

RECEIVED

Mar 07 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
ROBERT J. BONDS, CIRCUIT COURT JUDGE

---

Appellate Case No. 2025-000076

---

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, Defendants,

Of which Merrill U. Barringer as Personal Representative of the  
Estate of Paul Brandon Barringer II, is a, .....Respondent,

--and--

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak, .....Appellant,

v.

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

---

**INITIAL BRIEF OF APPELLANT**

---

Desa Ballard (S.C. Bar No. 498)  
226 State Street  
West Columbia, South Carolina 29169  
Telephone 803.796.9299  
Facsimile 803.796.1066  
desab@desaballard.com

James R. Gilreath (S.C. Bar #02133)  
William M. Hogan (S.C. Bar #65272)  
THE GILREATH LAW FIRM, PA  
110 Lavinia Avenue (zip 29601)  
P.O. Box 2147  
Greenville, South Carolina 29602  
Telephone: 864.242.4727  
Facsimile: 864.232.4395  
jim@gilreathlaw.com  
bhogan@gilreathlaw.com

S. Alan Medlin (S.C. Bar No. 3924)  
1713 Phelps Street  
Columbia, South Carolina 29205  
Telephone: 803.777.7465  
Facsimile: 803.777.7465  
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)  
MACLOSKIE LAW FIRM  
P.O. Box 280  
Beaufort, South Carolina 29901  
Telephone: 843.524.0909  
Fax: 843.521.1379  
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)  
CARTER, SMITH, MERRIAM ROGERS &  
TRAXLER, PA  
900 East North Street (29601)  
P.O. Box 10828 (29603)  
Greenville, South Carolina  
Telephone: 864.242.3566  
Facsimile: 864.232.1558  
tom.traxler@carterlawpa.com

ATTORNEYS FOR APPELLANT

## **TABLE OF CONTENTS**

|                                                                                                                                                                                                                                                                                                                                      |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Table of Authorities .....                                                                                                                                                                                                                                                                                                           | iii |
| Nature of the Action .....                                                                                                                                                                                                                                                                                                           | 1   |
| Statement of Issues on Appeal .....                                                                                                                                                                                                                                                                                                  | 9   |
| Statement of the Case .....                                                                                                                                                                                                                                                                                                          | 10  |
| Statement of Facts .....                                                                                                                                                                                                                                                                                                             | 14  |
| Standard of Review .....                                                                                                                                                                                                                                                                                                             | 16  |
| Argument .....                                                                                                                                                                                                                                                                                                                       | 17  |
| I.    THE TRIAL COURT ERRED IN GRANTING SUMMARY<br>JUDGMENT BY FAILING TO IDENTIFY, DETERMINE AS VALID,<br>AND CONSTRUE AS TO HIS INTENT ANY DOCUMENT BY<br>WHICH PAUL B. BARRINGER PURPORTEDLY GAVE<br>DEFENDANT MS. BARRINGER A SPECIAL TESTAMENTARY<br>POWER OF APPOINTMENT OVER CONTROLLING VOTING<br>STOCK IN HIS COMPANY ..... | 22  |
| II.   THE TRIAL COURT ERRED IN RULING BY SUMMARY<br>JUDGMENT THAT ANY SPECIAL TESTAMENTARY POWER OF<br>APPOINTMENT THAT PAUL B. BARRINGER PURPORTEDLY<br>GAVE TO MS. BARRINGER INCLUDED THE POWER TO<br>APPOINT CONTROLLING VOTING STOCK IN HIS COMPANY .....                                                                        | 23  |
| III.  THE TRIAL COURT ERRED IN RULING BY SUMMARY<br>JUDGMENT THAT DEFENDANT MS. BARRINGER WAS NOT<br>PRECLUDED FROM EXERCISING ANY SPECIAL<br>TESTAMENTARY POWER OF APPOINTMENT OVER<br>CONTROLLING VOTING STOCK IN THE LEGACY COMPANY<br>BECAUSE OF A PROMISE RELATED TO A FIDUCIARY AND/OR<br>CONFIDENTIAL RELATIONSHIP .....      | 27  |
| IV.  THE TRIAL COURT ERRED IN RULING BY SUMMARY<br>JUDGMENT THAT DEFENDANT MS. BARRINGER WAS NOT<br>PRECLUDED FROM EXERCISING ANY SPECIAL<br>TESTAMENTARY POWER OF APPOINTMENT OVER                                                                                                                                                  |     |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| CONTROLLING VOTING STOCK IN CFRC BECAUSE OF<br>PROMISSORY AND/OR EQUITABLE ESTOPPEL .....                                                                                                                                                                                                                                                                                                                                                                                      | 32 |
| V. THE TRIAL COURT ERRED IN RULING BY SUMMARY<br>JUDGMENT THAT THERE WAS INSUFFICIENT EVIDENCE THAT<br>DEFENDANT MS. BARRINGER WAS PRECLUDED FROM<br>EXERCISING ANY SPECIAL TESTAMENTARY POWER OF<br>APPOINTMENT OVER CONTROLLING VOTING STOCK IN CFRC<br>DUE TO A CONTRACT NOT TO REVOKE HER 1998 WILL WHICH<br>DID NOT EXERCISE ANY SUCH POWER — <i>I.E.</i> , DUE TO A<br>CONTRACT NOT TO EXERCISE ANY SPECIAL TESTAMENTARY<br>POWER OF APPOINTMENT OVER VOTING STOCK ..... | 34 |
| VI. THE TRIAL COURT ERRED IN RULING BY SUMMARY<br>JUDGMENT DESPITE THE INABILITY TO OBTAIN TESTIMONY<br>FROM THE TRIAL COURT ERRED IN RULING BY SUMMARY<br>JUDGMENT DESPITE THE INABILITY TO OBTAIN TESTIMONY<br>FROM DEFENDANT MERRILL BARRINGER .....                                                                                                                                                                                                                        | 41 |
| VII. THE TRIAL COURT ERRED BY FAILING TO RULE ON THE<br>ORDER BIFURCATING TRIAL .....                                                                                                                                                                                                                                                                                                                                                                                          | 42 |
| VIII. THE TRIAL COURT ERRED BY EFFECTIVELY REVERSING<br>JUDGE MULLEN’S PRIOR DENIAL OF DEFENDANT MERRILL<br>BARRINGER’S VERY SAME MOTION FOR SUMMARY<br>JUDGMENT IN 2020 .....                                                                                                                                                                                                                                                                                                 | 49 |
| Conclusion .....                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 50 |

