that both parties submitted excerpts from his deposition further demonstrates that the "additional discovery" created more issues of fact, not fewer. The third deposition cited by the Court was that of Kevin Luzak, but the Court did not indicate how or why his deposition made a difference. Kevin Luzak had submitted affidavits⁴ for the prior summary judgment as well as this one, both of which provided evidence that would defeat a summary judgment motion.

⁴ This Court's order mistakenly states that neither Kevin Luzak's affidavit nor Hampton Luzak's affidavit "suggest that a promise was made during [family] meetings" Both of their affidavits do exactly that. Under *Chapman*, a promise can be inferred, even from silence. The affidavits, inter alia, aver that Defendant Barringer never indicated that she would do anything other than comply with Paul Barringer's intentions for equal control of his company. This alone satisfied the requirement of *Chapman*.

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One other issue raised by the *Smith* case was the confirmation that, in a summary judgment, a “trial court, must view all ambiguities, conclusions, and all inferences arising in and from the evidence in a light most favorable to the non-moving party” This Court provided no indication in its order that it did so.⁵ This Court failed to even consider the rule that, even if the facts are undisputed (which Plaintiff does not acknowledge), summary judgment is inappropriate if the conclusions or inferences of fact to be drawn from those undisputed facts are disputed. *Hoard v. Roper Hospital*, 377 S.C. 503, 661 S.E.2d 113 (Ct.App. 2008).

The focus of Plaintiff’s second and third causes of action is whether Defendant Barringer has the power to appoint by will the controlling voting stock in Paul B. Barringer’s legacy company, Coastal Forest Resources Company (“CFRC”). Plaintiff has contended throughout this litigation that Paul Barringer never intended to give Defendant Barringer the power to appoint such voting stock and, even if his valid estate planning documents conveyed such a power, then Defendant Barringer cannot exercise any such power because she entered into a valid contract agreeing not to exercise any such power of appointment, as to the voting stock, and/or she made an enforceable promise in a fiduciary or confidential relationship not to exercise any such power of appointment.⁶

⁵ In its order, the Court referred to a post-hearing email submitting four documents previously submitted. Plaintiff notes that these documents were submitted because Plaintiff understood that the Court had requested them.

⁶ Despite the Court’s questioning the ability of Plaintiff to assert alternative theories about the existence of the power of appointment and, if so, about a promise not to exercise it, Plaintiff is certainly entitled to pursue alternate theories, all stemming reasonably from the same set of facts. See Rule 8(a), SCRCP (“Relief in the alternative or of several different types may be demanded.”)

ROA 004821

No Intent for Power of Appointment over Stock

This Court's Order failed to consider the evidence showing that Paul Barringer never intended to give Defendant Barringer a power to appoint voting stock. Because the Order focuses on a discussion of the 1998 documents,⁷ Plaintiff will do so as well for purposes of this motion to reconsider.⁸

Paul Barringer never allowed Defendant Barringer to have anything to do with the company, either CFRC or its predecessor. She is not and was not ever an officer, not a director, not an employee, and not a stockholder. Until his dementia subjected him to Defendants' improper influence, she had no say and no involvement in the company whatsoever. Paul Barringer never made Defendant Barringer a trustee of any of his trusts, although he variously named his three children as trustees or substitute trustees. There is no evidence whatsoever that Paul Barringer intended his wife, with no knowledge of, involvement in or power ever with the company, to decide after he died who might control the company. The facts regarding decedent's treatment of Defendant Barringer as to the company supports the opposite conclusion —i.e., Paul Barringer never intended to give Defendant Barringer a power to effect the

⁷ The Court refers to Plaintiff's response to interrogatories indicating that any promise would have been made no later than 1998. Plaintiff's position is based on the contract and separate non-contractual promise that arose at the time of the 1998 document executions, as discussed below. But Plaintiff's responses to interrogatories clearly do not limit the evidence to the time of execution of the 1998 documents; subsequent evidence is valid as well, as also discussed below.

⁸ Nevertheless, Plaintiff's argument prevails as to any subsequent valid document. This Court's Order failed to address the issue of the summary judgment by Judge Price, dated July 6, 2021, granting Defendant Light's motion for summary judgment as to the February 28, 2012 will and trust, finding that those documents were valid. Although that order is under appeal, if it is upheld, that means the 1998 will and trust documents are revoked and thus cannot grant a power of appointment to Defendant Barringer. As discussed below, even if the February 28, 2012 will and trust are the operative documents, Plaintiff's contention that Paul Barringer did not intend to give Defendant Barringer a power to appoint voting stock still prevails. And if the February 28, 2012 documents are valid, as determined by Judge Price's order, then any subsequent documents are invalid: if a subsequent document were valid, then the February 28, 2012 documents are not valid because they are revoked; the only way the February 28, 2012 documents can be valid is that the subsequent documents were never valid.

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distribution of voting stock. This is all evidence, in this record, that creates a genuine issue of material fact precluding summary judgment.

The deposition of Neill McBryde, was devastating to Defendant Barringer in that it exponentially increased the genuine issues of material fact as to the 1998 documents — the only documents McBryde was involved with. Despite contrary affirmations in sworn affidavits, when deposed, he admitted that he had no specific recollection of discussing a power of appointment with the Barringers.⁹ He testified that he never discussed voting control or stock with Paul Barringer, meaning that he never explained to Paul Barringer that any voting stock would be subject to any power of appointment. The grant of a power of appointment, as with any grant, requires intent. Paul Barringer could not have had any such intent, given that McBryde never discussed voting stock with him. McBryde's voluminous notes showed only one reference of a few words that even mentioned a power of appointment, and it could have referred to any number of powers of appointment found in the McBryde documents, most likely those given to the Barringer children, and not to Defendant Barringer.¹⁰ McBryde admitted that his notes did not necessarily mean that he discussed that issue with a client, but were often simply reminders to him to do something.¹¹

⁹ McBryde met only with Paul Barringer until the execution of the documents. Mrs. Barringer was never present, nor was any communication directed to her until McBryde mailed drafts (according to an unsigned copy of a letter in his file) for review two days before the Barringers apparently traveled from Hilton Head to Charlotte to execute the documents, ostensibly having had to drink from a firehose of complex documents between the time the drafts arrived and their travel to Charlotte without benefit of legal consultation, assuming they ever received the drafts in time. McBryde could recall very little, if any, specifics about his estate planning with Paul Barringer and Defendant Barringer. See McBryde deposition, pp. 114-117, 123-133, 135-137, 140 147-152, 155-162, 183, 187, 190, 194-195, 206, 209-211, 216-218, 220-223, 231-232, 238-241, 245, 247, 258. The McBryde deposition was attached as Exhibit 8 to Plaintiff's memorandum opposing this summary judgment, with excerpts at Exhibit 3.

¹⁰ McBryde admitted that the 1998 documents he created gave the children testamentary powers of appointment as well. His one shorthand note referring to powers of appointment indicated that property would be in trust as long as possible, which anticipates that the children would have testamentary powers of appointment. This again indicates that Paul Barringer did not intend to give Defendant Barringer any power of appointment over any voting stock.

¹¹ Similar facts apply to Jolley and the February 28, 2012 documents. *Nowhere* in his notes or communications did he discuss or demonstrate a power of appointment. *Nowhere* in his notes or communications did he discuss voting

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Importantly, *McBryde testified that he did not tell Paul Barringer or Defendant Barringer that the powers of appointment could affect control of the company.*¹²

Also importantly, Paul Barringer could not have intended to give Defendant Barringer a power of appointment over controlling voting stock in the 1998 documents because he did not have enough stock at that time to affect control. He had already given voting stock control to his children, who could act without him, and he did not keep enough stock to team with one child for control.¹³ A testator and/or settlor's intent must be construed in accordance with the facts and circumstances that exist at the time the relevant documents are executed,¹⁴ so Paul Barringer could not have intended to give such a power of appointment in 1998 because he knew he did not himself have enough stock to affect control.

The language of the powers of appointment in all the documents¹⁵ state that Defendant Barringer can appoint to any child or descendant. Paul Barringer would not have given someone the power to appoint controlling stock to any descendant, which could be a grandchild, great-grandchild, etc., that he may have never known before he died. He always maintained equal control among his children and intended that it continue.¹⁶ Again, there is simply no evidence that Paul Barringer understood and intended for Defendant Barringer to change his long-held plans for equal control of the company.

stock or control. Even though he testified at one point in his deposition that he explained the power of appointment, when pressed he could not specifically recall what he said or how he said it. John Jolley deposition of 4-21-21, pp. 56, lns. 20-25, p.57, lns. 1-20.

¹² McBryde deposition p. 258, lns. 18-25.

¹³ See voting agreement, Exhibit A, Attachment 7, to the prior summary judgment motion, incorporated herein.

¹⁴ See, e.g., *Estate of Fabian*, 362 S.C. 349, 483 S.E.2d 474 (Ct.App. 1997).

¹⁵ Again, because of the grant of summary judgment, Plaintiff was deprived of the opportunity to show the voluminous evidence as to why all of the post-1998 documents are invalid.

¹⁶ When his son Victor took a spin-off company, Paul Barringer allocated the remaining stock to treat his two daughters equally as to CFRC, confirming his long-stated intentions.

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Another reason Paul Barringer did not understand and intend that his voting stock would be controlled by someone else is because his trustee in all of his trusts had the power to distribute principal — to Defendant Barringer and the children — and/or to sell the trust property. Again, he never named Defendant Barringer as trustee, and the trustees and successors of his 1998 trust were his son, a friend, and a bank, all of whom possessed the business acumen and knowledge that Defendant Barringer lacks. Paul Barringer would never have allowed a trustee to distribute or sell voting stock, yet the language of the trust documents appear to do exactly that, clearly demonstrating a genuine issue of material fact as to whether he had any intention for his voting stock to be controlled as part of any power of appointment or trustee power.

Defendant Barringer argued that there is no evidence that Paul Barringer wanted to maintain equal control of the company regardless of how a child might have behaved subsequently, but that argument is without merit and contradicted by the facts: *Paul Barringer had already given away control of his company to his children by 1998; regardless of their subsequent behavior, they still had control that he had no power to take back.*¹⁷ His very actions prove that he did not care about future behavior because he had already irrevocably given away control.

Promise Not to Exercise

Even if the language of the documents successfully gave Defendant Barringer a power of appointment over voting stock, she promised not to exercise it. The Court has erred in failing to adequately distinguish the difference between a contract not to exercise, which of course requires a contract, and a unilateral fiduciary or confidential promise, which is enforceable under South Carolina law specifically because it is not a contract. Plaintiff recognizes that South Carolina

¹⁷ So, for example, if one of the children robbed a bank after 1998, there was nothing Paul Barringer could do as to the voting stock because he had already given it away.

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Code section 62-2-701 provides the sole means for proving a contract, as discussed below, but section 62-2-701 does not and cannot govern the common law, unilateral fiduciary or confidential relationship enforceable promise issue because the unilateral fiduciary or confidential relationship enforceable promise issue *does not involve a contract*. It is a separate issue not addressed by the statute. Section 62-2-701 is the sole source of law governing contracts not to revoke, superseding any prior common law as to contracts not to revoke, but it does not and cannot supersede the common law dealing with enforceable promises that *are not contracts*. See S.C. Code §62-1-103 (probate common law survives unless supplanted by statute). To focus exclusively on a contract diverts attention away from the common law and *Chapman*.

Thus, the common law, and not Section 62-2-701, applies to the enforceable promise cause of action — Plaintiff's second cause of action. The *Chapman* case therefore remains valid law and is unaffected by the statute.¹⁸

Plaintiff recognizes that the facts in *Chapman* differ from the facts in this case, but the statement of law in *Chapman* is nevertheless valid, controlling, and apropos: a spouse is bound by a promise not to exercise, if that promise is made while the spouse is in a fiduciary or confidential relationship; a contract is not necessary. Importantly, the *Chapman* court, citing the leading national authority on trust law, stated that the promise did not even have to be express. *Chapman, supra*, at 479, 395 S.E.2d at 452. Rather, the promise could be implied, even by silence. This Court's order granting summary judgment to Defendant Barringer is in direct contravention to the rule announced by the Court of Appeals in *Chapman*. Plaintiff clearly has demonstrated sufficient evidence to show that Defendant Barringer made such a fiduciary or

¹⁸ *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (S.C. App. 1990). Moreover, *Chapman* was decided in 1990, while section 62-2-701 became effective in 1987.

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confidential promise, even if only by silence or acquiescence. Indeed, Defendant Barringer maintains her silence even today by failing to produce an affidavit contesting Plaintiff's evidence in support of her position. Defendant Barringer's silence in connection with this summary judgment motion is compelling evidence that in itself precludes summary judgment.

In Plaintiff's second cause of action, for constructive trust and injunction, Plaintiff alleges that Defendant Barringer made an express or implied promise not to exercise any testamentary power of appointment she may have in a manner that would redirect the subject property in a manner other than as set forth in the default provisions of the estate plan of Paul Barringer. If, in fact, Paul Barringer intended to give Defendant Barringer a testamentary power of appointment over such voting stock, which Plaintiff disputes, Paul Barringer relied on Defendant Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous estate planning and succession documents of Paul Barringer,¹⁹ Paul Barringer intended to treat his daughters — Plaintiff and Defendant Merrill Light — equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Defendant Barringer and assertions made by her counsel in court, she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner that would not treat the daughters equally with respect to the CFRC voting stock

Defendant Barringer's 1998 will made an express promise to her now deceased husband by stating that she would not exercise her power of appointment. Nor did she attempt to exercise the power for the rest of Paul Barringer's life. Paul Barringer went to his grave believing that his

¹⁹ Those documents that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Plaintiff alleges that any of Mr. Barringer's estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons.

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wife would keep her promise. The *Chapman* court specifically and expressly adopted the rule in Bogert, Trusts, §89 (6th ed. 1987), noting that the promise by the fiduciary may be express or implied, even by silence. A fact-finder could infer that Paul Barringer understood that Defendant Barringer made such a promise because of her specific and express declination to exercise any power in her 1998 will, which is a genuine issue of material fact; Paul Barringer's failure to exercise any power for the rest of his competent life, and even for the rest of his life once Paul Barringer was incompetent; and from the numerous other situations where Defendant Barringer engaged in acts supporting Paul Barringer's intent that the children be treated equally, and always acquiesced and never expressed any disagreement about his intention of equal treatment.²⁰

Yet, according to this Court, none of this evidence creates even a scintilla of evidence to support the existence of a non-contractual promise based on a fiduciary and/or confidential relationship, even though Defendant Barringer's silence in itself speaks loudly.

Defendant Barringer argued that it would make no sense for Paul Barringer to give Defendant Barringer a power of appointment and then rely on her promise not to use it, but that is exactly what happened in *Chapman* and exactly what section 62-2-701 regarding contracts not to exercise, discussed more fully below, governs.

Equitable Estoppel

Plaintiff's second cause of action is also supported by the doctrine of equitable estoppel, which enforces a promise that is not contractual.²¹ Just as section 62-2-701, dealing exclusively

²⁰ For example, the estate planning related documents discussed at footnote 3, *supra*.

²¹ This Court's order states that Plaintiff has not asserted a claim for promissory estoppel. That is incorrect. Plaintiff's complaint alleges that, separate and apart from any promise pursuant to a contract, Defendant Barringer promised not to exercise any power of appointment. Promissory estoppel involves a promise, as does the fiduciary/confidential relationship argument involve a promise, neither of which need be part of a contract.

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with contracts, consequently does not and cannot supersede common law enforcement of non-contractual promises based on fiduciary or confidential relationships, section 62-2-701 likewise cannot supersede the common law of equitable estoppel, which by definition is non-contractual. In South Carolina, equitable estoppel can apply based on silence.²² As with the fiduciary/confidential promise issue, the Court failed to distinguish the difference between equitable estoppel, which does not require a contract, and a contract not to revoke, which is governed by section 62-2-701.

The Court misconstrues *Satcher*,²³ a classic equitable estoppel case in which the party relying on a non-contractual promise was entitled to enforce it. *Satcher* allowed purely oral, or non-written proof, to establish estoppel and hence the enforcement of the promise, proving that section 62-2-701, which requires some written proof of a contract not to revoke, does not apply to estoppel.²⁴ In this case, Paul Barringer relied on the promise of Defendant Barringer, and the doctrine of equitable estoppel clearly applies. There is evidence he relied on his wife's promise, whether express or implied, by declining to exercise the power of appointment she gave him and by his knowledge that she had promised to honor his intent to treat their children equally by declining to exercise any power in her 1998 will or in any will she executed thereafter while he was alive, by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and by participating in or acquiescing in other

²² See, e.g., *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012); *State v. Hinojos*, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011); *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998).

²³ *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002).

²⁴ *Satcher* was decided some 15 years after the effective date of section 62-2-701.

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acts evidencing the intent to treat the children equally. That constitutes classic promissory estoppel.

Yet, *according to this Court, not a scintilla of evidence exists* to support the existence of a non-contractual promise based on equitable estoppel, even though silence in itself would suffice.

Contract Not to Revoke Will (Not to Exercise Any Power of Appointment)

Separate and apart from the fiduciary/confidential relationship and equitable estoppel arguments, either of which is supported by sufficient facts for Plaintiff to avoid summary judgment, is Plaintiff's argument that a contract not to exercise existed, which in itself is supported by sufficient facts for Plaintiff to avoid summary judgment. Any of these arguments — fiduciary/confidential relationship and/or equitable estoppel and/or contract not to revoke — suffices to avoid summary judgment. With respect to contracts not to revoke, Plaintiff recognizes that section 62-2-701 governs. Nevertheless, Plaintiff satisfied the requirements of section 62-2-701, and certainly sufficient evidence suffices to avoid summary judgment.

The Court's misapprehension about section 62-2-701 is further demonstrated by its inability to determine whether the "decedent" in the statute is Paul Barringer or Defendant Barringer. The will that is subject to the contract is Defendant Barringer's, and it is her will against which the contract is enforced. Paul Barringer died first, and it is not his will that breaches the contract. Defendant Barringer's will would breach the contract, which is why Plaintiff sought an injunction against her breaching that contract.²⁵

In Plaintiff's third cause of action, for enforcement of contract not to revoke and injunction, Plaintiff alleges that Paul Barringer and Mrs. Barringer entered into a binding

²⁵ South Carolina allows the enforcement of a contract concerning succession — section 62-2-701 — before the decedent dies. See *Wright v. Trask*, 329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997).

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contract not to revoke their estate plans, especially with respect to Defendant Barringer's will(s) that did not exercise any power of appointment related to voting stock before Paul Barringer's death. This contract not to revoke applied to the estate plans in place that were not the result of, *inter alia*, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, fraud, and/or lack of capacity because any estate plan of Paul Barringer resulting from those actions would be invalid.

In 1998, Paul Barringer executed, *inter alia*, a will and revocable trust that included language purportedly giving Defendant a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him.²⁶ Even if Defendant and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Defendant in 1998, Defendant's 1998 will, prepared by the same drafting attorney, and executed at the same time and in conjunction with Paul Barringer's 1998 will and revocable trust, expressly declined to exercise that testamentary power of appointment.

Moreover, Defendant Barringer's 1998 revocable trust apparently gave Paul Barringer an identical special testamentary power of appointment over the property in her revocable trust if he survived her — establishing the mutuality of their planning — which he similarly expressly and specifically declined to exercise in his will. Thus, continuing to assume *arguendo* that Paul Barringer and Defendant understood what a testamentary power of appointment was and that Paul Barringer's 1998 documents contained such a special testamentary power of appointment, their symbiotic estate planning documents prepared by the same attorney and executed simultaneously included both a grant of such a testamentary power of appointment by Paul

²⁶ As discussed above, Plaintiff asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Defendant, Plaintiff, and Plaintiff's husband Kevin Luzak, and others, there is no evidence that either Paul Barringer or Defendant knew about or really understood that these documents gave Defendant a testamentary power of appointment over voting stock.

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Barringer and a concomitant express declination to exercise that testamentary power of appointment by Defendant Barringer, and vice-versa.

Thus, if Paul Barringer knew he was giving Defendant Barringer a testamentary power of appointment in his 1998 documents, he also knew that Defendant Barringer expressly declined to exercise that testamentary power of appointment in her will executed simultaneously, just as she knew that he declined to exercise the power she gave him. Because Plaintiff has produced significant proof that Paul Barringer never made another will or trust when he was competent and/or free from improper influence,²⁷ he thus spent the rest of his cogent un-influenced life²⁸ understanding that Defendant Barringer had agreed not to exercise that testamentary power of appointment. That understanding between Paul Barringer and Defendant Barringer, evidenced by the 1998 documents, including her specific and express declination to exercise the special testamentary power of appointment, if there was one, serves as evidence in support of all of Plaintiff's assertions in addition to there being no intent for Paul Barringer to give Defendant Barringer a power of appointment over voting stock.

The pattern of other planning related acts²⁹ by Paul Barringer, while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally, thereby denying any one child the ability to control the company. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant Barringer a special testamentary power of

²⁷ The voluminous and detailed evidence of the invalidity of any post-1998 estate planning documents purportedly executed by Paul Barringer is found in the filings in the prior summary judgment motion incorporated herein.

²⁸ Meaning that any document he executed after 2011 was invalid because he lacked capacity and was unduly influenced, etc, as to any documents he executed after 2011.

²⁹ The voluminous and detailed evidence of these other estate planning related acts is found in the filings in the prior summary judgment motion incorporated herein.

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appointment while Defendant Barringer concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that *his* plan for *his* company — shared control after his death — would remain intact.

Although this was the foundation, it is certainly not all of the evidence Plaintiff asserts that proves that Defendant Barringer agreed contractually not to exercise any power of appointment; plenty of other evidence exists to prove the existence of an agreement.

Attorney John Jolley prepared the documents and Defendant executed reciprocal documents multiple times between 2012 and Paul Barringer's death. Importantly, none of the documents prepared by Jolley and executed by Defendant Barringer exercised any testamentary power of appointment. Defendant Barringer did not purport to execute the power of appointment until after Paul Barringer died *and* the commencement of this action in 2016, when a different attorney began representing her.

Even assuming *arguendo* that the estate planning documents executed by Paul Barringer after 2011 might be valid, Defendant and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Not once during Paul Barringer's lifetime did Defendant Barringer attempt to exercise any testamentary power of appointment.

The pattern of other planning related acts by Paul Barringer while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally among the three children, thereby denying any one child the ability to control the company. That is indisputably the way the company operated when Paul Barringer was alive and competent, and serves as evidence of his intent going forward. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he

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purportedly gave Defendant a special testamentary power of appointment while Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that his plan for his company — shared control after his death — would remain intact.

South Carolina Code § 62-2-701 provides several methods of establishing a contract not to revoke a will or devise: “by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract.”

Assuming arguendo that Plaintiff relies solely on the existence of a contract not to revoke a will or devise — which she does not — any of these three methods listed in the statute may be used to establish the existence of a contract not to revoke a will or devise. The first option provides for the decedent’s will stating material provisions of the contract. That option does not require that the entire contract be contained in the decedent’s will, but rather only that the will state material provisions of the contract. Paul Barringer’s 1998 revocable trust executed in conjunction with his 1998 will stated material provisions as to the existence of a power of appointment and the intent to treat their children equally. Defendant Barringer’s 1998 will, executed simultaneously and symbiotically with Paul Barringer’s 1998 will and revocable trust, stated material provisions as to the existence of a power of appointment and the intent to treat their children equally, as well as, importantly, expressly and specifically declining to exercise the power of appointment set forth in Paul Barringer’s estate plan.

Paul Barringer similarly expressly and specifically declined to exercise the power of appointment set forth in Defendant’s estate plan. Although these Barringer 1998 estate planning

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documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Defendant Barringer's will that should not be revoked as to the express and specific declination to exercise any power of appointment: her will states the material provisions of the contract in itself, and is corroborated by the material provisions stated in Paul Barringer's will. The mutuality of the contract is confirmed by Paul Barringer's will, which declines to exercise the special testamentary power of appointment that Defendant gave him in her 1998 revocable trust.

If Paul Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Defendant Barringer, then he also understood that Defendant Barringer had agreed at the same time, in documents prepared by the same lawyer representing them both and executed at the same time, not to exercise that power of appointment, just as he declined to exercise the power of appointment she apparently gave him. He relied on that contract. These documents each treat the children equally.

The material provisions of the contract stated in the Barringers' 1998 estate plans, and particularly in Defendant Barringer's 1998 will, are sufficient to satisfy the requirements of SCPC section 62-2-701(1), but are also augmented and corroborated by the following:

- The pattern of the reciprocal wills and trusts executed by Paul Barringer and Defendant beginning in 2012 (although Plaintiff contends Paul Barringer's wills and trusts are invalid), none of which exercised any power of appointment, until Defendant Barringer breached the contract by executing wills after Paul Barringer died which purport to exercise a power of appointment;
- Family agreements demonstrating Paul Barringer's intent to keep voting control equal;
- Gift tax returns joined in by Defendant;
- Corporate documents demonstrating Paul Barringer's intent to keep voting control equal;
- Communications among the family and with advisors; and

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- Numerous meetings involving family and business planning, at which Paul Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant. These documents and events form a consistent and continuing pattern of evidence.³⁰

SCPC section 62-2-701(3) provides different requirements: “a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract.” Under subsection (3), a contract can be established by the signature of the decedent on a writing evidencing a contract as augmented by extrinsic evidence. Thus, subsection (3) broadly and effectively allows the terms of the contract to be established by extrinsic evidence. Just as with subsection (1), there is no requirement that the will (subsection (1)) or the signed writing (subsection (3)) expressly and specifically include the term “contract.” This is consistent with contract law, which of course does not require the word “contract” in a writing to create a contract.

The simultaneous and symbiotic 1998 estate planning documents of Paul Barringer and Defendant are obviously signed writings. As discussed above regarding subsection (1), Paul Barringer and Defendant’s 1998 documents create special testamentary powers of appointment and Defendant Barringer’s will specifically and expressly declines to exercise any power of appointment. This alone “evidences” a contract. Numerous other documents and evidence also serve as signed writings evidencing a contract and as extrinsic evidence establishing the contract, especially as to equal treatment.³¹

³⁰ The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

³¹ The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

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Presumably in the context of section 62-2-701(1), this Court held that Plaintiff has identified no provision stating the material provisions of a contract. As discussed above, the 1998 estate planning documents clearly set forth the material provisions of the contract: in short, the mutual declaration of the powers of appointment that each granted to the other and the mutual and mirror provisions otherwise in their 1998 documents — treating the children equally. Although not necessary because these documents themselves provide basis for the “material provisions of the contract,” section 62-2-701(1) does not preclude additional evidence. As discussed above, there is substantial additional evidence to show the continuing agreement between Paul Barringer and Defendant Barringer.

Presumably in the context of section 62-2-701(3), this Court held that Plaintiff had failed to identify *any writing* signed by Paul Barringer and Defendant Barringer evidencing an alleged contract. Again, as discussed above, Plaintiff alleges numerous writings, including but not limited to the 1998 documents, but in addition to writings, other evidence as well. Moreover, section 62-2-701(3) does not limit the use of extrinsic evidence to prove the contract. In addition to documentary evidence, Plaintiff has produced testimony, including affidavits, showing their intent. This Court generally focuses on “Mr. and Mrs. Barringer’s estate planning documents,” overlooking that section 62-2-701(3) allows extrinsic evidence, not limited to estate planning documents, and not even limited to documents.³²

Yet, *according to this Court, not a scintilla of evidence exists* to support the existence of a contract not to revoke/not to exercise any power of appointment over voting stock.

³² With respect to the contract claim, this Court also focuses on the 1998 documents as never promising not to exercise any power of appointment but, again, section 62-2-701(3) does not limit evidence to wills, even though the 1998 documents themselves contain sufficient evidence to show a contract under subsections (1) or (3). In addition, the Court cites the provision in section 62-2-701 that mutual wills do not create a presumption of a contract, but that provision does not preclude mutual wills from creating a contract, especially when supported by other evidence.

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Inability to Obtain Testimony from Defendant Barringer

Much has been made by Defendant Barringer's counsel about her age. While Plaintiff (and her counsel) wish her nothing but the best physical and mental health for a long time, Defendant Barringer has chosen never to testify about the power of appointment issue. Defendant's counsel cut short her deposition in March 2019, after Plaintiff had just short of three hours to depose her.³³ Defendant Barringer resisted a court order until finally obeying the order to produce her estate planning documents, which she did not produce, despite the court order, until March 6, 2020, some 17 months after the discovery request and approximately one year after her deposition. Her estate planning documents provided crucial information about the power of appointment issue. Because of the refusal to produce these documents, Plaintiff did not have access to them at Defendant Barringer's deposition, which was noticed by Defendants and conducted in 2019 before Plaintiff received these documents. Defendant Barringer, whom you would think would have something to say about the power of appointment issue, has failed to provide any affidavit, including for this summary judgment.³⁴ If the motion to reconsider is denied, and an appeal is Plaintiff's sole recourse at that point, the opportunity to hear from Defendant Barringer as to this issue is lessened.³⁵ Moreover, the Court issued its order without determining which estate planning document, if any, was valid and whether that valid document effectively created a power of appointment. Plaintiff has been deprived of her opportunity to

³³ The substantive amount of time was considerably less, given the constant and lengthy objections interposed by defense counsel.

³⁴ See *Davis v. Sparks*, 235 S.C. 326, 333, 111 S.E.2d 545, 549 (1959) ("In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him.") (quoting 31 C.J.S. Evidence § 156a, p. 847); see also *Matthews v. Porter*, 239 S.C. 620, 633, 124 S.E.2d 321, 328 (1962) ("It is well settled in this State that if a party fails to produce the testimony of an available witness on a material issue in the cause, it may be inferred that such testimony, if presented, would be adverse to the party who fails to call the witness.")

³⁵ Although Plaintiff did not want to have two lengthy repetitive trials, which is why she opposed bifurcation, she does want her day in court, which because of the summary judgment orders will be delayed even more.

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present evidence about the validity of any estate planning documents, which is crucial to the case.

Conclusion

Substantial and sufficient evidence exists, through the pleadings, depositions, affidavits, and discovery on file, such that Plaintiff must prevail. Plaintiff demonstrates substantial and sufficient evidence of a contract not to revoke, an express promise not to revoke arising from a fiduciary and confidential relationship, an implied promise not to revoke arising from a fiduciary and confidential relationship, and equitable estoppel.

Reserving all rights as set forth above, Plaintiff respectfully prays that this Court grant Plaintiff's motion to reconsider.

Respectfully submitted,

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August 30, 2021
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

**PLAINTIFF'S MOTION TO
 RECONSIDER AND/OR VACATE**

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
 2019-CP-07-01294

**PLAINTIFF'S MOTION TO
 RECONSIDER AND/OR VACATE**

Plaintiff finds herself in the position of having to file this Motion because of the Court executing its Order of August 24, 2021, despite the fact that the Plaintiff had already withdrawn her Motion for Reconsideration on August 2, 2021, before the Court issued an order denying the motion for reconsideration on August 4, 2021 and before the August 24, 2021 order. The relevant chronology is as follow:

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- On July 13, 2021, after a hearing on July 2, 2021, Judge Bentley Price filed an order denying Plaintiff's Motion for Disqualification and Recusal.
- On July 23, 2021, Plaintiff filed a Motion to Reconsider the Order Denying Motion for Disqualification and Recusal.
- On July 23, 2021, Judge Price filed an Order of Reassignment of Case Designated as Complex, assigning the case to The Honorable Robert Bonds.
- On August 2, 2021, Plaintiff's counsel Desa Ballard emailed Judge Price with an attached letter, informing him that Plaintiff was withdrawing her motion to reconsider without prejudice. (See Exhibit 1).¹
- On August 3, Judge Price, through his law clerk, responded that Judge Price had already filed orders denying Plaintiff's motion to reconsider on July 26, 2021. (Those orders do not appear on the court website nor was any notice of filing provided through E-Filing.)
- On August 4, 2021, at approximately 11:05 a.m., Judge Price through his law clerk responded to an email sent approximately 45 minutes earlier by Defendant's counsel Paylor (which she later requested be deleted) that he had instructed his law clerk to refile the orders previously filed on July 26, 2021, but he "asks Ms. Paylor to e-file her order in Word format, and he will sign it as well." That email on behalf of the judge responded to and retained the email chain from Paylor's email.
- On August 4, 2021, at approximately 11:18 a.m., Paylor sent an email stating that she had sent the prior email inadvertently and asking the judge and counsel to delete the email.
- On August 4, 2021, at approximately 11:23 a.m., Paylor sent a new email, and attached her "more fulsome order."
- On August 4, 2021, at approximately 12:01 p.m., Judge Price through his law clerk again responded, this time to Paylor's most recent email that he had instructed his law clerk to refile the orders previously filed on July 26, 2021, but he "asks Ms. Paylor to e-file her order in Word format, and he will sign it as well."
- On August 4, at approximately 2:57 p.m., Judge Price filed an order denying Plaintiff's motion to reconsider, which was not Paylor's proposed order.

¹ The letter withdrawing the Motion for Reconsideration was sent by Plaintiff's counsel's to all counsel of record in addition to Judge Price. See *Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 334 n. 5, 628 S.E.2d 894, 898 n. 5 (Ct. App. 2006) (upholding the issuance of a proposed scheduling order, notwithstanding that the documents submitted by the proponent of the order "were not necessarily the equivalent of a formal motion" and noting that "[b]ecause the circuit court and the parties were aware of the substance of Respondents' request, we do not believe Appellants were prejudiced by the absence of a formal motion") cited by *Jenkins v. Jenkins*, No. 2007-UP-342, 2007 WL 8327924, at *3 (S.C. Ct. App. June 29, 2007).

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- On August 24, at approximately 3:19 p.m., Judge Price filed another order denying Plaintiff's motion to reconsider — this time he filed a verbatim copy of Paylor's proposed order. In that order, Judge Price modified the prior Order of Reassignment to retain jurisdiction to rule on all motions to reconsider orders that Judge Price had issued.

Judge Price's prejudice against Plaintiff manifested itself once again with this filing confusion. Plaintiff's attempt to withdraw her motion to reconsider on August 2, 2021, was not recognized because, according to the Court, it had already filed orders denying the motion to reconsider on July 26, 2021. However, those orders apparently did not appear on any electronic filing system. Consequently, according to the Court, it re-filed its own orders denying the motion to reconsider on August 4, 2021, despite having already received notice from Paylor that she had prepared and attached a "more fulsome order." However, within 45 minutes after receiving the first Paylor email on August 4 (which she requested be deleted), Judge Price through his clerk told Paylor to e-file that order in Word and that he would sign it "as well." Judge Price apparently accepted Paylor's proposed order verbatim and filed it on August 24, 2021.

Although Plaintiff attempted to withdraw her motion to reconsider, the Court's actions and orders require her to address the August 24 order. The Court filed its second order denying Plaintiff's withdrawn Motion for Reconsideration on August 24, 2021 which was twenty (20) days after the Court's initial order denying Plaintiff's Motion for Reconsideration. During the time period from August 4 through August 24, neither party filed any motions requesting any further action by the Court regarding Plaintiff's Motions for Disqualification and Recusal or Reconsideration. The August 24 order was thus entered outside the 10-day time limit for a motion to alter or amend under Rules 52(b) and 59(e), SCRCP.

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The Supreme Court has held that a *sua sponte* order from the trial court issued more than 10 days from the entry of the judgment is invalid.

[T]he trial judge's full written order filed ... more than thirty days later, was patently untimely. Under Rule 59(e), SCRCP, trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative When no timely Rule 59 motion was made nor timely *sua sponte* order filed under Rule 59(e), the ... form order “matured” into a final judgment. The [subsequent] order ... was a nullity because the trial judge no longer had jurisdiction over the matter.

Leviner v. Sonoco Products Company, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000).

Similarly, the Court of Appeals has succinctly held: “We rule a Family Court judge does not have the authority to alter or amend a judgment, *sua sponte*, once the judgment is more than 10–days–old.” *Heins v. Heins*, 344 S.C. 146, 157, 543 S.E.2d 224, 229 (Ct. App. 2001).

The previously presiding judge of this complex case does not have the authority to re-enter this case after the expiration of ten days from the date of an order denying a motion to alter or amend. See Supreme Court Administrative Order 2006-07-26-01 regarding complex case designations (“The Chief Administrative Judge will assign the case to a judge assigned to the circuit or an adjoining circuit and all pretrial motions and other matters pertaining to that case will be under the exclusive jurisdiction of the judge assigned to the case.”) (underline added). For the reasons above, Plaintiff moves to vacate the August 24, 2021 order.

In the alternative, Plaintiff moves for reconsideration to vacate and/or amend the August 24, 2021 order for the reasons below and will address that Order’s statements seriatim.

Plaintiff reserves all rights and incorporates herein all prior motions, memoranda, and pleadings with accompanying exhibits, and she incorporates particularly her Motion to Recuse along with her Reply to the Returns filed in response to the Motion to Recuse, her motion to reconsider, and all of the supporting affidavits and supplemental affidavits submitted by her.

1. Plaintiff re-incorporates and re-asserts paragraph 1 of her motion to reconsider.

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2. Plaintiff re-incorporates and re-asserts paragraph 2 of her motion to reconsider.
3. Plaintiff re-incorporates and re-asserts paragraph 3 of her motion to reconsider.
4. Plaintiff re-incorporates and re-asserts paragraph 4 of her motion to reconsider.
5. Plaintiff asserted in her motion to reconsider that “The trial judge erred in failing to consider his June 7, 2021 letter to all counsel as a basis for finding that he violated Canon 3(E)(1)(a) when he asserted he had actual knowledge (see Terminology, Rule 501, SCACR) that supported the factual statements made in his June 7, 2021 letter.” The August 24, 2021 order excuses the June 7, 2021 letter as being based entirely on the record — a continuing theme throughout the order, but not an accurate assertion. As will be discussed in more detail in Item 18 below, much of the statements made in the June 7, 2021 letter were not based on the record. For instance, the June 7, 2021 letter states that Plaintiff has “unlimited resources.”² Nowhere does that evidence appear in the record. The letter’s assertion, therefore, presumes that the Judge had some independent knowledge of a fact that he put in writing to all counsel and parties.
6. Plaintiff asserts in her motion to reconsider that the trial judge erred in failing to consider the affidavits and supplemental affidavits of Nathan Crystal and Professor Gregory B. Adams and the other affidavits submitted by the Plaintiff. The August 24 order addresses this issue in its response to item 22, discussed below.

² For example, the June 7 letter accuses the Plaintiff of using her “unlimited resources” to “tempt attorneys into tip toeing the line of unethical and reportable behavior. There is absolutely no evidence in the record of that. Other examples from the June 7 letter include: “...it has become abundantly clear that this case is being mishandled and quite frankly is a miscarriage of justice that must be addressed”; “It became immediately clear to the Court lengths to which the Plaintiff is willing to go to ensure this case never sees the inside of a courtroom with 12 jurors seated” (as noted below, Plaintiff very much wants her day in court); Plaintiff’s assertion about the time required to try the case “... is seen as nothing more than another delay tactic” (as note below, even the successor judge has recognized that the bifurcated case could take up to three weeks, and Defendants have argued that the remaining case, which Plaintiff contends will be essentially repeated in the bifurcated case, could take “weeks if not months”); and an accusation that Plaintiff did not want judicial assistance.

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7. Plaintiff asserts in her motion to reconsider that “the trial judge erred in failing to recuse himself after asking Plaintiff to personally meet with him to discuss her affidavit in an email dated June 23, 2021.” That email stated “Judge Price would like to know if there is any time in the near future that Ms. Luzak could come to discuss her affidavit with the Court.” The August 24, 2021 order now takes the position that the Judge’s email “offered to have Plaintiff present in court when I addressed the concerns raised in her affidavit in support of the Motion. This was not to be an ex parte meeting, but *essentially a hearing* in which I could address those concerns, which were raised in the Motion to Reconsider. I provided this explanation at the hearing on July 2, and Plaintiff chose not to attend. Plaintiff offers no explanation as to why offering to meet with her (and all counsel) could constitute a basis for recusal.”

There is a lot to unpack in the Court’s explanation. The order states that the Judge provided the explanation about the email at the hearing on July 2, 2021, but that did not happen, according to the transcript. The August 24 order is the first attempt by the Court to explain the email. Understandably, Plaintiff did not read that email to mean, as the order now explains, as “an offer to have Plaintiff present in court when I addressed the concerns raised in her affidavit in support of the Motion.” The email mentioned nothing about *being in court* but rather invited Plaintiff to discuss her affidavit *with the Court*. Understandably, Plaintiff did not read the email to mean, as the order now explains, that the Judge was inviting her to “*essentially a hearing*,” whatever that means. Understandably, Plaintiff did not read the email to mean that all counsel would be present at this “essentially a hearing” or for that matter, that even her counsel would be in attendance. The email clearly does not extend the invitation to “all counsel” as the order now explains.

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Moreover, the Judge's response in real time did not take the opportunity to provide the explanation now attempted in the order. In response to the email of June 23, 2021, Plaintiff through counsel responded: "Recognizing that our client reserves all rights under the pending motions, can Judge Price please elaborate on what he is proposing?" Rather than taking that opportunity to provide the explanation now attempted in the order, the judge responded on June 24: "Judge Price would like to know when you all are available for a hearing on the Motion to Reconsider and Recuse. Ms. Luzak does not need to be there." Understandably, Plaintiff's initial reading of the June 23 email was corroborated by this email. The Judge was not expecting to have a discussion with Plaintiff as part of a hearing, or even "essentially a hearing." Understandably, Plaintiff chose not to attend the hearing discussed in the June 24 email, even though the order states that "she chose not to attend."

The order states that "Plaintiff offers no explanation as to why offering to meet with her (and all counsel) would constitute a basis for recusal." Plaintiff would not think that she would have to explain this, but it would be improper for a judge to invite a party to what the party considered to be an ex parte meeting and, as now explained, what was "essentially a hearing" and not an actual hearing with all counsel invited, despite the email failing to invite all counsel or explain the purpose and process of the "discussion." Already feeling intimidated by the June 7 extrajudicial letter, Plaintiff believed that she would be further intimidated into accepting an excuse for having sent that June 7 letter through a non-judicial discussion with the judge. The judge had already sent the June 7 "private, personal letter," as he described it at the hearing on July 2, and Plaintiff understandably read the email to invite her to more of the same private,

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personal discussions. Quite simply, a judge should not be having private, personal discussions with a party.³

8. Plaintiff asserts in her motion to reconsider that the Judge stated at the July 2, 2021 hearing that he “felt personally as the Court [sic] misled,” but Plaintiff made it clear that no one representing Plaintiff ever misled the Court. The August 24 order now expands the Court’s apparent rationale for being upset and writing the improper letter of June 7. The order now addresses both items 8 and 9 of the motion to reconsider together and, for the first time, accuses Mr. Medlin by name of misleading the court. The August 24 order states that Mr. Medlin:

argued that Mr. Barringer received very low scores on certain cognitive tests, including a zero on a scale of zero to thirty on one occasion. Mr. Medlin implied that these low scores created a genuine issue of fact as to whether Mr. Barringer had testamentary capacity in February 2012. When I inquired, “When did he get a zero?” Mr. Medlin conceded that the test was in 2015, three years *after* the February 29, 2012 documents were signed.” (Emphasis added.)

