

EXHIBIT

A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Peter Bouharoun, Opus Petrus, LLC,

Case No. 2023-CP-23-06364

Plaintiffs,

v.

Bouharoun Package Store, Inc., Patricia
Bouharoun,

Defendants.

ORDER **RECEIVED**
Feb 21 2025
SC Court of Appeals

This matter came before the Court on January 16, 2025, on Defendant Patricia Bouharoun’s (“Ms. Bouharoun”) Motion for Protective Order (“Motion”); whereby Ms. Bouharoun moved this Court for an order protecting her from being compelled to produce or discuss her current Last Will and Testament and related estate planning documents (including the contents thereof) during her lifetime. Present at the hearing were Konstantine P. Diamaduros on behalf of Ms. Bouharoun and Defendant Bouharoun Package Store (“the Store”) (collectively, “Defendants”), and Luke Burke on behalf of Plaintiffs Peter Bouharoun (“Peter”) and Opus Petrus, LLC (collectively, “Plaintiffs”). Based upon the Motion, the arguments of counsel, and the memoranda submitted by the parties, the Court now makes the following findings and **GRANTS** Ms. Bouharoun’s Motion.

FACTUAL BACKGROUND

Plaintiffs have alleged that Peter and Ms. Bouharoun entered into an oral agreement wherein Peter would operate the Store without receiving regular pay in exchange for Ms. Bouharoun: (1) naming Peter as the personal representative of her estate in her Last Will and Testament; and (2) bequeathing the Store to Peter upon her death. *See* Pls.’ Mem. at 3. As noted in Plaintiffs’ memorandum, the parties do not dispute that Ms. Bouharoun’s estate planning

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documents are relevant to this dispute. *Id.* However, they do dispute whether such documents are protected from disclosure by the attorney-client privilege while Ms. Bouharoun is still alive.

On September 23, 2024, Plaintiffs noticed the video deposition of Ms. Bouharoun for a date of “TBD” at 10:00 a.m. at the office of Maynard Nexsen PC, 104 South Main St., Suite 900, Greenville, SC 29601. *See* Mot. at 1. In addition, on October 18, 2024, Defendants served responses to Plaintiffs’ First Set of Requests for Production and objected to producing Ms. Bouharoun’s current Last Will and Testament and related estate planning documents on the ground that those documents are protected by the attorney-client privilege during Ms. Bouharoun’s lifetime. *Id.* at 2.

Now, before proceeding further, the parties agree that they need a ruling from the Court as to whether the contents of Ms. Bouharoun’s Last Will and Testament and related estate planning documents (including the documents themselves) are privileged during her lifetime. *Id.*

ANALYSIS

“Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: (1) that the discovery not be had; . . . [and] (4) that certain matters not be inquired into” SCRCP 26(c); *see also* SCRCP 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . .”).

Plaintiffs argue that Ms. Bouharoun has failed to carry her burden of proving that her current Last Will and Testament and related estate planning documents are protected by the attorney-client privilege, and therefore she must produce them. The Court disagrees.

Contrary to Plaintiffs' position, it is well settled that the contents of a testator's will are protected by attorney-client privilege during the testator's lifetime. *See Bethune v. Bethune*, 870 S.E.2d 827, 832 (Ga. Ct. App. 2022) (citations omitted) (holding that wills that have not been submitted to probate are protected by the attorney-client privilege and, therefore, not discoverable); *see also Fields v. Dep't of Revenue*, No. TC-MD 040659E, 2005 WL 3108209, at *5 (Or. T.C. Nov. 17, 2005) (holding that "wills prepared by attorneys are protected by the attorney-client privilege from disclosure"); *Compton v. W. Volusia Hosp. Auth.*, 727 So. 2d 379, 382 (Fla. Dist. Ct. App. 1999) (holding that the plaintiff's will was "protected from disclosure and surrender during her lifetime, by the attorney-client privilege"); *In re Guardianship of York*, 44 Wash. App. 547, 553, 723 P.2d 448, 451 (1986) ("A will, drawn by a lawyer at the direction of a client, contains the very essence of the communications from the client relating to his or her wishes, intentions, and desires with respect to the disposition of their property").¹

Public policy concerns also support maintaining the confidentiality of estate planning documents while testators are still alive. Allowing Plaintiffs to discover the contents of a living testator's estate planning documents would set a dangerous precedent, as it would invite swaths of

¹ The Court is not persuaded by Plaintiffs' argument that the above-referenced cases are not binding on this Court, particularly in light of the fact that Plaintiffs were unable to cite any authority in support of their position that Ms. Bouharoun's current Last Will and Testament is not privileged. Nor does the Court find persuasive Plaintiffs' argument that the Last Will and Testament is not privileged because it is an executed document as opposed to an attorney-client communication.

pre-death, quasi-will contests in various courts across this state. The Court declines to issue such an invitation here.

CONCLUSION

Because Ms. Bouharoun's Last Will and Testament and related estate planning documents are protected by the attorney-client privilege during her lifetime, good cause exists to protect her from being compelled to: (1) produce her current Last Will and Testament and related estate planning documents during her lifetime; and (2) testify about the contents or terms of those documents during her lifetime.

Based on the foregoing, Ms. Bouharoun's Motion is **GRANTED**. Ms. Bouharoun's current Last Will and Testament and related estate planning documents are hereby protected from disclosure during her lifetime, and Plaintiffs may not inquire about their contents or terms in this or any other civil case via written discovery, deposition, or otherwise.

Judge Gravely's e-signature to follow



Greenville Common Pleas

Case Caption: Peter Bouharoun , plaintiff, et al vs. Bouharoun Package Store Inc ,
defendant, et al
Case Number: 2023CP2306364
Type: Order/Protection from Discovery

So Ordered

s/ Honorable Perry H. Gravely, #2755