## **TABLE OF AUTHORITIES**

### **CASES**

|                                                                                                                            |            |
|----------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Bateman v. Rouse</i> ,<br>358 S.C. 667, 596 S.E.2d 386 (Ct. App. 2004).....                                             | 47         |
| <i>Baughman v. American Tel. and Tel. Co.</i> ,<br>306 S.C. 101, 112, 410 S.E.2d 537, 543-44 (1990).....                   | 17         |
| <i>Chapman v. Citizens and Southern Nat. Bank of South Carolina</i> ,<br>302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990)..... | 8,28,29,32 |
| <i>Clyburn v. Sumter Co. Sch. Dist. 17</i> ,<br>311 S.C. 521, 429 S.E.2d 862 (Ct. App. 1993).....                          | 8          |
| <i>Creighton v. Coligny Plaza Ltd. P'ship</i> ,<br>334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998).....              | 45         |
| <i>Davis v. Sparks</i> ,<br>235 S.C. 326, 333, 111 S.E.2d 545, 549 (1959) .....                                            | 29         |
| <i>Estate of Fabian</i> ,<br>362 S.C. 349, 483 S.E.2d 474 (Ct.App. 1997).....                                              | 23,26      |
| <i>Fleming v. Rose</i> ,<br>350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) .....                                            | 16         |
| <i>Gionan v. Tenet Healthsystems of Hilton Head Inc.</i> ,<br>383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2005).....              | 49         |
| <i>Hancock v. Mid-South Mgmt. Co., Inc.</i> ,<br>381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) .....                       | 17         |
| <i>Huggins v. Price</i> ,<br>96 S.C. 83, 79 S.E. 798 (S.C. 1913). ....                                                     | 17,23      |
| <i>Hedgepath v. American Tel. &amp; Tel. Co.</i> ,<br>348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).....                    | 33         |
| <i>Johnson v. S.C. Nat'l Bank.</i> ,<br>292 S.C. 51, 354 S.E.2d 895 (1987) .....                                           | 47         |
| <i>Holloman v. McAllister</i> ,<br>289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) .....                                     | 17         |

|                                                                                                                                          |      |
|------------------------------------------------------------------------------------------------------------------------------------------|------|
| <i>Lee v. Kelley</i> ,<br>298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App.1989).....                                                      | 17   |
| <i>Maher v. Tietex Corp</i> ,<br>331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998).....                                                       | 33   |
| <i>Matthews v. Porter</i> ,<br>239 S.C. 620, 633, 124 S.E.2d 321, 328 (1962) .....                                                       | 29   |
| <i>Paine Gayle Properties, LLC v. CSX Transp., Inc</i> ,<br>400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012).....                            | 33   |
| <i>Plantation Fed. Bank v. Gray</i> ,<br>401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013).....                                               | 47   |
| <i>Queen’s Grant II Horizontal Property Regime v. Greenwood Development Corp.</i> ,<br>368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006)..... | 33   |
| <i>Satcher v. Satcher</i> ,<br>351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002).....                                                        | 33   |
| <i>Schmidt v. Courtney</i> ,<br>357 S.C. 310, 320, 592 S.E.2d 326, 331 (Ct. App. 2003).....                                              | 17   |
| <i>Smith v. Barr</i> ,<br>375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007).....                                                    | 44   |
| <i>Smith v. Breedlove</i> ,<br>377 S.C. 415, 662 S.E.2d 67 (2008) .....                                                                  | 49   |
| <i>State v. Hinojos</i> ,<br>393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011).....                                                           | 33   |
| <i>Turner v. Milliman</i> ,<br>392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) .....                                                       | 17   |
| <i>Watson v. Southern Ry. Co.</i> ,<br>420 F.Supp. 483, 486 (D.S.C.1975).....                                                            | 17   |
| <i>Wachovia Bank, N.A. v. Blackburn</i> ,<br>407 S.C. 321, 755 S.E.2d 437 (2014) .....                                                   | 46   |
| <i>Weil v. Weil</i> ,<br>299 S.C. 84, 382 S.E.2d 471 (Ct. App. 1989).....                                                                | 6,49 |

|                                                                                                                                    |       |
|------------------------------------------------------------------------------------------------------------------------------------|-------|
| <i>White v. Wilbanks</i> ,<br>301 S.C. 560, 393 S.E.2d 182 (1990) .....                                                            | 22,44 |
| <i>Winthrop Univ. Trustees v. Pickens Roofing and Sheet Metals Inc</i> ,<br>418 S.C. 142, 167, 791 S.E.2d 152 (Ct. App. 1996)..... | 45-46 |
| <i>Wright v. Trask</i> ,<br>329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997).....                                                      | 35    |

### **Constitutional provisions and STATUTES**

|                                  |                        |
|----------------------------------|------------------------|
| S.C. Code Ann. §62-1-103.....    | 28                     |
| S.C. Code Ann. §62-2-701.....    | 6,27,28,29,32,33,34,37 |
| S.C. Code Ann. §62-2-701(1)..... | 39,40                  |
| S.C. Code Ann. §62-2-701(3)..... | 40,41                  |

### **OTHER AUTHORITIES**

|                                          |    |
|------------------------------------------|----|
| Rule 8(a), SCRCPP .....                  | 9  |
| Rule 56(c), SCRCPP .....                 | 16 |
| Bogert, Trusts, §89 (6th ed. 1987) ..... | 29 |
| 31 C.J.S. Evidence § 156a, p. 847 .....  | 29 |

## **NATURE OF THE ACTION**

As discussed in detail below, one of the many disputed issues in these long-running complex cases involves whether, Defendant/Respondent Merrill U. Barringer (“Ms. Barringer”), has a power of appointment over certain voting stock of a family corporation and, if so, whether she has the power to exercise it. Among the numerous critical errors by the lower court discussed hereinbelow, perhaps the most critical and obvious error is the lower court’s failure to determine where the power of appointment might have arisen: the lower court order fails to identify which, if any, of the numerous documents estate planning documents executed by decedent Paul B. Barringer is valid and creates a power of appointment. Obviously, a power of appointment cannot magically appear but rather must be created by a donor’s intent in a specific valid document, but the lower court order does not identify which, if any, of the multiple purported estate planning documents executed over many years by Paul Barringer created such a power of appointment. In these complex cases, the validity of all of the relevant estate planning documents are in dispute, but the lower court order ignores that foundational problem.