Putting aside the issue of how one can make an “implied misrepresentation,” the quoted language, taken straight from Paylor’s proposed order signed verbatim by the Judge, is completely inaccurate. Medlin never implied that these test scores occurred around 2012. Rather, given a total of 34 minutes to argue essentially the same issues that were argued over three days in the prior summary judgment motion denied by Judge Mullen, but now granted by Judge Price as to documents executed in February 2012, Medlin explained to the Court, in response to the Judge’s statement that he had reviewed all the briefs, that “We will refer to our briefs, and I will try not to get into the detail of our briefs.” (May 27, 2021 transcript of hearing, p. 154.) The briefs contained a detailed and voluminous timeline of medical reports from 2011 to 2016, so the Judge, having reviewed the briefs, should not have been “impliedly misled” by any statement. Moreover, after Medlin discussed the medical facts within a few months of the

³ This explanation was fully provided by Plaintiff in the supplemental affidavit of Dr. Gregory B. Adams.

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February 2012 wills, Medlin prefaced his following comments by referring to the *Gaddy* case cited in Plaintiff's brief, for the proposition that dementia is a regressive disease. Having cited the detail in the briefs, Medlin then quickly discussed a few subsequent medical reports, "in the *ensuing months*." (emphasis added) (May 27, 2012 transcript of hearing, p. 164.) Those medical reports were indeed in the ensuing months. The purpose of the statement was to show the continuing devolution of the decedent's mental capacity.

Medlin further clearly stated to the Court that the mini-mental scores cited by the court in the August 24 order occurred in the ensuing months after August 2012⁴ and as part of a discussion that dementia does not get better and that the range of scores he discussed *occurred between 2011 and 2015*. (May 27, 2021 transcript of hearing, p. 173).

The Court may have been confused but was not misled by any misrepresentation by Plaintiff's counsel. Rather, based on the hearing transcript, the Judge expressed concern about Medlin's statement involving a May 2012 medical report that the decedent had difficulty following commands "like, put two fingers on your left hand to your right ear." (May 27, 2021 transcript of hearing, p. 163.) After Paylor stated in her reply at the hearing that Medlin had made misrepresentations, the Judge asked Medlin

THE COURT: When did he get a zero?

MR. MEDLIN: He got a zero in the summer of 2015. That was just part of my explanation, Your Honor, about how he devolved but.

THE COURT: That is not what your argument was. I took it as -- when you were talking about going to the neurologist and that he was reporting he was getting a one, you brought it up not once, not twice, but three times the fact that he couldn't take

⁴ The "ensuing months" comment came after a specific statement about a medical report from August 2012. (May 27, 2021 transcript of hearing, p. 164.)

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his right hand and touch his left temple.
You never told me that was in 2015. You were
talking about this was all around of the time of 2012.

MR. MEDLIN: No. I told you when it was. It
was May of 2012 when he couldn't do that.

(May 27, 2021 Transcript of Hearing pp. 182, 183.)

Clearly, the Judge's confusion stemmed from his misunderstanding about the *May 2012 medical report* discussing the decedent touching his hand to his temple and was not the result of any misrepresentation. Moreover, the briefs read by the judge clearly set forth the timeline. The judge stated that he reviewed "the transcript and almost all 1,030 filings and hundreds and thousands of documents," which again would contain numerous pleadings and memoranda of Plaintiff clearly setting forth the medical timelines in great detail from 2011 to 2016. [June 7, 2021 letter]. In the August 24 order, the Judge specified an example of alleged misrepresentation and, again, he was mistaken in that accusation, as was Paylor, who included that language in her proposed order.⁵

9. The order combines items 8 and 9, and Plaintiff's response to item 9 is the same as item 8 above.

10. Plaintiff asserts in her motion to reconsider that the Judge stated at the July 2 hearing that "I guess when Ms. Luzak found out that I had set a court date, she was so excited about it that she decided to ask me to recuse myself," which the judge indicated was the reason she sought recusal. The sarcasm by the judge aside, that was not why Plaintiff sought recusal. As Plaintiff has stated before, she did not seek recusal because of any order by the Judge,

⁵ As noted in Plaintiff's motion to recuse, if the Judge were truly concerned about misrepresentations, he would be concerned by misstatements by defense counsel, such as stating that the decedent's wife "got everything" on his death, which is not true. (May 27, 2021 transcript at pp. 72, 146 compared to pp. 79-80.) That, having been advised about these misstatements by Plaintiff in her argument, the Judge continued to accuse Plaintiff's counsel of misrepresentations and not express concern about defense counsel misstatements is further evidence of his bias.

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although she disagrees with those rulings, but rather she seeks recusal based on the extrajudicial June 7 letter and the June 23 email inviting her to discuss her motion with the court. The August 24 order similarly states that it is the rulings that prompted Plaintiff's motion to recuse—again, that is not correct. Again, the August 24 order states that all of the judge's statements were based on the record. As noted in item 5 above and items 13 and 18 below, that is not correct.

11. Plaintiff asserts in her motion to reconsider that, at the July 2 hearing, the judge denied threatening anyone with sanctions. Understandably, Plaintiff assumed he was threatening sanctions when he stated in his June 7 letter that “the Court is fully aware of everyone's position in this case and any future desires to correct the Court *will be met with a firm response.*” (emphasis added). The August 24 order attempts to explain that a firm response is not the same as sanctions, although the order does not explain the difference.

12. Plaintiff asserts in her motion to reconsider that the judge's statements at the July 2 hearing, and in the June 7 letter, clearly blame Plaintiff and not Defendants for delays. Having reviewed all the hundreds of thousands of documents and 1030 filings, the judge should have realized that Plaintiff is not responsible for delays. The August 4 order explains that such a statement was based solely on the record and did not indicate any bias. As noted, a review of the record would show that the predecessor Judge never threatened to sanction Plaintiff for delays, such as in discovery, but did so as to Defendant Barringer.⁶ See Plaintiff's Motion to Recuse. That the judge could review the record and blame Plaintiff indeed does show bias. The August 24 order also indicates that Plaintiff was not prejudiced, but the Judge seems to not understand

⁶ In the hearing held on August 27, 2020 on Plaintiff's Motion for Sanctions against Defendant Merrill Barringer, after reviewing the evidence and hearing arguments regarding the defendant's delay of over two years in producing key documents, Judge Mullen stated: “All I can say at this point is that I'm gonna take it under advisement. I think it's a good stick for the future going on from here on, and, when we talk about a carrot and a stick, I think it's -- definitely can be a stick that's used.” (Tr. of Hrg. 8/27/20 at p.133, Ins. 6-10).

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that the prejudice from bias will occur in the future, which is the very purpose of the recusal motion. The August 24 order cites *Doe v. Howe*, 626 S.E.2d 25 (Ct. App. 2005), for the proposition that Plaintiff must show actual prejudice. The court confuses two issues: (1) Plaintiff showing that she has already been prejudiced, as in damaged, with (2) the prejudice held by a court. In *Doe*, the court of appeals statement quoted by the August 24 order is prefaced by the clause “must show some evidence of bias or prejudice.” Thus, the prejudice that must be shown is the prejudice held by the court, which is the same as bias. Plaintiff has clearly shown this judge’s bias.

13. Plaintiff asserts in her motion to reconsider that the statement in the June 7 letter that she has “unlimited resources” demonstrated prejudgment. As noted above at item 5 and below at item 18, there is nothing in the record indicating that Plaintiff has “unlimited resources.” The August 24 order merely dismisses the Court’s statement as “innocuous.” Prejudging a party from assumptions based outside the record is hardly innocuous, especially when the judge coupled his assumption about “unlimited resources” with his statement that she was using those resources to have her lawyers “tiptoe an unethical line.” Nothing in the record indicates that Plaintiff’s lawyers have “tiptoed an unethical line.”

14. Plaintiff asserts in her motion to reconsider that the judge improperly blamed her for the numerous filings in the case. She demonstrates that Plaintiff and Defendants have made numerous filings in this complex litigation and that more substantive motions were filed by Defendants than by Plaintiff. The August 24 order again excuses that statement as not showing bias but rather as innocuous. Rather, that statement, again by a judge who has reviewed all the filings and hundreds of thousands of documents, shows that he blames only one side when clearly that party is not solely to blame, demonstrating bias.

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15. Plaintiff asserts in her motion to reconsider that South Carolina law does not require a judge's bias to stem solely from extrajudicial sources. The August 24 order disputes that position. The order is incorrect, as more fully explained in Plaintiff's motion to recuse and in the affidavits of Nathan Crystal and Gregory Adams. The August 24 order also contends that Plaintiff alleged no extrajudicial bias in her motion to recuse. She did not need to, as the law does not require that, but she certainly did so anyway. The June 7 letter was clearly extrajudicial, as were some of the statements therein. The judge contends that the letter was not an order.⁷ (See July 2, 2021 transcript of hearing, p. 5; August 24 order, p.8.) In fact, at the July 2 hearing, the judge described the letter as personal and private. A judge's "personal, private letter" is extrajudicial. The August 24 order complains that Plaintiff did not even argue the motion to recuse at the hearing. That is not completely accurate. Plaintiff was willing to rely on the briefs, which make an argument. Moreover, the court commenced the hearing by attempting to explain away Plaintiff's concerns, ruled that he was not recusing himself, and then asked for any arguments, which would have been a little late.⁸

16. Plaintiff asserts in her motion to reconsider that the judge continued to show bias against her and her counsel.⁹ The August 24 order does not specifically address this item.

17. The August 24 order addresses Plaintiff's motion to reconsider item 17 in the court's discussion about item 15. In item 17 of her motion to reconsider, Plaintiff asserts that the Judge articulated a belief that she sought recusal based on his rulings which, as discussed above

⁷ Although the August 24 order now somehow transmogrifies a portion of the letter into an order, as to "advising" about a scheduling order.

⁸ And certainly would have risked the Court's stated objection to being "corrected." (July 27, 2021 transcript of hearing, p. 10: "I just thought that it was a push-back on me when Mr. Medlin was making his arguments where he said: "I hate to keep correcting the Court, but I just have to.") Apparently, the judge believes that counsel should not zealously represent clients by offering a correction to a judge who makes a misstatement about a fact or law. Holding such an opinion towards Plaintiff's counsel clearly shows bias against Plaintiff.

⁹ Mistakenly accusing counsel of a misrepresentation, while not admonishing other counsel for actually making misstatements, could certainly demonstrate bias. See item 8 above.

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at item 10, is incorrect: she bases her motion to recuse on his June 7 letter and his June 23 email, not on his rulings.

18. Plaintiff asserts in her motion to reconsider that the Judge showed bias by making the statements listed in item 18 of her motion to reconsider. The August 24 order justifies these statements by asserting that the statements do not explain why these statements show bias, that the judge formed opinions based on the record, and that the statements caused no prejudice to Plaintiff. To the contrary, these statements and the documents incorporated in the motion to reconsider, clearly show bias with an explanation; South Carolina law does not require bias to be shown solely as stemming from an extrajudicial source (not on the record), and the judge continues to demonstrate misapprehension about the showing of “prejudice,” which as discussed above means bias, not damage already inflicted on Plaintiff. Even if South Carolina law required the proof of bias to come from outside the record, these statements in the June 7 letter are not discernible from the record:

- a. There is not one iota of evidence in the record that the case is being mishandled. A judge is in control of a case, and Judge Mullen presided over a complex case with full preparation and diligence.
- b. There is not one iota of evidence in the record of “the lengths to which the Plaintiff is willing to go to ensure this case never sees the inside of a courtroom with 12 jurors seated.” Plaintiff brought this case for the express purpose of having it heard by 12 jurors in order to protect her father and his legacy, and she has undergone great stress and expense to bring justice to his memory and legacy. She very much wants a trial by jury and as soon as feasible. What she did not want was a separate bifurcated trial that would require two lengthy trials and a duplication of time and expense. This court took Plaintiff and her counsel to task for arguing that the bifurcated trial would take weeks.¹⁰ Defendants argued that the bifurcated trial would take only a day or two because the evidence would be limited to just the 1998 documents, which by their own doing —obtaining a summary judgment from this Court that the February

¹⁰ Defendants themselves have represented to the court that the trial of the remaining issues may take weeks if not months.

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2012 documents are valid, which documents *revoke* the 1998 documents — have demonstrated that the focus is not purely on the 1998 documents but on whatever documents are the last valid documents. This required essentially the same trial for the bifurcated issue as for the remaining issues — to determine which documents are valid. Judge Mullen never set a time limit for the bifurcated trial. This Court was willing to give a week before “cutting off” Plaintiff. Judge Bonds recognized that the bifurcated trial might take three weeks and was willing to allocate that much time. Defendants themselves have represented to the court that the trial of the remaining issues may take weeks if not months. Yet this Court shows its bias by completing disregarding Plaintiff’s estimate of time and believing Defendants, even though his successor judge apparently believes differently. This Court stated that there was not a double-term of court available until 2022, yet somehow Judge Bonds managed to figure out how to provide Plaintiff sufficient time for the bifurcated trial. Judge Price also accused Plaintiff’s counsel about inquiring about trial dates in 2022, thereby arguing that Plaintiff was looking to delay the trial, yet a review of the transcript shows that the judge was the one who raised that issue and that Plaintiff’s counsel merely asked if he had understood that correctly. (May 27, 2021 transcript at pp. 117, 118).¹¹

- c. There is not one iota of evidence in the record that only the Plaintiff needs to conduct discovery. In fact, Defendants conducted a two-day deposition, of the Plaintiff’s husband, after the July 2 hearing.
- d. There is not one iota of evidence that Plaintiff has unlimited resources and used unlimited resources and her counsel to attempt “to air out her disdain from being extricated from the Will and trust.” The court shows its prejudice and prejudging by this statement. One could fairly state the opposite conclusion: that Plaintiff has spent considerable resources to protect her father from undue influence, and Defendants have poured extensive resources into preventing a fair determination of Mr. Barringer’s intent.
- e. There is not one iota of evidence that Plaintiff “simply [does not] want to be assisted” and “[t]his practice will stop immediately.” Recognizing that it is difficult to make sense of this statement, to the extent it apparently blames Plaintiff, the Court demonstrates its bias, as discussed above about which parties caused delay and filed motions.

¹¹ This constitutes yet another example of the Court inaccurately accusing Medlin of saying something that he did not say.

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- f. The June 7 letter asserts: “If anyone takes issue with anything I’ve said, please don’t take this as an invitation to ‘clarify’ your position, the Court is fully aware of everyone’s position in this case and any future desires to correct the Court will be met with a firm response.” This issue is discussed above and is clearly aimed at Plaintiff because Medlin dared offer a “correction” to the Court.
- g. There is not one iota of evidence that Plaintiff has tempted her attorneys, with her “unlimited resources,” to “tip to[e] the line of unethical and reportable behavior,” which this Court described as deplorable.
- h. There is not one iota of evidence in the record that “Plaintiff counsel's argument that the Court would be limiting its ability to present its case in a week is unfounded and is seen as nothing more than another delay tactic.” See the discussion at b. above.

Clearly all of these unfounded statements demonstrate prejudice and bias separately and collectively. The Court has yet to offer any specifics from the record to support its accusations. In disagreeing with this assertion, the August 24 order asserts again that the June 7 letter did not prejudice Plaintiff and “does not even constitute an adverse ruling.” Again, the Court demonstrates that it does not understand Plaintiff’s assertion. The bias is found in the letter, especially because it is not a ruling. The prejudice required for recusal is not damage already occurring to Plaintiff, but prejudice synonymous with bias in the judge, which creates ongoing problems.

19. Plaintiff asserts in her motion to reconsider that the *Ledford* case provides a precedent. Again, the August 24 order contends that Plaintiff has suffered no prejudice. Again, the Court demonstrates that it does not understand Plaintiff’s assertion. The prejudice required for recusal is not damage already occurring to Plaintiff, but prejudice synonymous with bias in the judge.

20. Plaintiff asserts in her motion to reconsider that the bias against Plaintiff and her counsel already exhibited in the Judge’s June 7, 2021 letter to counsel was magnified and made more prejudicial by the statements made by Judge Price on the record on July 2, 2021. The

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August 24 order contends that Plaintiff made no specific assertions about statements made at the hearing. This is not correct. See Plaintiff's motion for reconsideration items 8-14, 18 (footnote 6).

21. Plaintiff asserts in her motion to reconsider that the judge failed to recognize or apply the Code of Judicial Conduct; he failed to respond to Plaintiff's position that he was in violation of the Code. The August 24 order again attempts to excuse the judge's actions by subjectively stating that he has no bias or prejudice and that all statements have been based on the record. These assertions are refuted and addressed above.

22. Plaintiff asserts that the judge "erred in failing to grant the Motion to Recuse and his order denying the Motion should be vacated, because the Plaintiff set forth in her Motion and her Reply to the Returns and their supporting affidavits many facts in support of mandatory and discretionary recusal, and she has set out the applicable laws as well as ethical issues and mandates, yet the Court has failed to address any of them." The August 24 order responds only by addressing the issue of expert affidavits, claiming that experts are not allowed to testify about the governing law. Plaintiff's experts did what experts can and should do: applying the law to the applicable facts to render an opinion about the propriety of behavior under scrutiny. Obviously, when considering actions of a judge, experts would have to consider those actions in light of the applicable law governing judges. The August 24 order argues that the affidavits are not persuasive "because [] Plaintiff's counsel since receiving the June 7 letter demonstrate that they are not at all afraid to represent their client very aggressively and to file motions seeking various forms of relief from this Court." This statement is a non sequitur: under the judge's theory, Plaintiff would be chilled by his statements only if she failed to seek any further relief from the Court, remaining silent and effectively folding her tent, which of course is not a viable

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or reasonable option for her, or any other party similarly situated. According to the judge, his threats about a firm response did not affect Plaintiff because she did not walk away from her lawsuit and rights while he remained the presiding judge.

23. The trial judge erred in denying the Plaintiff's Motion to Recuse and his order denying the motion should be vacated in that he applied a subjective standard at the July 2, 2021 hearing by stating what he actually did and intended to do, and he failed to recognize the objective standard under Canon 2(A) which mandates that a judge must avoid the appearance of impropriety, for which the test is: "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Commentary to Canon 2(A), Rule 501, SCACR. The August 24 order does not directly address this item.

Conclusion

The Court's Order of August 24, 2021 denying Plaintiff's Motion to Reconsider Order Denying Motion for Disqualification and Recusal should be vacated or, alternatively, amended in the particulars stated above. The Plaintiff properly withdrew her Motion to Reconsider on August 2, 2021; therefore, the Orders of August 4 and 24, 2021 regarding the Motion were moot. The Order of August 24, 2021 is a nullity and should be withdrawn as it was filed more than ten days after the August 4 Order thereby divesting this Court of authority to alter or amend its prior order. Moreover, the errors and omissions in the August 24, 2021 Order as set forth above necessitate the Order's withdrawal or amendment.

Respectfully submitted,

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Attorneys for Plaintiff Hampton Barringer Luzak

September 3, 2021
Columbia, South Carolina.

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Exhibit 1

August 2, 2021 letter to
Judge Price from Desa Ballard

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Ballard & Watson
Attorneys at Law
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August 2, 2021

Via Electronic Mail (bpricelc@sccourts.org)

The Honorable Bentley Price
100 Broad Street, Suite 432
Charleston, South Carolina 29401

Re: *Hampton B. Luzak v. Merrill B. Light, et al.*
Case Nos.: 2016-CP-07-01919
2019-CP-07-01263
2019-CP-07-01294

Dear Judge Price:

Enclosed is a copy of a motion to reconsider which was filed last week. We are notifying the clerk that we are withdrawing the motion without prejudice at this time.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

cc: *Via Electronic Mail*
Alice Paylor, Esquire
Bijan Ghom, Esquire
Charles Molster, Esquire
J. Ashley Twombly, Esquire
Lee Anne Walters, Esquire
Kevin Johnson, Esquire
Harley D. Ruff, Esquire
Denise Collins, esquire
Ryan Rich, Esquire
Edward Fuhr, Esquire
Jonathan E. Schronce, Esquire
Thomas W. Traxler, Esquire
S. Alan Medlin, Esquire
Charles Macloskie, Esquire
James R. Gilreath, Esquire
William Hogan, Esquire
Hampton Luzak

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ELECTRONICALLY FILED - 2021 Sep 03 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

ROA 004863

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITCivil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294**PLAINTIFF'S REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION TO
RECONSIDER ORDER GRANTING
SUMMARY JUDGMENT AS TO
PLAINTIFF'S SECOND AND THIRD CAUSES
OF ACTION**

TO: DEFENDANT AND HER COUNSEL:

Reserving all rights, and continuing to incorporate all of Plaintiff's responses, memoranda, arguments, affidavits, and exhibits from Defendant's prior summary judgment motion denied by Judge Mullen, from Defendant's present summary judgment motion of the second and third causes of action, and from Plaintiff's Motion to Reconsider Order Granting Summary Judgment as to Plaintiff's Second and Third Causes of Action, Plaintiff replies to Defendant's Memorandum in Opposition to Plaintiff's Motion to Reconsider Order Granting Summary Judgment as to Plaintiff's Second and Third Causes of Action.

Defendant continues to conflate a contract not to revoke any power of appointment given to Defendant by Decedent Paul Barringer and a non-contractual promise not to exercise based on a fiduciary and/or confidential relationship. However, these are separate arguments. If Paul Barringer intended to give Defendant a power of appointment over voting stock, which Plaintiff disputes, either a contract not to exercise¹ or a non-contractual promise based on a fiduciary and/or confidential relationship would suffice to prevent Defendant from exercising any power

¹ *I.e.*, a promise not to revoke that portion of her will that failed to exercise any such power of appointment before Paul Barringer's death.

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of appointment over voting stock that she may have. Although either argument would suffice, Plaintiff has sufficiently demonstrated that both a contract not to exercise and an enforceable non-contractual promise not to exercise exist in this case.²

Defendant also continues to contend that South Carolina Probate Code section 62-2-701 is the exclusive law governing these arguments. Without repeating in full her prior arguments, Plaintiff recognizes that section 62-2-701 applies to the contract, but asserts that the common law continues to apply to the non-contractual promise. Defendant continues to argue that only the statute applies, which flies directly in the face of the existing law. Defendant claims that Plaintiff is “circumvent[ing] the statute by wordsmithing her claim,” but that is not at all what Plaintiff is doing. Plaintiff’s second cause of action clearly is based on the non-contractual argument. Defendant is trying to make that argument disappear.

Defendant continues to assert that Plaintiff has not shown the existence of a “signed writing” as required by section 62-2-701. Section 62-2-701(1) requires that a will state material provisions of a contract. That section, however, does not limit evidence only to what is contained in any will. Nevertheless, Plaintiff has demonstrated that the wills state material provisions of the contract. Section 62-2-701(3) provides an alternative ground for establishing a contract, without requiring that the material provisions of the contract be stated in the will, but rather by a signed writing “evidencing the contract and extrinsic evidence proving the terms of the contract.” The wills alone would satisfy this alternative method of proof,³ but Plaintiff has produced substantial other signed writings, along with extrinsic evidence, satisfying the

² Defendant asserts that the Order states that “Plaintiff cannot circumvent Section 62-2-701 by repackaging her claim as an equitable claim based on a promise.” That is clearly in error. Plaintiff did not “repackage” her claim but separately argued in the second cause of action that a non-contractual promise existed, which the law allows. Defendant mistakenly asserts that Plaintiff has ignored “this portion of the Court’s Order.” Rather, Plaintiff continues to vigorously argue that the Court and Defendant have conflated the contractual argument with the non-contractual argument. Quite simply, section 62-2-701 does not “apply equally to her equitable claim,” as Defendant recognizes the Order states.

³ Section 62-2-701(3) does not preclude resort to a will to satisfy the signed writing requirement.

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requirements of section 62-2-701(3). Again, as to solely the contract issue, establishing a contract under either section 62-2-701(1) or section 62-2-701(3) would suffice, but Plaintiff has satisfied the requirements of both.

Defendant asserts that, for the first time, Plaintiff argues that Judge Mullen previously denied Defendant's motion for summary judgment as to the second and third causes of action, finding that "there is evidence in support of Plaintiff's two causes of action at issue in the summary judgment motion, creating a genuine issue of material fact for jury determination."⁴ To the contrary, Plaintiff did previously argue that there was no less evidence supporting her claim now that there was at the time of Judge Mullen's ruling.⁵ Plaintiff's argument about Judge Mullen's prior order is that she has no less evidence than she did when Judge Mullen found she had sufficient evidence. Any new evidence produced by subsequent depositions did not eliminate evidence previously produced by Plaintiff. Rather, as Plaintiff discussed in her motion to reconsider, any new evidence actually created additional questions of fact.⁶

Defendant asserts that Plaintiff filed her own motion for summary judgment, which the Court denied when granting Defendant's motion for summary judgment, thereby wanting "it both ways." Plaintiff is certainly entitled to assert alternative theories,⁷ but again Defendant asserts a non-sequitur. Plaintiff's motion for summary judgment asserted that Defendant had produced no material fact in opposition to granting the second and third causes of action. That is

⁴ Defendant contends that Plaintiff "conceded" that Defendant could file a second motion for summary judgment by "not arguing that the Court cannot consider the merits of Mrs. Barringer's motions because of the specific language in Judge Mullen's Order." That is a non sequitur.

⁵ Transcript of 8-10-21 hearing, p. 100. Despite Defendant's contention to the contrary, Plaintiff also previously raised the issue of Defendant's failure to provide an affidavit or testify (Transcript of 8-10-21 hearing, pp. 101, 102) and the inability to depose her about the power of appointment. (Transcript of 10-15-20 hearing, pp. 60, 61). As to arguments being contained in Plaintiff's complaint, pleadings are to be liberally construed. Quality Towing, Inc. v. City of Myrtle Beach, 530 S.E.2d 369 (2000).

⁶ For example, Neill McBryde, the drafter of the 1998 documents, had filed two affidavits for the previous power of appointment summary judgment motion. His subsequent deposition raised serious concerns about the information included in those affidavits, including his recollection and reliability. Thus, his deposition did the opposite of diminishing the evidence supporting Plaintiff in the prior summary judgment.

⁷ See note 8, *infra*.

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a different standard from Plaintiff's opposition to Defendant's motion for summary judgment, whereby Plaintiff needed to show only the existence of a genuine issue of material fact. In other words, to prevail on her summary judgment motion, Plaintiff had to show that there was no issue of material fact supporting Defendant, whereas to prevail against Defendant's summary judgment motion, Plaintiff only had to show an issue of material fact even if some evidence did support Defendant's argument.

Defendant argues that Judge Mullen's order did not identify specific facts or law in her Order, as if somehow that renders her Order impotent. Her ruling was that "there is evidence in support of Plaintiff's two causes of action at issue in the summary judgment motion, creating a genuine issue of material fact for jury determination." For this Court to grant summary judgment for Defendant, it necessarily rejected Judge Mullen's ruling.

While avoiding the non-contractual promise argument, Defendant continues to assert that Defendant's 1998 will does not expressly contain language such as "I promise never to exercise any power of appointment." The applicable statute does not require Plaintiff to show such language in order to prevail, and as discussed above and in her prior memoranda and arguments, Plaintiff has shown the evidence of a contract not to exercise, in addition to a non-contractual promise.

Defendant asserts that Kevin Luzak's affidavits fail to identify any promise not to exercise. As already discussed by Plaintiff, his affidavit, inter alia, provides exactly the evidence necessary under the *Chapman* case, as well as for equitable estoppel. The Court's Order fails to even mention the similar assertions by Hampton Luzak in her affidavits.

Defendants assert that Plaintiff cannot argue, as she consistently has, that Paul Barringer never intended to give a power of appointment over voting stock to Defendant. Plaintiff's

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argument about whether a contract not to exercise, or a non-contractual promise not to exercise, any power of appointment over stock can certainly include the argument about whether such a power even existed.⁸

Defendant asserts that her failure to, at any time in this litigation, state that she had a power to appoint voting stock and that she did not enter into a contract or a noncontractual promise not to exercise any such power is inconsequential. Defendant chastises Plaintiff for not identifying any questions that would be asked at a deposition, while ignoring the fact that Defendant withheld her estate planning documents, which would be crucial evidence in making the relevant arguments, for long after Plaintiff sought them, long after her deposition (which was called by Defendants), and even after ordered to do so by the Court. Defendant wants to reward her own improper behavior by blaming Plaintiff for not having the opportunity to depose her on unproduced documents.⁹ Nevertheless, Plaintiff's argument, based on the law, is that Defendant's failure to produce evidence can create an adverse inference.

Defendants assert that a power of appointment is valid merely because a document contains such language. It is hornbook law that, in construing a document, it is the testator's or settlor's intent that is paramount. If Paul Barringer did not intend to give Defendant any power to appoint voting stock, then she does not have one, regardless of what any document appears to say. Plaintiff has explained in previous memoranda and arguments why Paul Barringer had no such intention. Defendant's opposition attaches a weak statement from the affidavit of Neill McBryde,¹⁰ who drafted the 1998 documents, that shows that he could not recall the specifics of

⁸ Defendant once again argues that it is incongruent for Plaintiff to argue that no power of appointment was intended but, if it was, Defendant was precluded from exercising it. Plaintiff is certainly entitled to argue alternatively.

⁹ In Defendant Barringer's deposition called by Defendants, Defendant Barringer's counsel cut off Plaintiff's questioning after less than 3 hours. Judge Mullen granted Defendant's motion for protective order to prevent continuing the deposition, which Plaintiff moved to reconsider (filed May 3, 2019).

¹⁰ Attached as an exhibit to Defendant's opposition.

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any discussion he had with Paul Barringer about a power of appointment but based his recollection generally on “his practice.” As previously asserted by Plaintiff, McBryde’s affidavit, given after Judge Mullen’s prior summary judgment order, creates more, not fewer, material questions of fact. For example, he stated that he never discussed voting stock with Paul Barringer or that any power of appointment could affect control of the company.¹¹

Reserving all rights as set forth above, Plaintiff respectfully prays that this Court grant Plaintiff’s motion to reconsider.

Respectfully submitted,

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¹¹ In a letter previously submitted, McBryde recognized that the 1998 estate plan was the first to include power of appointment language.

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October 6, 2021
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-07-01919

HAMPTON B. LUZAK

PLAINTIFF

VERSUS

MERRILL B. LIGHT, ET AL

DEFENDANTS

JUNE 27, 2018
TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

BEFORE

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 10:00 A.M.

2 BY THE COURT:

3 THE COURT: All right. Someone correct me if I am
4 wrong. I think we have four outstanding motions. Is
5 that correct?

6 MR. DUFFY: Your Honor, one good piece of good news
7 this morning. We've actually spoken to Mr. Hogan about
8 we had a motion to compel against Ms. Margaret Ann
9 Boisselle. And based on the assurances -- Ms. Sharp,
10 Mary Sharp, actually represents Ms. Boisselle, but based
11 on the assurances and the forthcoming compliance with
12 the subpoena that we've been told is coming, we've
13 agreed to withdraw that motion without prejudice.

14 THE COURT: Very good.

15 MR. DUFFY: Thank you.

16 THE COURT: All right. Okay. The next one I had
17 was a motion filed by Mr. Gilreath on November 9th of
18 2017. Unless you all have a different order of how you
19 would like to proceed, I am happy to take up that order,
20 if that works for everybody.

21 MR. GILREATH: That's the one involving Davis,
22 right?

23 THE COURT: Pardon?

24 MR. GILREATH: That's the one involving Davis?

25 THE COURT: Yes.

1 MR. GILREATH: Yeah, we prefer to take that one.

2 THE COURT: We've been there before, so, yes.

3 Okay. All right. Well, whenever you all are ready.

4 MR. GILREATH: Your Honor, the primary thing we --
5 what caused us to have to bring this motion and what
6 we're also seeking is to try to revise this gatekeeper
7 process that we've been -- we've been going through. If
8 you remember -- well, I think the last time we were in
9 front of you, we reached an agreement, and you issued an
10 order about what would go on with Mr. Davis' deposition.
11 Well, Mr. Davis' documents. And the arrangement was,
12 Mr. Twombly and his firm were going to be what we call
13 the gatekeeper, because he initially said there's a
14 whole lot of privileged documents in there. And so, we
15 assumed that was correct. That looked like the best way
16 to do it. I mean, like all plaintiffs, were just trying
17 to get the documents. That's all we want.

18 Well, it turns out -- so we -- we finally -- he
19 finally produced the tax returns. All this is in our
20 briefs, which we furnished a copy for all of them. But
21 we finally, when we got the tax returns, we saw that
22 there was an IRS form in there, an 8879. I think we
23 talked about that in there, and we furnished that to
24 you. It's a confidential document.

25 THE COURT: Right.

1 MR. GILREATH: And we'd really like to have that a
2 part of the record. It's a very pertinent document,
3 because it's -- and we had this document before we took
4 Mr. Davis' deposition.

5 THE COURT: Right.

6 MR. GILREATH: And Mr. Davis -- I think I've got it
7 right here. Yes, Exhibit 9, and it's a Form 8879, and
8 it's a 2015 IRS efile signature authorization that was
9 dated -- we redacted all of the IRS numbers and so
10 forth, but it's dated --

11 THE COURT: April 12th of 2016.

12 MR. GILREATH: April 12th of 2016. Now, I had
13 already written Ashley -- I'd written him about that
14 document before. I can't remember. I got so many
15 documents. But what is so significant about this
16 document, and what Mr. Davis testified to, is that this
17 is a document -- and probably everybody in this
18 courtroom's used it. If you have a CPA do your return,
19 you take your stuff in to your CPA, he does the return,
20 and he gives you the return. And if he does many --
21 more than like twenty returns or something, he's got to
22 efile them all. So he's got to have this form signed.
23 And what this form says -- it's right there in fine
24 print. I'll paraphrase it. But it says:

25 *Under penalty of perjury, I declare that*

1 I have examined a copy of my electronic
2 individual income tax return and accompanying
3 schedule and statements of the tax year ending
4 December 31, 2015, and to the best of my
5 knowledge and belief, it is true and correct.

6 And so forth.

7 So that document, now, is signed by Paul Barringer
8 on April the 22nd -- April the 12th of 2016.

9 THE COURT: Right.

10 MR. GILREATH: And he died 48 days later, on May
11 the 30th. And he had already -- and I think ten days --
12 ten days later, he had that final mini mental exam that
13 came out in the conservator thing. And he scored 1 out
14 of 30. I mean, this man, the only thing he did right on
15 that test was he blinked his eyes. I mean, he didn't
16 know where he was. He didn't know what state he was in.
17 He didn't know what day it was. He didn't know
18 anything. And these people, I guess, Merrill Barringer
19 or Randy Light, had him sign this form under penalties
20 of perjury. I mean, you've got a man that's got
21 Alzheimer's, extreme Alzheimer's, misrepresenting
22 something to the IRS. So that got my attention.

23 And I went through that form in Mr. Davis'
24 deposition, and he said that this return, and most of
25 Mr. Barringer's returns, were always about 200 pages

1 long. So he signed the document saying he reviewed 200
2 pages. Well, we think that document is very significant
3 on the issue of his mental capacity.

4 Now, so, we go ahead with the deposition. And in
5 the course of the deposition, we found out several
6 interesting things. We found out Mr. Davis didn't know
7 he even had Alzheimer's. He testified that the last
8 time he saw him was when he brought the 2012 materials
9 over there. It was in February. He said Randy Light
10 was traveling with him. He didn't meet with Randy, but
11 Mr. Barringer told him that Randy would be handling all
12 of his tax stuff from then on.

13 THE COURT: So that was for -- he was dropping off
14 2012 information, so it was actually 2013?

15 MR. GILREATH: It was February of '13 that he was
16 dropping off 2012 return.

17 THE COURT: Okay.

18 MR. GILREATH: And of course, this is very close in
19 time to the critical date that everything in this case
20 is circled around, and that's 9-11-2012, when the
21 purported gift from Mr. Barringer for the stock
22 involving the lawsuit.

23 Anyway, so I start taking his deposition, and we go
24 through a lot of stuff. Found out he didn't know about
25 that. And found out that there were actually some bills

1 that he had issued that were never produced to us. But
2 most importantly, it came out that he had these tax
3 organizers. Now, we furnished you a copy of the tax
4 organizer. And the tax organizer -- it's hard for me to
5 put my finger on all this. Anyway, we cite that.
6 That's Exhibit 2. And that is perhaps the most
7 pertinent document in this case. And I didn't have it
8 at this deposition. And I still have not taken Mr.
9 Davis' deposition. But in this document, signed by Mr.
10 and Mrs. Barringer --

11 THE COURT: So who took his deposition, then?

12 MR. GILREATH: I did.

13 THE COURT: Okay. You just said you didn't take
14 his deposition.

15 MR. GILREATH: No, I said I didn't have it when I
16 took his deposition.

17 THE COURT: Okay. Okay. But did he say it was a
18 part of his file?

19 MR. GILREATH: Oh, yes, he said it was in the file.

20 THE COURT: He said it was in the file?

21 MR. GILREATH: It was in the file.

22 THE COURT: Okay.

23 MR. GILREATH: It was in the file with those
24 statements. And I had told -- so when I found out about
25 -- well, I didn't know about this. So when I found out

1 about it, this was on October 18 I'm taking the
2 deposition, and I told Ashley, I want a copy of that
3 document.

4 THE COURT: Okay.

5 MR. GILREATH: Did he give it to me the next day?
6 Did he give it to me the next week? I got it, finally,
7 after much haggling and letter writing, which you've
8 seen. And we've written I don't know how many letters.
9 I've never written as many letters in my life to try to
10 get documents. But, and I didn't know what it was going
11 to say. And so, finally, after we'd filed a motion to
12 compel -- let me go through what we had to go through to
13 get this document.

14 THE COURT: Do you have that now, correct?

15 MR. GILREATH: I have it now.

16 THE COURT: Okay.

17 MR. GILREATH: And I think -- I don't know whether
18 I put this in the record or not, but it says -- this is
19 Mr. Barringer signed this. It says:

20 *We have submitted this information for*
21 *the sole purpose of preparing our tax returns.*
22 *Each item can be substantiated by receipts,*
23 *canceled checks, or other documents. This*
24 *information is true, correct, and complete*
25 *to the best of our knowledge.*

1 And it's dated 3-2-13. And then he check the box
2 over on Page 3 or 4. I just put the whole thing in
3 there. Not make it too long. And there's a question
4 that says, *did you make gifts of more than \$13,000.00 to*
5 *any individual?* And it's talking about the year 2012.
6 And he checked no. So here's a man that's supposed to
7 have made this gift on February the 2nd. And he said he
8 -- February 3rd dated, he said he didn't do it.

9 Now, Bobby Davis got that in his file. And then,
10 we now know that after the lawsuit was filed up in
11 Virginia, and they're trying to really prove that this
12 was a gift or whatever --

13 THE COURT: Right.

14 MR. GILREATH: -- somebody, Randy Light, who is a
15 defendant in this case, Merrill, too, called up Bobby
16 Davis to see if there was a tax return found. He said
17 that there wasn't. He said we've got to get one. So
18 they get in touch with Bobby Davis, and Bobby Davis,
19 having this thing in his file, he didn't tell anybody
20 about it, they go out and tell the IRS there was a --
21 there was a gift, and they never -- this document, to my
22 knowledge, never got mentioned in the Eastern District
23 of Virginia. And it never got mentioned to me or shown
24 to me until I had to write I don't know how many
25 letters. And I had to listen to Ashley tell me -- keep

1 telling me, you've got to tell me what you want, Jim.
2 Well, I said, Ashley, can you read my subpoena? My
3 subpoena is very broad. It says -- I don't know what's
4 in his document. My crystal ball broke yesterday. I
5 can't define that this document's in there, so I asked
6 for anything that's related to this document. And your
7 order says that he's supposed to give us the gift tax
8 returns, the income tax returns, and anything else, he's
9 got to produce it, or he's got to file it on a privilege
10 log. And he didn't do that.

11 THE COURT: And that has not been done, correct?
12 And that has not been done, correct? There has been no
13 privilege log, correct?

14 MR. GILREATH: He's filed no privilege log on this.
15 And it was not until after I filed the motion to compel
16 that I got this document. And then, --

17 THE COURT: Mr. Gilreath, let me ask you. At our
18 last hearing, one of the big issues that you had was
19 that Bobby Davis was getting on in age.

20 MR. GILREATH: Right.

21 THE COURT: And how was he at his deposition?

22 MR. GILREATH: He's not nearly as bad as they --
23 he's not bad as I was afraid he was going to be.

24 THE COURT: Okay. How old is he?

25 MR. GILREATH: He's a little bit older than I am.

1 He may be in better shape than I am.

2 THE COURT: How old is he?

3 MR. GILREATH: He's probably approaching 80.

4 THE COURT: Okay. But he was fairly clear and was
5 able to give you information?

6 MR. GILREATH: He's very clear. He's sharp as a
7 tack. There's not --

8 THE COURT: Is he still practicing or not?

9 MR. GILREATH: Yes, he's still practicing.

10 THE COURT: So he's still a CPA, doing people's
11 returns and taking care of personal business.

12 MR. GILREATH: Right. Yeah. Okay.

13 THE COURT: Okay.

14 MR. GILREATH: And the other important thing that
15 he said is that, you know, when they filed this motion
16 to quash on his subpoena, they said, oh, there's always
17 privilege stuff in a file. And I took it for what I
18 assume that was true. So I asked him about what
19 involvement he had with attorneys, and he said he didn't
20 have any involvement with attorneys. So, I mean, I
21 contend that this whole thing about attorneys is more or
22 less of a red herring. And it was based on that, that
23 we kind of solved the predicament we were in and they
24 were talking about, so if it's a bunch of privilege
25 stuff there and that made sense. But now we find out

1 when we go talk to him, he says he doesn't have any.

2 Now, the other thing you said was, somewhere, I
3 think he said this in his affidavit earlier on that he
4 had probably three banker's boxes of stuff. And now, we
5 find out that we've only been produced -- there's only
6 been one banker's box produced.

7 But the point I'm trying to make, and we've got it
8 argued in detail ad nauseam in our brief, is that here's
9 a document, the most important document that will
10 probably surface in this in here, where this man said he
11 didn't make a gift. And then, his daughter and his son-
12 in-law went out, in cahoots -- not cahoots -- whatever
13 you want to call it, with the accountant who knew about
14 the document. I don't know whether he told them about
15 it or not. I haven't taken his deposition on this
16 point, but I've got some questions I want to ask him
17 about that.

18 THE COURT: Okay.

19 MR. GILREATH: And this gatekeeper over here, for
20 whatever reason, he produced the document. So
21 obviously, there's nothing wrong with the document.
22 It's not privileged. They didn't put it on any
23 privilege log, but he sat on it a long time. And I just
24 don't think it's right to have that kind of setup where
25 somebody who's involved with the defendants is actually

1 looking at these documents, because he's not going to
2 pursue them like we are.