These complex cases arise out of the undisclosed transfer of controlling stock in Coastal Forest Resources Company (“CFRC”), a privately-held and family-controlled corporation incorporated in Virginia and headquartered in Florida. (CFRC is not a party to this case, other than in its capacity as an intervenor on the limited issue of the categorization of damages as derivative or not; it is not a party in this appeal.) The disputed stock transfer involves a purported gift of CFRC voting stock in late 2012 from Paul Barringer, the late husband of Ms. Barringer and the parent, along with Ms. Barringer, of appellant Hampton B. Luzak (“Ms. Luzak”), Defendant Merrill B. Light, and non-party Victor Barringer. At the time of the stock transfer, Paul Barringer was suffering from Alzheimer’s disease. The purported gift from the mentally-

compromised Paul Barringer to Merrill Light resulted in Ms. Light ostensibly owning 51% of the voting stock in CFRC, thereby giving Ms. Light control over CFRC. Prior to the 2012 voting stock transfer, Paul Barringer and Ms. Barringer had always treated their two daughters equally in terms of gifts, including stock in CFRC. The purported transfer by Paul Barringer of the controlling interest in CFRC exclusively to Ms. Light represented a dramatic change in the pattern of family giving by Paul Barringer. And it was kept secret from Ms. Luzak, who owned the same amount of non-voting and voting stock as Ms. Light.

In consolidated actions filed in 2016, Ms. Luzak also seeks damages from her sister, Merrill Light and her sister's husband Randy Light<sup>1</sup> for the improper transfer of controlling stock and other assets from Paul Barringer's revocable trust to Merrill Light on the grounds of intentional interference with inheritance, civil conspiracy, and other related causes of action. Ms. Luzak has also asserted claims to rescind the stock transfer and to set aside purported amendments to the will and revocable trust of Paul Barringer, which took place after the onset of Paul Barringer's dementia, on the grounds of undue influence and fraud committed by the defendants Merrill and Randy Light on Paul Barringer, as well as lack of mental capacity of Paul Barringer. Ms. Luzak named Ms. Barringer as a defendant in these consolidated actions solely in Ms. Barringer's capacity as personal representative of the estate of Paul Barringer.

In 2019 Ms. Luzak filed this action naming her mother Ms. Barringer individually as a defendant asserting causes of action for intentional interference with inheritance, two causes of action preventing the exercise of Ms. Barringer's purported testamentary powers of appointment associated with Paul Barringer's trusts, attorney fees and costs, and civil conspiracy. Ms. Barringer argues that the decedent Paul Barringer had given her a special testamentary power of

---

<sup>1</sup> Randy Light died on March 16, 2020.

appointment over assets in his revocable trust — the critical asset being voting control stock of CFRC— and moved for summary judgment on Ms. Luzak’s second and third causes of action involving Ms. Barringer’s purported testamentary powers of appointment. In those causes of action, Ms. Luzak argued that (1) Ms. Barringer does not have a power to appoint voting stock owned by Paul Barringer in the company, and (2) even if she does, she was precluded from such an appointment because of a promise by her to Paul Barringer, enforceable by (a) a binding contract not to revoke her will that did not exercise the power, (b) a promise based on her fiduciary and confidential relationship, and/or (c) equitable/promissory estoppel.

In an order filed on November 4, 2020, the Honorable Carmen Mullen denied Ms. Barringer’s motion for summary judgment, based on the same second and third causes of action, issues, and arguments as in the orders being appealed hereby.<sup>2</sup> Ms. Barringer did not file a motion to reconsider. Judge Mullen recused herself from the case on February 19, 2021. On June 14, 2021, Ms. Barringer once again sought to obtain summary judgment on the second and third causes of action. This time around, on August 20, 2021, the Honorable Robert Bonds granted Ms. Barringer’s motion for summary judgment (“the vacated power of appointment summary judgment order”) on the very same causes of action that were before Judge Mullen when she previously denied summary judgment in 2020. The Supreme Court vacated Judge Bonds’ order because the trial court did not have jurisdiction. Supreme Court Order February 10, 2023. Once jurisdiction was returned to the lower court, in 2024 Judge Bonds re-issued his summary judgment order (“the re-issued power of appointment summary judgment order”), incorporating his 2021 order that had

---

<sup>2</sup> While denying Ms. Barringer’s motion for summary judgment, Judge Mullen subsequently ordered the bifurcation and trial of the second and third causes of action. That bifurcation order was separately appealed (see Appellate Case Nos. 2021-001022 and 2021-000837). In *Matter of Estate of Barringer*, Memo. Op. No. 2024-MO-003 (January 17, 2024), the Supreme Court directed the lower court to reconsider the bifurcation order, which Judge Bonds has so far declined to do, as indicated in the order that is the subject of this present appeal. The lower court’s ignoring of the directive regarding the bifurcation order is part of this appeal and discussed hereinbelow.

been vacated by the Supreme Court. That re-issued power of appointment summary judgment order is the subject of this appeal. The re-issued summary judgment order incorporated as an exhibit Judge Bonds' vacated summary judgment order, but also included a brief statement declining to presently address the Supreme Court's directive regarding the bifurcation order, as discussed hereinbelow.

By granting Ms. Barringer's motion for summary judgment on the second and third causes of action in the 2019 cases, Judge Bonds, who had only recently been appointed on July 23, 2021 to preside over these cases at the time he issued the vacated power of appointment summary judgment order, effectively reversed the prior denial in 2020 of the very same summary judgment motion by Judge 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. Judge Bonds reversed Judge Mullen even though *Ms. Luzak had no less evidence*<sup>3</sup> 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 Ms. Luzak has to do is produce a sufficient amount of evidence — a minimal amount under the law — to preclude summary judgment. If Ms. Luzak presented sufficient evidence to create a genuine issue of material fact for the prior summary judgment motion denied by Judge Mullen in 2020, she has at least that much, but even more evidence now, without the need to second-guess Judge Mullen.<sup>4</sup> According to Judge Bonds, Ms.

---

<sup>3</sup> Ms. Luzak actually had more evidence in her favor for the repeat summary judgment motions before Judge Bonds than in the prior summary judgment action before Judge Mullen, as discussed below, especially related to the testimony of attorneys Neill McBryde and John Jolley, which certainly addresses issues of material fact.

<sup>4</sup> Ms. Luzak, in the interests of economy and efficiency, hereby incorporates by reference all of Plaintiff's responses, memoranda, arguments, affidavits, and exhibits from Ms. Barringer's prior summary judgment motion denied by Judge Mullen and from all of the summary judgment motions before Judge Bonds on the second and third causes of action, and also incorporates by reference all appellate pleadings and briefs. This brief addresses the relevant issues,

Luzak 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 Ms. Luzak’s two causes of action at issue in the summary judgment motion, creating a genuine issue of material fact for jury determination.” Ms. Luzak certainly had not 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 and at the time of the re-issued power of appointment summary judgment orders in December 2024.<sup>5</sup>

Moreover, Judge Bonds’ order expressly identifies documentary evidence that does create a genuine issue of material fact that precludes summary judgment. On page 6 of the vacated power of appointment summary judgment order, which was incorporated as an exhibit into his re-issued power of appointment summary judgment order, Judge Bonds stated: “At most, these documents suggest that, during a certain time period, Mr. and Mrs. Barringer treated their children equally in

---

but reference is made to the filings in the prior summary judgment motions and the summary judgment order on appeal, including Exhibit references. Included in Ms. Luzak’s filed exhibits from the prior summary judgment motions and from this summary judgment order, 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 Ms. 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 Ms. Barringer, affidavits from estate planners Richard Allen and James Hardin (deposed by Ms. Barringer), debunking statements made by Neill McBryde, communications from Defendant Randy Light and from those occupying positions as officer, director, and general counsel of the company, and excerpts from Ms. Barringer’s deposition. Also included in Ms. Luzak’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 Ms. 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, Ms. Luzak included excerpts of the depositions of McBryde and John Jolley that impeached their recollection and reliability and contradicted Ms. Barringer’s assertions. In opposition, Ms. Barringer *failed to provide any personal affidavit or to testify* to dispute any of the facts shown by Ms. Luzak’s evidence. Moreover, Plaintiff also incorporates by reference all of Ms. Luzak’s responses, memoranda, arguments, exhibits, and affidavits, along with all appellate pleadings and briefs, related to her Motions to Reconsider and to Vacate the previously filed order of December 30, 2020, granting Defendants’ motion to bifurcate the second and third causes of action.

<sup>5</sup> Judge Bonds’ order focused solely on “documents” as evidence, despite the testimony of record of witnesses as to these very issues.

the past and intended or planned to treat them (*sic*) children equally with respect to certain assets in the future.” (Emphasis added). That’s only one of the genuine issues of material fact that precluded summary judgment.

Similarly, Judge Bonds’ analysis of S.C. Code §62-2-701 suggests that the fact of the reciprocal wills of the Barringers supposedly served as the only evidence of contractual intent, even while acknowledging one page earlier the existence of evidence that did create a genuine issue of material fact. Ms. Luzak has never argued, as implied in Judge Bonds’ order, that the purported wills constituted the sole evidence of a contract or promise. Ms. Luzak produced multiple examples of other indications of Mr. Barringer’s intent in addition to those purported wills, including the affidavits that Judge Bonds ignored. Judge Bonds necessarily had to ignore all of this evidence in order to grant summary judgment based solely on what “the documents” showed. In short, Judge Bonds opted to *weigh* the evidence instead of looking to see if evidence existed (by inference or otherwise) to support Ms. Luzak’s claims.

In improperly rejecting Ms. Luzak’s contention that reversing Judge Mullen’s prior denial of Ms. Barringer’s power of appointment summary judgment motion created precedent for judge-shopping and a never-ending series of bites of the same apple, with the resulting judicial inefficiency, uncertainty, and needless delays, Judge Bonds cited two cases<sup>6</sup> as authority for being able to consider again the exact same summary judgment motion denied by Judge Mullen but with a different result. Neither is precedent or authority for the position he stated. See the discussion at Issue VIII below.

As discussed more fully below, Judge Bonds listed as additional discovery following Judge Mullen’s 2020 order the deposition of Neill McBryde, who drafted the purported 1998 wills and

---

<sup>6</sup> *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d 471 (Ct. App. 1989); *Smith v. Breedlove*, 377 S.C. 415, 662 S.E.2d 67 (2008).

trusts of the Barringers but no subsequent purported will and trust.<sup>7</sup> Although ignored by Judge Bonds, McBryde's testimony was devastating to Ms. Barringer.<sup>8</sup> McBryde had filed two sworn affidavits for the first summary judgment motion, and his deposition testimony contradicted his sworn affidavits as well as numerous other facts asserted by Ms. Barringer — not to mention calling into question his recollection and reliability. Critically, McBryde admitted that he had not discussed with Paul Barringer or Ms. Barringer whether any power of appointment in the 1998 documents gave Ms. Barringer a power of appointment over CFRC voting stock. Thus, McBryde's testimony added nothing to Ms. Barringer's existing evidence from the 2020 summary judgment motion, denied by Judge Mullen, but weakened the facts Ms. Barringer had relied on in the 2020 summary judgment motion, therefore *adding* to and *strengthening* the genuine dispute over material facts at the time of the re-issued power of appointment summary judgment which is the subject of this appeal.