3 And so -- and we've got the -- we've got the same
4 problem with the Wachovia documents and all the stuff
5 they're doing the gatekeeper thing on. And I just --
6 you know, I don't know what's in Bobby Davis' file, but
7 we believe we should be produced his entire file, all
8 three boxes, or whatever he's got. We'll go down there
9 and get it all copied, and we'll see what's in there,
10 and we'll give them a copy of all of it. But that's the
11 only way we're going to get to the bottom of that. And
12 so, that's the main part of the file.

13 This motion as it applies to Bobby Davis is -- and
14 I wrote them a letter that we want to get rid of the
15 gatekeeper thing. And I wrote them a letter in
16 February, actually before I even took this deposition.
17 We were saying that the gatekeeper thing wasn't going to
18 work. And you've got a copy of that. That's --

19 THE COURT: So what I need to know from you, Mr.
20 Gilreath, is you want -- I'm hearing you say you want
21 the entire Bobby Davis file, correct?

22 MR. GILREATH: Correct. Yeah.

23 THE COURT: What else do you want?

24 MR. GILREATH: As far as Bobby Davis is concerned,
25 that's --

1 THE COURT: Well, that would be it, because that's
2 everything. So I think you're good with that. I want
3 to go to the next thing.

4 MR. GILREATH: Oh, and then I want to be able to
5 reconvene his deposition. And I, frankly, think they
6 ought to have to pay for that, but I'm not going to --
7 that's up to your Honor. We want to see his entire
8 file.

9 THE COURT: I understand that and I heard that.
10 What else?

11 MR. GILREATH: As far as Bobby Davis, that's all.

12 THE COURT: Okay. I understand that's all for
13 Bobby Davis. Now, what else do you want?

14 MR. GILREATH: What else do we want -- and we've
15 got it laid out in here ad nauseam all the -- we then go
16 to Randy and Merrill Light.

17 THE COURT: Right.

18 MR. GILREATH: And we've written them. The letters
19 are in the briefs. I can get those out and go through
20 them. It'll take a long time, if you want to. But
21 there's a lot of stuff that we aren't getting. I mean,
22 for instance -- just some for instances -- and we
23 actually got some stuff yesterday. I think we got some
24 this morning. It's amazing what motions to compel will
25 do.

1 THE COURT: From whom? Who did you get it from?

2 MR. GILREATH: Got it from Mr. Rosen's firm.

3 MS. PAYLOR: Ms. Paylor.

4 MR. GILREATH: Well, yeah, we also want -- we want
5 to remove -- we want to change the gatekeeper situation
6 on Wells Fargo, but we're not -- we're getting all kinds
7 of stuff on Wells Fargo that we're not getting.

8 THE COURT: Okay. Remind me, you all, Wells Fargo,
9 tell me what their involvement is. Do they administer
10 the trusts?

11 MR. GILREATH: They've got -- they're doing all the
12 investments.

13 THE COURT: Okay.

14 MR. GILREATH: He had all of his money invested
15 over there.

16 THE COURT: At Wells Fargo? Okay.

17 MR. GILREATH: And I mean, we -- you know, they
18 tried to say that's not relevant, but I mean, you got to
19 have -- you got to know what's there as far as damages
20 are concerned. We don't know what was going on. They
21 produced a Wells Fargo letter to us about right before
22 you came in. I just got it this morning. And we've
23 talked about it and our stuff. And it's a letter from
24 Cynthia Sprouse dated February 3, 2015, written to Randy
25 Light saying that there's some talk in there that

1 they're trying to get Mr. Barringer -- and this is about
2 his revocable trust. The third amendment dated 6-12-
3 2014. So this is after the stock transfer occurred, but
4 apparently, they're already talking then about they need
5 to get him to resign from that and let Merrill be the
6 trustee, and then she's got control of everything. And
7 of course, that's another thing we've asked for. We
8 wanted all the financial records on that revocable
9 trust, because we don't know what she did with his
10 money.

11 Another thing we want is, we have asked them for
12 the stock ledger on a corporation. We need to see what
13 she's done with her stock. Does she have any? Has she
14 sold it? Because we contend that we've got an interest
15 in it, and it would be a constructive trust. And they
16 won't give us that. Let me get my list. Let me switch
17 notebooks here.

18 In our brief, we talk about what we're looking for
19 on --

20 MS. PAYLOR: Which brief?

21 MR. GILREATH: This is our brief in support of our
22 motion.

23 THE COURT: Is this one as to Bob Davis or --

24 MR. GILREATH: No, no, this is the one on the
25 Lights.

1 THE COURT: Okay. On the Lights.

2 MR. GILREATH: So Merrill Light. Most of what we
3 are talking about on Merrill Light would apply to Randy
4 also.

5 THE COURT: Okay.

6 MR. GILREATH: There's one document that Randy's
7 got. I think it's Request Number 9. In his request,
8 and it involves -- and this is an interesting document.
9 It's a document involving an email from him to Hampton
10 and Merrill's brother, Victor. And it appears from
11 looking at the email and some related -- another email
12 -- well, Victor's email, he says some very bad things
13 about Hampton's husband, Kevin. And it appears to me,
14 based on what I've seen and just based on my experience,
15 that what Merrill may have done -- looks like it's
16 likely it may have happened -- is that she engaged with
17 Victor to help her turn her daddy on Kevin. So he --
18 because they knew they weren't going to pull this scheme
19 off if Kevin was at the helm of Coastal Forest
20 Resources. And Victor says some terrible things about
21 Kevin, and he's one of the nicest guys I've ever met.
22 He said --

23 THE COURT: My understanding is about Victor, was
24 he really didn't have anything to do with the business,
25 and he actually was bought out early on, and went on and

1 did something.

2 MR. GILREATH: He was bought out early on.

3 THE COURT: He was never interested and --

4 MR. GILREATH: Right.

5 THE COURT: Okay.

6 MR. GILREATH: The way his scheme worked is, he
7 kind of dealing -- just deal with Victor, so Victor's
8 out of this corporation. And really, the thing he had
9 set up -- and I've done a lot of estate planning in my
10 day. He had this voting stock, so that each of the
11 girls had separate, same amount. And then, there was
12 another family named Conyers had twenty percent.

13 THE COURT: Right. Right.

14 MR. GILREATH: But neither one of the girls had
15 control. And when he died with the twenty percent I
16 think he had, he was going to split that up, and they
17 would have never had control.

18 THE COURT: Right. I understand what the issue is.
19 It's his twenty percent of it and Merrill. Okay.

20 MR. GILREATH: So anyway, they appear to use Victor
21 to turn Mr. Barringer, who's then deep in his dementia,
22 against Hampton -- I mean, against Kevin. And they did
23 a pretty good job of it.

24 THE COURT: Okay. And tell me, now, what about
25 Mrs. Barringer. Where is -- has she passed on since

1 then?

2 MR. GILREATH: No, she's still around.

3 THE COURT: And how is her health or how is her
4 mental health?

5 MR. GILREATH: She's not -- I haven't seen her
6 since we handled the servicership thing a couple years
7 ago.

8 THE COURT: Okay.

9 MR. GILREATH: Ashley can probably tell you more
10 than that.

11 MR. TWOMBLEY: She just traveled to Virginia and
12 hosted a party for about 65 people at her apartment. And
13 she's doing great.

14 THE COURT: Has she testified in this case at all
15 or talked at all?

16 MR. TWOMBLEY: No, but she did attend the
17 conservatorship we had for a week in Probate Court, and
18 she was there through the whole thing, and was prepared
19 to testify.

20 THE COURT: That was years ago, though, correct?

21 MR. TWOMBLEY: That was two years ago April.

22 THE COURT: Right, two years ago. And correct me
23 if I'm wrong. She is the mother of all three of these
24 children?

25 MR. GILREATH: Right, right.

1 THE COURT: She is the natural mother. Not a
2 stepmother, not a -- okay.

3 MR. TWOMBLEY: Correct. She has recently had a
4 little bit of health issues with her stomach, but other
5 than that, she's doing fine.

6 THE COURT: Has she taken any kind of position in
7 all of this?

8 MR. TWOMBLEY: Yes, she's taken a very firm
9 position. She --

10 THE COURT: Okay.

11 MR. TWOMBLEY: She was married to Mr. Barringer for
12 sixty years during the time when all this -- when all
13 this happened.

14 THE COURT: Okay. And just so I'm clear in all of
15 this, if she was married to him for sixty years, Bobby
16 Davis was the attorney for both characters and the
17 company for forty-plus years. And correct me if I'm
18 wrong. How long was Kevin Luzak the head of the
19 company?

20 MR. GILREATH: I think Kevin -- Kevin was involved
21 with the company about ten years. Something like ten
22 years. He got terminated.

23 THE COURT: I know all that.

24 MR. GILREATH: You know.

25 THE COURT: I understand all of that.

1 MR. GILREATH: Right.

2 THE COURT: I read the amendments on this
3 complaint. I had to re-visit this, because it's been
4 almost a year. All last year, so, yes, I re-visited all
5 of that. So I understand that. Okay. Okay. I just
6 want to make sure I have the big picture in all of this.

7 MR. GILREATH: Okay.

8 THE COURT: Okay.

9 MR. GILREATH: Going back to this email, so we
10 asked for all these emails. Well, we didn't -- we got
11 the email from Victor, but the email's got an attachment
12 on it, and that's going to have the documents that, you
13 know, we think probably should send him to get Mr.
14 Barringer mad at Kevin.

15 THE COURT: Okay.

16 MR. GILREATH: And I think we've asked them -- I
17 think -- we've written letters to them on numerous
18 things. You've seen copies of all those letters. As
19 I've said, I've never written that many letters. But we
20 requested those exhibits --

21 THE COURT: Okay.

22 MR. GILREATH: -- in all, three times, and we still
23 don't have them. We finally got something from them a
24 day or two ago that says from some firm. See if I can
25 find that. I think it's Mr. Molster's former firm.

1 They apparently got their own people that go look at
2 emails and all that kind of stuff. And they filed --
3 but anyway, they just make a statement.

4 THE COURT: Let me ask you all this. Do we need to
5 go through this just document by document? Do we need
6 to talk in general? What is the easiest way? In other
7 words, I wonder if I need to go ahead and let Ms. Paylor
8 or Mr. Twombly talk about the Bobby Davis file. What
9 is the best way to go about it? And then, we can go on
10 to Wells Fargo. You all tell me what the best way is to
11 skin this cat, for lack of a better word.

12 MR. GILREATH: I'm okay with going, but they may
13 not be.

14 MR. TWOMBLY: I mean, there's two motions. I
15 mean, a motion against my client that he's got bleeding
16 over to this other motion.

17 THE COURT: Right. And so, that's what I'm trying
18 to figure out.

19 MR. TWOMBLY: I'd be happy to address the Bobby
20 Davis. I think it would give your Honor some clarity
21 about what happened.

22 THE COURT: I guess what I need -- I'm sorry.

23 MS. PAYLOR: It might be possible to -- they filed
24 a reply brief that we got yesterday. And in there, they
25 make these claims that Merrill Light has not consented

1 to Ms. Luzak using the CFRC documents that she has.
2 Nobody ever requested it. They consent. That's been
3 the whole point. They already have the documents. And
4 the best source to get them is from CFRC.

5 THE COURT: Okay.

6 MS. PAYLOR: Now, they might have to deal with CFRC
7 on the confidentiality order and just transfer it to
8 this court.

9 THE COURT: Right.

10 MS. PAYLOR: We would be happy to recommend that
11 they do that.

12 THE COURT: Is that what was turned over in the
13 Virginia location or not?

14 MS. PAYLOR: Yes, that was from the Virginia
15 litigation.

16 THE COURT: That would be my next question. Why
17 can't we just consent to that? I mean, it's already
18 been turned over once, so that seems to be the easiest
19 way to take care of this.

20 MR. TWOMBLEY: Everyone has consented to that in
21 writing.

22 MS. PAYLOR: We've consented.

23 MR. TWOMBLEY: We put it in our brief. They put it
24 in theirs. We have no idea where that came from.

25 MR. GILREATH: Your Honor, our Request Number 55

1 says all documents produced by CFRC used in the federal
2 court litigation in the case of Luzak versus Light.
3 We're still waiting to get them. We haven't got them.
4 And we've sent a subpoena to CFRC down in Florida.

5 THE COURT: My understanding is they've already
6 said they were already turned over in the Virginia
7 litigation; that you actually have them -- correct me if
8 you don't have them -- that you have those documents,
9 and they're agreeing that they're not under the
10 confidentiality, and you can use them in this case.

11 MR. GILREATH: Well, what -- if they'll agree -- if
12 they'll agree -- if they'll sign a waiver, but that's a
13 right strong confidentiality order up there, and I don't
14 --

15 THE COURT: You're telling me that they have
16 repeatedly sent notice and letters. Have you or have
17 you not?

18 MR. GILREATH: No.

19 MR. TWOMBLEY: Your Honor, in one of the --

20 THE COURT: Well, show me a copy. I'm going to do
21 this. Let me step off for just five minutes. You show
22 me a letter and you show me somewhere where you all said
23 you can use those documents, that's fine. And again,
24 just so I'm clear, do you have the power to do that,
25 based on who you represent? Because it sounds to me

1 like it could potentially be CFRC's documents. I just
2 want to make sure that --

3 MS. PAYLOR: We don't have the power.

4 THE COURT: And that's what I need to know.

5 MS. PAYLOR: Okay. We can consent for our clients,
6 but --

7 MR. TWOMBLEY: And I consent --

8 THE COURT: Okay. Do you have the power?

9 MR. TWOMBLEY: No, but I consent on behalf of my
10 client.

11 THE COURT: Okay. So I still need to order it, is
12 what I'm hearing.

13 MR. GILREATH: But they control CFRC, and we go to
14 CFRC -- we got a subpoena. Went all the trouble to get
15 an out-of-state subpoena down in Florida, --

16 THE COURT: Okay.

17 MR. GILREATH: -- and see if CFRC says get it from
18 here. So I mean, we're kind of caught in whip-saw.

19 MS. PAYLOR: They didn't say that. They had
20 already produced it to them, I think is -- and they
21 didn't follow up.

22 MR. GILREATH: No. CFRC --

23 THE COURT: Okay. Let's do this. I'm going to step
24 down. We're going to go ahead and just assume right now
25 that regardless of -- I am ordering that whoever it is -

1 - I don't know if you sent a proper subpoena to CFRC,
2 but I am ordering that those be turned over. So however
3 we need to effectuate that, whatever we have to do to
4 get that done. It doesn't sound like they oppose that
5 in any way.

6 MS. PAYLOR: Your Honor, can I hand --

7 THE COURT: Yes.

8 MS. PAYLOR: I'm going to hand up what you wanted,
9 Merrill Light and Randy Light. We'll stipulate that the
10 documents produced in the Virginia litigation can be
11 used in the South Carolina litigation.

12 THE COURT: Okay.

13 MR. TWOMBLEY: It's in the --

14 MS. PAYLOR: That was in --

15 MR. TWOMBLEY: It's in the heading.

16 THE COURT: Okay. Did you all see that? It's the
17 Number 5.

18 MR. GILREATH: We got that two days ago.

19 MS. PAYLOR: No.

20 MR. TWOMBLEY: No, your Honor. Those were filed a
21 year ago.

22 THE COURT: Do you all need to take a look at this?
23 Marlene, give this over to them. I'm just going to step
24 down literally for two minutes, you all. I'll be right
25 back. Okay?

1 MR. MACLOSKIE: If your Honor please --

2 THE COURT: Yes.

3 MR. MACLOSKIE: -- when you come back, you might
4 want to be thinking about two things that you -- you
5 said something about speeding this process up. One of
6 them is addressing this gatekeeper issue.

7 THE COURT: Okay.

8 MR. MACLOSKIE: That's simply not working. And the
9 other one is to straighten out everybody's concern, or
10 our concern, about the narrow definition and application
11 that's been put on the testamentary exception, because,
12 apparently, that's -- if it's not a problem already,
13 it's going to be a problem.

14 THE COURT: Okay.

15 MR. MACLOSKIE: I think it's a problem already.

16 THE COURT: Okay. All right. Well, we can --

17 MR. GILREATH: We talked about that in our brief.

18 THE COURT: We can come back and address that. I
19 will say this, if there are any, still, issues with Mr.
20 Davis, and you're thinking there's attorney/client
21 privilege, I certainly well understand that. I'm happy
22 to, when I come back, maybe address that first.

23 I can tell you this, Mr. Twombly, you didn't give
24 a privilege log. So as far as I'm concerned, all that
25 needs to be turned over. I think it's pretty much that

1 simple. I think his affidavit that he had some
2 conversations with Harley Ruff, who was here. But in
3 general, it's an accountant. And you can argue it, but
4 I think it's something that needs to be turned over, so,
5 because no privilege log has been made, so. And then,
6 we'll address this whole idea.

7 My concern is this. You talk about not wanting Mr.
8 Twombly to be the gatekeeper. While I know he has to
9 bill for his time, if you want an independent third
10 party as some kind of gatekeeper, you have to pay for
11 it.

12 MR. MACLOSKIE: That's a problem, too, because, if
13 we get some -- like a special referee to do it, all it's
14 going to add cost. It's going to delay the thing. What
15 we want to do is just get access ourselves.

16 THE COURT: I understand. I understand. Okay.
17 But we're going to come back. I want you to address
18 that, Mr. Twombly, if you would, and tell me, you know,
19 why they shouldn't get whatever these -- it sounds to
20 me, what I keep hearing with the CPAs, it's the back-up
21 documentation. Although, in supplying, he talked about
22 the tax organizer, which we all get when we do our
23 taxes, but it sounds like you already have given that to
24 them. So I'm not quite sure what's left. But let's --
25 let me give you five minutes; you can address that. I

1 don't need to hear what already has been turned over and
2 when. I need to know what is still out there, or if
3 there's any reason why Bobby Davis' full file shouldn't
4 be just turned over. Okay?

5 MR. TWOMBLEY: Yes, ma'am.

6 THE COURT: Okay. Thank you. All right. I'll be
7 right back, you all.

8 OFF THE RECORD 10:39 A.M.

9 BACK ON THE RECORD 10:42 A.M.

10 THE COURT: All right. Mr. Twombley.

11 MR. TWOMBLEY: Your Honor, I -- well, apparently,
12 we don't have Ms. Paylor.

13 THE COURT: Oh, I'm sorry. So do I need to wait
14 for her?

15 MR. TWOMBLEY: No, I don't know so.

16 THE COURT: Okay.

17 MR. TWOMBLEY: I was just told to let your Honor
18 know.

19 If I could just, your Honor, ask you to just bear
20 with me. I just want to just clarify a few things about
21 the big picture here.

22 THE COURT: Okay. As long as we don't talk about
23 the Virginia litigation, okay.

24 MR. TWOMBLEY: Your Honor, in 2012, Mr. Luzak,
25 Hampton's husband, he started setting up all of these

1 companies, and he started taking an ownership interest
2 in the companies such that he would get fees off these
3 companies. And he started using the Coastal Forest
4 Resources resources to create these companies and to
5 fund them. And he's a full-time employee now for
6 Coastal Forest Resources Company. But he starts setting
7 up all these other companies so he can make more money.
8 Okay? And Mr. Barringer figured it out. Mr. Barringer
9 figured out what he was trying to do, because Mr. Luzak
10 is a Wall Street guy. That's what he does. They do
11 deals. And each deal, you know, the Wall Street people
12 have their cut. The more deals that you do, the more
13 companies you set up, the more money that he gets to
14 make. That's what was the genesis behind him getting
15 fired. Okay? That's why he got fired. And there's an
16 audio recording of the event where Mr. Barringer's on
17 the recording where this takes place.

18 THE COURT: And this is a conversation between?

19 MR. TWOMBLEY: Between Kevin Luzak and Mr.
20 Barringer that Mr. Luzak secretly taped his father-in-
21 law without his knowledge, and recorded that
22 conversation.

23 THE COURT: And I understand, everyone's throwing a
24 lot of dirt around here in this case, because I also
25 understand in reading the pleadings, as well, that it's

1 alleged that Randy Light was in serious financial
2 difficulty as a developer, and that he was in debt and
3 had to file bankruptcy on behalf of a number of
4 companies. And there's an allegation, and I'll just
5 call it that, in the amended summons and complaint that
6 part of this distribution that was done by CFRC was
7 probably to help out his debt. And I have read emails
8 where -- and letters where he says he's having a hard
9 time at home convincing his wife to do X, Y, and Z. So
10 I think there's plenty of dirt to throw around in this
11 case, and I think everyone's using that to their
12 benefit.

13 But I want to back up. Instead of talking about
14 the dirt, I almost feel like because (a) this is family,
15 and (b) because everyone is alleging that everyone has
16 got their hand in the pot, why not just turn over all
17 the documents. Why not let's just look at everything
18 and see really what the deal is. I mean, this is a
19 family company. Clearly, from what I'm seeing, Mr.
20 Barringer inherited from his father. Obviously, it's
21 very successful. Why not just look at everything, and
22 figure out what's going on?

23 MR. TWOMBLEY: I'll be happy to address that, your
24 Honor. If I could make just one other background point.

25 THE COURT: Sure.

1 MR. TWOMBLEY: And then, I will go straight to the
2 Davis subpoena.

3 THE COURT: Okay.

4 MR. TWOMBLEY: What this case is about -- you read
5 their amended summons and complaint. They say
6 repeatedly, repeatedly, repeatedly, repeatedly that it
7 was always Mr. Barringer's long-term plan for this stock
8 interest that he held, twenty percent interest --

9 THE COURT: To be split evenly between the two
10 girls.

11 MR. TWOMBLEY: To be split between evenly. Okay,
12 here are his estate planning documents from 1998
13 forward. These documents were produced to them on
14 August the 24th of 2017. They cannot show you a single
15 sentence in these documents that supports the primary
16 allegation of their entire case, which is that if the
17 events of 2012 would not have happened, that they would
18 have -- she would have received half this stock. We've
19 produced his estate planning documents back to 1998.
20 There is no document anywhere in existence that says I
21 want Hampton Luzak to have half of my voting stock in
22 CFRC. They can set aside every will and trust back to
23 1998; they're not going to get what they're after, which
24 is this stock. And they refuse to talk about the
25 elephant in the room, which is that they cannot get this

1 stock. They cannot get it, even if your Honor says
2 everything that happened in 2012 was completely
3 fraudulent and he was demented; even though his primary
4 care physician, who's treated him for fourteen years,
5 testified under oath that he was fine in 2012, he was
6 fine in 2013, and that he started maybe would put some
7 restrictions on him in 2014. They're totally selective
8 in everything they're telling you.

9 So that's what the real issue is. They want this
10 stock. They say in their complaint, if you all wouldn't
11 have stole if from us in 2012, then, we would have
12 received it. Well, we're still looking for that
13 document. We're still looking for the document that if
14 you undo everything that happened in 2012, that says
15 she's going to get half the stock, it didn't say that,
16 because I'll tell what all of Mr. Barringer's documents
17 said. They say what every husband's documents say.
18 They say it all goes into trust for my wife.

19 THE COURT: Right.

20 MR. TWOMBLEY: And then, my wife gets to decide who
21 gets it whenever dies -- whenever she dies.

22 THE COURT: She dies, yes.

23 MR. TWOMBLEY: So they can undo them all back to
24 2012. The exact thing is going to happen. Hampton
25 Luzak is not going to get that stock, unless her mother

1 decides to give it to her, plain and simple.

2 Now, let's talk a minute about Bobby Davis. Mr.
3 Gilreath is correct. They sent this subpoena to him.
4 Mr. Davis has been working for Mr. Barringer for forty
5 years. Your Honor, Mr. Davis is a healthy, active
6 individual. He travels.

7 THE COURT: He still practices.

8 MR. TWOMBLEY: He's still practicing. He has a
9 full accounting firm. He's got employees. I mean, they
10 make it out like this is a one-man show, you know, in a
11 room on a card table, just doing whatever anybody tells
12 him to do. We'd be happy to get your Honor the
13 deposition, the video of it, you can see this man. He's
14 not as old as Mr. Gilreath is.

15 MR. GILREATH: He's a little bit older than me.
16 Not much.

17 MR. TWOMBLEY: Well, you look a little older than
18 him. Just a little.

19 MR. GILREATH: I know, but I'm still working, too.

20 MR. TWOMBLEY: All right. So, your Honor, so we
21 had this subpoena that they sent to them. And we
22 negotiated an order.

23 THE COURT: Right.

24 MR. TWOMBLEY: Okay? Ms. Campbell and my firm and
25 Mr. Hogan, they spent more than a month negotiating an

1 order. And here's what this order says. I don't care
2 what the subpoena said, because we negotiated.

3 THE COURT: Right.

4 MR. TWOMBLEY: We said we weren't going to produce
5 all that stuff in the subpoena, and they filed a motion
6 --

7 THE COURT: My question to you is this, Mr.
8 Twombley. If there are things in there that you believe
9 are privileged, why didn't you create a privilege log?

10 MR. TWOMBLEY: Because, your Honor, that's a red
11 herring. I'm going to tell you why.

12 THE COURT: Tell me why. Tell me why.

13 MR. TWOMBLEY: We objected to producing anything
14 prior to 2011.

15 THE COURT: Okay.

16 MR. TWOMBLEY: That's the date they have set.

17 THE COURT: He was suffering from dementia.

18 MR. TWOMBLEY: No. We objected to producing
19 anything prior to 2011 because all the events of this
20 case are about what occurred in 2012 through 2015. So
21 what happened in 2010 is totally irrelevant.

22 THE COURT: Okay.

23 MR. TWOMBLEY: They have chosen not to produce
24 documents prior to that time.

25 THE COURT: So did you all agree to that; that

1 we're starting from 2011?

2 MR. TWOMBLEY: Well, we haven't agreed to it, but
3 both of us have applied that date.

4 THE COURT: Okay.

5 MR. TWOMBLEY: So, your Honor, they have been
6 provided, subject to these specific objections that we
7 made in our response, they've been provided everything
8 from Mr. Davis' file from 2011 forward.

9 THE COURT: Okay.

10 MR. TWOMBLEY: Period. Now, --

11 THE COURT: You're talking about back-up document
12 and every last thing. Is that what you're telling me?

13 MR. TWOMBLEY: Yes, your Honor. Now, let me --
14 this is very important. Okay? The order that your
15 Honor signed that was negotiated --

16 THE COURT: You all wrote, clearly.

17 MR. TWOMBLEY: Right. It required the tax returns
18 to be submitted to your Honor for an in-camera review.

19 THE COURT: Okay.

20 MR. TWOMBLEY: It didn't even require me to give
21 them the tax returns.

22 THE COURT: I understand. It was for an in-camera
23 review. But again, you were being kind, not wanting me
24 to go through all of those.

25 MR. TWOMBLEY: Well, I got the actual returns, and

1 I said, we can't ask Judge Mullen -- I mean, these
2 things.

3 THE COURT: I mean, one of them was 200 pages long.
4 I saw that.

5 MR. TWOMBLEY: Are 200 pages.

6 MR. GILREATH: He did you a favor on that.

7 MR. TWOMBLEY: So what we did, your Honor, what we
8 did is, instead of producing them to you, we sent them
9 all the tax returns.

10 THE COURT: Well, let me ask you. I understand
11 you're talking about what specifically was in the order
12 and what you all negotiated, but why not produce -- now
13 what they're asking for is they want the back-up
14 documentation. I don't know why, other than --

15 MR. TWOMBLEY: We did, your Honor, in November of
16 last year, as soon as Mr. Gilreath -- we had a meet and
17 confirm on the telephone. He told me he wanted this
18 back-up documentation. I said, let me go back and think
19 about it. We went and looked at the order. We said,
20 look, we totally disagree with you that the order
21 required -- and the order didn't require us to send the
22 tax returns. I can't --

23 THE COURT: You've given -- but you're giving them
24 everything. You're telling me from 2011 --

25 MR. TWOMBLEY: We gave it to them in November of

1 2017. They've had it for almost a year. They've had it
2 for almost a year.

3 THE COURT: So, gentlemen, help me. I mean, I
4 don't want to re-order something that's already been
5 turned over. Do you have all the back-up documentation
6 from 2011 on for Bobby Davis?

7 MR. GILREATH: No, your Honor. I don't understand
8 what he's saying. This is the kind of stuff I hear on
9 some of these calls. But your order does not have any
10 time limitation in it, right? I hear him say something
11 there's time limitation in the order. It says all --
12 wait a minute. Let's look at it.

13 THE COURT: So when you say Bobby Davis has three
14 banker's boxes, it's got to be only from 2011 on. I
15 mean, he's done forty years.

16 MR. TWOMBLEY: He's got a lot more than -- a lot
17 more than three banker's boxes.

18 THE COURT: I understand that.

19 MR. TWOMBLEY: Jim is right. The order did say
20 2011.

21 MR. GILREATH: Okay. That's what we -- that's what
22 I heard him say.

23 MR. TWOMBLEY: What the order said was, what the
24 order said was, we could object to producing certain
25 documents after we got them all.

1 THE COURT: Okay.

2 MR. TWOMBLEY: We got them all. We said this case
3 involves what happened between 2011 and -- or 2012 and
4 2015. We applied the same date parameter that they have
5 applied. And we said, look, we object to providing
6 anything prior to 2011. And then, we gave them
7 everything thereafter, and they've had them for a year.

8 THE COURT: All right. So, Mr. Gilreath, explain
9 to me, then, do you have everything, do you believe,
10 from Bobby Davis from 2011 on? And secondly --

11 MR. GILREATH: No. I don't --

12 THE COURT: You do not?

13 MR. GILREATH: The problem is, your Honor, I don't
14 know what -- I don't know what he's got.

15 THE COURT: You don't know what you don't have.

16 MR. GILREATH: Ashley tries -- he comes in here and
17 says he's produced it all, but my subpoena is very
18 broad, and it covers everything he's got. And it
19 clearly covered that client organizer, --

20 THE COURT: Right.

21 MR. GILREATH: -- which is the most critical
22 document in this lawsuit, and he didn't produce it, and
23 he didn't object to it, and he didn't put it on a
24 privilege log. And if I hadn't filed this motion to
25 compel, I wouldn't have it yet. Now, that's what I'm

1 having to deal with. I just want to get the documents.
2 But you know, when I have somebody do me like that one
3 time, I say, well, I think I better go look at all the
4 documents myself.

5 That's not going to be any burden on him. We'll
6 drive down there. We've got people that can copy all of
7 that stuff, and we'll give you a copy of it all. I
8 mean, my Lord, we -- they sent us -- we haven't got to
9 this yet, but my client spent almost \$400,000.00
10 responding to that subpoena that Richard Rosen and them
11 laid on us for her secretary. And she had to go hire a
12 lawyer here in Beaufort and pay her thirty-some thousand
13 dollars, and we'd given them everything we got. We've
14 got that worked out, so we don't have to deal with it.
15 But, and then, we can't -- so we just want to see all of
16 his files. And I think that man -- he hadn't put any
17 limit on it. He's seen them all. it -- I mean, what --
18 like you said --

19 THE COURT: Okay. I hear what you're saying. Mr.
20 Twombly's saying he's turned it all over, everything
21 from 2011 on that belongs to Bobby Davis. You clearly
22 don't believe him. And there was no privilege log.

23 MR. GILREATH: Right.

24 THE COURT: So my question is this. What harm is
25 there if you've already turned it all over, to let him

1 go down there, let him, at his cost and expense, go
2 through all of those documents from 2011 on that you've
3 already produced.

4 MR. TWOMBLEY: From '11 forward, subject to the
5 objections we raised, we don't have any problem with
6 that. And let me just go through -- I'm not trying to
7 play hide the ball on you. We made --

8 THE COURT: Subject to your objections.

9 MR. TWOMBLEY: There are a couple objections.
10 There was a trust called the Gertrude Barringer Trust.
11 That was Mr. Barringer's father's trust. We don't
12 represent that trust.

13 THE COURT: Right.

14 MR. TWOMBLEY: Number 1, that trust was represented
15 by Gene Parrs at Harvey & Battey. They've been dealing
16 with Gene Parrs. Gene Parrs, I spoke to him. He
17 produced like ten years' worth of bank statements, worth
18 of tax returns, worth of everything. I don't believe
19 it's my obligation, and I certainly think if they're
20 going to -- if the stuff Mr. Bobby Davis has regarding
21 the Gertrude Barringer Trust is going to be ordered to
22 be turned over in this case, I at least think that Mr.
23 Parrs and the trust ought to be made a party to it. But
24 there's nothing in that stuff.

25 THE COURT: Okay.

1 MR. TWOMBLEY: They've got the tax returns.
2 They've got the bank statements. They've got everything
3 for that trust. So other than the specific objections
4 that we have made, everything has been turned over from
5 2011 forward.

6 THE COURT: So other than the Gertrude Barringer
7 Trust, what else in your objections?

8 MR. TWOMBLEY: Let's look at --

9 THE COURT: If you need that. Do need that, Mr.
10 Gilreath? Do you need that? No. Mr. Macloskie says
11 you don't need that.

12 MR. GILREATH: I don't think we -- we've seen it.
13 I've dealt with Gene Parrs on that. I think we --

14 THE COURT: You're fine with that.

15 MR. GILREATH: I'm fine with that.

16 THE COURT: What are your other objections, then?
17 Let's just go through them.

18 MR. GILREATH: Okay.

19 THE COURT: I feel like we need to get something
20 accomplished here, so.

21 MR. TWOMBLEY: Well, this is the problem, though,
22 your Honor, is because we drafted these objections.
23 There's five pages of them. You know, they have never
24 gone through and said, look, we don't agree with this
25 objection, actually; we want you to produce this stuff.

1 They've never done that. We've asked them to do it.
2 We've asked them to say what is it about our objections,
3 what document do you want; what do you think is supposed
4 to be out there that we haven't produced.

5 THE COURT: Well, how will they know? You do
6 plaintiffs work. How do you know what you don't know?

7 MR. TWOMBLEY: Your Honor, Your Honor, Mr. Gilreath
8 is a former tax lawyer. He knows how to do tax returns.

9 THE COURT: Right.

10 MR. TWOMBLEY: They know just as well as I know and
11 that you know that accountants send out these forms
12 every year and asked you to fill them out, and then you
13 send them back to the accountant with your back-up tax
14 information. That is CPA 101. Okay? The order, if
15 they wanted that stuff and they thought it was so
16 important, why didn't they just put in the order the
17 backup information for the tax returns?

18 And your Honor, think about this logically. Why
19 would I be required only to submit the tax returns to
20 you in camera, but I'm required to send them all the
21 back-up information for the tax returns? That's
22 illogical. That's illogical. No one expected me to do
23 that. And let me tell you what was going on here, your
24 Honor, okay?

25 THE COURT: That would be helpful.

1 MR. TWOMBLEY: They found -- they say they found
2 this earth-shattering document from 2012 that Mr.
3 Barringer signed.

4 THE COURT: 88794. Is that correct?

5 MR. TWOMBLEY: Well, one of those forms. I'm not
6 even sure.

7 THE COURT: Okay. I think that's --

8 MR. TWOMBLEY: It's a form he signed where he said
9 he didn't make any gifts in 2012.

10 THE COURT: Right. Right.

11 MR. TWOMBLEY: Okay? And that's true. We don't
12 dispute that. Obviously, Mr. Barringer, as many people
13 do, he forgot to tell his accountant that he had made
14 this gift. Every -- everybody does that. Everybody
15 does that. And there's no secret that when the Virginia
16 litigation happened, somebody said, well, hey, did the
17 man file a tax return. And they looked into it; they
18 said no. And so, a tax return was filed.

19 Here's the point. The only thing that document
20 shows is that Mr. Barringer did not tell Mr. Davis in
21 2012 or 2013 about the gift. They have known that since
22 2015; that Mr. Davis, Bobby Davis, produced his entire
23 file to them in the Virginia litigation, where he
24 drafted a memo, where he said that, apparently, Mr.
25 Barringer had made this gift and that Mr. Barringer

1 didn't tell him about it; and so, he's going to do the
2 tax return for it, because, by the way, if it was a gift
3 -- and it was, it's been conclusively decided by
4 Virginia now; you have to file a tax return. That
5 actually needed to be done.

6 So this earth-shattering document that they say
7 they didn't have and that prejudices them, all it told
8 them is that Mr. Barringer didn't tell Mr. Davis about
9 the gift in 2013. That's all it does. They got a
10 hundred documents that say that, your Honor. They've
11 known that. They've deposed Mr. Davis. Mr. Davis is
12 said, yeah, he didn't tell me about it. We stipulate he
13 didn't tell them about it. Now, they say that means he
14 was demented and didn't know what he was doing. And we
15 say it was an oversight.

16 Now, let me tell you what they don't tell you about
17 Mr. Davis' deposition. They just say, oh, well, nobody
18 told him he'd been diagnosed with Alzheimer's. Mr.
19 Davis met with Mr. Barringer in February or March of
20 2013.

21 THE COURT: Right. They told me that.

22 MR. TWOMBLEY: Yeah, but they don't tell you that
23 they had about a three-hour meeting where they went over
24 all these complicated tax matters, because Mr.
25 Barringer's got a lot of different things and stuff.

1 And they asked Mr. Davis, well, how was Mr. Barringer in
2 this three-hour meeting, where you've been his forty-
3 year-long accountant going over his taxes; I mean, was
4 he seeing things; I mean, was he demented; was he --
5 didn't know what he was talking about. No, Mr. Davis
6 said he was fine. Met with the man for three hours to
7 go over all of his taxes, alone, privately in a room,
8 with no one else there. And all they want to say is,
9 well, nobody told the man he was diagnosed with
10 Alzheimer's. You know what Mr. Davis said, he thought
11 he was fine. He didn't think there was a thing wrong
12 with him.

13 THE COURT: Okay.

14 MR. TWOMBLEY: They don't tell you -- again, Paul
15 Long, his primary treating physician testified down in
16 Probate Court. We gave him this form, your Honor, that
17 you fill out in Probate Court if you're going to have a
18 guardian and a conservator appointed. And it says on
19 the form, you know, does this man's right to vote need
20 to be restricted; does his right to marry need to be
21 restricted; does his right to participate in a lawsuit
22 need to be restricted; does his right to give away
23 things need to be restricted. All those things. And we
24 asked Mr. Long, if you had you been given that form in
25 2012, and had to fill it out for Mr. Barringer, would

1 you have given him any restrictions in 2012.

2 THE COURT: You're talking about Dr. Long? You're
3 talking about Dr. Long?

4 MR. TWOMBLEY: Dr. Long. You know, he said --

5 THE COURT: Is that his personal physician, --

6 MR. TWOMBLEY: Yes.

7 THE COURT: -- Dr. long, for the last fourteen
8 years? Okay.

9 MR. TWOMBLEY: Dr. Long said, no, I wouldn't have
10 restrict him at all in 2014 -- I mean, in 2012 or 2013.
11 And he said maybe he would have thought about it in
12 2014. Now, all they want to tell you is that, well, he
13 didn't know what he was doing and he was demented. The
14 man continued to serve on the board of directors. I
15 mean, we're going to have a hundred witnesses who are
16 all going to come and testify about all that.

17 MS. PAYLOR: Right.

18 MR. TWOMBLEY: I mean, this is not like he was
19 hemmed up in a room in Hilton Head and nobody saw him.
20 He's going hunting, hosting hunting groups. We got his
21 hunting buddies, they're all, you know --

22 THE COURT: I think the testimony, I'm sure, will
23 be very interesting from --

24 MR. TWOMBLEY: And let me just tell you one other
25 thing. Everybody that disagrees with him is involved in

1 this conspiracy. I mean, Randy Light, Merrill Light, my
2 client. My client was married to the man for sixty
3 years. They think she's going to sit by and let his
4 whole estate drain and be undone.

5 John Jolley of McNair Law Firm. They say he was
6 just basically a covert person that was serving Merrill
7 Light and Randy's interest, even though he was
8 representing Mr. Barringer. Travis Bryant, the CEO of
9 the company; Paul Long; Brad Herring, the former --

10 THE COURT: What does Michael Harrington --

11 MR. TWOMBLEY: Michael Herrington has passed away.

12 THE COURT: Okay. What about Tom Evans?

13 MR. TWOMBLEY: Tom Evans, you'll get a chance to
14 meet him and talk with him. He was one of Mr.
15 Barringer's best friends. Worked with him from the time
16 this was a very small company. He's like Mr. Barringer.
17 He's one of these guys they say has got saw dust in his
18 veins. When you meet him, you'll know. He's a big,
19 strapping fellow. He intimidates me because I'm so
20 short. The nicest guy you've ever met. He was with Mr.
21 Barringer. Talked with Mr. Barringer about all this
22 stuff. Talked with him about the decision that who he
23 was going to give his stock to.

24 Now, you know, your Honor, I do a lot of these
25 cases. And you know, sometimes these older people,

1 they're the smartest people. I mean, can you imagine if
2 Mr. Barringer would have done what they say was his
3 lifelong dream to do, which there ain't a document to
4 prove it, but if he would have gave ten percent of this
5 stock to Hampton, and let Merrill keep the other ten
6 percent, that would have been the biggest war you've
7 ever seen in your life. There would have been more
8 litigation from now until the end of time, because they
9 would have been deadlocked over almost everything. And
10 you know who would have gotten to decide? the Conyers,
11 the minority shareholder interest would have gotten to
12 decide everything.

13 So you know, I know I've given you more of a big
14 picture than you wanted, but the bottomline with this
15 Bobby Davis thing is this. We've made specific
16 objections to the documents we don't want to -- we don't
17 believe we have to produce. They've not questioned any
18 of them. We didn't provide a privilege log because we
19 objected for 2011 and prior to that. And when you place
20 that limitation on Mr. Davis' files, there are no
21 privileged documents in there. That's why we didn't do
22 a privilege log. If you start going back to 2011 and
23 prior to that, there's a million privileged documents
24 in there, with law firms all over the Southeast. And
25 Mr. Davis submittd an affidavit that said that, and said

1 how difficult it would be to extract those documents
2 from his files.

3 THE COURT: Okay. Hold on a second. So do you
4 need anything before 2011?

5 MR. MACLOSKIE: We don't know.

6 THE COURT: I need the answer.

7 MR. GILREATH: Well, I don't think -- I don't think
8 we do, but that's what I'm trying to look up now. I
9 don't remember him saying he restricted that thing to
10 2011. And what he didn't say in that tirade he just
11 went into, I didn't hear him mention two very important
12 words: undue influence. That's what this case is
13 about. I mean, it's also, there's no question --

14 THE COURT: All right, you all, again, we're not
15 arguing the case in front of me right now.

16 MR. GILREATH: Well, we don't -- all that, all what
17 he said hasn't got anything to do with me getting my
18 documents. I like what you said awhile ago, if there's
19 anything wrong here, this is supposedly a truth for the
20 search, Ashley, let's get all the documents in, and then
21 we'll look at it. But I mean, when you've got a
22 document like that organizer, and I'm not getting it,
23 then, I've got a problem.

24 THE COURT: Okay. Well, let's back up a second
25 here. I think we can take care of the Bobby Davis

1 information. It sounds to me right now like you don't
2 believe you have everything from 2011 forward. I'm
3 going to go ahead and order and allow you to go down
4 there and go through the boxes and copy everything if
5 you think there is something else. We're not going to
6 talk about anything before 2011, unless you give me a
7 reason to tell me why you need something before 2011.
8 But we're going to let you go and do that.

9 MR. GILREATH: Okay.

10 THE COURT: Okay. At your expense. So we're going
11 to let you do that so you can rest assured that even --
12 I understand you may have objections. It doesn't
13 matter. They are going to go through those boxes, so
14 that should not be a problem. So let's get past Bobby
15 Davis. Although, my understanding is, is once you look
16 through those documents, you want to re-convene his
17 deposition, and I don't know if that was agreed to or
18 not agreed to, but I'm going to tell you this. If
19 there's something new that they find, they can re-
20 convene his deposition to ask him those questions, but
21 we're not going to plow old ground. So to that extent,
22 that is my ruling as to Bobby Davis and his documents
23 and his deposition.

24 MR. GILREATH: Can I --

25 THE COURT: Yes.

1 MR. GILREATH: Can I re-convene his deposition if I
2 decide I want to, to discuss this organizer? Because,
3 see, I didn't know about that.

4 THE COURT: Anything you didn't get to ask him
5 before that you got after his deposition, that's fine.
6 But like I said, we're not going to -- I have no idea
7 how long this deposition was, but I'm guessing it took a
8 while.

9 MR. GILREATH: I don't take long depositions.

10 THE COURT: Okay. Well, that's good to hear, but
11 --

12 MR. TWOMBLEY: Your Honor, can I make you aware of
13 just one thing, please?

14 THE COURT: Sure. Sure.

15 MR. TWOMBLEY: First of all, I just want to point
16 out Mr. Gilreath says that he wasn't aware of the 2011
17 restriction. Your Honor's order says the income tax
18 returns of Paul Barringer filed in the years 2011
19 through the final income tax return shall be produced.
20 I mean, I don't know how else we can make them aware of
21 that limitation.

22 Second of all, the issue of re-convening Mr. Davis'
23 deposition, Mr. Gilreath brought that up before the
24 deposition. I told him that I thought he should wait,
25 let's go in front of your Honor, let's find out if

1 there's anything else, and then take his deposition. He
2 chose not to do that. He chose not to do that. And so,
3 I don't think it's fair to require us or Mr. Davis to
4 sit through another deposition when it was their choice
5 to go forward with it.

6 And also, this information is not new. It's not
7 new. All it is, is a document, another document, that
8 shows what everybody has known and what they have known,
9 is that Barringer didn't tell Mr. Davis about the gift
10 in 2013. They've already asked him about that. He's
11 already testified about it. And so, I would
12 respectfully suggest that that is not in any way,
13 shape, or form, new information at all.

14 THE COURT: Okay. Well, I'm going to let him go
15 ahead and re-convene it. And again, we're not going to
16 plow old ground, but you can do that, and you can have
17 that. What else?

18 MR. GILREATH: I'm going to ask him about the
19 organizer, obviously, because I didn't have that before.

20 THE COURT: Okay. Again, we're getting in the
21 weeds. Let's go to the next thing.

22 MR. TWOMBLEY: Your Honor, can I just make --
23 because I just want to make sure that I'm clear that
24 there -- I mean, in addition to the Gertrude Barringer
25 Trust, just as an example, there was another trust Mr.

1 Barringer had that a long time ago got divided into
2 three trusts for each of the three kids. One for
3 Hampton, one for Victor, one for little Merrill. I do
4 believe that Mr. Davis continued to do work on maybe
5 Victor's trust, maybe even Hampton's trust. I'm not
6 even sure. But those -- because that trust was divided
7 well before any of the issues in this litigation, and
8 Mr. Barringer didn't have anything to do with it. I
9 mean, but I don't think those post-2011 documents should
10 be included. And I just want to clarify, because --

11 THE COURT: I'm not going to put in anything that's
12 after 2011. We're going to use that as a limiting date.
13 Again, I think they should be able to have everything
14 from 2011 on. I have no idea if it's even what I would
15 say -- I think it's relevant, but I don't know, and
16 again, I don't know what they're going to say. I think
17 it's fair. I don't know how Bobby Davis keeps his
18 files. I don't know if he keeps them per trusts, or if
19 he keeps them for per year for these people. I'm
20 assuming he keeps them per trust, but it is in
21 sequential order by the year, so that shouldn't be
22 unduly burdensome. And it really doesn't matter,
23 because they're the ones that are going to do it. All
24 they have to do is sit the boxes down --

25 MR. GILREATH: It's also subject to a

1 confidentiality agreement.

2 THE COURT: And that's fine. We can put everything
3 in this case under confidentiality order. Okay. So
4 let's move on. Let's get past Mr. Davis. Do we need to
5 talk about Wells Fargo now, or what else do we need to
6 talk about? I mean, other than Mr. Davis, what else do
7 we need to discuss?

8 MR. TWOMBLEY: The only thing that they don't have
9 from Wells Fargo that Wells Fargo produced to us are Mr.
10 and Mrs. Barringer's, you know, personal financial
11 statements, their bank statements, and things of that
12 nature.

13 THE COURT: Well, tell me, how is that relevant in
14 any way?

15 MR. TWOMBLEY: I don't think it is.

16 THE COURT: I mean, because they can give whoever
17 they want any money they have personally in any way.
18 The question is whether or not --

19 MR. GILREATH: It relates to damages. And I mean,
20 we've got -- we've got a claim here where we claim Ms.
21 Light exercised undue influence, whatever, and got this
22 stock. I mean, I would tell you that I've been in a lot
23 of these cases. Ashley said he's been in one. I don't
24 believe he'd stand up here and tell you he's been in one
25 where somebody didn't dip into somebody's account.

1 We've got a wife who's -- oh, yeah, and Merrill Light is
2 the co-trustee on all these accounts. So, you know.
3 And she's complaining, and her husband --

4 THE COURT: What are we talking about? Because it
5 sounds to me we're talking about personal accounts? Are
6 we talking about their personal accounts? Are we
7 talking about trust accounts? What are we talking
8 about. I mean, I'm assuming --

9 MR. TWOMBLEY: Bank statements.

10 MR. GILREATH: Their trust is, I mean, Paul
11 Barringer --

12 THE COURT: Their trust is one thing, but for their
13 personal bank statements, I mean, they have to have an
14 income themselves. They may manage their own trust to
15 pay her income, I guess. I just don't know what their
16 structure is. But again, I think Mrs. Barringer can do
17 whatever she wants with her money when she does it. So
18 I'm trying to figure out, if it doesn't have to do -- I
19 guess, explain to me what you're looking for.

20 MR. GILREATH: Well, there's a Paul Barringer
21 revocable trust. That's the one we're primarily
22 interested in. That's the one where the stock went.

23 THE COURT: Okay. So my question is, what are we
24 -- you're talking about personal bank accounts and
25 personal bank statements at Wells Fargo. You're talking

1 about a trust account. So what are we talking about?

2 MR. TWOMBLEY: Your Honor, --

3 MR. GILREATH: Your Honor, what I'm interested in
4 are the statements from the bank who was managing his
5 money. I think everything he had was probably in some
6 kind of trust account, if I had to bet. We don't know.
7 But we know he had this Paul Barringer revocable trust.
8 That's where the stock actually went into that before it
9 went to Merrill, before she got it away from him there.
10 But for damages, we -- you know, it goes the old saying,
11 you got to follow the money. And it won't take us long
12 to figure that out. I've got experts that can look at
13 that. Maybe there's nothing there.

14 THE COURT: But there's got to be separate
15 accounts.

16 MR. GILREATH: But if there's nothing there, why
17 don't they let us see it?

18 THE COURT: There's got to be separate accounts.

19 MR. TWOMBLEY: But, your Honor, I'm not sure I -- I
20 don't understand. Is the belief is the reason it's
21 relevant because you think someone improperly took money
22 out of the account?

23 MR. GILREATH: I certainly have seen it happen in
24 the past.

25 MR. TWOMBLEY: Okay.

1 MR. GILREATH: And we've got a lady who's husband
2 is in dire straights down in Texas. She's writing
3 emails to people talking about she's afraid she's going
4 to lose everything. My client's going to testify that
5 she told her that he was -- she was going to go
6 bankrupt, she was going to lose everything she had. We
7 contend that's why this whole thing happened. So, and I
8 mean, but we're entitled to see what -- and we got a guy
9 there who's got -- admittedly got Alzheimer's. Got it
10 bad towards the end. And I mean, if she wanted to get
11 the money, it wouldn't have been hard for her to do, I
12 don't believe.

13 MR. TWOMBLEY: So, your Honor, this is a common
14 issue in cases like this where someone who has been cut
15 out of a trust, who is currently not a beneficiary of
16 the trust, and Hampton Luzak is currently not a
17 beneficiary of the trust, she wants all the trust
18 financial information.

19 THE COURT: Okay.

20 MR. TWOMBLEY: Well, she's not entitled to it.
21 She's not the beneficiary. If she establishes the fact
22 that she is a beneficiary, she wins this case. Then she
23 could argue and say, well, I was somehow deprived as a
24 beneficiary of what should have been in the account.
25 She's not a beneficiary. She's not even a contingent

1 beneficiary.

2 Your Honor, people set these trusts up. And
3 wealthy folks, they set up -- all of them usually have
4 these revocable trusts, and they do put all their
5 personal, you know, money in those trusts. And so, that
6 is the equivalent of Mr. and Mrs. Barringer's personal
7 bank statements for every little thing they purchase,
8 for every little thing they give money to, for every
9 little check that they write. They've objected to
10 providing that information to us, even though we think
11 that information is relevant to our claims against them.
12 And they won't provide it to us, and we don't want to
13 provide it to them.

14 We went through the statements and we gave them,
15 it's in our response, we gave -- we drafted all this out
16 and sent it to them, and told them of any material
17 change in the balance of the account. You know, we went
18 through and said, for example, there was ten million
19 dollars in the account in 2011. At the end of 2012,
20 there was, you know, eleven million dollars. The
21 million-dollar increase was due to market appreciation.
22 It then increased by three million dollars the year
23 after that, and that was because a piece of property was
24 sold and that money was placed. So we've given them
25 some pretty detailed information about this account to

1 show them that nobody's taken any money out of that
2 account.

3 THE COURT: And so I'm clear, they're looking for
4 2011 on. Is that what they're looking for? Or they're
5 looking back prior to that? Do you know?

6 MR. TWOMBLEY: I think it's just 2011 on. I mean,
7 I think we've all kind of agreed -- have -- I mean --

8 MR. GILREATH: Your Honor, my understanding is,
9 based on what they've shown us that's there now, it's
10 not anywhere close to what was there. And --

11 MR. TWOMBLEY: You mean prior to 2011? I mean,
12 there's no allegation he had any problems. He may have
13 spent it. He may have bought a boat. I don't know what
14 he did with it prior to the time they allege he got
15 sick. That's not an issue in this case at all.

16 MR. GILREATH: Your Honor, if we found that they
17 had dipped into his account for a substantial amount or
18 any amount of money, I think it would be relevant in
19 this case to what she did. She's got -- she's
20 exercising undue influence. You've got a man that's
21 very wealthy. He's got bad Alzheimer's. You see it
22 happen every day. And I, you know, and everything was
23 in those bank accounts. And if we can't get to those,
24 then we don't have any access to what they were doing
25 and what they may have gotten. I mean, they may --

1 THE COURT: How many different bank accounts are we
2 talking about?

3 MR. GILREATH: It's just these accounts at
4 Wachovia, my understanding. I think there are five
5 accounts at Wachovia.

6 MR. TWOMBLEY: I mean, this -- I mean, you know,
7 there's like this IRA. There's an investment account.
8 There's a, you know, account that they write all their
9 bills and stuff from.

10 THE COURT: You said there were five.

11 MR. TWOMBLEY: You know, the personal checks and
12 stuff, I mean, it's incredibly invasive to give -- to
13 require my client and Mr. Barringer to go through every
14 single bank statement, to go through every little
15 expense that they make when they're not a beneficiary of
16 the trust. I mean, it'd be one thing if Hampton was the
17 beneficiary of the trust and she's saying, your Honor, I
18 was supposed to inherit five million dollars; but
19 because they spent this money, now I'm going to only
20 inherit four million dollars; and I need to prove -- and
21 I need these records to show that the account went down
22 in value; and therefore, I'm going to inherit less.
23 That's not going to happen here. She's not a
24 beneficiary of the trust.

25 Now, she might -- she might win the case. In the

1 future she may obtain beneficiary status, and when she
2 does obtain beneficiary status, then she might be able
3 to get those records. But now, she's not a beneficiary.
4 She has no right to them under South Carolina law.

5 THE COURT: Let me ask you this, though. You say
6 it's unduly -- I understand the invasive, you know,
7 argument. My question is, it's his expense; he has to
8 do it; he subpoenas the bank; the bank has to produce
9 them. So really, there's no expense to you, other than
10 you're saying he's not entitled to them, and I
11 understand that. But again, it's no cost to you.

12 MR. TWOMBLEY: Well, it's not the cost, your Honor.
13 It's the, you know, it's kind of like the recent case
14 from the Supreme Court about the police going through
15 your cell phone. I mean, your cell phone has got every
16 little email, every little communication you got. And
17 your bank statement's the same way. It's even more
18 private, I would say, than your cell phone. And I don't
19 think she -- again, if she were a beneficiary of the
20 trust, if she can establish that in the future, then
21 she may be able to get those records. Your Honor, it's
22 also --

23 THE COURT: Was she ever beneficiary?

24 MR. TWOMBLEY: She was a beneficiary in the past,
25 that's correct.

1 THE COURT: She was prior, in that trust?

2 MR. TWOMBLEY: She was prior, in that trust.

3 MR. GILREATH: I was just getting ready to point
4 that out. What he hadn't told you is, there's a family
5 trust out there. Been around for years. He actually
6 went in and had it amended through the Probate Court
7 here downstairs, so they could accelerate it to the
8 children. And he treated -- I think in that one, he
9 treated all of the children equally. So I mean, you
10 know, this guy --

11 THE COURT: Okay. You're talking generalities
12 again. We're not going there. If she was previously
13 beneficiary to that trust, I think he should be entitled
14 to the documents from -- the bank statements from 2011
15 up until whatever you all agree to. So if she was a
16 prior beneficiary to that trust.

17 MR. TWOMBLEY: So during that time we can, subject
18 to the confidentiality order.

19 THE COURT: Of course. Okay. What else?

20 MR. GILREATH: Wait just a minute. Let me get back
21 to where I was. Yeah, we we're talking about the
22 Merrill Light production. We don't have --

23 MR. TWOMBLEY: Your Honor, can I make one point of
24 clarification? I apologize. Mr. Ruff has just reminded
25 me and corrected me that Hampton Luzak was, in fact,

1 never a beneficiary of any of these trusts. And this is
2 -- this is the way it worked. The trust, as I pointed
3 out earlier, goes to Mrs. Barringer.

4 THE COURT: Okay.

5 MR. TWOMBLEY: Okay? If Mrs. Barringer doesn't say
6 who gets it, then the default provision --

7 THE COURT: Right.

8 MR. TWOMBLEY: Okay. So this is what's going to
9 have to happen, your Honor.

10 THE COURT: Okay.

11 MR. TWOMBLEY: Even if you go back to the time in
12 2012 when she was a beneficiary, -- well, during --

13 THE COURT: You're saying she wasn't, but if --

14 MR. TWOMBLEY: If you go back to the time in 2012
15 before they say everybody exercised undue influence over
16 Mr. Barringer, --

17 THE COURT: Right.

18 MR. TWOMBLEY: -- and that document comes back into
19 play, Hampton's not going to get anything, unless
20 Merrill U. Barringer decides she's going to. She's got
21 total power of appointment over the trust. So not only
22 does she have to go back to that document, you then have
23 to wait 'til Mrs. Barringer dies; you then have to wait
24 and see if she doesn't exercise the power of
25 appointment; and then you have to apply the default

1 provision; and only then would she ever been entitled to
2 anything. That's the way it works.

3 So she was never a beneficiary in the '98 document,
4 in the 2012 document, in the 2014 document, in the 2015
5 document. It works the way all of them work. It all
6 goes to the wife, and the wife gets to decide who gets
7 it. So there's a double layer of contingency here in
8 that not only do you have to go back to those documents,
9 you then have to wait until Mrs. Barringer passes away,
10 and then, only if she doesn't exercise the power of
11 appointment.

12 THE COURT: And she would be entitled. Okay.
13 Okay. So just so I understand, so that contingency was
14 in the trust, correct? But if she doesn't designate,
15 Ms. Barringer doesn't designate, then, the three
16 children take, I'm going to assume. Am I wrong on that?

17 MR. TWOMBLEY: Right. It's called a default
18 provision.

19 THE COURT: It's default or contingency?

20 MR. TWOMBLEY: It is default.

21 THE COURT: Okay. Okay.

22 MR. TWOMBLEY: But to say that she is a beneficiary
23 is not -- was factually incorrect, and Mr. Ruff
24 correctly --

25 THE COURT: But she was named as a default in the

1 trust. Is that correct?

2 MR. TWOMBLEY: If --

3 THE COURT: A default beneficiary.

4 MR. TWOMBLEY: Yeah. If, if, when Mrs. Barringer
5 passes away.

6 THE COURT: I understand all that.

7 MR. TWOMBLEY: At some point in the future, if the
8 power is not exercised.

9 THE COURT: Then she was. Okay. I'm going to
10 require it be turned over. So let's go to the next one.

11 MR. GILREATH: All right. Your Honor, back to
12 where -- I think I started on this, and got off on
13 something else. But I know one thing we don't have.
14 They can correct me if I'm wrong, but I think we got
15 something yesterday, but I'm not sure. We asked for all
16 of the documents that relate to the stock ledger, copies
17 of the stock, front and back and all of that. And we
18 have still never gotten the stock ledger. And one
19 reason we want the stock ledger is to see what, if
20 anything, she's done with her stock since she got it.
21 Because, if we prevail and we're entitled to that stock,
22 then we're claiming it ought to be under some kind of
23 constructive trust or something. And they just stiffed
24 us on the stock ledger. We got a copy of the stock
25 ledger from way back, but we haven't seen a current one,

1 and they just haven't produced that. And they have --
2 they just produced some copies of stock certificates,
3 which are very interesting, because, I mean, Mr.
4 Barringer didn't even sign some of these stock
5 certificates, which tells me a lot.

6 Another thing we -- this is getting off the stock.
7 We've asked for drafts of the wills that were going
8 around. We didn't get any drafts.

9 THE COURT: Okay. We need to get back to the stock
10 ledgers, because if I don't take these things one at a
11 time, then I don't think I'm going to be able to address
12 them.

13 MR. GILREATH: Okay.

14 THE COURT: So let's talk about the stock ledgers.
15 Do we have them?

16 MS. PAYLOR: Our client doesn't have a current copy
17 of the stock ledgers to give. CFRC would have those.

18 THE COURT: Okay.

19 MS. PAYLOR: She has not disposed of any of her
20 stock.

21 THE COURT: Okay. All right. So for the record,
22 she says she has not disposed of any of her stock. Is
23 that correct? For the record?

24 MR. GILREATH: That's for the record.

25 THE COURT: That is for the record. Okay. So it

1 sounds to me that if you really wanted those stock
2 ledgers, you'd have to get them from the CFRC. I know
3 you can say they're in and of the same, but again.

4 MR. GILREATH: Of course, she controls CFRC. CFRC
5 says get her to get them. She controls CFRC. See,
6 that's where we get whip-sawed.

7 THE COURT: She just said that she hasn't disposed
8 of any of her stock. I mean, again. And so, Ms.
9 Paylor's binding her to that, and that's what it is,
10 right?

11 MS. PAYLOR: She has not, so I think we're safe on
12 it.

13 THE COURT: She has not. Okay. I think we're
14 okay.

15 MR. GILREATH: All right. We've asked for copies
16 of any of the draft wills or trusts or anything that
17 Merrill Light may have had. We haven't gotten anything
18 on any of that. And they were changing all of his stuff
19 back in this time frame. And Randy Light was in the
20 middle of it. And so was Merrill. But I'd be surprised
21 if there are not some emails or some drafts. And we
22 don't have anything, my understanding.

23 THE COURT: And these are of Mr. Barringer's? Is
24 that what we're talking about?

25 MR. GILREATH: Mr. Barringer, yeah, right.

1 THE COURT: Okay. Yes.

2 MS. PAYLOR: Neither Randy Light nor Merrill Light
3 have any such documents, so we cannot produce them.

4 MR. GILREATH: Do they not have any emails?

5 MS. PAYLOR: He's produced all emails. Now, his
6 emails only go back to 2015.

7 MR. GILREATH: Well, that was the thing I was
8 starting to talk about awhile ago, and we got off on
9 something else. But it was this document. Where's that
10 thing? Mike, you handed it to me. Oh, yeah, this is a
11 declaration of Kevin Bundy, who is somebody with the
12 firm I think Mr. Molster used to be with it, and he says
13 they were turned over, the email accounts and passwords,
14 and that the E-discovery Group collected two collections
15 of both emails accounts, which was conducted on July
16 30th, 2015. Another collection was conducted on
17 September 2017. Almost all the material collected was
18 from 2015 forward. Where's the stuff from before? The
19 E-discovery Group found fourteen items from 2015, and no
20 items before. Now, they cite this email, this thing
21 here in their brief here as somehow being conclusive of
22 the fact that he's got no email account. He says that
23 he deleted all of his emails and all of that, so we've
24 asking him, saying if that's what you did, --

25 THE COURT: You said *he*. Who is *he*?

1 MR. GILREATH: Randy. If Randy Light says he
2 doesn't have any emails, then I think this Court needs
3 to require him to give this Court an affidavit to that
4 effect. And then, if I find one of those emails, he's
5 going to be in some kind of trouble, if I can have
6 anything to do with it. But they just make this kind of
7 statement that he doesn't have an email account, but he
8 hadn't even verified an interrogatory or anything saying
9 that. If he doesn't have them, fine, but I want
10 something in writing, under oath, presented on the
11 record that that's his story. Because I'm going to take
12 his deposition. I'll get -- you know, I'll have some
13 questions about that. And you know, somebody says they
14 don't have any emails, they better be sure they don't
15 have any, because it's hard to hide emails. You never
16 know where they're going to show up. But right now, all
17 I got is a statement and a brief from his lawyers making
18 kind of a vague --

19 THE COURT: I guess you could do a request to
20 admit.

21 MS. PAYLOR: Well, what happened was, they gave
22 their computers to Mr. Molster when he was in Winston &
23 Strawn. And they had their I.T. people try to recover
24 the emails.

25 THE COURT: Okay.

1 MS. PAYLOR: And they could not. So that's where -
2 - that's why we attach that, because --

3 THE COURT: We found none. Okay.

4 MS. PAYLOR: Thank you. He doesn't have any.

5 MR. GILREATH: If he says he doesn't have them,
6 fine, but can we get something in the record that either
7 his answer to one of these responses or either file an
8 affidavit to that effect? I'm going to give him an
9 interrogatory.

10 MS. PAYLOR: That's fine.

11 THE COURT: Well, why don't you? Just give him an
12 interrogatory or request to admit or something.

13 MS. PAYLOR: That's fine.

14 MR. GILREATH: But he's going to have to sign that
15 interrogatory.

16 THE COURT: Okay.

17 MR. GILREATH: Yeah, we've asked in Request 23 for
18 documents showing when Mr. Jolley became the attorney,
19 and we haven't gotten anything on that.

20 MR. DUFFY: Became the attorney for what?

21 THE COURT: Yes, what are you talking about? Whose
22 attorney for what?

23 MR. GILREATH: For CFRC.

24 MS. PAYLOR: That's in CFRC files. Our clients
25 don't have any such documents.

1 THE COURT: Okay. So who did they serve a subpoena
2 on for CFRC?

3 MR. GILREATH: He whip-sawed with that.

4 MR. DUFFY: Your Honor, they served it on CFRC's
5 corporate headquarters, which is located in Havana,
6 Florida.

7 THE COURT: Thank you.

8 MR. DUFFY: We were actually here on that issue. I
9 think your Honor entered an order commissioning an out-
10 of-state subpoena to go to Florida for that very reason.

11 THE COURT: Okay.

12 MR. GILREATH: We haven't gone down there yet. You
13 know, we're going. I guess we'll have to.

14 THE COURT: So it sounds to me like you're going to
15 Florida to get that from CFRC.

16 MR. DUFFY: And your Honor, I don't have the exact
17 date of that subpoena, but I can assure you that it was
18 at least six months ago. I think it was October 2017.
19 CFRC, in their course of business, did oppose some
20 objections to that subpoena. They have not written them
21 a letter, filed a motion to compel, pursued it any way
22 whatever in the Florida courts, as would be the proper
23 procedure.

24 THE COURT: Right. Who is CFRC's attorney down in
25 Florida? Do you know?

1 MR. DUFFY: Your Honor, I think it -- because it's
2 a Virginia corporation, CFRC's actually represented by
3 counsel in Virginia.

4 THE COURT: Got it.

5 MR. DUFFY: It's a firm, previously Hunton &
6 Williams. I think they just went through a merger.
7 It's Hunton & Kurth now, or something like that.

8 THE COURT: Okay. Okay. Okay.

9 MR. GILREATH: Your Honor, another document that
10 they put on privilege log, it's on -- dated 9-12-12,
11 which is one day after 9-11-12. All right. This is on
12 -- it's Exhibit 13 in the Merrill Light filing we gave
13 you a copy of. And it's on a privilege log, and it's
14 dated 9-12-12, which is the day after the stock --
15 reported stock transfer. The author is John M. Jolley.
16 And it's an email to Paul Barringer and Merrill Light.
17 Re: Legal Advice Re Attorney's Fees. It's a letter.
18 We think that clearly would be covered by the
19 testamentary exceptions the day after the gift. That's
20 under Tab 13 in one of my books, in the Merrill Light
21 book I gave you, I believe.

22 MS. PAYLOR: With regard to that, that letter is
23 only about legal fees. It does not mention anything
24 else. And that's it. So we don't think the
25 testamentary exception would apply to that gift anyway,

1 but it doesn't even talk about the gift. We could show
2 it to you if you wanted.

3 THE COURT: I'm looking for it right here to see if
4 it's here.

5 MS. PAYLOR: We'd be happy to show your Honor in
6 camera.

7 THE COURT: So it just has to do -- it's just legal
8 fees?

9 MS. PAYLOR: Yes, ma'am.

10 THE COURT: And what do you want that for, Mr.
11 Gilreath?

12 MS. PAYLOR: We may not have it here, but we can
13 send it to you.

14 MR. GILREATH: Well, we wanted to see it because,
15 mainly because the date is the day after the gift.
16 That's what perked my attention.

17 THE COURT: It was a bill. They're saying there
18 was a bill.

19 MR. GILREATH: Right.

20 THE COURT: So you're saying it was not a bill.

21 MR. DUFFY: Judge, it's not a bill. It's a letter
22 about the payment of attorney's fees.

23 THE COURT: Okay.

24 MR. MOLSTER: Legal advice.

25 MR. GILREATH: How long's the letter?

1 MS. PAYLOR: It's like a paragraph. It's not long.

2 MR. DUFFY: Well, if you look at the privilege log,
3 it's one paragraph long. So I mean.

4 THE COURT: And what's it say? Do you owe? I
5 mean, what does it say?

6 MR. GILREATH: If it's got nothing to do with
7 gifts, then --

8 MR. MOLSTER: It's got nothing to do with the gift.
9 It's a discussion about legal advice regarding payment
10 of attorney's fees.

11 THE COURT: Okay. So they're saying it has nothing
12 to do with the gift. So they don't need to give that to
13 you. Okay. Do you want me to -- is it okay? I'm going
14 to step down for another five minutes. You want to go
15 through your list and see what is in there that we can
16 keep going.

17 MR. GILREATH: We'll take a break for a minute?

18 THE COURT: Yes, if that's okay.

19 MR. GILREATH: That would be help.

20 THE COURT: We'll take ten minutes, you all. Let's
21 just go ahead and take ten minutes. But yes, it'll give
22 you an opportunity to go through kind of fill me in on
23 what it is you're looking for. And got it. Okay? All
24 right. Thank you.

25 OFF THE RECORD 11:38 A.M.

1 BACK ON THE RECORD 11:49 A.M.

2 MR. GILREATH: All right, your Honor, I think we
3 got our list down.

4 THE COURT: Okay.

5 MR. GILREATH: I've got this six-month old, little
6 knee that ain't working real good yet. First time,
7 anyway, so if I'm slow getting up and down, that's why.
8 All right. We've got just a few and I think we'll be
9 through on Merrill Light.

10 In our brief, on Page -- and I'm going through to
11 this brief now so you can follow this. Page 10, Request
12 Number 32, we seek some information between Paul Light,
13 who's Randy and Merrill's son, regarding the possible
14 sale of CFRC, and we haven't -- I don't think we got
15 anything on that.

16 THE COURT: So this is --

17 MR. GILREATH: This is in our brief. It's on Page
18 --

19 THE COURT: Is this the something above and beyond
20 that was produced at any board of directors meeting? Is
21 that what you mean? Or was it produced at a board of
22 directors meeting, or it's just his background?

23 MS. PAYLOR: There are no such documents.

24 THE COURT: We're talking about Paul Light,
25 correct?

1 MR. GILREATH: Yeah, on 32.

2 MS. PAYLOR: The son of Merrill and Randy Light.
3 There are no such documents.

4 MR. GILREATH: I don't think you -- I don't think
5 you said that --

6 MS. PAYLOR: Our clients don't have documents.
7 Maybe there are some at CFRC.

8 THE COURT: CFRC? So we see the problem.

9 MS. PAYLOR: Yeah, he worked for the company.

10 THE COURT: And that begs the question. He, of
11 course, was of age. What did he do for CFRC? Do you
12 know?

13 MS. PAYLOR: I think he was an analyst.

14 THE COURT: Okay.

15 MS. PAYLOR: He analyzed properties to buy and
16 sell. He was getting into the saw dust, but apparently
17 he didn't stay, so.

18 THE COURT: Okay.

19 MR. GILREATH: Well, I don't think they -- I don't
20 think they -- you hadn't ever told us you don't have any
21 documents, have you?

22 THE COURT: She's saying that the Lights don't have
23 any documents. She's saying that potentially, CF -- or
24 CFRC -- sorry -- potentially could.

25 MR. GILREATH: Okay.

1 THE COURT: So my question is, do you need to --
2 how are we going about all this with the CFRC? Do we
3 need to be subpoenaing these potential documents from
4 them, or how are we doing this?

5 MS. PAYLOR: They subpoenaed documents from CFRC.
6 CFRC interposed many objections, including who was going
7 to pay for the search and that type of thing.

8 THE COURT: Okay.

9 MS. PAYLOR: And they didn't do anything after
10 that.

11 THE COURT: So you need to follow up on that, so.

12 MR. GILREATH: We're going to. Of course, you
13 know, Randy Light's chairman of the board of CFRC, and
14 his wife is controlling stockholder. They can make it
15 happen, but apparently, you know. My understanding of
16 the discovery rules, because they always pulling this on
17 me, if your client's got control of the people who got
18 that document, you got to give it up. And that's what
19 we got here, and it's not happening.

20 MS. PAYLOR: This is a corporation.

21 MR. GILREATH: And they're playing me back against
22 this out-of-state company and --

23 THE COURT: I think the problem is -- I understand
24 that, but the problem is, you've sued these people
25 individually in the company. That's, I think, where the

1 difference is in where you're subpoenaing. I think
2 that's where the documents should come from. And I
3 mean, I saw you made a motion for sanction in all of
4 this, too, and I think that's something we're going to
5 have to visit, as well.

6 MS. PAYLOR: They haven't pierced the corporate
7 veil. I mean, this whole control thing.

8 THE COURT: Okay.

9 MS. PAYLOR: I mean, they live here in Hilton Head.
10 They don't -- they're not employed at the company,
11 running the company as such.

12 MR. GILREATH: Randy's drawing a quarter of a
13 million dollars a year over there. He's doing pretty
14 good.

15 MS. PAYLOR: He's the chairman of the board.

16 THE COURT: He's the chairman of the board. Okay.

17 MR. GILREATH: Makes \$250,000.00 a year, and he
18 can't make this happen? He's vice president and
19 chairman. All right. Anyway.

20 THE COURT: Is he involved at all in the daily
21 operations?

22 MS. PAYLOR: No.

23 THE COURT: Is that a no, Ms. Paylor?

24 MS. PAYLOR: No, he's not. He's the board of
25 directors. The board of directors.

1 THE COURT: I understand.

2 MS. PAYLOR: They do the big --

3 THE COURT: He flies in quarterly and does his job.
4 Okay.

5 MR. GILREATH: And I would remind -- it's somewhere
6 in the records, your Honor, but may be the appropriate
7 time for me to say this. When Mr. Barringer's mind was
8 right, he would not let Randy Light even come to a board
9 meeting.

10 THE COURT: I understand.

11 MR. GILREATH: Said he was the sorriest -- sorriest
12 businessman he ever knew.

13 THE COURT: I read that in the amended subsequent
14 complaint.

15 MR. GILREATH: And that's one reason my client's
16 upset.

17 THE COURT: Right. I understand that.

18 MR. GILREATH: Okay.

19 THE COURT: I understand that.

20 MR. GILREATH: Now, Request Number 37, 38, 39, on
21 Page 11, that should be benefits -- fringe benefits paid
22 to Randy Light. We got -- I think we got one thing. We
23 don't think we got it all. I mean, that -- that goes
24 straight to the motive of what's going on here. We got
25 that email. We talk about it in our complaint. Read it

1 last night, right before I went to bed. That's the last
2 thing I read before I went to sleep. I had forgotten
3 how long it was. But we talk about that in there, and
4 we talk about these emails of Mr. Light, Mr. Randy
5 Light, where he's -- I mean, and Merrill, where she's
6 talking about Randy's in all this trouble down there,
7 and I mean, it's got to be connected, or it -- I feel
8 sure we're going to be able to put all that together.
9 So we're looking for those emails or whatever, answers
10 to those requests.

11 THE COURT: So you say that. So what are you
12 looking for, then? Do you want those from Randy Light?
13 Do you want those from CFRC? I guess I'm trying to
14 figure out the difference between -- there's \$250,000.00
15 here as a COB, but as someone who is supposedly in
16 serious debt, you're looking for serious money
17 transfers, like millions, correct? I mean, is that what
18 you're looking for?

19 MR. GILREATH: Yeah, we -- I mean, I'm not looking
20 for \$50.00 or something. But I mean, if it's -- I don't
21 know what I'm looking for 'til I see it. It's kind of
22 like that form. I didn't see it. I knew when I saw it,
23 I wanted it. And I should have gotten it earlier.

24 MS. PAYLOR: Well, it was attached to our memo INJ,
25 that they had already received the compensation paid to

1 him.

2 THE COURT: To Mr. Light.

3 MS. PAYLOR: And that's what he just referred to
4 when he says he's making a quarter of a million dollars
5 a year.

6 MR. GILREATH: Yeah, we did get something from
7 that. Some of that stuff, we got it in here. And then,
8 I get it, you know, in an email last night or the day
9 before or something.

10 MS. PAYLOR: No. No. This was given to you a long
11 time ago.

12 MR. GILREATH: Okay. But as we say, that goes to
13 the motive. Request Number 40 and 41 seek information
14 regarding corporate board minutes concerning
15 compensation paid to members of CFRC, the board from
16 July 2012 'til present.

17 THE COURT: Just so I'm clear, I thought Hampton
18 Luzak was on the board at the time. Was she not?

19 MS. PAYLOR: She has offered a seat on the board
20 and she declined.

21 MR. GILREATH: No, she didn't -- she declined. She
22 wasn't going to --

23 THE COURT: She was never been on the board?

24 MR. GILREATH: She's never been on the board.

25 THE COURT: Okay.

1 MS. PAYLOR: She was never on the board.

2 MR. GILREATH: Her husband was on the board.

3 THE COURT: Her husband was on the board. Okay. I
4 knew some was.

5 MS. PAYLOR: But she was offered a seat and she
6 declined.

7 MR. GILREATH: They offered her a seat, but, I
8 mean, she wasn't interested in going to a board meeting
9 and getting outvoted every time, and she was dealing
10 with the people that had already taken her daddy's
11 stock. Number 40 and 41.

12 THE COURT: Okay. So you said 40 and 41. You want
13 the corporate board minutes.

14 MR. GILREATH: Yeah.

15 MS. PAYLOR: That's CFRC, your Honor.

16 THE COURT: Yes, again, is there any reason why you
17 don't get those from CFRC? because they should produce
18 those to you.

19 MR. GILREATH: Well, we can get them. Request 42
20 and 44 deal with dividends. Now, that -- I'm still --
21 I was just getting ready to talk to Ms. Paylor about the
22 -- they said -- I heard it, and Bill was telling me at
23 the break, that he -- we didn't need to worry about this
24 because we're going to get all the stuff from the
25 Eastern District of Virginia. And she said they're not

1 going to object to it. But the question -- and of
2 course, we've got some of that stuff. We can't use it,
3 because it's subject to that order.

4 THE COURT: We all agreed. Let's go back again.
5 And correct me if I'm wrong. Ms. Paylor, Mr. Twombly,
6 help me out here. Again, we've agreed that we are going
7 to go ahead and use that, and we are -- it's going to be
8 able to be used in this litigation, correct?

9 MS. PAYLOR: Subject to the confidentiality order.

10 THE COURT: Subject to the confidentiality order.

11 MS. PAYLOR: Yeah.

12 MR. GILREATH: Now, all right, only thing I want
13 to be sure of is, because if I'm a party -- well, Mr.
14 Molster here is a party, and probably some other people
15 in this room, party to that thing up there, and it says
16 you can't -- it's the strongest confidentiality order
17 I've ever seen. And I don't think that, too -- I think
18 everybody in there on the order would have to agree to
19 it, including CFRC. And so, are you all representing
20 the majority?

21 MR. MOLSTER: We don't represent CFRC. We will use
22 our best offices to encourage CFRC to also agree that
23 they can use the documents that were produced in the
24 Eastern District of Virginia litigation, in this
25 litigation, pursuant to the provisions of the

1 confidentiality order.

2 THE COURT: And correct me if I'm wrong. All I'm
3 required to do is tell them -- can I just say that
4 whatever was produced in that litigation, you all can
5 use it in this litigation? And again, I understand that
6 that was subject to that confidentiality order, but,
7 again, I think I can.

8 MR. GILREATH: I don't think we can do that under
9 that order, unless everybody to the order agrees. Does
10 everybody agree?

11 MR. MACLOSKIE: I think you can do that, but the
12 problem is, it doesn't -- your order that we can use the
13 CFRC material from the Eastern District is -- would be
14 effective here.

15 THE COURT: Right.

16 MR. MACLOSKIE: But that would not prevent the
17 Eastern District of -- the courts in the Eastern
18 District, Judge Trenga up there, for doing something for
19 violating that confidentiality order.

20 THE COURT: Their court order.

21 MR. MACLOSKIE: If we didn't have the consent of
22 Charlie Sanders, and that outfit is the outfit that
23 represents CFRC.

24 THE COURT: So is the easiest way to do it, then,
25 if those documents were all -- no, you guys are all

1 subject to the confidentiality order, too.

2 MS. PAYLOR: We are.

3 MR. TWOMBLEY: Your Honor, --

4 THE COURT: Why can't we just produce it all again,
5 and use it.

6 MS. PAYLOR: What we're saying is, we will contact
7 the attorneys for CFRC --

8 THE COURT: Yes.

9 MS. PAYLOR: -- and ask them if they will consent
10 to letting us use them in this litigation, and in this
11 litigation only, subject to confidentiality.

12 MR. GILREATH: Well, I appreciate that, but --

13 MR. MACLOSKIE: Matter of fact, encourage them.

14 THE COURT: And let's just use --

15 MR. GILREATH: Well, let's just see what happens.

16 THE COURT: You can go one step further, and tell
17 them if they can't agree to that, I'll set a date, and
18 we can go ahead and set it right now, where they can
19 come into court and tell me why I can't use it.

20 THE COURT: So we'll look forward to that. And
21 then, I'm assuming unless they're licensed here, they're
22 going to have to hire local counsel and have someone
23 argue on their behalf, so I think we need to have a
24 strong encouragement for that. So I'm going to pick a
25 date for you already to say, if you disagree, then

1 you're coming to see me, and we'll go from there. Okay?

2 MR. GILREATH: I appreciate that. I appreciate
3 their help. I will say somewhere in the brief -- I
4 don't know they said it or not -- they keep talking
5 about this bunch of documents. It really is not that
6 much documents. But in their briefs, you know, kind of
7 looks like it's a big pile of documents. It's only
8 about what? 463 pages, and 150 of it's hers, so it's
9 not a lot of documents.

10 THE COURT: Okay.

11 MR. GILREATH: But there are some documents that
12 would be very pertinent to this litigation, and they
13 should be here. All right. Hopefully, we'll get that.
14 That'll work itself out.

15 Now, in our reply brief, on Page 4, we talk about
16 September --

17 MR. HOGAN: It's Exhibit 2, to our reply brief.

18 MR. GILREATH: It's Tab 2, to our reply brief.
19 It's Paragraph 4, September 20, 2012 email from Randy
20 Light and John Jolley, with a cc to Travis Bryant.
21 Those emails, we say, fall out of the attorney/client
22 privilege. They're not privilege. This -- actually,
23 this document here is a privilege log.

24 MS. PAYLOR: It starts on Page 3.

25 MR. GILREATH: It talks to a subpoena served by the

1 plaintiff on John Jolley. And that document on the
2 privilege log is a 2012 email from Randy Light to John
3 Jolley, with cc to Travis, obviously about a gifting
4 procedure to Merrill. John Jolley responds. Those
5 clearly would fall outside the testimony exception
6 communication between attorney/client and somebody
7 that's -- that's what they say. We say it'd be part of
8 the testimony exception, and it's also -- a person's not
9 a lawyer on it.

10 THE COURT: Okay. And John Jolley prepared the
11 Paul Barringer revocable trust, correct?

12 MS. PAYLOR: I'm sorry, your Honor.

13 THE COURT: John Jolley from McNair prepared the
14 Paul Barringer revocable trust. Am I correct?

15 MS. PAYLOR: He did. He did.

16 THE COURT: Okay.

17 MS. PAYLOR: He was Paul Barringer's lawyer.

18 MR. GILREATH: He was also the company lawyer.

19 MS. PAYLOR: Well, yeah, he was the company lawyer,
20 so he's dealing with two clients.

21 MR. GILREATH: He's in it all the way up to his
22 eyebrows.

23 THE COURT: And he became a company lawyer in 2012,
24 correct?

25 MR. GILREATH: Right.

1 THE COURT: Once Mr. Luzak got kicked off or kicked
2 out, and once everything allegedly changed.

3 MR. GILREATH: Merrill comes in with her lawyer and
4 her husband's lawyer, company lawyer.

5 THE COURT: I understand.

6 MS. PAYLOR: Well, this is attorney/client
7 privilege. Clearly, it's John Jolley; Randy Light, who
8 is John Jolley's client; and Travis Bryant, who is CFRC,
9 is a client.

10 THE COURT: But they're looking for -- I thought
11 what they're looking for is the will. What are you
12 looking for exactly from John Jolley?