As Judge Bonds noted, both parties submitted deposition testimony from John Jolley, who had nothing to do with the 1998 documents but who drafted subsequent purported estate planning documents; that both parties submitted excerpts from his deposition further demonstrates that the “additional discovery” created more issues of fact, not fewer. Judge Bonds ignored this deposition testimony. The third deposition cited by Judge Bonds was that of Kevin Luzak, but the Court did

---

<sup>7</sup> As part of the critical failure by Judge Bonds to determine which estate planning documents were valid and created a power of appointment, the validity of the 1998 wills and trusts are in dispute. Defendants contend that subsequent wills and trusts are valid, which Ms. Luzak disputes, but if any post-1998 will and trust is valid, then the 1998 wills and trusts are no longer valid because they were replaced by a subsequent valid will and trust. Judge Bonds' order focused on the 1998 wills and trusts without determining their validity or the validity of any purported subsequent will and trust.

<sup>8</sup> Ms. Barringer's arguments, as well as Judge Bonds' orders, focused on the 1998 estate planning documents, even though (a) Judge Price granted Defendant Merrill Light's motion for summary judgment as to the validity of Mr. Barringer's February 28, 2012 will and trust (which was vacated by Supreme Court Order February 10, 2023) and (b) Defendants additionally continue to assert the validity of Mr. Barringer's purported wills and trusts executed in 2012, 2014 and 2015, as well as another purported trust in July 2012, any of which would revoke any earlier will and trust, including the 1998 documents.

not indicate how or why his deposition made a difference. Kevin and Hampton Luzak had submitted affidavits to the trial court for each power of appointment summary judgment motion<sup>9</sup>; each affidavit provided evidence that would defeat a summary judgment motion; their affidavits were unrefuted by any affidavit from Ms. Barringer, who never submitted an affidavit, or by any other witness. The Luzak affidavits discussed family meetings that included Paul and Ms. Barringer, where he expressed his intent to keep the daughters' control over the company equal, with no objection or even comment from Ms. Barringer. Judge Bonds does not mention this testimony at all in his order.

The *Breedlove* case, discussed below, confirmed 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....” Judge Bonds provided no indication in his order that he did so.<sup>10</sup> Judge Bonds failed to consider the rule that, even if the facts are undisputed (which Ms. Luzak does not acknowledge), summary judgment is inappropriate if the conclusions or inferences of fact to be drawn from those undisputed facts are disputed. *Clyburn v. Sumter Co. Sch. Dist. 17*, 311 S.C. 521, 429 S.E.2d 862 (Ct. App. 1993).

Ms. Luzak has contended throughout this litigation that Paul Barringer never intended to give Ms. Barringer the power to appoint such voting stock and, even if his valid estate planning documents conveyed such a power, then Ms. Barringer cannot exercise any such power because

---

<sup>9</sup> Judge Bonds' order mistakenly states that neither Kevin Luzak's affidavit nor Hampton Luzak's affidavit “suggest that a promise was made during [family] meetings . . . .” All of their affidavits do exactly that. Under *Chapman*, discussed below, a promise can be inferred, even from silence. Unrefuted by any affidavit from Ms. Barringer or by any witness, the affidavits, inter alia, aver that Ms. 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*. The affidavits of the Luzaks filed in response to the three aforementioned summary judgment motions are hereafter referred to as “Affid. of \_\_\_\_\_. Luzak filed \_\_\_\_/\_\_\_\_/202\_\_\_\_.”

<sup>10</sup> In his orders, Judge Bonds referred to a post-hearing email submitting four documents previously submitted. Ms. Luzak notes that these documents were submitted only because she understood that Judge Bonds had requested them at the 2021 hearing.

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, and/or she was estopped.<sup>11</sup>

### **STATEMENT OF ISSUES ON APPEAL**

- 1. Did the trial court err in granting summary judgment by failing to identify, determine as valid, and construe as to his intent any document by which Paul B. Barringer purportedly gave Defendant Merrill Barringer a special testamentary power of appointment over controlling voting stock in his company?**
- 2. Did the trial court err in ruling by summary judgment that any special testamentary power of appointment that Paul B. Barringer purportedly gave to Merrill Barringer included the power to appoint controlling voting stock in his company?**
- 3. Did the trial court err in ruling by summary judgment that Defendant Merrill Barringer was not precluded from exercising any special testamentary power of appointment over controlling voting stock in the legacy company because of a promise related to a fiduciary and/or confidential relationship?**
- 4. Did the trial court err in ruling by summary judgment that Defendant Merrill Barringer was not precluded from exercising any special testamentary power of appointment over controlling voting stock in the legacy company because of promissory and/or equitable estoppel?**
- 5. Did the trial court err in ruling by summary judgment that there was insufficient evidence that Defendant Merrill Barringer was precluded from exercising any special testamentary power of appointment over controlling voting stock in the legacy company due to a contract not to exercise any special testamentary power of appointment over voting stock?**
- 6. Did the trial court err in ruling by summary judgment despite the inability to obtain testimony from Defendant Merrill Barringer?**
- 7. Did the trial court err by failing in its summary judgment order to rule on the bifurcation order as directed by the Supreme Court?**

---

<sup>11</sup> Despite the trial court's questioning the ability of Ms. Luzak to assert alternative theories about the existence of the power of appointment and, if so, about a promise not to exercise it, she 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.")

8. **Did the trial court err by reversing Judge Mullen’s prior denial of Defendant Merrill Barringer’s very same motion for summary judgment in 2020 despite more evidence that created more genuine issues of material fact?**

### **STATEMENT OF THE CASE**

The cases<sup>12</sup> underlying this appeal center on the undisclosed transfer of controlling stock in CFRC from the revocable trust of the cognitively-impaired Paul Barringer<sup>13</sup> to Merrill Light’s revocable trust in late 2012, thereby giving Ms. Light control over CFRC. Also at issue in this case has been the validity of the will and revocable trust of Paul Barringer<sup>14</sup> executed on December 4, 1998 and the purported new wills and re-stated trusts dated February 28, 2012, July 20, 2012,<sup>15</sup> June 12, 2014, and February 5, 2015. Ms. Luzak also separately seeks damages from her sister, defendant Ms. Light, and her sister’s now-deceased husband, defendant Randy Light, for the improper transfer of controlling stock and other assets from Paul Barringer’s name pursuant to claims for fraud, conversion, quantum meruit/unjust enrichment, breach of fiduciary duty, intentional interference with inheritance and gifts, and civil conspiracy. Ms. Luzak also seeks to unwind the putative transfers and estate planning documents of Paul Barringer from February 28, 2012 and afterwards. Ms. Luzak further seeks a constructive and/or resulting trust over misappropriated property resulting from the stock transfer of her father’s shares in CFRC to

---

<sup>12</sup> While four (4) different lawsuits were filed, the cases were designated as complex and assigned to Judge Carmen Mullen, who consolidated the cases. (Orders of Judge Mullen dated May 19, 2017 and December 3, 2019).

<sup>13</sup> Mr. Barringer’s first medical records on this topic were dated December, 2011, when he reported to his physician that he had been suffering from cognitive difficulty for “the last one or two years.” (Ex. G, Attchm’t 3, Dr. W. Garrett Rpt. dated Dec. 27, 2011). Even before that, those close to Mr. Barringer indicated problems with his cognition.

<sup>14</sup> Mr. Barringer was a long-time resident of Hilton Head at the time of his death in 2016. South Carolina litigation originated in Beaufort County Probate Court, prior to Mr. Barringer’s death, when Ms. Luzak sought the appointment of a guardian and conservator for her father, who was suffering from dementia diagnosed as Alzheimer’s disease. *In re: Matter of Paul B. Barringer II*, Case Nos. 2016-GC-07-00006 and 00007.

<sup>15</sup> Paul Barringer purportedly executed and restated his revocable trust on July 20, 2012 but did not sign a new will on that date. (ROA p. ).

Defendant Ms. Light, rescission of the stock transfer, and other related relief. (Amended Complaint 2016-CP-07-01919 (previously 2016-ES-07-00517)). In addition, Ms. Luzak asserts claims to set aside amendments to the will and revocable trust of Paul B. Barringer on the grounds of undue influence committed by Ms. Light and Randy Light on Paul Barringer, lack of mental capacity of Paul Barringer, and other related causes of action.<sup>16</sup> (ROA p. \_\_\_\_)

After Mr. Barringer's death in May of 2016, Ms. Luzak originally filed her complaint in this action in the Beaufort County Probate Court on August 26, 2016 and petitioned for removal to the Court of Common Pleas the same day. (ROA p. \_\_\_\_). By order dated September 1, 2016 the Probate Court ordered the removal of Ms. Luzak's complaint and all related proceedings to the Beaufort County Court of Common Pleas. (ROA p. \_\_\_\_). On September 7, 2016 Ms. Luzak filed a nearly identical complaint in the Beaufort County Court of Common Pleas in order to ensure the trial court's jurisdiction. The two actions were consolidated by a consent order entered May 19, 2017. (ROA p. )

Ms. Luzak filed related actions on May 28, 2019 naming Ms. Barringer individually as a defendant asserting causes of action for intentional interference with inheritance, two causes of action involving the purported testamentary powers of appointment associated with Mr. Barringer's trusts, attorney fees and costs, and civil conspiracy. (Complaint 2019-CP-06-01253; and Complaint 2019-CP-07-1294) ("the 2019 cases"). Those actions were consolidated for

---

<sup>16</sup> Altogether the Amended Complaint in case number 2016-CP-07-1919 contains 19 causes of action for: setting aside the will of Paul Barringer for lack of mental capacity, undue influence and mistake; setting aside *inter vivos* transfers of Paul Barringer for lack of mental capacity, undue influence and mistake; setting aside purported *inter vivos* trust amendments by Paul Barringer for lack of mental capacity, undue influence and mistake; setting aside putative transfers of personal property by Paul Barringer to his *inter vivos* trust; fraud; conversion; quantum meruit/unjust enrichment; constructive trust; resulting trust; breach of fiduciary duty; intentional interference with inheritance and gifts; attorney fees and costs; and civil conspiracy.

purposes of discovery and trial with case number 2016-CP-07-1919 by order of consolidation filed December 3, 2019. (Order of Judge Mullen filed Dec. 3, 2019).

Ms. Luzak's second and third causes of action in the 2019 cases regarding the purported testamentary powers of appointment focus on whether Ms. Barringer has the power to appoint by will the controlling voting stock in Paul B. Barringer's legacy company, CFRC. Ms. Barringer contends that she has a testamentary power of appointment to redirect Mr. Barringer's CFRC voting stock to Ms. Light. Ms. Luzak has contended throughout this litigation that Paul Barringer never intended to give Ms. Barringer the power to appoint such voting stock and, even if his valid estate planning documents -- whatever may be valid, if any --- conveyed such a power, then Ms. 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, and/or she was estopped.

On March 20, 2020, Ms. Barringer filed a motion for summary judgment seeking dismissal of Ms. Luzak's second and third causes of action in the 2019 cases.<sup>17</sup> That motion was heard on October 15, 2020 and denied by Judge Mullen on November 4, 2020. (ROA p. ). Ms. Barringer did not file a motion to reconsider.

On September 10, 2020 Ms. Light filed a Motion for Summary Judgment to dismiss all of Ms. Luzak's causes of action against her. Circuit Court Judge Mullen denied Ms. Light's omnibus summary judgment motion on December 30, 2020. (ROA p. ).

---

<sup>17</sup> Ms. Barringer in her motion asked for summary judgment on all five of Ms. Luzak's causes of action, but by her Memorandum in Support of her Motion for Summary Judgment filed September 8, 2020, Ms. Barringer withdrew her request for summary judgment except as to Ms. Luzak's second and third causes of action. (ROA p.).