13 MR. GILREATH: Well, we're -- this is a document.
14 It's on the privilege log. And it's an email, and it --
15 yeah, very possible gifting procedure to Merrill Light.
16 So I mean, here is an email. It's actually got a non-
17 lawyer on it, but it ought to be part of the
18 testamentary exception. It's dated September 20, 2012.

19 THE COURT: Who's the non-lawyer on it?

20 MR. MACLOSKIE: Travis Bryant.

21 MS. PAYLOR: Travis Bryant.

22 MR. GILREATH: Travis Bryant's not a lawyer. He's
23 a CEO.

24 THE COURT: Of CFRC.

25 MR. GILREATH: CFRC, right.

1 MR. TWOMBLEY: He's a client.

2 MS. PAYLOR: He's a client. This is -- doesn't
3 have anything --

4 MR. GILREATH: I don't know whether he's
5 representing them or not, but it's still got to do with
6 testamentary exception. I mean, you're talking about
7 gifted procedure.

8 THE COURT: So what you're telling me is there
9 should be something in an email or some document from
10 Mr. Barringer or Merrill Light to John Jolley about this
11 gift to Merrill Light. I mean, you're guessing that it
12 has Merrill Light or someone on it, correct?

13 MR. GILREATH: Well, I mean, this was in September
14 of 2012. This is nine days after the fake 9/11/2012
15 gift that this whole lawsuit's about. Transfer of that
16 stock.

17 THE COURT: Okay.

18 MR. GILREATH: This is nine days after September
19 9th. Is it 9/11. September the 9th is what it is.

20 MS. PAYLOR: There's no discussion of that.

21 MR. GILREATH: That's the way I remember it.

22 MS. PAYLOR: There's no discussion of that. That
23 is about something else. You know, is it possible to do
24 a certain gift or something like, you know. It's not
25 anything to do with that stuff. He's asking for legal

1 advice on gifting.

2 MR. GILREATH: That sounds like mighty close to
3 this thing. I think we ought to be able to get that.

4 THE COURT: Well, that one, I think, Ms. Paylor,
5 I'm going to have you give me that letter just for an
6 in-camera review.

7 MS. PAYLOR: Okay.

8 THE COURT: Whoever has it, before I turn them
9 over.

10 MR. GILREATH: I'm okay with that. I'm okay with
11 that. All right, now, let's see. We got Number 5
12 yesterday or early this morning.

13 THE COURT: Hold on a second. You keep looking
14 while I do this.

15 MR. GILREATH: Okay. Excuse me. Oh, you got it up
16 there now?

17 MS. PAYLOR: It's attorney/client privilege and it
18 has nothing to do with the testamentary exception.

19 THE COURT: It has to do, though, with the heart of
20 this case, doesn't it? I mean, it's --

21 MS. PAYLOR: No, he's asking for legal advice.
22 It's privileged. It's clearly privileged.

23 THE COURT: It's Randy Light asking for legal
24 advice?

25 MS. PAYLOR: Yes. It's about something -- it's

1 about something that never happened, also.

2 THE COURT: I understand that, but let me ask you
3 this, Ms. Paylor. How do you and I discuss this and you
4 explain to me what this is, and if it's attorney/client
5 privilege, not letting them know? You see what I'm
6 saying? Like, I can't -- it looks to me like it has
7 obviously something to do with money and giving a gift
8 and how to go about it, so. And I understand you're
9 saying it's attorney/client privilege, but -- what's the
10 date on this? September 20th of 2012. And at this
11 time, this is already after Mr. Light has been placed
12 back on the board, correct?

13 MS. PAYLOR: Yes.

14 THE COURT: He was placed on the board -- at first,
15 that's all -- he was placed on the board.

16 MS. PAYLOR: He was put -- I think in August he was
17 placed on the board. He was put on the board in August.

18 THE COURT: Okay.

19 MS. PAYLOR: He's just asking a question, legal
20 question for legal advice.

21 THE COURT: Like I say, it looks relevant to me,
22 and that's why I need you to tell me why it's
23 privileged.

24 MS. PAYLOR: It might be relevant, but it's
25 privileged. Whether it's attorney/client privilege.

1 That's his lawyer. It's also Travis Bryant's lawyer.
2 He's asking a question that concerns both. The whole
3 thing about attorney/client privilege is so he'd feel
4 free to ask whatever questions are out there and not
5 worry that they're disclosed later. And that didn't
6 happen. Nothing happened.

7 MR. GILREATH: But the purpose of the testamentary
8 exception is --

9 MS. PAYLOR: it's not him, though.

10 THE COURT: It's not him, though. This is not.
11 It's by Mr. Light. This is not Paul Barringer. This is
12 Mr. Light.

13 MR. GILREATH: Okay. Right. Right.

14 MS. PAYLOR: I think it's clearly covered by the
15 attorney/client privilege. The parties and what he's
16 requesting is legal advice. He's just asking a
17 question.

18 MR. GILREATH: Well, I can't see it, so I can't
19 enter in this conversation, unfortunately.

20 THE COURT: Well, we'll take that up in just a
21 minute. We'll take that up in just a minute. Let's go
22 on to the next thing.

23 MR. GILREATH: Ma'am?

24 THE COURT: Let's go on to what's next after that.

25 MR. GILREATH: I was just going to suggest one

1 thing on that letter before I forget it. You haven't
2 ruled on it yet, right?

3 THE COURT: I have not.

4 MR. GILREATH: I think it would be -- I would say
5 -- of course, I've got to see it, and then, I may have
6 to make a motion or something. But I would be willing
7 to take it for attorney's eyes only, so, if they're
8 worried about my client seeing it.

9 THE COURT: They're worried about the what? Your
10 client seeing it?

11 MR. GILREATH: Sometimes you do these things where
12 they're attorney's eyes only. In other words, --

13 THE COURT: I don't think that would matter in this
14 case.

15 MS. PAYLOR: No.

16 THE COURT: I guess my question to you would be is,
17 I need to know whether -- the letter is from Randy Light
18 to John Jolley. My question at the time is whether or
19 not John Jolley is Randy Light's personal attorney and
20 whether or not he is CFRC's attorney --

21 MS. PAYLOR: He's both.

22 THE COURT: -- at the time, just September 20th.
23 And the reason why is this, because it is copied to
24 Travis Bryant, who, correct me if I'm wrong, at the time
25 -- and I do not know this -- if he was president of

1 CFRC. And that's what I need to know.

2 MS. PAYLOR: He was. He was.

3 THE COURT: He was?

4 MS. PAYLOR: And -- yes. John Jolley was --

5 THE COURT: And you're telling me -- The lawyer for
6 CFRC -- I think you can easily tell me what date that
7 is, because from everything I see, he was -- when all
8 this happened, at some point, John Jolley --

9 MR. TWOMBLEY: He was clearly the lawyer at that
10 time.

11 THE COURT: Pardon?

12 MR. TWOMBLEY: He was clearly the lawyer at that
13 time. I mean, he --

14 THE COURT: So can you tell me the date he became
15 the lawyer for CFRC?

16 MR. GILREATH: That's something I think we've been
17 asking them to show us.

18 MR. TWOMBLEY: I think it was June or July. I
19 mean, there's minutes where --

20 THE COURT: I know, but you got to tell me. That's
21 fine, but give me the date.

22 MR. MOLSTER: Some time in July of 2012, I believe.

23 THE COURT: Okay.

24 MR. MOLSTER: Brad Herring resigned.

25 THE COURT: Right.

1 MR. GILREATH: Yeah, Brad Herring resigned.

2 MR. MOLSTER: He was the CPA counsel, and Jolley
3 was but in.

4 THE COURT: I understand that, which also begs the
5 question of why did all of this blow up, and why did
6 Brad Herring resign as well.

7 MR. TWOMBLEY: Because Ms. Luzak and Mr. Luzak
8 accused him of, you know, not doing --

9 THE COURT: Being in cahoots with everybody else?

10 MR. GILREATH: Being in cahoots with everybody else
11 and not following, you know, not doing what he was
12 supposed to do. And so, he'd been corporate counsel of
13 that firm, he'd been corporate counsel for years and
14 years and years. And he said, I'm getting out of this
15 mess.

16 THE COURT: That, or he thought everything smelled
17 wrong or bad and he didn't want to get sued, too. So
18 that's going to be another potential issue of all that,
19 so I think you can look at this a lot of different ways,
20 which is why it's a jury issue. Okay. Well, find me
21 the date that John Jolley became counsel.

22 MR. GILREATH: He was counsel then.

23 MR. TWOMBLEY: I think they agree he was counsel at
24 the time that email was sent.

25 THE COURT: That that email was sent. And he was

1 counsel for CFRC?

2 MR. GILREATH: That's one of the things we had and
3 some of the stuff we filed is tell us when John -- what
4 is that question? When did John Jolley become counsel.

5 THE COURT: Well, I could have sworn I read it last
6 night somewhere. It's somewhere in here, because I'm
7 pretty positive I read it. So it's somewhere in here.

8 MR. HOGAN: We discussed it earlier this morning,
9 Judge.

10 MS. PAYLOR: It might be in the minutes of the
11 board.

12 THE COURT: What I'm concerned about is, for some
13 reason, Ms. Paylor, I thought that all this happened at
14 a board meeting; all this went down; and then it was
15 after the fact that they hired -- and I don't know if it
16 was in the next meeting or in the next potential phone
17 conference where they went ahead and agreed that Mr.
18 Jolley was going to be, you know, corporate counsel, and
19 maybe even secretary, or was that Mr. Ruff? I think it
20 was John Jolley. He was going to be secretary and --
21 yes.

22 MR. MOLSTER: I think assistant secretary.

23 THE COURT: Assistant secretary.

24 MR. MOLSTER: I think what happened was, there was
25 a board meeting on June 28, 2012, where Mr. Luzak was

1 terminated.

2 THE COURT: Got it.

3 MR. MOLSTER: Brad Herring was counsel for the
4 company then. The next board meeting, I believe, was
5 August 3rd. It was a shareholders' meeting and a board
6 meeting. Same day. And John Jolley was counsel for the
7 corporation by that point, which is why I think some
8 time in July of 2012 he replaced Brad Herring as
9 counsel.

10 MR. GILREATH: I think that's correct, your Honor.

11 MS. PAYLOR: He clearly was on that date, because
12 this is a letter of September 17 when he writes Mrs.
13 Luzak on behalf of Coastal Forest Resource Company to
14 determine if she wants to be on the board.

15 THE COURT: Okay.

16 MS. PAYLOR: So this letter I just found, so I know
17 that on 9-20 he was.

18 THE COURT: Okay. Let's move on to the next thing.

19 MR. GILREATH: All right. Yeah, Number -- I think
20 Number 6 on that same privilege log, February 3, 2015,
21 email from Cindy Sprouse to Randy Light and John Jolley.

22 MS. PAYLOR: That's the one I gave you this
23 morning.

24 MR. GILREATH: No, you gave me the 5th. You gave
25 me Number 5, but I don't think you gave me Number 6.

1 MS. PAYLOR: Well, they're all the same. There's
2 three of them that are the same. One of them has some
3 handwritten notes of Mr. Jolley on it, so I did not
4 produce those to you. I gave you the clean email that
5 she sent to Randy Light or whoever it went to. I can't
6 remember.

7 MR. GILREATH: So you're saying that's the same as
8 the email I got this morning?

9 MS. PAYLOR: Yes. You can see from here, this one
10 has handwritten notes on it. I did not produce that.

11 MR. GILREATH: Well, if it's the same, I think
12 we're all right. We're okay on that. All right. Thank
13 you, your Honor. That will be it. And I understand
14 she's -- we'll await your ruling on it.

15 THE COURT: Yes, sir.

16 MR. GILREATH: I think that's all I've got, other
17 than that email you got in front of you.

18 THE COURT: Okay. Mr. Macloskie, you were saying
19 something about the testamentary exception?

20 MR. MACLOSKIE: I just think it'd be useful. We
21 haven't raised this, but it's obvious that there's some
22 difference in the way we interpret the testamentary
23 exception and the way it's been interpreted to avoid us
24 going behind the execution of testamentary documents
25 that John Jolley may have, because we're entitled to --

1 the testamentary exception, although, it's not only to
2 the execution of those kinds of documents, but also the
3 preparation, based on the Wellen case. And I would just
4 appreciate clarification from the Bench. If you agree
5 with my interpretation of the law to what it means.

6 THE COURT: It hasn't been decided? Has it not
7 been decided?

8 MR. MACLOSKIE: I think the order that you signed
9 said something about the execution, but not the
10 preparation.

11 MR. GILREATH: They appear to be construing it a
12 lot tighter than we are.

13 THE COURT: And I understand what you're saying. I
14 guess my question is this. As to certain things, I
15 understand you're looking towards intent. And while I
16 think the preparation documents may be important, but
17 for things like drafts of wills, until they're executed,
18 what does it matter?

19 MR. TWOMBLEY: And your Honor, they have all that.
20 They have all that.

21 THE COURT: So what exactly are we looking at?

22 MR. MACLOSKIE: Notes.

23 THE COURT: Notes? By who?

24 MR. MACLOSKIE: By the lawyer that were taken in
25 preparation for the documents.

1 THE COURT: So you're looking for -- this is John
2 Jolley's?

3 MR. MACLOSKIE: Yes, ma'am.

4 THE COURT: You're looking for John Jolley's notes.

5 MR. TWOMBLEY: Your Honor, I have to verify, but I
6 think that those have been provided. If it was for the
7 preparations of one of the estate documents, I think
8 it's been provided. I mean, like they say --

9 MR. MACLOSKIE: Bill tells me that he thinks most
10 of it has been provided. So it might be okay.

11 THE COURT: Okay. Well, why don't we just do this.
12 If that is an issue, why don't you just email me, and if
13 there's something else you think is out there.

14 Let me ask you, is there any case law that you all
15 could find, I guess, in questioning -- and again, this
16 is Monday morning quarter backing, because now, you have
17 -- where you have an attorney who is the corporation's
18 lawyer, who is also the personal lawyer of the person
19 that's being accused, potentially, they and their wife,
20 of some type of undue influence or fraud, is there any
21 case law on attorney/client privilege based on that?
22 Because I guess I'm having a hard time understanding or
23 having to go separate the two. I mean, do you just
24 always get around having to produce something if you can
25 -- if you all just use the same lawyer? I mean, it's

1 obviously not good practice. I mean, it's not good
2 practice. I mean, they should never have let their
3 personal lawyer --

4 MR. GILREATH: I agree.

5 THE COURT: -- be the lawyer for the corporation,
6 if they're moved in a corporation.

7 MS. PAYLOR: Your Honor?

8 THE COURT: Yes, Ms. Paylor.

9 MS. PAYLOR: At the time this happened, they didn't
10 know how events were going to unfold. So I mean, to
11 think, you know, they had some nefarious thing going on
12 in September of 2012 --

13 THE COURT: And I agree. It wouldn't necessarily
14 have to be some nefarious thing, but it really isn't
15 best practice by any stretch, even in 2012.

16 MS. PAYLOR: It might not be, but it is what it is.

17 THE COURT: What it is.

18 MS. PAYLOR: We can't change that today.

19 THE COURT: And tell me, what is the value of this
20 company? Is it still it's privately held still,
21 obviously, correct?

22 MR. GILREATH: It's particular valuable, your
23 Honor.

24 THE COURT: Well, I mean, and give me, I mean, I'm
25 seeing dividends of huge amounts, but give me numbers or

1 somebody even. It can be very vague.

2 MR. GILREATH: I think it's worth --

3 THE COURT: You know, I don't want to hear from --
4 I want to see what CFRC says it may be worth. I mean,
5 that's, I think -- I mean, what are we talking about?

6 MS. PAYLOR: We think it's somewhere about 750
7 million dollars.

8 THE COURT: Okay. And that's what I was wondering.
9 My guess was not that high. My guess was, you know, in
10 the 250s. So I -- okay.

11 MR. TWOMBLEY: And your Honor, if I could just --

12 MR. GILREATH: Your Honor, he said that maybe he
13 didn't know, but he knew about the 9-11-12 stock
14 transfer. He was the guy that drafted --

15 THE COURT: You're talking about John Jolley.

16 MR. GILREATH: John Jolley, he's the guy that
17 drafted the paperwork. But now, -- and that's another
18 thing. I don't know whether I mentioned it. Bill, tell
19 me whether we talked about it. Maybe we got all the
20 stock certificates, but I mean, the stock certificates
21 and the paper trail on this transfer of stock is a
22 really -- is kind of messed up. I mean, there's
23 something somewhere I've seen or heard where -- I mean,
24 there's even some question whether the thing got dated.
25 I think what's his name -- well, they actually -- they

1 filed it --

2 THE COURT: Was it the 22nd or was it the 21st?

3 MS. PAYLOR: I mis-spoke about the value. It's not
4 that much. Okay. They just told me it wasn't. It's
5 not that much.

6 MR. GILREATH: Well, I've heard -- I've heard --

7 MR. DUFFY: I don't think we can say. First of
8 all, we don't represent CFRC, and we don't know that
9 much about it.

10 MS. PAYLOR: We don't -- we are just guessing.

11 THE COURT: All right.

12 MR. GILREATH: But what the --

13 THE COURT: Yes, but is it fair to say it's in the
14 hundreds of millions?

15 MR. DUFFY: Yes, I think that's fair to say.

16 MS. PAYLOR: That's fair.

17 THE COURT: Okay. That's all I need.

18 MR. TWOMBLEY: Your Honor, can I --

19 THE COURT: Sure.

20 MR. TWOMBLEY: I just want to make one point.

21 MR. GILREATH: Wait a minute. I'm trying --

22 MR. TWOMBLEY: Oh, I'm sorry. Go ahead. I didn't
23 mean to interrupt.

24 MR. GILREATH: Talking about Jolley, the paper
25 trail on this transfer of stock -- and that's one of the

1 things we complained about. I think we've got that
2 worked out today, tell you the truth. We talked about
3 so much, I'm not sure what I've got and what I don't
4 have yet. But the -- if Bobby Davis talked about this
5 in one of his memos. And he actually dated -- he dated
6 the gift that he finally filed, he dated it December 31,
7 2012. Then there's another document where it's dated 9-
8 11-12. And then, I think there's an email somewhere.
9 It may be -- I don't want to say anything here that's --
10 I think there's an email in the CFRC documents that
11 pretty well confirms that it was not in 2012. And I
12 think Mr. Randy Light was on that email, and we ain't
13 got a copy of that from him either.

14 MS. PAYLOR: He doesn't have it.

15 MR. GILREATH: But that may be the stuff we get
16 worked out on this thing. But I'm telling you, Mr.
17 Jolley, I don't mean to impugn him here in the
18 courtroom, but the paperwork on this was not as clean as
19 you would expect from a New York, Wall Street,
20 securities lawyer. And there's a lot of complaining
21 back and forth in the email traffic about it.

22 MS. PAYLOR: I think Mr. Jolley is a Beaufort
23 County lawyer, not a New York, Wall Street lawyer. And
24 no one has noticed his deposition or taken it and asked
25 those questions.

1 MR. GILREATH: Well, don't worry, I'm going to take
2 his deposition.

3 MR. TWOMBLEY: Your Honor, I just want to make one
4 point.

5 THE COURT: Yes, yes.

6 MR. TWOMBLEY: I mean, it's not unusual in a
7 situation like that where the estate planning lawyer
8 would be representing one family member and also begin
9 to represent another family member, and also
10 representing the corporations of the privately held
11 family corporation. You know, there's two possibilities
12 here. The one possibility is that everyone in the world
13 that believed Mr. Barringer was okay and able to make
14 those decisions, including Mr. Jolley and including his
15 doctor and including his CPA and including all the
16 people that used to work with him, and they thought
17 Hampton was just being a problem child. And so, that,
18 in and of itself, wouldn't necessary cause Mr. Jolley,
19 in my opinion, to say, well, wait a minute; we've got
20 one child out of the entire family and the entire
21 orchestra of other people involved that are raising
22 these complaints; and therefore, I've got to
23 disassociate myself with everyone that I'm representing.
24 I just wanted to put that in a little bit of context,
25 because, obviously, looking back on it and looking at

1 where we are today, you know, perhaps things may have
2 been done different, but at the time, you know, having
3 some context, perhaps it's not that unusual.

4 MS. PAYLOR: And I can say that the Barringer
5 family was very hopeful that Hampton Luzak would come
6 back to the fold and be part of the family. And that
7 didn't happen. And that's where she was offered the
8 seat on the board, which an olive branch to get her
9 back. And you know, and that was everybody's hope.

10 MR. GILREATH: Your Honor, the only thing I'd say
11 about all that, these are the same people who hid that
12 gift from her for two years. And if they're holding out
13 olive branches, why didn't somebody say, oh, by the way,
14 Hampton, I got Daddy to give me all the voting stock in
15 CFRC? I don't believe that telephone call or email was
16 made. And Mr. Jolley was right there in middle of it,
17 and he should have known that that was going to be a
18 problem, because -- I guarantee you, he knew. And I
19 don't want to speculate. I'll take a deposition, but I
20 would suspect he was aware of that. I mean, that's all
21 for discovery.

22 THE COURT: Okay. And again, we're not going to
23 cast aspersions on another lawyer and what they knew or
24 didn't know, so.

25 MR. GILREATH: I understand. I don't know what

1 anybody knew.

2 THE COURT: I understand. He enjoys a very good
3 reputation in Beaufort County.

4 MR. TWOMBLEY: And I know a lot of this is
5 extraneous, but it's hard when statements are made. I
6 feel like some way we need to address them.

7 THE COURT: I understand.

8 MR. TWOMBLEY: But it's not possible -- it's
9 possible, and perhaps not unusual, that no one wanted
10 Hampton to know about the gift. I mean, he didn't want
11 her to know about it.

12 THE COURT: Knowing it would cause a problem in
13 your family.

14 MR. TWOMBLEY: She's accusing her father of things.
15 She's accusing her brother and sister of things. You
16 know, it's possible that nobody -- that Mr. Barringer
17 didn't want her to know about it. I mean, he could have
18 called her up. He wrote her several handwritten letters
19 after that. I mean, he could have told her if he would
20 have wanted her to know. But it just doesn't seem that
21 odd or unusual that she might not have been told. I
22 mean, I think that is perfectly consistent with what
23 would happen in a situation like this, when a patriarch
24 of the family, who's made this decision for whatever
25 reason it was. So he's not required to tell her.

1 There's no law that obligates him to tell her.

2 THE COURT: He certainly wasn't required to tell
3 her, but if the goal was to avoid all of this, maybe a
4 discussion should have been had. Those are all
5 practical, of course, but you know.

6 MR. TWOMBLEY: Like you say, hindsight --

7 THE COURT: Is 20/20. I agree.

8 MR. MACLOSKIE: And if your Honor please.

9 THE COURT: Yes, sir.

10 MR. MACLOSKIE: I don't know Mr. Barringer very
11 well. I was around him maybe for an hour, and that was
12 shortly before his death. But he has a reputation of a
13 person that is bold enough to speak his mind. His
14 reputation was that of someone, if you really didn't
15 want to know the answer to a question, do not ask Mr.
16 Barringer. I doubt very seriously if he were inclined
17 to hide this from anybody. That just doesn't fit with
18 the reputation. I don't get that just from this
19 litigation. I know people that, for example, there's
20 been some mention of people hunting with Mr. Barringer.
21 I know I've talking to some of those folks. That's just
22 not the kind of person he was. He was bold enough to
23 tell you the truth, and gentleman enough to be -- to
24 exercise common courtesy while he firmly told the truth.

25 But at any rate, tell me something. Who do you

1 want to write the order or draft it?

2 THE COURT: I don't want it to take a month. Ms.
3 Paylor, yes.

4 MS. PAYLOR: I was going to volunteer, but I have a
5 personal issue next week I had completely forgotten
6 about since I was here. But I did just want to close
7 with the boldness of Mr. Barringer. He was bold. He
8 was so bold, he would do whatever he wanted to. And
9 when he kept twenty percent of that stock, he kept it
10 for a reason.

11 THE COURT: Clearly.

12 MS. PAYLOR: Because he was going to give it to
13 whichever daughter he thought should control the
14 corporation, because he wasn't going to throw it out.
15 So I think that Liam and I can draft the order.

16 THE COURT: Is that acceptable to you all?

17 MR. MACLOSKIE: Fine with me.

18 MR. GILREATH: Assuming we get to look at a copy of
19 it, comment on it.

20 MS. PAYLOR: Well, I mean, we'll send it to you
21 all, of course.

22 MR. GILREATH: Send me -- we get a copy of it to
23 comment on it.

24 THE COURT: Of course.

25 MR. DUFFY: That's the way it works.

1 THE COURT: I'm going to give you back this, Ms.
2 Paylor.

3 MS. PAYLOR: Yes, thank you. I was going to get
4 that back.

5 MR. TWOMBLEY: Your Honor, I have one more
6 question.

7 THE COURT: Yes.

8 MR. TWOMBLEY: I raised this at the last hearing,
9 and I want to raise it again every time I'm in front of
10 you. Based on the way these estate planning documents
11 are drafted, Ms. Luzak is not going to be able to get
12 that stock, okay? even if it goes back to Mr. Barringer,
13 even if it goes back to his estate and the gift was
14 improper. They're going to go into his trust. His
15 trust says everything's held for my wife, and when my
16 wife dies, she gets to say who gets it. Okay? So she's
17 -- everything we've been fighting over, all the money
18 that's been spent and all these subpoenas and everything
19 else. They're trying to get this stock. They can't get
20 it back. It's not legally possible, even if you were to
21 grant all the relief that they've asked for in the
22 complaint.

23 So, you know, the plaintiff has never told us what
24 they want. I mean, what do they want from all this?
25 And if they can tell us what they want, and we can talk

1 about what they want, we could possibly resolve the
2 case. It's been the last time we were in front of you -
3 - and this is coming from my client, Merrill Barringer.
4 She's the mother of both of these two girls. You know,
5 while she firmly believes that Mr. Barringer knew
6 absolutely what he was doing and talked to her every
7 night when they laid their head down on the pillow
8 together about what he was going to do and why he was
9 going to do it.

10 You know, even if she's successful, she's not going
11 to get that stock. So if that's the case, then, what
12 are we all fighting about? I would like for your Honor
13 to consider the possibility of ordering a mediation in
14 this case, so we could at least have a discussion with
15 Hampton about what she wants or what she's after.
16 Because, unless Mr. Ruff and every estate planning
17 lawyer that I've talked to and my read of the documents
18 is all a hundred percent wrong, she can't get this
19 stock. If she can't get it -- there is no will, there
20 is no provision, there is no trust that says that you
21 can go back to and say, well, if this one applies, then
22 she gets ten percent of that stock. It doesn't exist.
23 And that's what they want in this case. The rest of the
24 stuff is peanuts.

25 So in light of that, you know, what are we arguing

1 about? I think, you know, it's been two years now.
2 They've already litigated in Virginia. They've drafted
3 80-page complaints. There's been God only knows how
4 many documents produced.

5 THE COURT: So what is it? I mean, does anyone
6 want to respond to that?

7 MR. GILREATH: Your Honor, we are very interested
8 in mediation. I'm a certified mediator. I've certainly
9 mediated -- I mean, I've settled a lot of cases in
10 mediation. I'm a big believer in it. But until we get
11 some discovery, I don't -- I don't think we can get
12 anywhere with mediation. And I don't agree with what
13 he's saying, because, I mean, he's just totally ignoring
14 the fact that I'm, you know, possibility of undue
15 influence on Ms. Barringer. I don't know what -- I
16 mean, we're talking about something that's way out in
17 the future, and he's got this crystal ball that's
18 predicting what everything's going to be, and I'm not
19 quite buying into that.

20 THE COURT: Since all this litigation started --
21 let me ask you this. Since all this litigation started,
22 have Ms. Luzak and Ms. Light and Mrs. Barringer, their
23 mother, sat down in a room together and talked?

24 MR. TWOMBLEY: No, your Honor.

25 THE COURT: And is that a possibility? Is that a

1 possibility?

2 MR. GILREATH: What's that? Possibility of what?
3 I didn't under -- hear.

4 THE COURT: It's whether or not Mrs. Barringer --
5 she sounds like she is in excellent health, so is there
6 any reason why the three of them can't sit down to start
7 with? I mean, the lawyers are making a lot of money,
8 and I'm a lawyer, so, you know, it's not that I don't
9 want everyone to make money. The simple fact is, you
10 all are spending a lot of money. And I can tell you,
11 Mr. Twombly, you sit down and want to say let's have a
12 mediation, but I can tell you that my bailiff, as he
13 walked in, said, he goes, this case is going to trial,
14 because I just don't see how you settle it.

15 The problem with these types of cases are it's not
16 just about money, it's about hurt feelings, and it's
17 about family, and that's the kind of case that is very
18 difficult to settle, and we all know that, as lawyers.
19 So my question is, is that a possibility? Can either
20 one of you talk to your clients to see if they will
21 agree to a sit-down among the three of them, and come to
22 some kind of resolution? Because quite frankly,
23 sometimes lawyers -- and I'll say this -- you all can
24 sit down for a second, because I'm really looking at
25 your clients. They just get in the way. I mean,

1 sometimes, I'm sorry, but lawyers get in the way. And I
2 think that's probably a part of all this. I really do.
3 Because, I mean, the real truth is this, while, it's a
4 lot of money, there is so much money here that, really,
5 when we're talking about, you know, -- I mean, I hate to
6 be flippant about it, but at some point there is a
7 diminishing return of what you're trying to do. And I
8 would guess -- and I could be absolutely wrong -- but I
9 would guess that their relationship, the three women, is
10 more important than any of the money in all this.

11 MR. MACLOSKIE: I can tell you that as far as
12 Hampton Luzak is concerned, her relationship with her
13 mother is far more important than the result of this
14 litigation.

15 THE COURT: And I would assume that for all of
16 them. I would assume that for all of them. And I hate
17 to be totally practical. I also think that Paul
18 Barringer is just turning in his grave over all this.

19 MR. GILREATH: If we get some discovery, that may
20 be a lot easier once we get a little bit of discovery.
21 I don't know. See, the problem is, they -- they -- I
22 hate to keep casting stones over that way, but their
23 attitude has been no discovery. I mean, they've tried
24 -- they've quashed every -- they've quashed Bobby Davis'
25 subpoenas so much it's so flat you can walk on it.

1 THE COURT: I think we've taken care of that today,
2 though, Mr. Gilreath. I think we've taken care of that
3 today. I think that's done. But again, I think in the
4 very end, everyone has their firmly held beliefs;
5 everyone thinks the other person was trying to do
6 something nefarious. I think that's what it is, which
7 is why I almost feel like if we could get the three of
8 them to sit down, that there is a potential -- and I
9 don't know Mrs. Barringer, but if she -- it sounds to me
10 like is probably the matriarch now of this family, after
11 Mr. Barringer is gone. Maybe they could sit down and
12 try to mend something. I don't know if it's possible,
13 but.

14 MR. MACLOSKIE: Well, I think there's been a lot of
15 back and forth.

16 THE COURT: Oh, no doubt.

17 MR. MACLOSKIE: And as far as -- I would think that
18 -- I'd would be more optimistic about healing the
19 relationship between Hampton on the one hand and her
20 mother on the other, than I would Hampton on the one
21 hand and her sister on the other.

22 THE COURT: Right. I understand that.

23 MR. MACLOSKIE: I hear what you say about the
24 lawyers being in the way, you know.

25 THE COURT: Sometimes it is, and sometimes it's the

1 case.

2 MR. MACLOSIE: Well, we don't like our clients
3 talking to each other.

4 THE COURT: Well, the other thing, too, and I'm
5 going to go ahead and say this just for the parties,
6 again, you know. Lawyers are going to tell you your
7 side is right, and they're going to promise you the sun,
8 moon, and the stars, and the end of this, regardless of
9 who wins, everyone's going to be out money having to pay
10 all these lawyers. And I can tell you, from what I see
11 right now, it's already in the millions of dollars, or
12 close to it, and it's going to be a lot more if this
13 case is tried.

14 So the point is, and I guess it doesn't matter. I
15 guess no one cares about what money is spent, because
16 everybody just wants to be right. That I'm just trying
17 to figure out a way, if we can't somehow sit down.

18 MR. TWOMBLEY: Well, the only point -- I mean, I
19 agree with everything you've said, your Honor, but the
20 only point I would make is, you may be right; this may
21 be a blood war. But it might not be. It might be a
22 money war. I and my client do not know -- we do not
23 know if this is just one of those cases where, you know,
24 Hampton wants to be right or Merrill Light wants to be
25 right, and everybody's going to argue their position

1 until they're blue in the face and it's really not about
2 money.

3 One distinct possibility, though, your Honor, is
4 that it might be about money, and you know, we don't
5 know. Again, I am happy to be corrected by your Honor,
6 by any of these lawyers, or anyone else, if somebody can
7 show me the provision in these documents that's going to
8 end up with Hampton getting this stock, then I'd say,
9 you know, maybe that's different. But I honestly,
10 genuinely, and on my client's behalf, we would like to
11 know what it is that Hampton Luzak wants from this
12 litigation. And if, you know, if that's through a
13 mediation, if that's through a letter, if that's through
14 whatever they want to tell us, but we would like to
15 know. I think we're entitled to it, because the same
16 thing I pointed out last time when I was in front of
17 you, a bunch of money is being spent. And as I said a
18 year ago, it would behoove everyone to try to sit down
19 and work this out. And now, we're a year later, and you
20 know, they can go look at these Bobby Davis documents
21 that they already have.

22 THE COURT: Is there a jury trial requested in this
23 case?

24 MR. MACLOSIE: Yes, ma'am.

25 THE COURT: And I'm assuming you've explained to

1 your clients, because I certainly try cases day in and
2 day out. You put twelve people in a box; the whole idea
3 is that they are the collective wisdom of the community.
4 But I am going to go ahead and tell you this right now,
5 they are not your peers in any way, shape, or form of
6 everyone in this family. They're just not. And to be
7 able to think that you're going to get what you think is
8 a good and fair verdict, it might happen. But I can
9 tell you, they don't understand this kind of money.
10 They don't understand these positions. And I can't tell
11 you how many times I have had people say as clients in
12 the past before on the Bench and watching it day in and
13 day out what juries do, because they don't understand
14 it. They just don't. And I'll be the first to tell you
15 that. I can't tell you how many people and how many
16 people I represented -- and I was -- I was always
17 referred to as the Hilton Head, because everyone's
18 always fighting over, you know, principle. They're not
19 fighting over money. They always say they're fighting
20 over principle. It is money, too, and I get that, as
21 well. But I can tell you that no one is going to get
22 justice in this case that they feel is right from a
23 twelve-person jury. And I believe in the system. I
24 truly believe it's a great system and it's the best way
25 to resolve these matters. But again, these people are

1 not your peers. They are not. And I think your clients
2 need to know that and understand that, and I'm confident
3 the lawyers have told them that, but.

4 MR. MACLOSKIE: I just wish all the parties were
5 here to hear what you just said, unfiltered through the
6 mouths of their lawyers.

7 THE COURT: I do agree that there needs to be a
8 mediation at some point. I will say this, I think we
9 need to get the order. Ms. Paylor and Duffy said that
10 they would draft it. Get it over to you all. Let's get
11 those documents produced. And then, at that point,
12 which you all have had time to go through them, I am
13 going to order that they are produced. And I will tell
14 you this. I understand people are living in different
15 places and flying in and whatever. Does Mrs. Barringer
16 live on Hilton Head?

17 MR. MACLOSKIE: She does.

18 MR. TWOMBLEY: Yes, ma'am, TidePointe.

19 THE COURT: Okay. Okay.

20 MR. GILREATH: Both of them live on Hilton Head.

21 THE COURT: Pardon?

22 MR. GILREATH: My client's here today. She had to
23 come -- well, she's --

24 THE COURT: I understand. I understand. I
25 understand. She's at TidePointe?

1 MR. TWOMBLEY: Yes, ma'am.

2 THE COURT: I mean, I can tell you that if you do a
3 mediation, I just want everyone to be aware, short of
4 someone being in the hospital, I'm making everybody come
5 that's a party. And I mean everybody. Because there's
6 not going to be any excuse. Again, I think everyone
7 needs to go into a room. But I will take this. I might
8 also tell these three women that they need to sit down
9 together, as well, ahead of time. Okay. All right.

10 So just so I'm clear, what else do we have
11 outstanding, other than that one email that's
12 attorney/client privilege that you claim between John
13 Jolley and Randy Light and Travis Bryant, I think is his
14 name? Other than that, is there anything we haven't
15 resolved?

16 MR. GILREATH: I don't think so, your Honor.

17 THE COURT: Anything? Okay.

18 MR. MACLOSKIE: But today is young. We'll create
19 something this afternoon.

20 MR. TWOMBLEY: Stick around.

21 THE COURT: Okay. Are you all sure? Okay. Okay.
22 Well, let's get these documents produced. You know,
23 part of -- this case is old, you know, and I would like
24 to get it moved, and I know you all need to get it
25 moved. But once we can get everything out and documents

1 out there, and no one thinks anyone's hiding anything,
2 and everyone thinks everyone's ready to do.

3 I am going to ask, though, Mr. Macloskie, and Mr.
4 Gilreath, if you will respond to Ashley and what he's
5 asking, you know, what Ms. Luzak wants in this case.
6 Because I agree. I mean, I think he's entitled to know,
7 as well, exactly what it is you are looking for. And
8 that can be by letter. But again, I think he is
9 entitled to it, and I think you all need to tell him.
10 Okay?

11 MR. MACLOSKIE: We can do that.

12 THE COURT: Okay. Okay. All right. Anything
13 else?

14 MR. GILREATH: You'll let us know on the letter you
15 took?

16 THE COURT: Pardon?

17 MR. GILREATH: You'll let us know on that letter?

18 THE COURT: I'll let you know on the letter, yes.
19 I will.

20 MR. TWOMBLEY: Your Honor, I just want to thank you
21 and your clerk for working with us on the scheduling.
22 It was back and forth and kind of a nightmare. Thank
23 you so much, because a lot of people had a lot of
24 different things going on.

25 THE COURT: And I appreciate it, too, because I

1 have to tell you, I feel like I've been everywhere. I
2 haven't been in Beaufort very much this summer, so I
3 appreciate you all working with us. And again, if we,
4 you know, do it again, we can do it anywhere where I'm
5 going to be. We just -- we've had a bad schedule so far
6 this summer, but I think we're going to be here now for
7 awhile, so. Okay. Oh, Crystal says no. So anyway, she
8 says no. But, and apparently. But thank you all. I
9 appreciate it.

10 MR. TWOMBLEY: Thank you, Judge.

END PROCEEDING 12:46 P.M.

CERTIFICATE OF REPORTER

JUNE 27, 2018 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing June 27, 2018 Transcript of Hearing is a true and accurate record of the proceedings had on said date, in the case of Hampton B. Luzak versus Merrill B. Light, et all, Beaufort County, Court of Common Pleas, Case Number 2016-CP-07-01919; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the original of this transcript requested by Hon. William M. Hogan. Pursuant to SCACR 607, requests for copies of this or any transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature July 24, 2018.

s/ Wanda H. Rowe

Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF:	)	
ESTATE OF PAUL BRANDON	)	
BARRINGER, II	)	
	)	
HAMPTON B. LUZAK,	)	
PLAINTIFF,	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
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.	)	
_____	)	

August 20, 2019
Beaufort, South Carolina

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, JUDGE

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(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

There were no exhibits introduced.

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ROA 004999

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 11:41 a.m.)

THE COURT: Mr. Twombly, and we're going to go ahead and let me just start with a question, because why not. Reread your motion, and I am concerned that I was compelling the personal financial documentation from someone who is not a named party and that she's only in this case -- when I say "she," I mean Mrs. Barringer -- by virtue of being the PR of her husband's estate. In reading everything, that concerns me the most, and I am concerned that I was incorrect. So go ahead and tell me again why I was.

MR. TWOMBLY: Well, Your Honor, first of all, thank you very much for scheduling the hearing on this motion to reconsider. I think it's a very important issue, and we appreciate it. So thank you.

Your Honor, that is one of the most important issues here is that Ms. Barringer is not an individual party to this case. The plaintiffs chose -- plaintiff chose not to name her as an individual party. They have chosen not to serve her with the subpoena. She's never been served under the Rules of Civil Procedure with a subpoena in this action. We objected to the request for production on this very ground. Contrary to the memo that was filed, we did

ROA 004999

ROA 005000

1 raise this issue in our initial motion to compel -- or
2 response to the motion to compel and we raised it in our
3 motion to reconsider. And we just don't think it's proper
4 as further evidence, I think, of that point.

5 Since we were last before Your Honor, the plaintiff
6 has now filed a lawsuit ---

7 THE COURT: Against her personally.

8 MR. TWOMBLEY: --- against her personally despite
9 taking the position, you know, for the past three years
10 that her mother had done nothing wrong and that she
11 respected her mother. Total reversal now. She is added
12 to the list of co-conspirators or in my estimation the
13 list of people that disagree with her. And they have
14 served request for production in that case, and so, you
15 know, if they're going to get the documents, it ought to
16 be through that case.

17 Your Honor, I think this highlights a more important
18 point that I'd like to make, and I'd like to take just a
19 moment to refresh the Court's memory about how we got
20 here. Ms. Luzak initially filed this case in 2016, and
21 she alleges in her 80-page complaint repeatedly that
22 Mr. Barringer always wanted her to receive this stock,
23 that that was his estate plan, and that if these events
24 had not taken place but for these events that took place,
25 the conspiracy that she alleges, she would have received

ROA 005000

ROA 005001

1 one half of this voting stock. So, I mean, that was their
2 case.

3 THE COURT: Right.

4 MR. TWOMBLEY: And if you will recall, the second
5 time we were before Your Honor in this case, I brought a
6 copy of Mr. Barringer's estate plans all the way back to
7 1998, and I asked Your Honor to make a mental note about
8 this point, the point being that, you know, they now have
9 all of Mr. Barringer's estate planning documents back to
10 1998. And I was going to appear back before you at some
11 point in time, and I was going to ask them to identify the
12 sentence, the page, the document that throughout the
13 course of Mr. Barringer's life, he ever stated or uttered
14 a single word in his estate planning documents that he
15 wanted Hampton Luzak to receive half of this voting stock.
16 And I told you, I represented to you that they would not
17 be able to do that, that they would never be able to do
18 that.

19 THE COURT: But isn't there argument that they were
20 treated equally up until 2012? That's what I'm seeing. I
21 don't think it necessarily had to state it exactly. But
22 the argument that I read -- and I will tell you this. So
23 I went back and reread the original complaint, the 2016
24 complaint, and I also now read this new complaint against
25 Merrill Barringer. I just wanted to see what was

ROA 005001

ROA 005002

1 different. I wanted to know what was going on. And it's
2 really not. It's the same thing. There's two questions,
3 and it all comes around to the September 11, 2012, stock
4 transfer.