On May 14, 2021 Ms. Light, despite Judge Mullen’s denial of her omnibus summary judgment motion, filed another summary judgment motion before Circuit Court Judge Bentley Price seeking a ruling that Paul Barringer’s February 28, 2012 will and trust are valid documents in opposition to Ms. Luzak’s seventh, eighth, and ninth causes of action to set aside the February 28, 2012 will and trust for lack of mental capacity, undue influence and mistake. Ms. Light’s 2021 summary judgment motion did not seek to have any of the later wills and trusts declared valid. On July 6, 2021, Judge Price granted Ms. Light’s 2021 motion for summary judgment, ruling that Mr. Barringer’s February 28, 2012 will and trust were valid. This order was vacated by the Supreme Court. See Supreme Court Order February 10, 2023. (ROA p. \_)

On June 14, 2021, Ms. Barringer again filed two motions for summary judgment on the second and third causes of action — involving the powers of appointment — in the 2019 cases. Those motions were heard on August 10, 2021 by Circuit Court Judge Robert Bonds, who granted the motions for summary judgment on August 20, 2021 (“the vacated power of appointment summary judgment order”). (ROA p. ). Ms. Luzak filed a motion to reconsider on August 30, 2021, which was heard on October 7, 2021 before Judge Bonds, who denied the motion to reconsider in a Form 4 order filed on October 8, 2021. (ROA p. ). This order was vacated by the Supreme Court. (ROA p. Supreme Court Order February 10, 2023).

On February 16, 2023, while the case was stayed, Ms. Barringer again filed motions for summary judgment on the second and third causes of action — involving the powers of appointment — in the 2019 cases. (ROA p. ). As with her second round of summary judgment motions of June 14, 2021, Ms. Barringer did not offer her own affidavit or any excerpts from her deposition transcript. Those motions were heard on December 13, 2024 by the Judge Bonds, who granted the motions for summary judgment on December 31, 2024 (“the re-issued power of

appointment summary judgment order”). (ROA p. ). The 2024 order incorporated as an exhibit the vacated power of appointment summary judgment order. *Id.* On January 3, 2025, Ms. Luzak filed a motion to reconsider (ROA p. ), which was denied by Judge Bonds in three Form 4 orders filed on January 9, 2025. (ROA p. ).

On December 30, 2020 Judge Mullen ordered the bifurcation and trial of the second and third causes of action to be heard separately from, and prior to, the remaining 22 causes of action in the consolidated cases. (ROA p. ). In *Matter of Estate of Barringer*, Memo. Op. No. 2024-MO-003 (January 17, 2024), the Supreme Court directed the lower court to reconsider the bifurcation order on remand. (ROA p. ). On December 2, 2024 Ms. Luzak filed a motion with the lower court to reconsider the bifurcation order of December 30, 2020 pursuant to the Supreme Court’s directive. (ROA p. ).

The bifurcation matter was heard by Judge Bonds on December 13, 2024. In his order of December 31, 2024, Judge Bonds held reconsideration of the bifurcation order in abeyance and failed to comply with the Supreme Court’s dictate to reconsider bifurcation on the merits. (ROA p. ). Ms. Luzak raised the issue of the bifurcation order in her motion to reconsider on January 3, 2025 (ROA p. ) which Judge Bonds summarily denied in the Form 4 order of January 9, 2025 without addressing the matter. (ROA p.).

On January 10, 2025, Ms. Luzak filed and served her Notice of Appeal of these re-issued power of appointment summary judgment orders and Judge Bonds’ holding in abeyance the reconsideration of the bifurcation order despite the Supreme Court’s directive.

### **STATEMENT OF FACTS**

As would be expected in a case designated as complex, the underlying facts are voluminous and complicated. Because the underlying case, and parts of it, have been before the trial and

appellate courts on numerous occasions, the complete recitation of the facts underlying the overall case have been presented to the courts on those occasions. However, the summary judgment being appealed herein involves only one discrete factual dispute (regarding the power of appointment issue) and one legal dispute (regarding Judge Bonds' failure to comply with the Supreme Court's directive on the bifurcation order): the power of appointment issue is whether Mr. Barringer empowered his wife, Ms. Barringer, to control the disposition of voting stock in CFRC through a special testamentary power of appointment. Consequently, rather than once again reciting the voluminous complete statement of the facts underlying the overall complex case, Ms. Luzak limits her discussion of facts herein to those particularly relevant to this appeal. Ms. Luzak incorporates herein the more complete recitation of facts previously submitted on those numerous occasions<sup>18</sup>

The specific facts particularly relevant to this appeal are as follows:

For many years, Paul B. Barringer had a succession plan that included a division of voting stock in the family company. Through gifting by Mr. Barringer, Ms. Luzak owned 31.2% of the voting stock (and 37.1% of the non-voting stock), Defendant Ms. Light owned 31.2% of the voting stock (and 37.1% of the non-voting stock); Mr. Barringer retained 20% of the voting stock.<sup>19</sup> His plan was for his two daughters to agree to make decisions, but if they could not agree, then he could cast his vote to make the decision by voting with one daughter or the other. Mr. Barringer intended for this equal division of his voting stock to continue after his death. Ms. Barringer never owned any stock and was never involved with the family company. Purportedly, Mr. Barringer gifted his 20% share of the voting stock to Defendant Ms. Light in 2012. Ms. Luzak disputes the validity of that purported transfer for reasons including undue influence, fraud, intentional

---

<sup>18</sup> See Appellate Case Nos. 2021-000159 and 2021-001022; 2021-000837; and 2021-001337.

<sup>19</sup> Another non-family member, not involved in the lawsuit, owned 17.6% of the voting and non-voting stock. Mr. Barringer's son was given a spin-off company as part of his "equal children's share" and owns 8.1% of the non-voting stock. (ROA p.).

interference with an inheritance, and lack of capacity. Defendants argue that, if that purported transfer was not valid, Ms. Barringer can control the disposition of that 20% voting stock through a special testamentary power of appointment purportedly given to her by Mr. Barringer. Ms. Luzak contends that Ms. Barringer does not have the power to appoint that voting stock.

Mr. and Mrs. Barringer executed reciprocal wills and trusts, along with some other estate planning documents, in 1998. Ms. Luzak does not contest the validity of the 1998 wills and trusts. Mr. Barringer purportedly executed additional wills and trusts in 2012, 2014, and 2015. Ms. Luzak contests the validity of those purported documents. Defendants assert the documents executed in 2012, 2014, and 2015 were not invalid at the time of execution. However, each of these documents, if valid, would revoke the prior documents, so the Defendants are effectively arguing that the 2015 documents are the valid documents and the previous documents are not valid because they were revoked. Mr. Barringer died on May 30, 2016. (ROA p.).