5 MR. TWOMBLEY: Right.

6 THE COURT: I mean, that seems to be the entire case.

7 MR. TWOMBLEY: And, Your Honor, the assertion
8 respectfully that Mr. Barringer always treated them
9 equally is not correct. It is not correct. In
10 Mr. Barringer's 1998 estate plan, he never said, or at any
11 point in time thereafter he never said it is an important
12 tenet of my estate plan, and when I die, I want one half
13 of my voting power in this company to go to this daughter
14 and the other to go to that daughter. He never said that.
15 No one can point to any document that ever suggests that
16 Mr. Barringer ever wrote down, ever told an estate
17 planning lawyer, and he had some of the most sophisticated
18 lawyers around throughout his days, nowhere is there ever
19 a sentence, is there ever a clause, is there ever anything
20 that says I want to make sure that the voting power in
21 this company stays equal, and I intend to give when I die
22 this daughter one half and the other daughter one half.
23 It's not there. And the fact that he may have
24 historically treated his children equally, that in no way
25 arises to any type of legal obligation or any type of

ROA 005002

ROA 005003

1 binding agreement to treat them equal in the future.

2 That stock belonged to Mr. Barringer. He could do
3 whatever he wanted to with it, and every estate planning
4 document he's ever executed has said the exact same thing:
5 I leave it in a trust to my wife, and when she dies, she
6 gets to decide who gets it.

7 What the plaintiff would have you believe is that the
8 document says I leave everything to my wife in trust, and
9 when she dies, she gets to decide who gets it; however,
10 with respect to my CFRC voting stock or subsequent
11 company, I've got a different plan than that. I've got a
12 different plan that I would like to execute, and I don't
13 give my wife the authority and discretion to do that.
14 No. She doesn't have the discretion to do that. With
15 respect to that asset, I have a specific, particular plan:
16 half to Hampton, half to Merrill Light. It does not
17 exist. They can say it a thousand times, they can put it
18 in these motions a thousand times. There is no document
19 that says that, plain and simple.

20 And what we have, Your Honor, with this new lawsuit,
21 is an admission. It's an admission. It is a concession.
22 They now agree unequivocally. Even as they say in their
23 most recent document that they filed, they agree
24 Ms. Barringer has the right to control the stock. They
25 say that. In the memo that they filed yesterday, two days

ROA 005003

ROA 005004

1 ago, it's one of the headings. They say Ms. Barringer has
2 the right to control the stock. Now, I've been telling
3 Your Honor that for three years now. And why they are
4 just getting around to recognizing that fact, I'm not
5 sure, but that's the reality.

6 Now, of paramount importance, how do I know that?
7 How do I know that Ms. Barringer has the right to control
8 the stock? How do they know that Ms. Barringer has the
9 right to control the stock? And how do you know? We all
10 know that because we've all read -- none of us have read
11 Ms. Barringer's estate plan. I've never looked at it. I
12 do not know what it says. They've never seen it.

13 THE COURT: You say they're getting it from
14 Mr. Barringer since she also said it in her deposition.

15 MR. TWOMBLEY: They are getting that solely from
16 looking at Mr. Barringer's documents. It's his documents
17 that say that. It's not her documents. And the fact that
18 they say I placed it at issue, that I'm the one that
19 raised it, all I've done is to point out what the man's
20 will says and his trust says, what it's always said since
21 1998. It's always said more or less the same thing.

22 So this new lawsuit, Your Honor, is an admission and
23 it is a concession. And what I said when I was before
24 Your Honor, I did not say -- and I want to be very careful
25 because I went back and I pulled the actual transcript to

ROA 005004

ROA 005005

1 see exactly what I said and I want to make sure I'm making
2 the correct representation to Your Honor today. As of
3 today, Ms. Barringer has no control over the stock. This
4 stock was given away in 2012, seven years ago. Merrill
5 Light has had it, she's been voting it, she's been doing
6 all the things that go along with ownership of that stock.

7 What I said is even if they prevail in this
8 litigation, which we still have a lawsuit here, nobody's
9 conceding that Mr. Barringer didn't know what he was doing
10 in 2012 and '14 and '15, but even if they prevail and
11 upset the '15 documents, and even if they prevail and
12 upset the '14 documents and both of the 2012 documents and
13 the gift in 2012, even if they go all the way through that
14 and we litigate this case and they win and it's upheld,
15 all that means, to use Hampton Luzak's terminology, we
16 deposed her a few weeks ago, that just means the
17 transaction is unwound. It's unwound. And it doesn't go
18 into her pocket.

19 THE COURT: It goes back to the estate, doesn't it?

20 MR. TWOMBLEY: It goes back to the estate and then we
21 apply Mr. Barringer's 1998 document, which they concede is
22 a good document, a valid document.

23 THE COURT: So what does it do?

24 MR. TWOMBLEY: All goes into trust for my wife, and
25 when she dies, she gets to decide. That's what they all

ROA 005005

ROA 005006

1 say. Virtually, that's what all of them say.

2 So, you know, what I referred to this issue two and a
3 half years ago was the elephant in the room that they
4 didn't want to talk about. They didn't want to talk about
5 that even if they are successful in all of these things
6 that they're trying to do, this tortured review of
7 history, this document after document, if they go back in
8 time all the way to 2012 and you undo all that, they still
9 can't get what they want, which is the stock in this case,
10 which is the voting stock. It goes into a trust for
11 Mrs. Barringer, and Ms. Barringer then has the right to
12 decide who gets it according to Mr. Barringer's 1998
13 estate plan.

14 THE COURT: Well, isn't this back to the question you
15 posed to me at the very beginning is what do they want? I
16 remember at the very beginning of this lawsuit you said,
17 "I don't understand what it is they want."

18 MR. TWOMBLEY: And I still don't, Your Honor. And,
19 you know, we have a mediation scheduled. I think it's
20 scheduled for October the 1st.

21 THE COURT: Who's your mediator?

22 MR. TWOMBLEY: We had agreed to Tom Wills, and then
23 there was an issue that came up where we had to agree to
24 postpone the mediation. But I don't think we have agreed
25 on one yet. In fact, I mentioned to my associate on the

ROA 005006

ROA 005007

1 way in that before we leave these gentlemen, we need to
2 talk about who's going to be the new mediator and schedule
3 a time before October 1st.

4 So, you know, another way of saying what I'm saying
5 is that Mrs. Barringer's estate planning is just
6 premature. It's just premature. I mean, at a minimum,
7 they first have got to win this lawsuit, and they've first
8 got to accomplish this feat of upsetting '15 and '14 and
9 '12 and '12 and the gift.

10 And by the way, contrary to what they say, there has
11 been another lawsuit concerning this gift of stock. It
12 was filed in the Eastern District of Virginia. Contrary
13 to what they say, and I've never been smart enough to
14 bring these -- but I've got two complaints that Hampton
15 Luzak filed. One was filed on May the 11th, 2015, and one
16 was filed on November the 6th, 2015. And in that
17 litigation, she did, in fact, challenge this exact stock
18 transfer. This exact stock transfer. And you'll recall,
19 Your Honor, that we moved initially to dismiss based on
20 res judicata and the fact that any claims that she had
21 related to that transfer should have been brought in that
22 case.

23 You will recall that at that point in time, they told
24 you she didn't really know about what was going on, she
25 didn't really know about Mr. Barringer's condition. And

ROA 005007

ROA 005008

1 you'll recall there's letters and emails from 2012, three
2 years prior to that where Hampton Luzak begins her
3 campaign stating that her father is delusional, that her
4 father is demented, that he doesn't know what he's doing.
5 So it's clear beyond a shadow of a doubt that she knew
6 that in 2015, and there's no reason she cannot have
7 brought those claims in Virginia. But she didn't. But
8 fair enough. We needed to develop the factual record on
9 that, and we have. And there will be appropriate motions
10 at the time.

11 But as I have said before, I'll say it again, you
12 know, there's a tremendous amount of resources being
13 dedicated to this case that will continue to be.

14 It's conceded in this new lawsuit that they certainly
15 can't get what they want in this lawsuit, which is half
16 that voting stock. And certainly, in my respectful
17 opinion, there is absolutely no reason to compel my
18 client, who is a fiduciary of the estate, to produce those
19 documents. You can discern everything that needs to be
20 discerned about her ability and her having an exercise of
21 a power of appointment from Mr. Barringer's documents.
22 They wrote a great brief that they just filed yesterday,
23 and they know all that from Mr. Barringer's documents.

24 THE COURT: Okay.

25 MR. TWOMBLEY: Thank you.

ROA 005008

ROA 005009

1 THE COURT: Who's going to speak?

2 MR. MEDLIN: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. MEDLIN: I'm Alan Medlin on behalf of the
5 plaintiff.

6 It's a sore spot with my client, and I want to make
7 sure that we make this clear on the record. In 2015,
8 after she made a number of appropriate shareholder records
9 requests after she discovered what she determined to be
10 information she thought had been improperly withheld from
11 her, the company sued her in the Eastern District of
12 Virginia.

13 THE COURT: I understand.

14 MR. MEDLIN: She brought a counterclaim. And the
15 only issue that was resolved about the validity of the
16 gift is whether it was subject to a shareholder agreement.
17 And the judge determined that a gift was not subject to
18 the shareholder agreement and that only a transfer for
19 consideration was in that case. So she was sued first.
20 She ended up as the plaintiff when they dismissed their
21 claim.

22 THE COURT: Realign the parties. Okay. Yeah.

23 MR. MEDLIN: But she gets very upset when she keeps
24 reading that the defense claims she brought that lawsuit.
25 She was sued first.

ROA 005009

ROA 005010

1 Secondly, nothing in that Eastern Virginia lawsuit
2 that I've seen ever discussed whether the gift was valid
3 for any purpose other than the shareholder voting
4 agreement. We didn't get into Mr. Barringer's capacity,
5 we didn't get into undue influence, we didn't get into
6 tortious interference. That is why, Your Honor, we, I
7 believe, got past the motion to dismiss a couple years ago
8 because this is a new case dealing with a new issue, and
9 it is whether Mr. Barringer had the independent ability to
10 determine to make those gifts. And, in fact, we've
11 already created a bunch of evidence, and we intend to
12 create a bunch more evidence and certainly going to bring
13 that into question. So I want to just correct that from
14 the start.

15 Now, again, I disagree with the defense position
16 about the estate plan. First of all, other than maybe
17 some inexact use of language, we've never taken a position
18 that our client was supposed to get half of
19 Mr. Barringer's estate. Once we saw the documents, we saw
20 that the three children were going to be treated equally.
21 However, from other evidence that eventually the Court
22 will see, we know from family discussions and other
23 advisor plans and so forth that the real equal treatment
24 as far as the company is concerned, and by that we focus
25 on the voting stock, was between the two daughters. The

ROA 005010

ROA 005011

1 son is off in a different direction. And so what we're
2 saying is he intended to have equal treatment.

3 Now, here's where we get into a semantical difference
4 with defense, who I'm sure, in eloquently arguing his
5 point, wants to leave this out. The default provision in
6 all those documents treats the children equally. It is
7 only if Mrs. Barringer, if she has the power, and we now
8 have some questions about that, if she has the power and
9 she exercises it in a way contrary to what her husband
10 wants, then she gets to control the stock. But yes,
11 technically, legally, she gets to control the stock.

12 But his intent, as I read it and as the estate
13 planners at the table read it, is common. He sets out
14 what he wants as the default provision, and almost as a
15 boilerplate, which they admit this is common in documents,
16 we give a power of appointment to the surviving spouse. I
17 don't recall any kind of the number of wills that I've
18 created where I've ever had a surviving spouse exercise
19 the power. I don't believe anybody at my table who does a
20 lot of estate planning recalls that. It's I don't think
21 commonly done, but I can't give you any data on that. I
22 just don't think it's commonly done. The testator creates
23 his plan, and that plan is abided by, particularly
24 somebody who's, according to the defense, in so much
25 control as Mr. Barringer is, he expects his wishes to be

ROA 005011

ROA 005012

1 followed.

2 Now, there are other reasons for giving the surviving
3 spouse a testamentary power of appointment. In this case
4 it's a special testamentary power of appointment, which
5 means that, under the tax law, Mrs. Barringer isn't
6 treated as owning the property. And there are tax reasons
7 for doing that, particularly, in sophisticated wealthy
8 plans, the most common reason that I sure don't want to
9 expand upon is the Delaware tax trap. But this is common.

10 And, again, to say that he wanted her to have control
11 is legally and technically correct. We've never argued
12 against that. What we've said is that his default estate
13 plan gives it equally to the children, which means the
14 daughters will continue to be treated equally as far as
15 control of the company is concerned. And if
16 Mrs. Barringer cares to exercise that power, and, again,
17 I'm not sure she has the right to exercise that power, and
18 if I may, Your Honor, I will address that again in just a
19 little bit, it seems to me she would not appreciate having
20 the stock taken out of the trust by an inter vivos gift
21 from her husband.

22 Now, we're exploring this, and the question I can't
23 ever get answered to my satisfaction is why a man, in July
24 of 2012, who supposedly got angry at his son-in-law that
25 he loved like a son and let run his company for years and

ROA 005012

ROA 005013

1 while he was documented to be confused, and while it was
2 documented that his other daughter gave him some documents
3 that he had seen long ago but forgot and got mad at our
4 client's husband so he, along with the other daughter,
5 supposedly fired him at a board meeting in June, although
6 we have evidence from independent directors that he was
7 being coached by the daughter at that meeting, he didn't
8 know what he was doing. Within three weeks, supposedly
9 having fired my client's husband, he gives voting control
10 in his revocable trust by amendment to his other daughter,
11 the defendant Merrill Light.

12 Now, that's a whole separate thing. It's one thing
13 to maybe get mad at your son-in-law and fire him after a
14 long-term job at the company. It's another thing to
15 disinherit your daughter. And one of the arguments that
16 was proposed in Ms. Light's deposition was that he never
17 wanted the husband to become CEO again. Well, at the time
18 in July, he owned the controlling part of the stock, and
19 his daughter with him could always vote to make sure that
20 the husband would never return to the CEO position. And
21 his revocable trust provided that when he died, that that
22 controlling share would go to Defendant Light and then she
23 would have control and she could make sure that the
24 husband never returned as CEO or in any other position of
25 the company. He had that set up in his estate plan if

ROA 005013

ROA 005014

1 that's what he's intending to do.

2 What I can't figure out is why a couple months later,
3 he gave away total control irrevocably in his company by
4 giving away the voting stock. And I've yet to get a good
5 answer to that. I don't think it makes sense for tax
6 reasons. I don't think it makes sense from a guy who was
7 so totally in control, this company was his life and his
8 legacy, that he would turn it over and give it to his
9 daughter who then could turn it over and give it to her
10 husband.

11 And by the way, Your Honor, if I may digress and take
12 some culpability here, at the May 22nd hearing, you
13 expressed some concern about questions asked of
14 Mrs. Barringer about the stock being able to go to the
15 son-in-law. That's my question, and I want to take
16 culpability for that. But I also want to argue that it's
17 a really good question, Your Honor. When we estate plan,
18 we figure out where the property is going to go, and only
19 once in my career have I had a client who wanted, after
20 legal advise, the property to go to an in-law,
21 particularly one who filed two bankruptcies.

22 THE COURT: Of course.

23 MR. MEDLIN: So if, in fact, he was a careful planner
24 and never considered that possibility, then I have to
25 wonder what kind of advice he was getting and whether he

ROA 005014

ROA 005015

1 was competent to make those decisions. That's the purpose
2 of those questions, Your Honor. So thank you for my
3 digression there.

4 THE COURT: I guess my question to you all is I feel
5 like we're going down one rabbit hole where the real issue
6 in this case, from just having gone through and I think I
7 was on the rabbit hole up until recently, was whether or
8 not he truly suffered from dementia and Alzheimer's in
9 2012. I mean, that's -- I see it thrown around. I've
10 seen everyone's name on this. I mean, I knew every doctor
11 in this case. I know Paul Long and that he saw Paul Long
12 at one point, Dr. Mazzeo from Port Royal, Dr. Bachman at
13 MUSC. I guess the question is, are you focusing on that?
14 I mean, to me, the question would be what kind of shape
15 was he in in 2012? And I know we keep going and asking
16 people like Mrs. Barringer, who it doesn't surprise me the
17 deposition she gave, I mean, it really doesn't, because
18 she's going to defend her husband and say -- I guess my
19 question just becomes is how do you get to that point to
20 find out? Because isn't that the real issue was whether
21 or not he was competent?

22 I mean, I would agree with you. It begs the question
23 all that's going on here. And I understand how you're
24 looking at it and saying wait a minute, what's the
25 question? And, you know, we can all sit back and you can

ROA 005015

ROA 005016

1 ask every, you know, medical expert on Alzheimer's. They
2 will tell you that, you know, people, become delusional,
3 people become suspect if they suffer from this. They
4 think everyone is stealing from them. And I see it's a
5 possibility, but somehow I missed it. I don't know if
6 that's your focus or not. And maybe I'm just wrong and
7 that that is not the issue in the case.

8 But that really to me seems to be what the issue is
9 is whether or not he was competent, and whether or not he
10 could make these decisions, or whether or not someone else
11 was making them for him. I agree with you. It begs the
12 question of Mr. Barringer, who was this strong man who,
13 according to his wife, ran his company, and all of a
14 sudden that he gave away everything but one share? I
15 mean, I would agree with you. That makes me question
16 whether or not he was competent.

17 MR. MEDLIN: Your Honor, and again, I always
18 apologize because I'm not used to having these
19 conversations with judges. So if I step out of a lane,
20 please let me know.

21 With all due respect, the mental capacity is an
22 issue. The Alzheimer's is an issue. And by the way, we
23 have doctor's records from 2011. We have doctor's records
24 from, to my knowledge, the leading Alzheimer's doctor in
25 South Carolina treating my mother ---

ROA 005016

ROA 005017

1 THE COURT: Right.

2 MR. MEDLIN: --- Dr. Bachman who says in May he has
3 Alzheimer's. So we have doctor's report that he has
4 Alzheimer's ---

5 THE COURT: I guess the question is to what extent.

6 MR. MEDLIN: --- in 2012, Your Honor.

7 But to me this isn't the main issue. The main issue,
8 as is often the case in fact patterns like this, is undue
9 influence.

10 THE COURT: And how -- he can't be subject to undue
11 influence, though, unless he is at decreased capacity. I
12 mean, at least for ---

13 MR. MEDLIN: Actually, Your Honor, that's ---

14 THE COURT: Not true.

15 MR. MEDLIN: I may disagree.

16 THE COURT: Okay.

17 MR. MEDLIN: I would say you can be subject to undue
18 influence for any number of reasons. You can be
19 blackmailed, you can be fooled, you can be misrepresented
20 to. There's any number of reasons that people with
21 perfectly good capacity are subject to undue influence,
22 and, in fact, most of the cases as I see them turn on
23 undue influence. It is hard to show that someone lacks
24 mental capacity in South Carolina.

25 THE COURT: I understand.

ROA 005017

ROA 005018

1 MR. MEDLIN: It's very hard to show that. But the
2 weakened impact of the -- the weakening impact of the
3 Alzheimer's helps someone who would be interested in
4 unduly influencing a decedent. That to me -- and, again,
5 what do I know? But, I mean, that to me is the primary
6 issue in the case.

7 THE COURT: So what are his vulnerabilities? I mean,
8 it's harder to figure out or wrap my head around a man who
9 has built this amazing company, what could be an undue
10 influence from two daughters? I mean, unless it's
11 something like blackmail. Unless it's ---

12 MR. MEDLIN: Or to make misrepresentations to him to
13 take advantage of his confusion, to tell him that the
14 son-in-law is trying to sell the company to a bunch of
15 Yankees from New York, which isn't true, and in a confused
16 state to get him mad which starts the whole path going.

17 Now, it's not just our clients. We have Mike Haller,
18 one of the great lawyers of Georgia who passed away
19 recently, as an independent director and somebody I know
20 who is a man of impeccable integrity who's saying, "Don't
21 accept what he did at the board. He's not himself. He is
22 not the person that I've gotten to know."

23 You have Tom Evans, another person who's worked for
24 years saying the same thing.

25 But not just that. You have Randy Light sending

ROA 005018

ROA 005019

1 emails before that saying, "We're very worried about
2 Mr. Barringer and his mental capacity."

3 So we don't think we just have to focus on the
4 doctor's evidence, and we have plenty of that. We have
5 independent people and even the opposing party who are all
6 admitting that before these critical events took place, he
7 is of diminished capacity, and his personality has changed
8 as we see. He's become angry. He starts doing things
9 that he wouldn't have done in his business career before.
10 We'll be able to show all that, hopefully, Your Honor.

11 THE COURT: Which are all symptoms -- but those are
12 symptoms of Alzheimer's. I mean, those are symptoms of
13 Alzheimer's.

14 MR. MEDLIN: Those can be symptoms of Alzheimer's.
15 Yes, Your Honor. They can be. And we have diagnoses of
16 Alzheimer's before all this happened from, again, in
17 particular, the leading Alzheimer's doctor, to my
18 knowledge, in the State of South Carolina in May of 2012
19 before all this happened.

20 But, Your Honor, if I may, if I were Mrs. Barringer,
21 and I know I'm not and I know I don't represent her, but
22 I'd be upset if I cared about this power of appointment
23 that somebody took the stock away from me in September of
24 2012. That was taken away from her. If that power is so
25 important, that was taken away from her, too.

ROA 005019

ROA 005020

1 And, again, Your Honor, if I may get back to that
2 point later, but let me start with your order, which we
3 don't think is mistaken.

4 THE COURT: Well, how are my compelling documents
5 that are her personal financial documents when all she is
6 is the fiduciary, you know, for the estate in that case?
7 I mean, how am I not wrong by doing that?

8 MR. MEDLIN: Well, not only are you not wrong, I
9 think you're absolutely right. I think these are critical
10 pieces of information. She's not disclosing any financial
11 information in her will unless it's a will unlike most
12 I've ever seen. She's not -- it's not like a separation
13 agreement where you attach a financial declaration. She
14 just says this is what I'm going to do with whatever
15 property I have. And so I don't think we're giving that
16 information away.

17 Secondly, you required there to be a confidentiality
18 order for attorneys' eyes only.

19 THE COURT: I understand that part.

20 MR. MEDLIN: So any concerns about the privacy I
21 think are washed away by that.

22 But, again, Your Honor, I have a number of reasons
23 why, in this particular case, I think you are absolutely
24 correct. You said that she has said all along that she
25 has the power to control the stock.

ROA 005020

ROA 005021

1 THE COURT: She said that in her deposition a number
2 of times.

3 MR. MEDLIN: Well, and we've never disagreed once
4 we've seen the documents early on in discovery that we did
5 get pretty easily, that she has this technical legal
6 testamentary special power of appointment. But the
7 arguments we get are sort of whipsaw arguments. First, we
8 get the argument that, well, your lawsuit needs to go away
9 here because she ultimately is going to control it, and
10 it's her control that means this lawsuit is meaningless.
11 And then on the other side we start hearing, well, she
12 didn't have any control over anything because the stock's
13 already given away. Which is it? And that's one of our
14 concerns.

15 But as I argued on May 22, 2019, we have information
16 that makes us, upon information and belief, think that she
17 may be subject to some particular South Carolina
18 precedent. One is that a contract not to revoke or not to
19 exercise a testamentary power of appointment can be
20 enforced during the lifetime of the testator. The Wright
21 v. Trask case, now, granted that did not involve a
22 surviving spouse, it involved a granddaddy, but in another
23 case, Carmichael v. Heggie, it did involve a surviving
24 spouse and her attempt to exercise the power of
25 appointment. Again, the facts are different as is often

ROA 005021

1 the case in a will contest, but we've got precedence in
2 South Carolina where people's wills are in front of the
3 Court.

4 Now, defense counsel just said we get to cite a case
5 where a nonparty was required to present a will, and I'm
6 still not aware for sure that there is a case out there.
7 I don't see a case saying the opposite either. And as I
8 supposed back on May 22nd, it's a discovery issue. I
9 doubt there are many recorded cases. But also I doubt
10 there are many exact fact patterns where the surviving
11 spouse is also the personal representative, is also taking
12 the side of one side of the dispute instead of being
13 neutral as a fiduciary. And I understand defense says
14 she's following the facts. We don't think that's the
15 case, and that's just another point of disagreement.

16 But the issue just because we can't present a case
17 exactly to you certainly has parallels in South Carolina
18 where, during the lifetime of the living testator, the
19 will was examined. And, in fact, we have situations not
20 reported, but -- well, let me not say that because that
21 may be a confidential matter in another probate court in
22 another case, so I don't want to go down that road. But
23 in any event, we have appellate precedent in South
24 Carolina where the will of somebody alive can be examined
25 and determined if it's valid or not.

1 Now, we also have a very important case in South
2 Carolina, the Chapman case, Judge Chapman's family where
3 the Court concluded that, despite the lack of a contract
4 not to revoke or a contract not to exercise, which would
5 be enforceable, you may have a mere fiduciary duty not to
6 exercise the testamentary power of appointment, and that,
7 in fact, is what the Court found in that case, that the
8 decedent gave his wife a testamentary power of
9 appointment, but because of dealings between themselves,
10 she had taken on a fiduciary duty where she agreed not to
11 exercise it.

12 Now, we think we already have sufficient evidence.
13 We wouldn't have brought the lawsuit against
14 Mrs. Barringer if we didn't think we did, and it's not an
15 admission of anything. It's the opposite of that. Based
16 on what we've determined in the meantime, we think she may
17 well be involved in the tortious interference. We think,
18 upon information and belief, as we try to develop that
19 evidence but think we have a good-faith basis to do that
20 now based on family meetings and so forth where
21 Mrs. Barringer never said I'm not doing that, I'm not
22 going along with that, that sort of thing. She was fine
23 with all those things, according to our evidence, our
24 information. So she may well have a fiduciary duty.
25 Mr. Barringer may have died thinking I'm not going to

ROA 005024

1 allow my wife to make a nontax decision. I am going to
2 let her save some taxes from this. We need to explore
3 that. We can't do any of that without ---

4 THE COURT: So how do you find that out, though? You
5 say we explore it. I mean, he's gone. And how do you
6 explore that? How do you find out?

7 MR. MEDLIN: Well, from witnesses, documents and
8 other information. And a critical set of documents to us
9 would be her estate plan. One -- or the many reasons we
10 think we need to see her estate plan for this case is
11 because we might be able to see that she really doesn't
12 have such a power of appointment effectively. Either
13 she's contracted not to exercise it with Mr. Barringer ---

14 THE COURT: How are you going to find those in her
15 documents, though, is my question. Why wouldn't they be
16 in his?

17 MR. MEDLIN: Well, first of all, we don't know,
18 because we don't know what those documents say. But what
19 we suspect and what's often the case in these sorts of
20 situation is a pattern. That pattern is important for
21 more than just this issue, but it is important for this
22 issue.

23 If she has gone along and never exercised the power
24 of appointment until, say, after Mr. Barringer died, then
25 that's a pattern that might tell us something. Based on

ROA 005024

ROA 005025

1 the evidence of family understandings about what was
2 taking place before, the fact that she's never bothered to
3 exercise that power, they tell us something.

4 On the other hand, if she started exercising the
5 power back in 1998 in giving it all to me, then that tells
6 us something else. Probably tells us our case isn't so
7 good. And my understanding, you want to know what's good
8 and bad about your case. Everything I've heard from the
9 other side is this is bad for the case because she has
10 some power so that our client's never going to get it.
11 And that requires more than just looking at
12 Mr. Barringer's documents. It requires looking at her
13 documents to see if there is a pattern that indicates any
14 evidence of a contract not to revoke or a fiduciary duty
15 not to exercise. It's critical for that, but for a number
16 of other reasons, Your Honor.

17 In any undue influence case, patterns are important.
18 I've cited, again, a couple of cases which is sort of
19 classic cases in South Carolina indicating that, but
20 that's a common situation. Somebody is for years giving
21 property to a daughter and then all of a sudden a
22 caretaker comes in and the will changes and the caretaker
23 is now the beneficiary, that's evidence of undue
24 influence. And because these two estate plans are tied in
25 together, at least from the side that we see because of

ROA 005025

ROA 005026

1 this testamentary power of appointment, we have to see how
2 his plan is or might be completed. That will help us with
3 the pattern of determining whether he was subject to undue
4 influence or not.

5 For example, if Mrs. Barringer's will starts cutting
6 Hampton out earlier than 2012, that tells us something.
7 If Mrs. Barringer's will doesn't cut Hampton out until
8 later, that may tell us something else entirely. If she
9 doesn't cut Hampton out at all, and I don't think we're
10 going to find that, but who knows, nobody here knows, I
11 think then that tells something else as well. So it's
12 that pattern that makes the difference in determining
13 whether he was unduly influenced in addition to knowing
14 whether there's a contract not to revoke or a fiduciary
15 duty to exercise.

16 Related to what I just mentioned, Your Honor, we now
17 think, based on other evidence and particularly some of
18 the statements she made in her deposition, that she may
19 well be complicit in the undue influence. She certainly
20 took sides. She's in the room at the board meeting.
21 Rarely there, she shows up so that he doesn't make a
22 mistake. She wants to make sure they get rid of the
23 son-in-law, just as sort of an example. Later on she's
24 the one person that can influence Mr. Barringer.

25 So ---

ROA 005026

ROA 005027

1 THE COURT: Can I ask you a question? Was there any
2 evidence of any wrongdoing by Mr. Luzak?

3 MR. MEDLIN: Any wrongdoing?

4 THE COURT: Yeah. And when I say that, in reading
5 the minutes, he kept saying, "Let's have someone come in.
6 Let's have someone" -- I don't know. He didn't say
7 "audit," but, you know, someone review.

8 MR. MEDLIN: We can't think of any actual evidence of
9 that.

10 THE COURT: I imagine you can't, but is there any, is
11 the question.

12 MR. MEDLIN: They're going to argue that he was going
13 to take fees or, depending on the witness, that he took
14 fees.

15 THE COURT: Or that he was also trying to renegotiate
16 a bigger salary. I think that's the only thing that I
17 saw. Okay.

18 MR. MEDLIN: He made proposals to his board.

19 THE COURT: I understand.

20 MR. MEDLIN: That's what CEOs do. They have to
21 approve it.

22 THE COURT: I understand.

23 MR. MEDLIN: So we don't understand how they said he
24 did anything wrong.

25 THE COURT: I understand. And the flip side is is

ROA 005027

ROA 005028

1 that on all this, you know, Mr. Light was in financial
2 distress. I mean, we all understand what everyone has as
3 far as their arguments are concerned. But -- okay.

4 MR. MEDLIN: So, Your Honor, as actually pointed out,
5 Mr. Twombly pointed out for the record, we have a
6 mediation that you want us to have by October 1st. Again,
7 we would have had it, but we had to rearrange it, and
8 we're all fine with that.

9 We expressed our concern back on May 22nd about the
10 mediation being fruitful where we still think we're
11 missing some critical evidence. Now, hopefully, some of
12 that will be resolved because Mr. Gilreath and company are
13 going to go down to Florida and try to get some CFRC
14 records on September the 11th, and depending on how
15 quickly that gets produced, we may have that by
16 October 1st. Unlikely, probably, but that might be
17 helpful.

18 Well, these documents would also make a difference at
19 mediation. Let's say that we have some documents that are
20 pretty compelling showing that Hampton was never going to
21 get an equal share of the voting stock. That might affect
22 our position in a mediation in a negative way. We need to
23 know that. And without that knowledge, I think it's
24 difficult for a client to come to a fruitful decision
25 while there is still evidence roiling around out there.

ROA 005028

ROA 005029

1 And I think we all agree mediation is a wonderful thing
2 and we'd like to get this case resolved, but I see that as
3 an obstacle.

4 THE COURT: So let me ask you, what's the resolution
5 in this case? Is it that Mrs. Barringer at the end
6 changes her will and gives them both equal -- somehow
7 equalizes the playing field even though I know the stock
8 transfer's already been done to Merrill Light? What is
9 the endgame? I'm trying to figure out what is going to
10 make the plaintiff satisfied in this case. Is it -- I
11 have two concerns in this, because, number one, there's
12 two things. And this is -- I call it a typical -- we'll
13 call it a Beaufort County case, but it sounds like a
14 Hilton Head case to me where what is it that we hope to
15 achieve? Is it not only the equalization of the finances,
16 but it's also the proving that my father loved us equally
17 and he was unduly influenced? That's where my concern is,
18 is I'm looking at the ultimate of how do we resolve this
19 case. Because in some ways, I don't see this case as
20 being able to be resolved.

21 And I will make one other point. And you can believe
22 me or not, and I don't know, I've been sitting here enough
23 to watch this. I can't imagine that there are going to be
24 12 people in Beaufort County that are the peers of any of
25 these people. And I'm going to go ahead and say that

ROA 005029

ROA 005030

1 right here right now. Because there is no way you're
2 going to sit 12 people in that box that can understand the
3 millions of dollars and can understand the fight in this
4 case. And that concerns me as well. I'm just not sure
5 how or what y'all are expecting in the end. And I know as
6 the trial judge, it probably isn't any of my business, but
7 I think at some point, I get to the practical end of where
8 are we going.

9 So what is it? I have no idea how y'all would reach
10 an agreement in mediation. I can't even -- I mean, you
11 can't even name a number. We've been asking and I've been
12 asking for forever. You can't give me a number. I truly
13 could be wrong. I don't think this is about money. I
14 really think this is about family dynamics.

15 And so how do we resolve this? Because you're not
16 going to solve it through mediation. I hate to say that,
17 but I don't think you are. We're going to jury try it,
18 and who knows what's going to come up. I mean, I think
19 the odds, quite frankly, are like tossing a coin, what's
20 going to happen there, and then it's going to be appealed
21 and we're all still going to be sitting here, although,
22 hopefully, I'll be long gone. But we're all going to be
23 sitting here ten years from now while this thing is
24 appealed. So I'm just -- where are we going?

25 MR. MEDLIN: Well, Your Honor, we're getting farther

ROA 005030

ROA 005031

1 and farther down that road. The more information we get,
2 the more I think that our client is able to fashion what
3 it is she does want. But, of course, as always, she will
4 astutely point out some factors, thought may have occurred
5 to our side and probably the other side, but may not have
6 the most sympathetic parties in front of a jury.

7 Certainly, there's a family dynamic going on here,
8 and this case is one of those family dynamic cases where
9 there's enough to argue about family dynamics.

10 I do think it ultimately will be a mediated
11 resolution. I'm optimistic of that. But I certainly ---

12 THE COURT: I'm hopeful, too, for you all.

13 MR. MEDLIN: I'm hopeful, too, Your Honor.

14 THE COURT: I don't see -- I can tell you this. I
15 don't see how it's ever going to happen without
16 Mrs. Barringer in the room.

17 MR. TWOMBLEY: She'll be there.

18 THE COURT: I think it's just a lot. It's just an
19 absolute lot.

20 MR. TWOMBLEY: Your Honor, may I respond very
21 briefly?

22 MR. MEDLIN: I'm not ---

23 THE COURT: I don't know. The tea leaves probably
24 don't matter.

25 Go ahead. Yeah. Let Mr. Medlin finish.

ROA 005031

ROA 005032

1 MR. MEDLIN: If I may, Your Honor.

2 And Ashley, I'm sorry.

3 MR. TWOMBLEY: No. Go ahead.

4 THE COURT: Yeah. Go ahead, please.

5 MR. MEDLIN: One more reason that production of these
6 documents is important to our side, and, again, it's
7 statements that the other side makes as well. We
8 recognize this. If the stock transfer in September 2012
9 is valid, the power of appointment is meaningless. So if,
10 in fact, Mrs. Barringer, who we think is falling pretty
11 closely with the Light defendants, changed her will after
12 September the 11th, 2012, and exercised her power of
13 appointment, it makes us wonder why. Why would you bother
14 to change your will and exercise the power over stock that
15 is no longer going to be in the estate? Now, maybe it's a
16 belt and suspenders sort of thing, but we'd like to know
17 because it may help us resolve our concerns about the
18 validity of that stock transfer.

19 So for all those reasons, those are important to us.
20 It's going to be confidential. We're the only ones who
21 are going to see it, but I think it gets us far down the
22 path.

23 Now, if I may address some of their points. First of
24 all, as to the subpoena issue, I take responsibility if I
25 missed this, I don't see anything in their responses

ROA 005032

ROA 005033

1 talking about the difference between a subpoena and a
2 request to produce. What I see is a statement that she's
3 an individual -- she's not a party as an individual, she's
4 a party as a personal representative, and so maybe that's
5 implicit and over my head. I just never saw a direct
6 statement in their response to the request for production,
7 their response to our motion to compel and their argument
8 on May 22nd. So that's why we take the position that you
9 can't do it now. It's too late. They didn't raise it,
10 and so that issue can't be raised.

11 But even then we would argue, Your Honor, that that's
12 just a form over substance thing. They sort of conflate a
13 jurisdiction issue with your ability to require their
14 production. Certainly, we agreed there are some cases, as
15 there should be, noting the difference between somebody
16 being a party in a fiduciary capacity versus somebody
17 being an individual. I didn't read those cases to say
18 that you couldn't subpoena somebody in their individual
19 capacity because you can subpoena nonparties. So I don't
20 think that necessarily makes the connection.

21 So if that's going to be the difference, then we're
22 going to have to go subpoena Mrs. Barringer, and we're
23 going to take more time and resources and ---

24 THE COURT: All that concerns me is, is that, based
25 on the new lawsuit, I think you can get her documents. So

ROA 005033

ROA 005034

1 even if I'm wrong here, even if I'm wrong in this case, I
2 think, based on the lawsuit that you just filed against
3 her individually, I think you can get them that way.

4 MR. MEDLIN: Well, maybe. They filed a motion to
5 dismiss already. They've not responded to our discovery.
6 We, of course, have a disagreement about the alacrity with
7 which they've responded in our discovery in this case. So
8 I don't know if we're going to get it in the other case
9 and how long it might take to get it, but it certainly
10 impacts this case. So we think you're right and we want
11 you to remain right.

12 On the privacy issue ---

13 THE COURT: I'm not concerned so much on the privacy
14 issue. I mean, I think we all know she has a privacy
15 right. I don't think there's any question, and I think we
16 shouldn't be delving into people's privacy. But I think
17 if it's necessary in a lawsuit, it can be turned over.
18 And that's what a protective order's for. So I get that.
19 I mean, I certainly understand it. I just want to make
20 sure that I'm not stepping in waters I'm not supposed to
21 be when she is only named as the PR in the administration
22 of her husband's estate and I'm asking for her documents.

23 And I heard you say earlier, you say it's a unique
24 position because not only is she the PR of the estate, but
25 she's also the person that's the beneficiary of most of

ROA 005034

ROA 005035

1 it, so -- and she gets to exercise the power. So I guess
2 that's where the difference is.

3 MR. MEDLIN: Well, and, Your Honor, we would say it's
4 more unique than that. We say they've opened the door.
5 And what Ashley has pointed out on numerous occasions, in
6 fact, back in June of 2018 he said, "Your Honor, I raised
7 this at the last hearing and I want to raise it again
8 every time I'm in front of you," and then he goes and
9 makes that argument which they make. And we see the
10 reverse side of that, that the idea that she can control
11 the stock has been a threat all along for us to give up on
12 this lawsuit because it's a meaningless lawsuit, a fool's
13 errand, as it was described before. And that, although
14 you may never mention the word "will," certainly indicates
15 that she is going to exercise that testamentary power if
16 she hasn't already to divert the stock away from the
17 default plan of Mr. Barringer.

18 And so, again, you can argue both sides of that, but
19 it certainly affects our side of the case where we are
20 being threatened by a person wearing her personal
21 representative hat, she's making the threat because she
22 has a personal power, and yet, we don't have any way to
23 respond to that threat because she says, Well, wait a
24 minute now, I didn't say you can see the thing that I'm
25 threatening you with. I'm going to tell you that you're

ROA 005035

ROA 005036

1 not going to get where you're going to get, it's not
2 possible to get where you're going to get. And, again,
3 that's true only if she has a right to exercise, which we
4 are disputing as well now, but you have the right to
5 exercise and you are going to exercise it in a way to keep
6 us from being able to get the stock eventually, which was
7 the default estate plan, but yet, you can't see my
8 documents. That to me is a very peculiar position.
9 That's a door-opening position if I've ever seen it.
10 Maybe if they've never raised the argument, maybe if it
11 didn't come up every time that they're in front of Your
12 Honor, then it wouldn't be such an open door. But it's a
13 really wide open door with respect to that.

14 They have to show that to start, based on the Hamm
15 case, with specificity, what the harm is in discovery.
16 Otherwise, discovery is ---

17 THE COURT: I argue this all the time. I mean, I
18 hear discovery, and it's why I grant it in the first
19 place.

20 My question is, quite frankly, anything that's in
21 those documents probably could have been asked of her in
22 her deposition anyway. So to me it seems like just a
23 natural extension of her deposition and in the follow-up.

24 MR. MEDLIN: Your Honor, we would -- believe me, we
25 had that on our list of questions that we were going to

ROA 005036

ROA 005037

1 get to, but we didn't get as much time as we were hoping
2 to get. And now we're sort of chicken and egg now because
3 in your order, you said that if we get the documents and
4 we see something we can ask about, you might let us
5 reconvene that deposition. So once again, we're caught in
6 a situation where very critical evidence to us is being
7 held over us, but then we can't see it.

8 But as to her right to privacy, I'd just like to make
9 one more point about that, Your Honor. Wills are not
10 private documents. Every will is in public record once
11 somebody dies. In a number of states, the will might be
12 on public record before somebody dies. There's nothing in
13 South Carolina law that I know that prevents somebody from
14 having a will examined while the decedent is alive. And,
15 in fact, the two cases that I mentioned, the ---

16 THE COURT: But isn't it the point that she can
17 change it at any time?

18 MR. MEDLIN: Well, maybe, Your Honor. But number
19 one, the pattern up to now would be very important to us,
20 and number two, she might not have that power if there's a
21 contract not to exercise or if she has a fiduciary duty
22 not to exercise.

23 THE COURT: So where -- I guess my question is, that
24 contract not to exercise that special testamentary power
25 of appointment, where do you find that? And remember,

ROA 005037

ROA 005038

1 we're in Circuit Court. I'm not a probate judge, and I
2 certainly probably am much over my head. So I guess my
3 question is where is that document? Where would that
4 contract be? Whose files would it be in?

5 MR. MEDLIN: Your Honor, it's proved by relevant,
6 admissible evidence. It doesn't ---

7 THE COURT: Are you saying it's a verbal contract?
8 Is that what you're telling me?

9 MR. MEDLIN: The evidence has to be in writing unless
10 there are exceptions like we have a couple of cases in
11 South Carolina. Equitable estoppel ---

12 THE COURT: Right.

13 MR. MEDLIN: --- the Wright v. Trask case was based
14 on oral testimony, but in fairness, it was entered into
15 before the probate code. So that's a difference. But
16 yes. It's possible to do that, but we could see it in
17 writing.

18 Now, what you'd really want to see is something that
19 says this is not a contract not to exercise. That could
20 be spelled out in the will. Or there is no contract not
21 to revoke. That could be spelled out in the will.

22 THE COURT: In her will?

23 MR. MEDLIN: And maybe it's in her will. I don't
24 know. But how can we know until we see it. But there
25 could be other admissible evidence, and perhaps as

ROA 005038

ROA 005039

1 critical as anything is the pattern which would show
2 whether she's done it or not. So her will is going to be
3 on public record.

4 Now, she cannot exercise this power other than
5 through her will. Mr. Barringer, this is about
6 Mr. Barringer's intent. This case is about his intent.
7 He had at one time one of the best estate planning lawyers
8 in the country. I happen to like the one he had more
9 recently, too, but he had one of the best nationally
10 renowned estate planners for many years. And so he didn't
11 give her the power to exercise other than through a will.
12 He could have done that. He gave her the power in a will.
13 So he knew, assuming he was properly advised, if they even
14 talked about the power of appointment because it is fairly
15 boilerplate, he knew or should have known that the only
16 way that his wife was going to be able to change his
17 default estate plan was with something that would
18 eventually end up on public record. Now, she'd be dead,
19 but was still going to end up on public record. If he was
20 so concerned about her privacy, he could have given her a
21 power in a different way where she didn't have to do it in
22 her will, and he didn't do that.

23 Your Honor, those are our arguments. We think you're
24 right.

25 THE COURT: Ashley, I'm going to let you respond.

ROA 005039

ROA 005040

1 Can we just take a quick five minutes? I only want
2 something new. I mean, I feel like I've heard this topic.
3 I think I understand.

4 MR. TWOMBLEY: I'll do my best.

5 THE COURT: Okay. Well, no, don't do your best. I
6 know you cannot retread old ground. I know we can go
7 forward. So let's -- I'll let you respond to this really
8 quickly. Just give me about five minutes to step off and
9 then let's keep moving, okay?

10 MR. TWOMBLEY: Yes, ma'am.

11 THE COURT: Because I'm assuming you guys need to
12 continue with Randy Light's deposition. I mean, I'm
13 assuming he's in town and you guys want to get going,
14 right?

15 MR. TWOMBLEY: Yes, ma'am.

16 THE COURT: Okay. All right. Just give me five
17 minutes.

18 (WHEREUPON, a recess is taken at 12:44 p.m.)

19 THE COURT: All right. Mr. Twombley?

20 MR. TWOMBLEY: Your Honor, thank you very much. I
21 just made a list of just a few points I want to make.

22 I've asked for the evidence of this contract. I'm
23 not going to go into all of it now, but I really think the
24 filing of that new lawsuit alleging that there is a
25 contract not to exercise the power of appointment is

ROA 005040

ROA 005041

1 totally and completely frivolous and a violation of the
2 rules. And I've gone on record about that. There is no
3 contract.

4 It is important that, you know, Professor Medlin
5 makes this point about, you know, we want to know whether
6 or not this is good or bad for our case. That's not what
7 they really want. They don't want to know if it's good or
8 bad for the case because that's not what this case is
9 about. This case is about Mr. Barringer. What they want
10 to know is I'm sure what every child in America wants to
11 know is what is my mom and dad going to leave me. And oh,
12 my gosh, my mother might not leave me something. Well,
13 what can I do to stop that? What can I do to stop the
14 threat? Well, you know what the reality is? Nothing.
15 She's not entitled to a dime from her mother. Her mother
16 can do with her property anything she wants.

17 THE COURT: This is why people leave their money to
18 their dogs.

19 MR. TWOMBLEY: This is exactly right. This is
20 exactly right. And it's not helpful to their case. They
21 just want to know. They just want to know. I really want
22 to know what my mom's going to give me. Well, I mean, get
23 in line with every other brat child in America who wants
24 to know what they're getting from their mother and their
25 father. They're not entitled to it. And I'm sorry they

ROA 005041

ROA 005042

1 want to know it. That is not entitled into it in this
2 case.

3 Your Honor, the fact that no subpoena has been served
4 is not form over substance. It's jurisdictional. This
5 court obtains jurisdiction over Ms. Barringer personally
6 by her being properly served with a subpoena in accordance
7 with the rules. It is my understanding that service of
8 process is not a mere technicality in this state. It's an
9 important rule that they haven't complied with it. It's
10 jurisdictional.

11 Your Honor, I want to make sure you understand, this
12 is a very critical point because Mr. Medlin and the
13 plaintiff, and now they've said it so much I'm fearful
14 that they have confused Your Honor, but that Hampton Luzak
15 was disinherited in 2012, that Mr. Barringer, you know,
16 had this company and he had built it up, and all of a
17 sudden ---

18 THE COURT: She knew nothing about it. I don't think
19 that's -- I don't think that was the argument at all. It
20 was a stock transfer.

21 MR. TWOMBLEY: Well, Your Honor, I think they have
22 said repeatedly that Mrs. Luzak was disinherited in 2012.
23 And I want to make sure Your Honor understands this.

24 THE COURT: I clearly don't believe that. I think
25 all there was was a stock transfer, and it was given over

ROA 005042

ROA 005043

1 to Merrill Light. And she thinks she should have gotten
2 half of it if it even should have occurred.

3 MR. TWOMBLEY: Right. Well, the reason it's
4 important, because I think it does go to the heart of this
5 case, first of all, the equity ownership in this company
6 was given half to Ms. Luzak and half to Ms. Light a long
7 time ago. All of Mr. Barringer's what I would say
8 significant valuable assets were divided a long time ago.
9 The only thing we are talking about in this case is just
10 the voting control ---

11 THE COURT: I understand.

12 MR. TWOMBLEY: --- over the company. And so yes, he
13 did change his mind as to who he wanted to have the
14 authority to control the company in the future, but if
15 this company declares a dividend, she gets just as much as
16 Merrill Light gets. If the company is sold, she gets just
17 as much as Merrill Light did. So this assertion that
18 there was this radical change in 2012 is not entirely
19 accurate. It's not accurate at all.

20 My client has never threatened anybody with anything.
21 All I have done is appropriately point out the facts and
22 the substance of Mr. Barringer's documents, and that is
23 that under his estate plan, even if you go back to 1998
24 and they win the case, that my client has a power of
25 appointment. It's not a threat. It's not a threat. I

ROA 005043

ROA 005044

1 don't know how she's going to exercise that appointment.
2 Even if this case were to prevail, I have no idea, but no
3 one has threatened anyone with anything.

4 Your Honor, all of this evidence that they talk about
5 is so critical, I mean, just this critical evidence. I
6 mean, it's so critical, over the past three years they
7 haven't asked for it. And it's so critical that they
8 spent, you know, a full day deposing my client and they
9 didn't ask her about it. I mean, I don't know why they
10 now think they can come in here and offer that it's so
11 critical. They just want it. They're just saying it's
12 critical. They know it's not critical to this case. They
13 would have asked about it a long time ago.

14 Your Honor asked if there was any evidence that
15 Mr. Luzak had done anything wrong. Just put a footnote or
16 an asterisk there because we aren't finished with our side
17 of the case, and we'll have more about that later, but I
18 just want to make sure that doesn't go unresponded to.

19 Very briefly, Your Honor, the Chapman case that
20 Mr. Medlin talks about, Mr. and Mrs. Chapman were from --
21 they have blended families. Mr. Chapman had two of his
22 children and Ms. Chapman had two of her children. And in
23 that case, Mrs. Chapman agreed, she said, "I had an
24 agreement with my husband, a contract, a duty and an
25 obligation that I would not exercise this power of

ROA 005044

1 appointment, and despite the fact that I agreed to it, I
2 changed my mind two or three years after he died." And
3 the Court of Appeals said that that evidence was
4 undisputed. Okay.

5 Now, that's a far cry from this situation. Chapman
6 is not applicable at all, and the tax code was totally
7 revamped in 1981 that changes the entire outcome of this
8 case. There is nothing that would have prevented
9 Mr. Barringer from drafting up a trust that's for a will
10 that said when I die, I want everything to go to my wife,
11 be held in trust for her until she dies, and when she
12 dies, she gets to decide who gets it with the exception of
13 this stock. And I've got this new secret plan for the
14 stock, and the stock is going to go a different way.
15 Wouldn't have changed the tax situation one penny, one
16 penny. Totally and completely opposite from what we had
17 in the Chapman case.

18 You know, I think, Your Honor, that they're confusing
19 influence with undue influence. I mean, the idea that
20 Mr. Barringer may have been influenced, I mean,
21 everybody's influenced every day, right? I mean, that
22 doesn't -- you can't bring a legal case to upset
23 somebody's estate plan because somebody was influenced.
24 It's undue influence. The law says force, coercion,
25 lacked the ability to make a decision on their own. There

ROA 005046

1 is no evidence.

2 You asked a very good question: Who are the
3 witnesses? Where are the documents? Who's going to come
4 in and testify?

5 Let me tell you who they've deposed so far. We've
6 got Ann Sarratt, the lifelong banker at Wells Fargo. She
7 said she met with Mr. Barringer in '12 and in '13 and I
8 think she said in '14. She said he was fine, no problems,
9 understood everything, answered her questions asked
10 appropriate questions.

11 Bobby Davis, the man's accountant for 30 years said
12 he had a two hour plus meeting or a long meeting with
13 Mr. Barringer to go over all of his estate taxes in 2013.
14 He said he never knew there was anything wrong with him at
15 all. Went through all of his -- I'm sorry if I said
16 estate taxes, but his tax return, went over his tax return
17 with him.

18 Paul Long, his physician of ten years who he sees in
19 Hilton Head, he testified in probate court that if he
20 would have been called as a witness in 2012 out of the
21 conservatorship hearing, and if he would have been
22 presented with that form that we have down in probate
23 court that says can this man vote, can this man enter into
24 a contract, can this man bring a lawsuit, can this man
25 handle his financial affairs, he would not have placed any

ROA 005046

1 restrictions on him at all.

2 And, of course, not to be forgotten is my client, his
3 wife of 59 years. She said he knew exactly what he was
4 doing and that they talked about it and that he -- this is
5 exactly what he wanted.

6 So those are the witnesses that they have deposed,
7 and that's what the evidence is. And the only people on
8 the planet Earth that think Mr. Barringer didn't know what
9 he was doing in 2012 is Hampton Luzak and her husband
10 Kevin Luzak. That's it.

11 THE COURT: And correct me if I'm wrong, Mr. Luzak
12 was the CEO at the time of the company, correct, and dealt
13 with him then, I would assume, on a frequent basis?

14 MR. TWOMBLEY: He was the CEO of that company and
15 some other companies. He had a lot of irons in the fire.

16 THE COURT: But he would have some information or at
17 least an idea how having dealt with him what he was like.

18 I'm sitting here just wondering who else. I mean,
19 what about their friends? I mean, did they socialize
20 ever? And I know this is getting very, very far-fetched,
21 but, I mean, for instance, who did they meet at Tide
22 Pointe? Because there's a lot of people over there that I
23 think they could give lots of testimony.

24 MR. TWOMBLEY: We have identified witnesses. We are
25 discovering new ones every day.

ROA 005048

1 THE COURT: I mean, I'm sure there's housekeepers.
2 I'm sure there's probably cooks.

3 MR. TWOMBLEY: The problem is, Your Honor, they can't
4 find any of those witnesses that are going to support
5 their case. That's why they haven't identified them, and
6 that's why they haven't deposed them. Those witnesses
7 don't exist. There's a host of people at the company, at
8 CFRC that talked with Mr. Barringer, that worked with him
9 all through the remainder of 2012 and 2013, people he's
10 been -- his best friends, his lifelong confidants for the
11 man's entire life that have been right by his side at the
12 -- at this company the whole time. So ---

13 THE COURT: Okay. I think we're getting -- and I
14 apologize. I'm the one that did that. But I think we're
15 very far afoot at this point.

16 So unless there's anything else new, Mr. Twombley,
17 we've got to move on.

18 MR. MEDLIN: May I just take a few minutes to
19 respond, Your Honor?

20 THE COURT: Sure.

21 MR. MEDLIN: We didn't just ask for it. We asked for
22 it in September of 2018. We asked for it a year ago.
23 According to Mr. Twombley, we need more evidence. We
24 don't have enough evidence. Again, I don't want to get
25 back into the facts, although I mentioned before, Your

ROA 005048

ROA 005049

1 Honor, all the people who are independent and involved
2 with the company, including Randy Light who's sending
3 emails saying Paul's losing it, but that's only a factor.
4 I don't think it's an accurate depiction of the law to say
5 for undue influence, you must lack an ability to make a
6 decision on their own. That's mental capacity. Undue
7 influence is when somebody either overtly or covertly or
8 somewhere in between convinces you to do something other
9 than what you would have done. And as I mentioned before,
10 I think that's what this case is about.

11 THE COURT: But I think also you take it in the
12 context of this man, according to his wife's own testimony
13 and probably everyone else in this case, was a very strong
14 man. I think I heard Mrs. Barringer repeatedly in her
15 deposition say he wasn't going to do anything he didn't
16 want to do. So I think that plays into it as well.

17 MR. MEDLIN: Your Honor, we have, we think, plenty of
18 evidence already that shows that while he was suffering
19 from Alzheimer's, which was diagnosed including early on
20 by Dr. Long -- and Alzheimer's is a funny disease. You
21 have good days and bad days. I lived through 12 years of
22 it with my mother, and I know excruciatingly well what
23 it's like to live with Alzheimer's. And the point being
24 that when you have diminished capacity, it can be a factor
25 in being more susceptible to undue influence. Undue

ROA 005049

ROA 005050

1 influence is simply susceptibility and the propensity of
2 the undue influencer combined. And every fact pattern is
3 different, and we think we have enough facts to show that.

4 But although we think we have enough evidence to make
5 those allegations including, again, the independent
6 director on the board, a renowned honest, honorable
7 attorney who has since passed away, but we have his
8 documents, Tom Evans who's worked with Mr. Barringer, the
9 question is not was he competent to make a will
10 necessarily. The question is, is that a factor in his
11 being unduly influenced, being lied to and misrepresented
12 to by those who ended up benefiting. That's the question.

13 Now, as far as this other lawsuit is concerned, we
14 obviously have a serious disagreement with Mr. Twombly on
15 that. We don't think we brought a frivolous lawsuit. We
16 do think we need more evidence to move down the path.
17 It's the very evidence that he's withholding from us.

18 I don't think my client harbors any doubt about what
19 her mother's leaving her. I think she knows her mother is
20 not going to leave her anything. The question is, when
21 did that start? She's got records where she was
22 communicating with her mother pleasantly up until the time
23 that Mr. Barringer died.

24 THE COURT: But why does that matter? Why does it
25 matter when it's her power, the mother's power to leave it

ROA 005050

ROA 005051

1 to her?

2 MR. MEDLIN: Because the question raised by
3 Mr. Twombly is does Mrs. Luzak want to know what she's
4 getting. I think that was made apparent on the date
5 Mrs. Barringer was deposed. But we need to see the
6 pattern of the documents to be able to do that.

7 I hate to -- well, I'm going to do it anyway.

8 THE COURT: Go ahead.

9 MR. MEDLIN: It's not her property. Unless and until
10 she exercises a special testamentary power of appointment,
11 it is Mr. Barringer's property, and the beneficiaries, the
12 default beneficiaries are considered beneficiaries. The
13 only way that it moves in a different direction is if she
14 exercises that power. Now, yes, Mrs. Barringer is a
15 beneficiary, the trust that holds the stock. But it's not
16 her property. So that's an important distinction.

17 THE COURT: Okay.

18 MR. MEDLIN: I won't address the brat child issue.

19 THE COURT: We need to move on, y'all. We really do.

20 MR. MEDLIN: Can I just address a few other points,
21 Your Honor?

22 THE COURT: Sure.

23 MR. MEDLIN: Again, I don't see anywhere in the
24 pleadings or in the transcript of the previous hearing
25 where we talked about the subpoena, but she raised the

ROA 005051

ROA 005052

1 will in the context of her capacity as personal
2 representative. She has access and control over that. So
3 she is a party. You do have jurisdiction over her.

4 In the Chapman case, and again, I hate, but I'm going
5 to do it, Mrs. Chapman did not say that she had a contract
6 not to revoke in that case. That's not a contract not to
7 revoke case. And I'll be happy to cite you a poorly
8 written Law Review article on just that case. The Court
9 simply talked about a fiduciary obligation. The Court
10 didn't want to get into a contract not to revoke, and the
11 reason is because if there was a contract not to revoke,
12 they wouldn't have gotten the tax benefit. So that case
13 didn't say anything at all about a contract not to revoke.

14 And then finally, if we're going to use Bobby Davis
15 as a witness, which we intend to do, he's going to show us
16 a 2012 tax organizer that he got for Mr. Barringer early
17 in 2013 where Mr. Barringer couldn't remember making the
18 most critical gift of his life three months before. He
19 said he didn't make any gift in 2012. It's the most
20 critical gift of his life. So yes, we have some other
21 evidence and other documents and so forth.

22 And by the way and finally, and I'll hush, Your
23 Honor, we do think it's a radical issue about the voting
24 stock, and I will make this offer. If they don't think
25 that's radical, we'll take -- and this is like voting

ROA 005052

ROA 005053

1 stock. We'll just take it, accept it as a gift today.
2 That's the issue, control of the company. It's the voting
3 stock that is at issue.

4 Sorry for being so long, Your Honor. Thank you.

5 THE COURT: All right. Ashley, do we need to take up
6 -- obviously, your motion to stay was just that, it was to
7 stay. And you don't need to argue it. I understand the
8 basis of it, so I think we all know. They've withdrawn
9 their motion for sanctions, so what other motion do you
10 have? Or did you? That was it?

11 MR. TWOMBLEY: I think that's all I have, Your Honor.

12 THE COURT: All right. So now we need to get to
13 Randy Light, am I correct, and this Texas -- information
14 of the Texas bankruptcy?

15 MR. MACLOSKIE: That's correct. We filed our motion
16 to compel after trying to deal with this without coming
17 back to you unsuccessfully. Remembering some dates might
18 be useful here. We're dealing with a fairly short time
19 frame. Mindful that the stock transfer is critical,
20 there's no question about it, but often it is, it's the
21 events that precede and succeed that critical event.

22 THE COURT: What was the stock distribution that
23 Hampton Luzak said her father never would have approved
24 but I believe that y'all were tying it to a time when
25 Mr. Light needed money? I mean, I've heard that.

ROA 005053

1 MR. MACLOSIE: What happened is the stock was placed
2 into Merrill Light's revocable trust when she was a
3 co-trustee of Paul Barringer's revocable trust. And I
4 think the date that you have, September of 2011, is
5 correct.

6 THE COURT: Right. September 11th.

7 MR. MACLOSIE: But there are other events after that
8 that have something to do with defining that moment and
9 other important moments.

10 It is June of 2012 that Randy Light put Stretford
11 into bankruptcy. And in the bankruptcy form or
12 application that we have, he's checked a box that says
13 that the bankruptcy is somewhere between \$10 and \$50
14 million. It turns out it's about \$24 or \$23 million.
15 Now, that's on June the 4th of 2012.

16 On June the 28th, 2012, Kevin Luzak is removed as
17 president of CFRC. We have the benefit of some documents
18 from that Texas day. We need more. We've gotten some.
19 We need more.

20 Now, the objection that has been made to you is that
21 it's harassing, it's burdensome, it's irrelevant, that
22 motive is not an element of any cause of action we've
23 alleged. Motive is important, and South Carolina
24 recognizes that.

25 There is a case that has really nothing to do with

1 bankruptcy or this kind of thing. It's Brown vs.
2 Allstate. It's a 2001 Supreme Court case. And what that
3 case says is -- it's an arson case. The guy is accused of
4 -- he sued his insurance company wanting to claim damage
5 to his automobile for a fire that's alleged by the
6 insurance company he set. And this is what it says in the
7 pertinent part: To prove arson, an insured must
8 demonstrate by a preponderance of the evidence that the
9 fire was of an incendiary origin and the insured caused
10 the fire. An insurer can prevail in an arson defense
11 based solely on circumstantial evidence if it shows the
12 fire was of an incendiary origin and the plaintiff had
13 both the opportunity and the motive to set the fire.

14 Judge Perry, in a federal case, I think it was after
15 this, says -- it's in Donovan vs. Pete Zimmer, in just a
16 little scrip, of course, the difference between holdings
17 and dicta has become almost combined. There seems to be
18 very little -- but anyhow, whether it's a holding or a
19 dicta, I think it's a dicta. And this is what Judge Perry
20 says: Direct evidence of motive rarely exists.
21 Inferences from the evidence almost universally are the
22 only way of determining motive. Well, motive is important
23 in this case. It is an element of conversion, which is
24 the civil equivalent of theft.

25 THE COURT: Mr. Macloskie, let me ask this. So we

ROA 005056

1 have the bankruptcy filings, correct?

2 MR. MACLOSKIE: We have some of them.

3 THE COURT: Some of them. My question is, is why
4 can't you get all of them? Are they under seal? Why
5 can't you ---

6 MR. MACLOSKIE: Well, the settlement is under seal.

7 THE COURT: Okay.

8 MR. MACLOSKIE: We've gotten as much as we can, but
9 there are other documents that we think are critical.

10 THE COURT: Like what?

11 MR. MACLOSKIE: Like his applications to the banks
12 out in Texas.

13 THE COURT: His applications to the banks?

14 MR. MACLOSKIE: For loans. Emails that flew between
15 the banks or anybody else involved in this and Mr. Light.
16 Those things we can't get off of PACER. We can't --
17 there's no public record of them. They control these
18 documents.

19 Now, any idea that what we're requesting, the limited
20 amount of documents that we're requesting is harassing,
21 harassing or burdensome, unduly burdensome are ---

22 THE COURT: But my question is, how do you get these
23 applications? Because I'm going to presume he doesn't
24 have copies of them. So how do you get them?

25 MR. MACLOSKIE: Well, you know, some -- if he doesn't

ROA 005056

ROA 005057

1 have them, why not say that? But we believe he does have
2 records. He can certainly go to the banks and get them.
3 He controls those things. They don't -- documents don't
4 have to be in possession. They can be under control. And
5 our position is he's still in control of those documents.
6 He can call Stillwater and say, "I need copies of these."
7 And believe me, if he thought they would help him in this
8 lawsuit, he would produce it.

9 But I need to point out to you and remind people at
10 the other table about expense and burdensome. The
11 plaintiff in one -- in complying with one request for
12 production furnished over 90,000 pages of documents at a
13 cost that exceeded \$200,000. And for anybody to come in
14 here in light of that kind of history and saying that a
15 limited request like this is harassing, that it's
16 irrelevant, it's relevant, it's not harassing, we're
17 entitled to it, and we want it.

18 THE COURT: So tell me, what would an application for
19 a loan say?

20 MR. MACLOSKIE: Oh, it might say something about, for
21 example, his net worth in 2010 when he applied for this,
22 or whenever he did. 2005. They might have a lot of
23 information.

24 But this deposition that we recessed to come here to
25 argue these motions is replete -- the most common answer

ROA 005057

ROA 005058

1 that Mr. Light has to questions asked is "I don't recall,"
2 "I don't remember," "I don't know." The things that seem
3 to just be incredulous, he can't remember.

4 And that's another reason we need them because we're
5 not getting -- we're not getting anywhere with him. We'll
6 go back there and it will be an afternoon, maybe a morning
7 tomorrow full of "I don't recall," "I don't know" and "I
8 don't remember."

9 Fortunately, because of the conversation that took
10 place this morning before the deposition, we dealt with
11 some concerns that this court has mentioned about
12 objecting. In the last deposition we took of Mrs. Merrill
13 Light, we had somebody go back through that deposition,
14 and the reason I'm bringing this up is because there's
15 been mention of it and a brief in opposition to our motion
16 to compel about the nature of the conduct at these
17 depositions. Well, I had somebody go through it and I
18 needed kind of blindly I guess to serve as an officer of
19 the Court that these are accurate. And I'm going to pass
20 up to the Court for whatever purpose a compilation of
21 this.

22 MS. PAYLOR: Could we see that, please.

23 MR. MACLOSIE: It shows -- I'm going to give you a
24 copy of it.

25 It shows that on day one of Mrs. Light's deposition,

ROA 005058

ROA 005059

1 Mrs. Paylor objected 530 times, and on day two, she
2 objected 279 times for a total of 809 times. Mr. Twombly
3 echoed those objections on day one 211 times and on day
4 two 95 times. If you total all of that up, and this is a
5 little over ten hours, that's 1,115 objections.

6 THE COURT: Mr. Macloskie ---

7 MR. MACLOSKIE: And to claim that we're harassing and
8 engaged in burdensome conduct, it's just -- it just is
9 unseemly at best. Have we had discovery problems in this
10 case? You bet we have. They're not cured by a ten hour
11 and 17 minute deposition being interrupted 1,115 times.

12 THE COURT: Mr. Macloskie . . .

13 MR. MACLOSKIE: All we want is our documents.

14 THE COURT: Clearly, I voiced earlier my
15 disappointment in Mrs. Barringer's deposition.

16 MR. TWOMBLY: We'd love you to watch this one.

17 THE COURT: What I don't want to do here, and I just
18 -- I need to say this because, y'all, I have the highest
19 respect for every lawyer in here. I mean, there is no
20 question about that. And I know you're all doing your
21 jobs, and I appreciate that. But at this point, everyone
22 has a side to argue, and you're doing your jobs. And for
23 me, I'm sitting here just trying to ferret through all of
24 it and to figure out what it is we need to really narrow
25 and go forward.

ROA 005059

ROA 005060

1 What concerns me in this case, as I said all along,
2 is there is so much money involved. And the truth is
3 this, every person sitting in this room is making money
4 every time they're laying eyes on this case. I truly
5 think that I'm the only one that's not because I do it
6 regardless. If it isn't this, I'm doing something else.
7 So I feel like at some point I need to reign you in.

8 But what I'm saying is this. I don't want to hear
9 how everyone has abused discovery, because I would agree
10 with you. I think it's been all over the place. I think
11 everyone's abused discovery in this case. And I can
12 assure you of this. If both clients didn't have these
13 deep pockets, y'all wouldn't be in front of me near as
14 much, and you would not be taking three-day depositions.
15 It's just the truth. It just is.

16 So what I want to do is just go back and hopefully do
17 the right thing, figure out how to get this case ready for
18 trial, get it prepared, get it ready to go forward. I
19 don't want to hear again what everyone is doing or not
20 doing. Again, y'all are defending your clients and you're
21 bringing the cases. I appreciate that. But, I mean, I'm
22 going to tell you truthfully, I'm not going to look at how
23 many times Ms. Paylor objected just like I'm not going to
24 look any more about Mr. Gilreath asking questions that
25 really don't matter.

ROA 005060

ROA 005061

1 MR. MACLOSKE: We just want this case to move
2 forward to resolution, and I view what happened in that
3 last deposition as interfering with this case moving along
4 in an orderly fashion.

5 THE COURT: I think everyone has, though. I think
6 everyone has.

7 MR. MACLOSKE: You're in the end. And if we need a
8 discovery conference, let's have it. But all of us are
9 weary of this. And I've listened to Ms. Paylor's
10 expressions of weariness. She's as weary as anybody is.
11 But this has got -- we have got to move this case on, and
12 we can't do it taking depositions for ten hours and put up
13 with 1,115 objections. That's obnoxious to the goal that
14 all of us -- and I agree with you. If there wasn't a
15 bunch of money involved, no, you wouldn't have all these
16 lawyers involved in it.

17 THE COURT: My point is this. We need to move on and
18 I need to see exactly -- what I need to know from you is
19 how are applications to banks for loans in 2010 -- I don't
20 think there's any question that you already have evidence,
21 I'm going to tell you that right now, with some type of
22 motive. If Mr. Light was \$26 million in the hole and
23 looking for an out, I would agree that that's a great
24 argument for a jury to exercise undue influence against
25 Mr. Barringer to get some voting stock put his wife's way

ROA 005061

ROA 005062

1 so he could control the company. I think it's good
2 evidence and I think it's an argument. And I understand
3 that's why you're saying it and doing it.

4 My question is, is why go through all of these
5 documents to show the exact same thing? We already know
6 that he had two failed projects. We already know that he
7 was in financial distress horribly. By his own email,
8 he's already stated that he's got a problem. So, again, I
9 don't see what's more to gain by showing, again, that he
10 had some kind of motive to do this.

11 MR. MACLOSKIE: May I just briefly address this?

12 THE COURT: Sure.

13 MR. MACLOSKIE: One of our contentions is that when
14 Mr. Light was put on the board, Kevin was removed as
15 president on June the 28th, 2012. He was removed from the
16 board on August the 28th of that same year. I mean, I'm
17 sorry, August the 3rd. That's when Mr. Light assumed the
18 position on the board. He was not employed at that time.
19 He testified that day that he was employed as an advisor.
20 Doesn't remember what he was paid as an advisor, but
21 remembered that Mr. Barringer wanted him to be
22 compensated.

23 We found out that among other things, Mrs. Light used
24 a line of credit that Randy Light used for some purpose to
25 the tune of \$2 million. Where is the income coming from

ROA 005062

ROA 005063

1 to pay back that line? Because Mrs. Light testified she
2 wouldn't do it. Well, we know this, that in one year,
3 while Mr. Light was compensated at the rate of \$147,000,
4 holding some position, vice president, I believe, in that
5 year, as a member of the board of directors, he was paid a
6 \$250,000 bonus. What our contention is, is that he had to
7 get some type of employment with CFRC, a corporation that
8 his wife, in essence, controlled because she controlled
9 the majority of the voting stock.

10 THE COURT: Well, why can't you just show that by his
11 tax returns showing that he has no income?

12 MR. MACLOSIE: Well, we asked for those, too.

13 The financial documents from Texas are useful. I
14 mean, that's all there is to it. And they're relevant.
15 They're relevant to show that he had no net worth to be
16 able to pay -- to do anything at all until he gets on the
17 board of directors.

18 THE COURT: So aren't we also then getting into
19 Merrill Light's net worth and what she has? I mean, I
20 don't know how they held their wealth, but my question is,
21 was it separate? I mean, I guess the question is, when
22 does it ever stop?

23 MR. MACLOSIE: A perfectly legitimate question. Is
24 there any connection between her wealth and his?
25 Perfectly legitimate.

ROA 005063

ROA 005064

1 THE COURT: Well, it sounds to me like she had some
2 objection to certain things because she wasn't agreeing to
3 it. I mean, I know there was an email that's something
4 like I'm having a hard time at home trying to convince
5 her.

6 MR. MACLOSKIE: The email trail that we have shows
7 that he expresses frustration. There's another term used.
8 "Desperation" was one term. And all of it has to do with
9 he can't get his wife on board to do whatever is necessary
10 to free up some money to help him with his bankruptcy.
11 The documents in Texas are going to be relevant and
12 helpful toward that end.

13 Again, I hear what the other side is saying, that we
14 don't -- their contention is we don't want to know
15 anything that hurts us. Nothing could be further from the
16 truth. If there's something out there that hurts us, we
17 need to know about it because that's going to be helpful
18 in getting to a resolution of this case, period, the end.

19 THE COURT: All right. Ms. Paylor?

20 MS. PAYLOR: Thank you, Your Honor. And I'm not
21 going to come back. We disagree with everything that he
22 says that they have evidence to prove. Mr. Light, they've
23 been with him for a couple hours and I think I made three
24 objections today because I also cautioned Mr. Gilreath
25 this morning not to make misleading questions that are

ROA 005064

ROA 005065

1 based on facts that are not in evidence and they have no
2 proof of. He's doing a very good job so far. So as long
3 as he does that, then I don't have to object to the form,
4 Your Honor.

5 Randy Light went to Texas in 2005. Guess what
6 happened in 2008? The market went out. His project
7 failed. Yes, his project went into bankruptcy, not Randy
8 Light. He put it into bankruptcy. And according to the
9 claims at that time, \$23 million were owed. They were
10 nice enough to give us the final report of the trustee at
11 the end, and they only allowed like \$1.5 or \$6 million in
12 claims in the bankruptcy. What they haven't asked him is
13 does he still have any involvement there? The answer will
14 be no. Did he resolve everything? The answer will be
15 yes. Did he spend a boatload of money? No. They want to
16 just get pieces, they want to get accusations that some of
17 his partners made against him, all of which went away, and
18 they want to say that's the truth. And that's what they
19 were telling this poor man's son in his deposition.

20 THE COURT: I read that whole -- where he had no idea
21 what was going on.

22 MS. PAYLOR: Of course not. And to tell somebody,
23 you know, I've never heard of worst conduct than your
24 father committed in Texas.

25 Our client was the only one who stood up and tried to

ROA 005065

ROA 005066

1 make things right. All of his other partners took off and
2 left him. He kept trying to build the units out of his
3 own pocket. Now, it got to the point where he couldn't do
4 that anymore. And that's what happened. He had a great
5 lawyer in Texas who helped him get out of it. They want
6 to take his deposition. He's going to tell him this is
7 one of the nicest people he has ever met, he is a standup
8 guy, he was trying to do the right thing, and I helped him
9 get everything resolved and tied up into a nice package.

10 THE COURT: Okay. And I know y'all disagree. I know
11 you say that he lied and was double-dealing with the
12 bankruptcy court. I read your brief. I get it.

13 MS. PAYLOR: There's no evidence of that. There were
14 a couple of complaints, all of which went away, Your
15 Honor.

16 THE COURT: Okay.

17 MS. PAYLOR: And where we are is my client doesn't
18 have any of those documents. As they know, he doesn't
19 have any emails prior to whatever the date was that we
20 gave them. They had -- they got hacked, and they don't
21 have anything before, I think, 2015. He doesn't have any
22 of those emails.

23 Why a bank application from 2005 or 2006 could have
24 any relevance to this case I cannot imagine. He did put
25 the company into bankruptcy right there the same time all

ROA 005066

ROA 005067

1 this was going on, so he wasn't here trying to tell Paul
2 Barringer what to do. In June of 2012, he was in Texas
3 putting this Stretford entity into bankruptcy. He wasn't
4 here unduly influencing Paul Barringer. And I can promise
5 you there are hundreds of witnesses who will tell you and
6 a jury that no one could influence Paul Barringer.

7 Last of all, his sweet daughter, who all she's ever
8 been her whole life is the good daughter who stayed here,
9 stayed out of spats between the other children and helped
10 her parents. They didn't tell you that Hampton didn't go
11 see her father from 2012 till he died in 2016 except one
12 time one month before he died. She did it through accord.
13 She never got on an airplane and came down and tried to
14 make up with him. And he reached out to her and asked her
15 repeatedly to come, make things right before -- in his
16 words, before it's too late. She didn't do it. Very
17 simple.

18 Anyway, I don't want to, you know, preach any more
19 about the merits of our case versus theirs. I have seen
20 no evidence to support their case whatsoever.

21 These Texas documents have no relevance. They have
22 all the information they need to show that, yeah, he was
23 looking for some money. Wasn't looking for \$100 million
24 or \$200 million or even \$23 million. He got out of it
25 using his funds. And he borrowed a little bit from his

ROA 005067

ROA 005068

1 wife, a little bit from his wife and that's where --
2 that's the story of that.

3 THE COURT: And he got out for what? You said a
4 million five, something ---

5 MS. PAYLOR: I think it was \$1.7 million.

6 THE COURT: Okay.

7 MR. MACLOSKIE: If Your Honor please, just because I
8 don't address things like Hampton's ---

9 THE COURT: You all have briefed this so well.

10 MR. MACLOSKIE: --- I'm not agreed with that.

11 THE COURT: Oh, I absolutely understand that. You
12 all have briefed this so well that I'm not concerned about
13 that.

14 What else do we need to do? Y'all were talking to me
15 about a scheduling order and that you didn't think the
16 deadline for the mediation by I think it was October 1st
17 -- am I correct on that? -- was appropriate until you have
18 the documents you need. And I hear you, and I certainly
19 understand that. But, again, I don't want to keep this
20 open-ended.

21 So what I'm going to do is this. Let me -- based on
22 how I'm going to rule today, let me -- well, that begs one
23 other question. Somewhere someone mentioned that you're
24 going to try to consolidate the case against Ms. Barringer
25 with this case. Am I correct on that? I read it

ROA 005068

ROA 005069

1 somewhere. Don't ask me where it came from at this point.
2 Is that what you're going to do?

3 MR. GILREATH: Your Honor, I think Alan may have
4 talked to him. We don't think they're going to consent to
5 it.

6 MR. TWOMBLEY: Yeah. I do not consent to that. They
7 haven't filed a motion to do it.

8 And I did want to ask one question since Your Honor
9 did ask about that in the course if they consolidated in
10 there before you, I understand that, but I want to make
11 sure that ---

12 THE COURT: Did I retain jurisdiction of this case?
13 I know I ask this every time as if I've got my mental
14 amnesia. But have I retained jurisdiction of this case or
15 took this case in any way?

16 MR. TWOMBLEY: This case I think has been assigned to
17 you. We all agreed to assign it to you. It's complex.
18 Or I'm not sure how that works. But we heard they wanted
19 it assigned and we ---

20 THE COURT: I'm pretty sure I talked to y'all a long
21 time ago about a special referee and someone who maybe had
22 like probate specialty, and I think everyone said no. I
23 can't imagine why.

24 MR. MEDLIN: Your Honor, we asked for a special
25 referee last fall, and you turned us down.

ROA 005069

1 THE COURT: You both did?

2 MR. MEDLIN: We did.

3 THE COURT: Whoa. I can assure you on this one I
4 don't remember anything, but I can positively tell you
5 that if you all agreed on a special referee, I would have
6 given you one.

7 MR. MEDLIN: We didn't agree. We moved to get one.
8 They did not want a special referee, and you said no
9 special referee.

10 MR. TWOMBLEY: That is correct because the rules say
11 unequivocally that once someone asks for a jury trial, it
12 shall go back, it cannot stay with a special referee.
13 Now, I know you ---

14 THE COURT: Actually, it can go to a special referee
15 for discovery issues all day long and then it can come
16 back to me.

17 MR. TWOMBLEY: I respectfully disagree. The rule
18 says once a jury trial is asked for -- I mean, I may be
19 wrong on that and, you know, you could enter a ruling, but
20 I worry that the special referee is going to have, you
21 know, jurisdiction if the rule says it must go back.

22 THE COURT: Y'all can't talk about someone who has
23 got some kind of expertise in this who maybe knows what
24 they're doing? I mean ---

25 MR. TWOMBLEY: Your Honor, respectfully, I mean, I

ROA 005071

1 think you know a lot about the case now and have been
2 brought up to speed, and what would be necessary to
3 educate another person would be monumental in my opinion.

4 But I would just like to clarify one thing. I don't
5 really have ---

6 THE COURT: Well, now, before we go off on that
7 tangent, let's keep with the special referee idea for just
8 a quick minute, even if I just had it all go for discovery
9 purposes. I mean, do you think y'all can come up with
10 someone?

11 And I've got to tell you, as far as probate, I don't
12 know -- I don't know who that would be. I mean, I'm going
13 to tell you, I can throw out mediators for you all day
14 long that I think would be great. But . . .

15 MR. TWOMBLEY: Your Honor, I personally do not favor
16 a special referee. I think it's going to be incredibly an
17 additional expense for ---

18 THE COURT: With all due respect, I think that is so
19 long gone that that really doesn't matter, I mean, quite
20 frankly, just where we're at.

21 MR. TWOMBLEY: Well, that's my opinion in good faith.
22 Your Honor, I'm the one who's been asking to know what
23 they want ---

24 THE COURT: I know.

25 MR. TWOMBLEY: --- and to try to get the case

ROA 005071

ROA 005072

1 resolved from day one. I mean, all this stuff about
2 motivation and stuff, we still get back to the original
3 premise. Mr. Barringer's got a power of appointment.

4 THE COURT: I know. We're rearguing the same thing
5 we've all heard a hundred times. I don't want to reargue
6 anything.

7 All right. I will go ahead and table this whole idea
8 about talking about a special referee, but this is what I
9 am going to ask you both to do. Within one week's time, I
10 want you both to give me two, three, each separately,
11 people that you potentially would consider that you don't
12 have a conflict with. And I will admit, to you,
13 Mr. Medlin, I have a concern because I'm guessing that
14 most probate lawyers probably call and consult you, so it
15 can't be someone, obviously, you consult with. But taking
16 that out of that, everyone give me two or three, and then
17 let me just figure out from here whether or not I'll even
18 entertain it. I'm interested to see if you overlap on
19 your list, I mean, which there's potential the two of you
20 could overlap. So . . .

21 MR. MEDLIN: Your Honor, if I may just interject,
22 which I've done and I apologize if I shouldn't have. I
23 think before, you had suggested we look to the list of
24 retired judges, which we had done. Is that correct?

25 MR. GILREATH: We did, Your Honor. And I gave -- I

ROA 005072

1 talked to Alice, and I thought we had agreed on one.

2 Apparently we didn't. But we gave them a list ---

3 THE COURT: Tommy Cooper?

4 MR. GILREATH: --- and then the next thing that
5 happened -- the next thing that happened, they decided
6 they didn't want one. So we didn't get too far with that.
7 I mean, I think what we're concerned about now is we've
8 got this new case. Ain't going to be making motions. We
9 just -- I mean, I think it makes sense for you to
10 obviously take that case.

11 THE COURT: I have a huge concern is that now you are
12 opening this up to a bigger Pandora's box. I mean, this
13 case needs to get tried. If you all cannot settle it, it
14 needs to be tried. I mean ---

15 MR. GILREATH: We're hoping we can settle it. I
16 thought we had Tom Wills and had a time to do it.

17 Alan, didn't you have that worked out? I thought we
18 did.

19 MS. PAYLOR: We did have a time to do it.
20 Unfortunately, I learned that my husband had to have
21 cancer surgery on a Friday. So we were going to do these
22 depositions a month ago, and it was hard for me to figure
23 out what I needed to do, but I knew what I needed to do.

24 THE COURT: Okay. Do you have a conflict with Tom
25 Wills or not?

ROA 005074

1 MS. PAYLOR: I called Bill Hogan, and they were
2 extremely gracious, they were very nice. And I said I
3 could probably still do the mediation. They didn't want
4 to do it because they wanted to take the Lights'
5 depositions first. And so I said, "Fine." You know, I'm
6 not pushing it.

7 THE COURT: I'm not worried about the timing of it.
8 I'm just wanting to if I can help you get a quicker date
9 with Tom. I mean, a lot of times I have some success in
10 that. So I'm just saying if that's who you all agree on,
11 do you think it's ---

12 MR. GILREATH: We've agreed on it. I thought we had
13 a new date sometime ---

14 THE COURT: Do you have a date?

15 MR. MEDLIN: We don't.

16 MR. GILREATH: I thought we had a date of
17 October 1st.

18 MR. MEDLIN: I've emailed his paralegal a couple of
19 times, and the dates that would have worked for us before
20 we proposed them ---

21 THE COURT: Okay.

22 MR. MEDLIN: --- doesn't work for ---

23 THE COURT: How many dates do you need? Do you need
24 one, two days? How many days do you need? Just one?
25 Okay. All right. Well, on top of your email, I will go

ROA 005074

ROA 005075

1 call, and I will beg. So I can help with that if y'all
2 are still willing that that's who you want to mediate, and
3 that all sounds good to me.

4 MR. GILREATH: I think we're all in agreement with
5 that.

6 MR. MEDLIN: Your Honor, if we may, one of the things
7 that I had hoped we would discuss while we're all together
8 is our mutually agreeable dates. So would you let us do
9 that first ---

10 THE COURT: Absolutely.

11 MR. MEDLIN: --- and give those to you and then we
12 can work on Mr. Wills?

13 THE COURT: Okay. Realizing, though, that we're
14 really working on his schedule because, you know, he books
15 between three and six months in advance. And again ---

16 MS. PAYLOR: His calendar's online. We can go back
17 and look at them.

18 THE COURT: Okay.

19 MR. GILREATH: There's a deadline in that scheduling
20 order, October 1st.

21 THE COURT: I'll fix whatever y'all need to do on
22 that. I'm not worried about that. If y'all can agree on
23 anything, then, of course, I'll do whatever y'all can
24 agree on. That I'm not concerned about.

25 Other than that, are you worried about any deadlines

ROA 005075

ROA 005076

1 as far as maybe experts or anything along those lines? I
2 mean, I think we really need to know. We mediate, I can
3 back everything however I need to up. And trial dates as
4 well. So I'm just trying to figure out how we can get
5 that to some kind of conclusion.

6 Whose deposition is left to be taken? I know we're
7 kind of going now into discovery conference, but who
8 else's deposition needs to be taken? Are you taking
9 anyone else's? Let me just ask you that. Are you taking
10 anyone else's?

11 MR. TWOMBLEY: I have no idea. They have sent a list
12 of like 20 people they want to depose.

13 THE COURT: Okay. That's -- I'm asking you. Are
14 you ---

15 MS. PAYLOR: We want to take Kevin Luzak's
16 deposition.

17 THE COURT: You want to take Kevin Luzak's. Okay.

18 MS. PAYLOR: And probably his assistant Peggy
19 Boysell; David King, an associate of his in New York.

20 MR. TWOMBLEY: I mean, I do not want to be bound, but
21 I honestly do not know. But I ---

22 THE COURT: I'm not asking you. I'm -- just whoever
23 knows.

24 MS. PAYLOR: I know that we definitely want to take
25 those three depositions. We're waiting -- we were waiting

ROA 005076

ROA 005077

1 to get documents from them, and we got them I think while
2 we're here so we haven't had a chance to look at them.

3 THE COURT: Okay. So roughly, how many, y'all? And,
4 again, how many do y'all still have left to go?

5 MR. GILREATH: I can't honestly tell you. I know
6 we've got to go down to Florida and we're probably going
7 to want to take a 30(b)(6) deposition of somebody down in
8 Florida, hopefully, CFRC 30(b)(6). We're going to want to
9 take the deposition of some of the household people.

10 THE COURT: Who would that be at this point? Who
11 would be the 30(b)(6) at CFRC now, Alice, do you know?

12 MR. MOLSTER: Who would be the 30(b)(6)? I think
13 their counsel will probably decide that. One possibility
14 is Travis Bryant, who's the CEO.

15 THE COURT: Okay.

16 MR. MOLSTER: But, I mean, that's going to be a
17 decision for Hunton Williams, not for us.

18 THE COURT: Okay. And I understand that. I just --
19 I want to have an idea who we're talking about. Okay.

20 So we can work on the scheduling order. I don't want
21 you all concerned about that. That's not -- we can all --
22 as long as you all can figure it out, I'm not -- I'm not
23 concerned. Let's just get a mediation date, okay? And
24 then we can work backwards from there, okay?

25 MS. PAYLOR: I think we're good on our scheduling

ROA 005077

ROA 005078

1 order, are we not?

2 MR. GILREATH: Yeah. And I think we're good on the
3 scheduling order now.

4 MS. PAYLOR: We have a scheduling order we all agreed
5 on, so I don't think that's an issue.

6 MR. GILREATH: They're going to think we filed some
7 kind of -- we can't get them to agree to consolidate them.
8 We filed a motion on the other case, I assume. As far as
9 I'm concerned, we want her to take that, right? We don't
10 want that going to some other judge. I don't know where
11 it will go. You know more about it than anybody else.
12 Makes sense for you from our standpoint, I think. Whether
13 it's consolidated or not, I think we -- from our
14 standpoint, we want you to be judge.

15 THE COURT: Well, I can say this. I know that we
16 don't want to try to resolve one case with the other one
17 hanging out there. I mean, that doesn't make any sense.
18 All of this needs to be -- so if you go to mediation,
19 obviously, if you were to come to a settlement, it would
20 have to include both cases and tie everything up.

21 Okay. All right. So other than what I'm looking at
22 right now between the Randy Light Texas documents and,
23 obviously, the motion to reconsider my original order on
24 Mrs. Barringer's planning documents, anything else that I
25 have to hear that you want me to hear?

ROA 005078

ROA 005079

1 MR. GILREATH: I don't think so.

2 THE COURT: And that doesn't mean anyone's waiving
3 anything. Apparently, that was quite the argument in the
4 last motions. I think it just means that we've been here
5 a long time, and I'm a little concerned that you've got
6 Mr. Light sitting over there and I think you all probably
7 need to be asking him some questions.

8 MR. GILREATH: We've got lunch in the refrigerator,
9 too.

10 THE COURT: Even better. Even better.
11 Okay. So anything else?

12 I'm going to let y'all know something pretty shortly.
13 I'm just going to tell you that right now. So can y'all
14 give me a proposed special referee, just come up with a
15 couple -- two or three, whatever. Let me see if either
16 one of your lists overlap and see if there's anyone I can
17 think of.

18 Okay. I can just tell you this. Anyone that's not
19 involved in a probate matter isn't going to want to do the
20 discovery issues in this case. I mean, unfortunately,
21 being a special referee is a pretty thankless job, so
22 unless you all can get someone to agree to it. I know
23 Marvin doesn't want it. So okay. All right.

24 Anything else, y'all?

25 MR. TWOMBLEY: No, ma'am.

ROA 005079

ROA 005080

1 THE COURT: Okay. You're good? Everyone's okay?
2 All right. I appreciate it. Good luck this afternoon.

3 MR. GILREATH: Appreciate you hearing this day.

4 MR. MEDLIN: Thank you, Your Honor.

5 THE COURT: Absolutely.

6 (WHEREUPON, proceedings concluded at 1:50 p.m.)
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ROA 005080

1 CERTIFICATE OF REPORTER
2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF BEAUFORT)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Beaufort County, South Carolina, on the
14 20th day of August, 2019.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 August 27, 2019
19

20
21 

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS NONJURY

IN THE MATTER OF:)

ESTATE OF PAUL B. BARRINGER, II)

HAMPTON BARRINGER LUZAK,)

PLAINTIFF,)

VS.)

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.)

TRANSCRIPT

OF

RECORD

2016-CP-07-1919

2019-CP-07-1253

2019-CP-07-1294

November 17th - 19th, 2020
Beaufort, South Carolina

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, Judge.

A P P E A R A N C E S:

WILLIAM M. HOGAN, JAMES R. GILREATH, CHARLES B.
MACLOSKIE, and ALAN MEDLIN
ESQ.
Attorneys for the Plaintiff

ALICE PAYLOR and CHARLES B. MOLSTER, III
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Attorneys for the Defendant Merrill B. Light,
Individually and as Trustee

ASHLEY TWOMBLEY
ESQ.
Attorney for the Defendant Merrill U. Barringer as
Personal Representative of the Estate of Paul B.
Barringer

Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder
Project, and WebEX Recording

I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

P R O C E E D I N G S

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THE COURT: Let's see.

MR. MACLOSKIE: Good morning, Judge.

THE COURT: Good morning. Hi, Alice. Hello, Jim. I see Mr. Medlin. Mr. Macloskie.

MR. MEDLIN: Good morning, Judge.

THE COURT: Good morning. Good morning everyone.

MR. TWOMBLEY: Good morning, Judge.

THE COURT: Good morning.

All right. Well, I'm first apologizing for last Thursday, y'all. I just couldn't get it done, and the nice thing I think that's coming up now is that we have a little bit of time during Thanksgiving where there's not as much Court. So, I've got some chambers weeks. And so it gives me a little bit better of a timeframe to be able to take some time and hear these. So, I appreciate it.

Alice, I was gonna ask you.

How, how do you think you want to go about it?

Do you want to talk about causes of actions in groups or you tell me what you think is the best way?

MS. PAYLOR: Well, what my plan is, if it meets your approval, is to kind of go over the law that applies cause it really applies to all of the causes of action.

THE COURT: Okay.

1 MS. PAYLOR: Now -- and then -- but just hit on the
2 undisputed facts that I believe are in evidence.

3 THE COURT: Okay.

4 MS. PAYLOR: And then I'd like to take up each cause of
5 action separately.

6 THE COURT: Okay. Okay. I think that sounds good
7 unless anyone objects to that or has -- I think it's a good
8 approach. So --.

9 MS. PAYLOR: Yes.

10 THE COURT: Okay. Alice, let me ask you, when we go
11 through each cause of action, do you want them to respond
12 directly after each cause of action or would you rather go
13 through all of yours first?

14 MS. PAYLOR: I'd like to pause after each one and hear
15 what the Plaintiff's---

16 THE COURT: Okay.

17 MS. PAYLOR: ---statement of fact is. I think they
18 have a burden on each---

19 THE COURT: Okay.

20 MS. PAYLOR: ---cause of action to do that.

21 THE COURT: Right.

22 Okay. Okay. That sounds good.

23 All right. So, whenever you're ready.

24 MS. PAYLOR: I'm ready.

25 THE COURT: Okay.

1 MS. PAYLOR: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MS. PAYLOR: Thank you for hearing this motion. I
4 really appreciate it.

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: I think that this is a case that really
7 cries out for resolution on a summary judgment motion, and,
8 in doing my research, I found that there were numerous cases
9 providing for granting of summary judgment or directed
10 verdict in cases alleging incapacity and/or undue influence
11 on the part of a testator, and that is because the
12 Plaintiff---

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: ---must present admissible evidence
15 supporting the necessary elements, and the bar is so low for
16 testamentary capacity --

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: -- and it's so high to prove, and it's
19 high, high on the Plaintiff to prove undue influence.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: I'm gonna spend a lot of time talking
22 about the recent Court of appeals case, Swiger versus Smith.

23 THE COURT: Okay.

24 MS. PAYLOR: I sent you a copy of that last week. I
25 really think that is the Bible on---

1 THE COURT: Okay.

2 MS. PAYLOR: ---the applicable law.

3 THE COURT: Okay.

4 MS. PAYLOR: They went through everything and I think
5 just set it out clearly and succinctly---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---where the burdens of proof lie, what
8 has to be proved, et cetera.

9 So, I'm going to spend a lot of time with you talking
10 about that.

11 THE COURT: Okay.

12 MS. PAYLOR: In my case, the contestant of a will
13 challenge the granting of summary judgment by the Trial
14 Court. So, that was a summary judgment case.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: And in, in her appeal, she argued that she
17 presented sufficient evidence to the Lower Court of both
18 undue influence and the existence of a confidential or
19 fiduciary relationship thus establishing a presumption of
20 invalidity.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: It's the same thing that we've got here.

23 The Court of Appeals affirmed the granting of summary
24 judgment and found that the plaintiff had not met her
25 burden. The Court of Appeals stated the applicable standard

1 of proof in an undue influence case with a fiduciary
2 relationship, which is---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---present in our case, they said, in
5 cases requiring a heightened burden of proof, the nonmoving
6 party, the plaintiff in this case --

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: -- must submit more than a mere scintilla
9 of evidence to withstand a motion for summary judgment---

10 THE COURT: Okay.

11 MS. PAYLOR: ---since, since the standard of proof in
12 an undue influence case is unmistakable and convincing
13 evidence, there must be more than a scintilla of evidence in
14 order to defeat a motion for summary judgment.

15 So, the standard is more than a scintilla.

16 Now, I say this, but I am going to argue to you that
17 they do not even have a scintilla of evidence in this case,
18 Your Honor -- and the Swiger Court said contestants of a
19 will have the burden of establishing undue influence, fraud,
20 duress, mistake, revocation, or lack of testamentary intent
21 or capacity by unmistakable and convincing evidence, which
22 is usually circumstantial.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: In order for the will to be void due to
25 undue influence, a contestant must show that the influence

1 was brought directly to bear upon the testamentary act.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: And that would be execution of a will, or
4 instructing a lawyer what to put in the will, and then
5 fighting, you know, forcing the testator to sign a will that
6 he or she did not want.

7 A mere showing of opportunity or motive does not
8 create---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---an issue of fact regarding undue
11 influence.

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: That was straight out of the Swiger case,
14 Your Honor.

15 To send the undue influence to the jury, the contestant
16 must show more than general influence. There must be
17 additional evidence that such influence was actually
18 utilized.

19 The Swiger Court said the influence necessary to void a
20 will must amount to force and coercion. The evidence must
21 show that the free will of the testator was taken over by
22 someone acting on testator's behalf.

23 It's very tough, Your Honor---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---to prove undue influence.

1 In order to void a will on the ground of undue
2 influence, the undue influence must destroy free agency and
3 prevent the maker's exercise of judgment and free choice.
4 The Swiger Court also said, if the testator had the
5 testamentary capacity to dispose of his property and was
6 free and unrestrained in his volition at the time of making
7 the will, the influence that may have inspired it or some
8 provision of it will not be undue influence.

9 The Court also said, generally in cases where a will
10 has been set aside for undue influence, there has been
11 evidence either of threats, force, and/or restricted
12 visitation, or of an existing fiduciary relationship. The
13 Court went on to say that a confidential or fiduciary
14 relationship exists when one imposes a special confidence in
15 another so that the latter, in equity and good conscious, is
16 bound to act in good faith and with due regard to the
17 interest of the one imposing the confidence.

18 The Court stated the existence of a fiduciary
19 relationship between a testator and beneficiary raises a
20 presumption of undue influence.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: If evidence of such a relationship is
23 presented, the proponents of the will, in our case
24 Mrs. Light and Mrs. Barringer, must offer rebuttal evidence.
25 However, although the proponents of the will must present

1 evidence in rebuttal, they do not have to affirmatively
2 disprove the existence of undue influence. Instead, the
3 contestants of the will, in this case Hampton Luzak---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---retains the ultimate burden of proof to
6 invalidate the will.

7 The Court further stated, to summarize, where the
8 contestants introduced testimony raising a presumption of
9 undue influence by a beneficiary sustaining a confidential
10 or fiduciary relation toward the testator, which we have
11 here---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---the issue should be submitted to the
14 jury only where, in addition to the factor of confidential
15 relations, there also appear the further facts of an
16 unnatural disposition making the person charged with the
17 undue influence the chief beneficiary, and that such person
18 generally dominated the testator.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: There is no evidence of any of that in our
21 case, Your Honor.

22 The Swiger Court had the fiduciary relationship just
23 like we have here, but it found that the contestant failed
24 to provide more than a scintilla of evidence to establish
25 undue influence was exerted upon decedent, decedent when he

1 executed the will, and that is the language straight out of
2 Swiger Your Honor.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: The Court cited South Carolina precedent
5 that in order for the will to be void under undue influence,
6 a contestant must show---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---that the influence was brought directly
9 to bear upon the testamentary act.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: The testamentary act is the execution of
12 the will or the Trust.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: In Swiger, the Court found that the
15 contestant "did not set forth any evidence that proponent of
16 will restricted visitation with respect to her side of the
17 family." There is absolutely no evidence that Merrill Light
18 or anyone restricted visitation by Hampton Luzak with her
19 father.

20 The Court cited case precedent, precedent where undue
21 influence was upheld when the proponent of the will admitted
22 the monitored testa -- this is when the proponent was
23 monitoring the testator's conversations---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---with her son---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---via a baby monitor.

3 THE COURT: Okay.

4 MS. PAYLOR: And the testator created hand signals to
5 communicate with her visitors. So, in that case, they did
6 find undue influence.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: In another case where the proponent of the
9 will had a purpose and design to restrict the visits, and to
10 prevent communications between the testator and his children
11 prior to and following the date of the execution will -- of
12 the will --

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: -- we have none of that in our case, Your
15 Honor. Absolutely none of it.

16 THE COURT: Alice, and I apologize for interrupting
17 you.

18 Do you have any kind of testimony or any kind of
19 evidence in the record about where he was living at the
20 time?

21 Obviously, I, I -- I say obviously and I shouldn't --
22 you know, at some portion he was living with his wife, and
23 then, at some point, I assume he was not living with his --
24 I, I don't know any of that is my question.

25 MS. PAYLOR: He always---

1 THE COURT: So --.

2 MR. TWOMBLEY: In fact -- and I'll, I'll -- if you want
3 me to jump over that, I won't go into the law anymore,
4 and---

5 THE COURT: No, no, no, and you're fine to keep going
6 on the law. I'm good. It just -- it begged the question.

7 MS. PAYLOR: Oh, okay.

8 THE COURT: I just had never -- I'm, I'm sitting here
9 thinking I've never heard any evidence or read any evidence
10 on his living arrangement during this time, and from the
11 time that we're questioning from 2012 until his, you know,
12 death in, in 2016.

13 MS. PAYLOR: Well, and I want to make sure you know
14 about that because he was living in a home with his wife---

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: ---way before 2011.

17 THE COURT: Okay.

18 MS. PAYLOR: And I believe it was 2014 the two of them
19 moved into a---

20 THE COURT: Into TidePointe.

21 MS. PAYLOR: A senior---

22 MR. MEDLIN: To TidePointe.

23 MS. PAYLOR: Yeah, a senior---

24 THE COURT: Right. I'm---

25 MS. PAYLOR: ---living facility.

1 THE COURT: I'll just go ahead and say I'm very
2 familiar with TidePointe, and my understanding and all the
3 testimony she gave in her deposition is that she is in the
4 independent living portion of TidePointe, and he was with
5 her then. It's -- you know, you own your units. You just
6 can get services or help. But it is independent living.
7 So, that -- that's what I understood.

8 MS. PAYLOR: And he, he lived there until he died
9 actually.

10 THE COURT: Okay.

11 MS. PAYLOR: They never moved him --

12 THE COURT: Okay.

13 MS. PAYLOR: -- anywhere outside of that. He lived---

14 THE COURT: Yeah.

15 MS. PAYLOR: ---with her. He drove up until -- I mean
16 he was still driving in the Summer of 2015 I believe.

17 THE COURT: Okay.

18 MS. PAYLOR: He had lunch with his friends---

19 THE COURT: Okay.

20 MS. PAYLOR: ---on a weekly basis. He had dinner with
21 Merrill and her husband---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---frequently. But they saw -- they
24 probably saw him on a weekly, bi-weekly basis---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: ---because they lived in Hilton Head.

2 THE COURT: I guess the, the question I was asking is,
3 is that I'm, I'm not -- I haven't heard the testimony how
4 Merrill Light could have or Mrs. Light could have restricted
5 visitation in any way for him because I didn't think -- I
6 understand she lives on Hilton Head, but she is not living
7 with them. And so I don't know how she would of done that
8 where -- I mean I guess there's a possibility that Mrs.
9 Barringer could have, but I don't see how Mrs. Light could
10 have.

11 MS. PAYLOR: Mr., Mr. Barringer had his own cell phone.

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: Anybody could call him.

14 THE COURT: Okay.

15 MS. PAYLOR: Mr. Barringer drove wherever he wanted to
16 go. He went to appointments by himself.

17 THE COURT: Okay.

18 MS. PAYLOR: He saw friends by himself. Mrs. Luzak
19 could of flown down there any time she wanted and walked up
20 to that house and walked in it.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: She could of called him on her cell phone.
23 She never, she never did it. She made absolutely no effort.
24 She has created now this story or whatever that Mrs.
25 Barringer told her to call her on her cell phone, and

1 that's -- I -- we think that is true.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: But that doesn't mean she couldn't call
4 her father. Her mother just told her to call her on her
5 cell phone, and that's, that's what she testified to. She
6 said don't call the landline.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: Well, Mr. Barringer had a cell phone---

9 THE COURT: Yeah.

10 MS. PAYLOR: ---and she knew what his number was.

11 THE COURT: Okay.

12 MS. PAYLOR: So there were no restrictions.

13 THE COURT: Okay.

14 MS. PAYLOR: Similar to Mrs. Luzak's position in this
15 case, Your Honor, the Swiger Court stated, and this kind of
16 goes to what you were just asking, there is scant evidence
17 in the record suggesting family members from the proponent's
18 side of the family ever, I'm sorry, from the contestant's
19 side of the family ever attempted to visit decedent---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: ---during any alleged restrictive period.
22 So, even if she alleged that she was restricted, she
23 made absolutely no effort to go see him.

24 THE COURT: Okay.

25 MS. PAYLOR: The Swiger Court stated, and I quote,

1 "this is insufficient for a claim of undue influence to
2 survive a properly supported summary judgment motion." They
3 also cited the famous Russell case as recognizing a party
4 arguing undue influence must provide more than a scintilla
5 of evidence to survive summary judgment.

6 The Swiger Court further stated, and I'm just quoting,
7 "viewing the evidence in a light most favorable to
8 contestant of the will, a confidential or fiduciary
9 relationship did exist between decedent and the will
10 proponent because they held powers of attorney. However,
11 sufficient evidence exists to rebut any presumption of undue
12 influence created by the existence of these fiduciary
13 relationships."

14 They said that one of the proponents of the will was
15 not present when the will was dictated and drafted, and the
16 power of attorney, attorney given to the niece was dated
17 three weeks after the execution of the will.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: In addition, a social worker met with
20 decedent frequently without family members presented, and
21 decedent could of shared any concerns with her during their
22 discussion.

23 Finally, as the Court says, there is no evidence in the
24 record that the power of the -- powers of attorney were ever
25 utilized other than to help the decedent find living

1 arrangement. The Court said even if proponents of a will
2 had some influence over decedent's disposition of his
3 estate, such influence does not amount to undue influence
4 because decedent had the testamentary capacity to dispose of
5 his estate and the contestant of the will failed to provide
6 sufficient evidence that decedent's will was, in any way,
7 restrained or overcome.

8 They cited from another South Carolina case, and said
9 if the testator had the testamentary capacity to dispose of
10 his property and was free and unrestrained in his volition
11 at the time of making the will, the influence they may have
12 inspired it or some provision of it will not be undue
13 influence.

14 THE COURT: Alice, I'm gonna interrupt you, and, and,
15 after I interrupt you and ask a question, tell me if I'm
16 completely off base, if I'm following it the wrong thing,
17 and then feel free to jump right back as to what you're
18 doing because I need to hear it all.

19 My question to you is, is that I seem to remember the
20 testimony that, when the stock transfer was done, there was
21 a question as to whether or not there was coaching at that
22 board meeting.

23 If you recall any of that?

24 MS. PAYLOR: No, I don't think it -- what you're
25 referring to.

1 THE COURT: Do you know what I'm talking -- who, who
2 allegedly was the coaching done by and---

3 MS. PAYLOR: Okay. That didn't have anything to do
4 with the stock transfer, Your Honor.

5 THE COURT: Pardon?

6 MS. PAYLOR: This was at a -- this was at a board of
7 director or the shareholder's meeting.

8 THE COURT: Okay. The shareholder's meeting. Okay.

9 MS. PAYLOR: That's CFRC.

10 THE COURT: Okay.

11 MS. PAYLOR: And at that meeting Mr. Barringer had made
12 a motion to remove Kevin Luzak---

13 THE COURT: From---

14 MS. PAYLOR: ---from all of his positions at CFRC.

15 THE COURT: Alice, though, was the stock transfer
16 before that or after that?

17 MS. PAYLOR: After that.

18 THE COURT: That was after that because they wouldn't
19 of had the power to pass it had they not have already done
20 the stock.

21 You see what I'm saying?

22 I mean to be able to get rid of Mr. Luzak -- just --
23 I'm sorry.

24 So, you said the stock transfer---

25 MS. PAYLOR: Okay.

1 THE COURT: ---was after that.

2 MS. PAYLOR: Let me, let me, let me explain the stock
3 to you.

4 THE COURT: Okay. Okay.

5 MS. PAYLOR: At -- in 2004, when the company
6 reorganized when Victor Barringer left the company---

7 THE COURT: Right.

8 MS. PAYLOR: ---he ended up -- Victor ended up having
9 no voting stock.

10 THE COURT: Okay.

11 MS. PAYLOR: Mr. Barringer had a total of 82 percent,
12 somewhere in there.

13 THE COURT: Okay.

14 MS. PAYLOR: He, he gave 31 percent --

15 THE COURT: To each of the girls, right.

16 MS. PAYLOR: -- to each daughter --

17 THE COURT: Okay.

18 MS. PAYLOR: -- and he kept 20 percent.

19 THE COURT: Right.

20 MS. PAYLOR: So, what he did was he created a situation
21 where he could always join up with one of his daughters---

22 THE COURT: And have the majority stock.

23 MS. PAYLOR: ---and have control.

24 THE COURT: Got it.

25 MS. PAYLOR: So, I, I mean that's the way I've always

1 looked at it because---

2 THE COURT: Right.

3 MS. PAYLOR: ---neither daughter had control.

4 THE COURT: So---

5 MS. PAYLOR: Now, if they got together---

6 THE COURT: Right.

7 MS. PAYLOR: ---they would have control.

8 THE COURT: They'd have control.

9 So, where was the rest of the stock at that point?

10 If he had 20 percent and they each had 31 percent, who
11 had the rest of it at that time?

12 MS. PAYLOR: Well, this -- the Conger family basically.

13 THE COURT: Okay. Okay.

14 MS. PAYLOR: They had -- they're, they're minority
15 shareholders---

16 THE COURT: Okay.

17 MS. PAYLOR: ---and they belong -- they've, they've
18 been involved with the company a long time, but they really
19 don't play---

20 THE COURT: Into any of this. Okay.

21 MS. PAYLOR: ---any little role in what happened here.

22 THE COURT: Okay.

23 MS. PAYLOR: Because they weren't -- they had a guy
24 named Michael Hagler who was on the board as their---

25 THE COURT: Right.

1 MS. PAYLOR: ---their---

2 THE COURT: Okay.

3 MS. PAYLOR: ---their board member.

4 THE COURT: Okay.

5 MS. PAYLOR: And so, at the time it was Mr. Luzak, Mr.

6 Hagler, Mr. Barringer, and Mrs. Light were the board

7 members---

8 THE COURT: Okay.

9 MS. PAYLOR: ---when all of this---

10 THE COURT: Okay.

11 MS. PAYLOR: ---transpired. I'm fixing to speak---

12 THE COURT: I, I guess---

13 MS. PAYLOR: And I'm getting ready to go to that---

14 THE COURT: Yeah.

15 MS. PAYLOR: ---to my undisputed facts, but that, that

16 kind of sets up the stock. I mean if he had wanted each of

17 them---

18 THE COURT: Right.

19 MS. PAYLOR: ---to have exactly equal amounts---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: ---he could of done it.

22 THE COURT: Right.

23 MS. PAYLOR: But he---

24 THE COURT: I guess what I'm---

25 MS. PAYLOR: ---wouldn't of had any.

1 THE COURT: What I was looking for though, Alice, and
2 in, in my head, I need to distinguish between the potential
3 undue influence that Mrs. Merrill Barringer could make
4 versus your client, Mrs. Light, if that makes sense. I just
5 want to make sure that, in this case, I appropriately parse
6 out what potentially she could do, what Mrs. Barringer could
7 do, Mrs. Barringer could do, and whether or not they would
8 have to work in concert to get something done I guess is my
9 question to be able to exert the undue influence, and
10 that's, that's why I want to make sure that I understand the
11 difference as far as their potential roles because I do
12 think there is a difference between being a wife and being a
13 daughter and sitting on the board.

14 And so, in my head, and it -- you can tell me that
15 means nothing, and you may say---

16 MS. PAYLOR: No, I---

17 THE COURT: ---it doesn't matter at all.

18 MS. PAYLOR: Well, I tend to agree with you. I agree
19 with you a hundred percent and---

20 THE COURT: Okay.

21 MS. PAYLOR: ---the only evidence in the record is that
22 Mrs. Light was the good daughter.

23 THE COURT: Right.

24 MS. PAYLOR: She always did what her parents wanted her
25 to do.

1 THE COURT: Well, she was the local one too.

2 MS. PAYLOR: Yes.

3 THE COURT: She's the one that lived on Hilton Head and
4 obviously was around. So, I understand that. And the
5 simple fact that she sat on the board showed that she was
6 interested, and I understand, you know, Mrs. Luzak had been
7 invited to be on the board before and she declined. You
8 know, I'm sure she'll say that it's because her husband was,
9 you know, working there. And so they had enough input.
10 But, again, I, I, I understand and hear all that.

11 So -- okay.

12 MS. PAYLOR: Well---

13 THE COURT: Keep going.

14 MS. PAYLOR: ---actually Mrs. Luzak was invited on the
15 board after her husband was fired.

16 THE COURT: Oh, okay.

17 MS. PAYLOR: So, they, they -- it was even more -- they
18 extended the olive branch to her---

19 THE COURT: Okay.

20 MS. PAYLOR: ---and said come back to the family, come
21 back to us, get on the board, get interested, and this is
22 before -- you know, this was after Mr. Barringer had
23 transferred the stock.

24 THE COURT: Okay.

25 MS. PAYLOR: But it was also -- he was reaching out and

1 the company was reaching out to her---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---to come back.

4 THE COURT: Okay.

5 MS. PAYLOR: So, I want to talk just a little bit about
6 what is suitable summary judgment evidence, Your Honor---

7 THE COURT: Okay.

8 MS. PAYLOR: ---so that we, we know what that is.

9 THE COURT: Yeah.

10 MS. PAYLOR: The South Carolina Appellate, Appellate
11 Courts have interpreted Rule 56(e) to mean that materials
12 used to support or refute a motion for summary judgment must
13 be those which would be admissible in evidence.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: So, they can't come in today and say
16 Hampton, Hampton Luzak wasn't with him after May of 2012,
17 but she says he was incapacitated on all of these dates---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---cause she wasn't with him. She has no
20 personal knowledge.

21 THE COURT: Okay.

22 MS. PAYLOR: But -- and the Courts have said a genuine
23 issue of -- for summary judgment---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---can be created only by evidence which

1 would be admissible at trial.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: Rule 56 specifically states supporting and
4 opposing affidavits shall be made on personal knowledge
5 shall set forth such facts as would be inadmissible in
6 evidence, and shall show affirmatively that the affiant is
7 competent to testify to the matters stated therein.

8 THE COURT: Can I ask you, Alice---

9 MS. PAYLOR: Uh-huh. (Affirmative).

10 THE COURT: ---at what -- on what date was Mr. Light
11 fired?

12 MS. PAYLOR: Mr. Luzak you mean?

13 THE COURT: I'm sorry. Mr. Luzak.

14 The -- yeah.

15 On what date was he fired and what would be the last
16 date of contact that either Hampton or her husband had with
17 Mr. Barringer?

18 MS. PAYLOR: Well, there was a board meeting, and it
19 was a telephonic board meeting. The last time that Mrs.
20 Luzak ever had any contact with her parents was May 30,
21 2012, when she took her parents, mainly her father, to see
22 some doctors at the Medical University.

23 THE COURT: That was when he went -- took them to see
24 Doctor Baughman, correct?

25 MS. PAYLOR: Correct.

1 THE COURT: Okay.

2 MS. PAYLOR: He went to see Doctor Baughman and also a
3 urologist over there because he had had severe urinary tract
4 issues.

5 THE COURT: Okay. Okay.

6 MS. PAYLOR: And, as a matter of fact, Mrs. Light was
7 the one who asked them to take her parents.

8 THE COURT: Okay.

9 MS. PAYLOR: Not something an indue (sic) influencer
10 would do.

11 THE COURT: Right.

12 MS. PAYLOR: So they were there by themselves with the
13 parents at the end of---

14 THE COURT: Okay.

15 MS. PAYLOR: ---May.

16 THE COURT: Okay.

17 MS. PAYLOR: There was a meeting of the board, I think
18 it was June 28th, and that's -- actually that meeting,
19 believe it or not, was called by Kevin Luzak because he --
20 and I'll just go -- I'm gonna go ahead and talk about the
21 facts, Your Honor, cause that---

22 THE COURT: Sorry. And I apologize. Yeah, I'm just---

23 MS. PAYLOR: It's okay.

24 THE COURT: ---jumping on, but---

25 MS. PAYLOR: It's okay. I'll come back to this other

1 stuff.

2 THE COURT: Okay.

3 MS. PAYLOR: Okay. First of all, Your Honor, you have
4 the undisputed medical testimony.

5 THE COURT: Right.

6 MS. PAYLOR: There's no factual dispute as to Mr.
7 Barringer's capacity to execute any of his testamentary
8 documents.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: Doctor Paul Long testified at a Probate
11 Court hearing on April 28th, 2016 --

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: -- that he had the mental capacity to
14 execute his wills and Trust Amendments until the Fall of
15 2015. He did not execute any testamentary documents after
16 that.

17 Doctor David Baughman, on March 27, 2013, put in his
18 medical records, in my opinion he has capacity at this time
19 to make decisions regarding his personal affairs. Doctor
20 Dotson, a Greenbrier doctor who examined him, had a lengthy
21 examination of Mr. Barringer---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---in both 2013 and 2014.

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: He determined that he had the capacity to

1 take care of his own affairs. The Plaintiff's expert gave
2 no opinion as to Mr. Barringer's capacity, and she has no
3 witness who was with him after June of 2012.

4 THE COURT: Okay.

5 MS. PAYLOR: But---

6 THE COURT: Alice?

7 Alice, just -- let me -- just so I can make sure.

8 That was -- it was -- Doctor Sanders is the Plaintiff's
9 expert.

10 Am I correct on that name?

11 MS. PAYLOR: Correct.

12 THE COURT: I need to know---

13 MS. PAYLOR: That's correct.

14 THE COURT: ---what is the latest opinion she gave. I
15 had two different opinion letters, and then I don't know
16 that any depositions were taken of her, but I need to
17 know---

18 MS. PAYLOR: They have been---

19 THE COURT: ---what they're relying on as their last
20 opinion letter cause you keep saying she has no opinion as
21 to capacity, and I just want to make sure I can read that
22 specifically on it.

23 what, what is the date of that letter?

24 If anyone can just let me know?

25 MS. PAYLOR: December 29th I believe.

1 Is that right?

2 When was it then?

3 February -- July -- maybe July. I had the last one.

4 She only gave one opinion, Your Honor---

5 THE COURT: Okay.

6 MS. PAYLOR: ---in the whole thing.

7 THE COURT: Well then I just, I just need Laura to hand
8 it to me. So, you can keep talking, but I want Laura to be
9 looking for it. So I need to know and tell her what the
10 date was on it, and I'm -- I can't tell you which one it
11 was.

12 MS. PAYLOR: I invite Mr. Medlin or Mr. Hogan to tell
13 you the date of that letter.

14 THE COURT: What was it?

15 MR. MEDLIN: Your Honor, I apologize. It's July 2nd,
16 2020---

17 THE COURT: July 2nd.

18 MR. MEDLIN: ---when she was deposed, Your Honor.

19 THE COURT: Okay.

20 MR. MEDLIN: She was deposed, Your Honor.

21 THE COURT: She was deposed.

22 Okay. So---

23 MS. PAYLOR: She was deposed.

24 THE COURT: Okay.

25 MR. MEDLIN: Your Honor, it's in Exhibit -- it's in

1 Exhibit K to Plaintiff's memoranda.

2 THE COURT: K. So, I need Exhibit K.

3 And is that both her deposition, Mr. Medlin, or just
4 her letter report, whatever it is?

5 Is that -- so, it's Exhibit---

6 MR. MEDLIN: Just a, just a report, Your Honor.

7 THE COURT: Okay. Sorry.

8 So you keep going.

9 I just need you to find it, Laura, and then do I have a
10 copy of her deposition as well?

11 MS. PAYLOR: I didn't rely on that because we took it
12 after I had filed my motion, Your Honor.

13 THE COURT: Okay. Okay.

14 MS. PAYLOR: We can certainly get it to you.

15 THE COURT: Well, I'm sure someone will point out in,
16 in the deposition to me if she did give an opinion. I'm,
17 I'm assuming that I'm gonna hear that from Mr. Medlin or
18 someone else to counter what you're saying if that's --.

19 MS. PAYLOR: She refused to give any opinion about
20 capacity because she had not examined him.

21 THE COURT: Okay. Okay. So---

22 MS. PAYLOR: Your Honor?

23 THE COURT: That's fine.

24 Alice, keep going. Laura's just gonna find her -- the
25 date of her letter.

1 MS. PAYLOR: Okay.

2 THE COURT: Go ahead.

3 MS. PAYLOR: Okay. And I'm gonna, I'm gonna give you
4 the undisputed facts now, Your Honor.

5 THE COURT: Okay.

6 MS. PAYLOR: Decedent, Paul Barringer, had three
7 children with his wife of 59 years, Merrill Barringer --

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: -- and they were -- Merrill Light is the
10 oldest, Victor Barringer, and Hampton Luzak. Mr. Barringer
11 ex -- executed a will and Revocable Trust in 1998, which
12 you've heard a lot about. In 2011, the Barringer's decided
13 to update their estate planning. They had moved to Hilton
14 Head, and they retained John Jolley of the McNair Firm to do
15 this work. John Jolley had also done estate work for
16 Mr. and Mrs. Light.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: Paul Barringer signed the first amendments
19 to the Revocable Trust -- 1998 Revocable Trust on
20 February 28th, 2012, and signed a new will at that time.
21 That will treated his three children similar. It really
22 didn't -- I mean I'm just giving the general---

23 THE COURT: Right.

24 MS. PAYLOR: ---overview.

25 THE COURT: Okay.

1 MS. PAYLOR: Plaintiff was not present when Paul
2 Barringer executed these documents. She has no knowledge of
3 his legal capacity to execute them or whether any undue
4 influence was exerted on him by her sister, Merrill Light---

5 THE COURT: Alice?

6 MS. PAYLOR: ---and the testimony---

7 THE COURT: Alice, can I be a question -- ask you a
8 question?

9 MS. PAYLOR: Sure.

10 THE COURT: I don't know.

11 what duty does John Jolley have when, as a lawyer and
12 he's executing a will, as to determine if he questions
13 whether or not someone has capacity?

14 I mean what, what, what duty is on the lawyer who's
15 preparing these or watching the execution and, and
16 discussing it with him?

17 MS. PAYLOR: I don't know that a duty is---

18 THE COURT: Is there any---

19 MS. PAYLOR: ---actually put on him. Although he knows
20 that the testator must have capacity.

21 THE COURT: Okay.

22 MS. PAYLOR: So, my understanding is that every lawyer,
23 and I don't do wills --

24 THE COURT: I understand.

25 MS. PAYLOR: -- but every lawyer questions the testator

1 on the three requirements for capacity.

2 THE COURT: Okay.

3 MS. PAYLOR: They're very low.

4 THE COURT: Okay.

5 MS. PAYLOR: To know your assets.

6 THE COURT: Right.

7 MS. PAYLOR: To know that -- your loved ones.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: And to know to whom you want to leave your
10 assets.

11 THE COURT: Okay.

12 MS. PAYLOR: A very, very low bar.

13 THE COURT: Okay. Keep going. I'm sorry.

14 MS. PAYLOR: After executing that will on
15 February 28th, Paul Barringer became very upset with
16 Plaintiff's husband, Kevin Luzak. He thought that Mr. Luzak
17 was trying to take the family company in a direction away
18 from its core business of timber and lumber and he was.
19 There's no question he was trying to go in new directions.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: In May of 2012, after the Luzaks knew that
22 he was upset, Paul Barringer was hospitalized due to a
23 severe urinary tract infection.

24 THE COURT: And is this when he was taken to Savannah?
25 Am I correct on that---

1 MS. PAYLOR: Yes, ma'am.

2 THE COURT: ---he was taken to Savannah?

3 Okay.

4 MS. PAYLOR: He was. And this caused him to be
5 extremely confused and disoriented and he was. I don't
6 think there's any question.

7 THE COURT: Okay.

8 MS. PAYLOR: But it wasn't a permanent, forever
9 incapacity, Your Honor. And as part -- at the same time as
10 he was in the hospital, there was some activity going on
11 that he really didn't have anything to do with because, when
12 he signed his new will and Trust in February of 2012---

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: ---his advisers, primarily his insurance
15 agent, Robert Swain---

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: ---advised him to put all of his
18 substantial assets into his Revocable Trust. Because he had
19 not put his CFRC stock in his Revocable Trust because that
20 had all been changed after he signed the 1998 will---

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: ---they advised him to do that.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: So he asked them to get with CFRC and have
25 that done.

1 THE COURT: Okay.

2 MS. PAYLOR: So, coincidentally, while he was in the
3 hospital, Kevin Luzak signed the certificate of stock
4 retitling it. It was retitled from Mr. Barringer's
5 individual name to his Revocable Trust.

6 THE COURT: Okay.

7 MS. PAYLOR: Now, I better point out to you that, in
8 February, he named Merrill Light the cotrustee on his
9 Revocable Trust, which is true, and there's not -- we're not
10 questioning that.

11 what did Merrill Light do as cotrustee?

12 Absolutely nothing.

13 In fact, if you look at the Trust document, it says
14 that either -- if there's more than one trustee, either
15 trustee combine---

16 THE COURT: Right.

17 MS. PAYLOR: ---the Trust.

18 THE COURT: Okay.

19 MS. PAYLOR: So, it didn't have to be both of them
20 working together.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: And so Mr. Barringer took charge, just
23 like he always did, and he did what he wanted to do.

24 So, Merrill Light had nothing to do with the transfer
25 of the CFRC assets from Paul Barringer individually to his

1 Revocable Trust, and, in fact, it really didn't impact
2 anything except that it -- they went into his Revocable
3 Trust rather than being titled in his individual name.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: As I said a few minutes ago, Kevin Luzak,
6 as CEO and president, even signed the stock certificate
7 retitling this stock to Paul Barringer's---

8 THE COURT: Okay.

9 MS. PAYLOR: ---Revocable Trust.

10 THE COURT: Okay.

11 MS. PAYLOR: And this is a common practice if you have
12 assets, and you have revocable trusts, you're advised to put
13 them all in there---

14 THE COURT: Okay.

15 MS. PAYLOR: ---because it helps you get through
16 probate.

17 THE COURT: Got it.

18 MS. PAYLOR: At the end of May of 2012, Paul Barringer
19 and his wife stayed with the Luzaks at their home in
20 Charleston. No one else was with them. Hampton Luzak
21 accompanied them to see several doctors at the Medical
22 University, including a urologist, and Doctor David
23 Baughman, a neurologist.

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: Doctor Baughman stated in his medical

1 record that Mr. Baughman (sic) might have mild Alzheimer's
2 Disease.

3 THE COURT: Okay.

4 MS. PAYLOR: In June of 2012, Kevin Luzak had a number
5 of arguments with his father-in-law, Paul Barringer.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: He taped all of them.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: He audio taped them all.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: So -- and they've been written and
12 transcripts -- up in transcripts, and I know I attached a
13 number of those to my original memo.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: The interesting thing, Your Honor, is that
16 Mr. Luzak is now saying that he was incapacitated at that
17 time --

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: -- and that he believed that he was
20 incapacitated.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: And he went to Mr. Barringer and tried to
23 convince him to take his company in the way that Mr. Luzak
24 wanted it to go.

25 THE COURT: Uh-huh. (Affirmative).