### **STANDARD OF REVIEW**

The standard for a summary judgment follows the scintilla of evidence rule, with the evidence and all reasonable inferences viewed in light of the non-moving party.

When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted). Summary judgment is appropriate only when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRPC. “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860 (citation omitted). “In order to withstand a motion for summary judgment in cases

applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.

*Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543-44 (1990).

Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law.” *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App.1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.

*Schmidt v. Courtney*, 357 S.C. 310, 320, 592 S.E.2d 326, 331 (Ct. App. 2003).

### **ARGUMENT**

In brief, Ms. Luzak makes a number of assertions, any one of which successfully supports her second and third causes of action.

1. Paul Barringer never intended to give Ms. Barringer a special testamentary<sup>20</sup> power of appointment over controlling voting stock. [See Issue 1 below].
  - a. A critical error in the trial court’s summary judgment order is the failure to identify, which, if any, of Paul Barringer’s estate planning documents, is valid. Paul Barringer executed a will and trust in 1998. (ROA p. ). Defendants contend that Paul Barringer executed subsequent wills and trusts in 2012, 2014, and 2015. Ms.

---

<sup>20</sup> A testamentary power of appointment can be exercised only at the powerholder’s death. See, e.g., *Huggins v. Price*, 96 S.C. 83, 79 S.E. 798 (S.C. 1913).

Luzak contests the validity of all of these post-1998 documents. Defendants, by asserting that the post-1998 documents are valid, necessarily dispute the validity of the 1998 documents. Thus, the *validity of all of Paul Barringer's estate planning documents is in dispute*. Until a court determines which, if any, of these documents is valid, then no power of appointment can have been created. Yet the trial court, having failed to determine which if any of these documents is valid, has committed this critical error by effectively finding that a power of appointment was magically created but fails to identify how, when, and by what document that occurred.

- b. Even if the court had found that a disputed estate planning document was valid, and that its language purports to give Ms. Barringer a special testamentary power of appointment, the lower court would then have to examine Mr. Barringer's intent to determine what property he intended the power of appointment to cover. The "rules" of a power of appointment are created and governed by the intent of the person creating the power of appointment (the donor of the power of appointment). The intent is determined in accordance with the donor's intent at the time the power of appointment is created. Having failed to determine if any of Mr. Barringer's purported estate planning documents was valid, then of course the trial court also failed to examine his intent at the time of the creation of the purported power of appointment about the rules governing that power of appointment, such as what if any property the purported power of appointment covered.
- c. Even if the trial court had determined that one of the disputed documents was valid and then examined Mr. Barringer's intent at the time of the execution of that document, there is no reliable evidence that any estate planning advisor explained

the effect of the power of appointment language in the documents or discussed powers of appointment with Paul Barringer. For example, McBryde, the drafter of the 1998 documents, testified in his deposition that he did not discuss with Mr. Barringer whether any power of appointment covered the voting stock. If Mr. Barringer did not know the power of appointment covered the voting stock, then he could not have intended to do so.

Paul Barringer never involved his wife in the company business, gave her any stock, or named her trustee. (Affids. of K. Luzak filed 9/28/2020, ¶¶ 58-65, and 8/6/2021; Affids. of H. Luzak filed 9/28/2020, ¶¶ 52-56 and 8/6/21). Why would he give her the power to change his intentions about who would run his legacy company after his death?

The power of appointment language in the documents purportedly gives Ms. Barringer the power to appoint to descendants. Why would Paul Barringer give Ms. Barringer power to give control over his legacy company to a grandchild, great-grandchild, etc.: someone who might not have been born by the time of his death?

Paul Barringer's intent is determined according to the facts and circumstances existing at the time of execution of the documents. For example, on December 4, 1998, the date that Mr. Barringer executed the documents whose validity is disputed by Defendants, he could not have intended to give Ms. Barringer the power over stock with voting control because he did not own enough stock on that date to affect voting control. (See p.25, n.29, *infra*, and Ex. A, Attachm't 7, Barringer Family Voting Agrmt).

2. Even if Paul Barringer intended to give Ms. Barringer a testamentary power of appointment, she does not have the power to exercise it for several reasons, any one of which successfully supports Ms. Luzak's second and third causes of action.

- There was an express promise not to exercise by Ms. Barringer who was in a fiduciary and/or confidential relationship with Paul Barringer. [See Issue 2 below]
- There was an implied promise not to exercise by Ms. Barringer who was in a fiduciary relationship with Paul Barringer. [See Issue 2 below]
- Ms. Barringer is equitably estopped from exercising any such power of appointment. [See Issue 3 below]
- A contract not to exercise any power over the voting stock existed, pursuant to South Carolina statutes. [See Issue 4 below]

These issues are explained more fully in the Argument sections that follow.

In Ms. Luzak's second cause of action, for constructive trust and injunction, she alleges Ms. Barringer made an express or implied promise not to exercise any testamentary power of appointment, assuming arguendo that there is a valid estate planning document that creates a special testamentary power of appointment over voting stock, in a manner that would redirect the subject property other than as set forth in the default provisions of the estate plan of Mr. Barringer. In particular, Ms. Barringer has contended that she has a testamentary power of appointment to redirect the voting stock of Mr. Barringer in CFRC to Ms. Light. Ms. Luzak alleges that, if in fact Mr. Barringer intended to give Ms. Barringer a testamentary power of appointment over such voting stock, which she disputes, Mr. Barringer relied on Ms. Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous

documents of Mr. Barringer,<sup>21</sup> he always intended to treat his daughters – Ms. Luzak and Ms. Light – equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Ms. Barringer and assertions made by her counsel, , she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise at her death any testamentary power of appointment given to her in a manner inconsistent with Paul Barringer’s intent. (Wills of M. Barringer dated 9/15/2016, 3/2/2017, 2/22/2018, & 5/30/2019, Ex. A, Attachm’ts 31, 33, 34 & 36; Mot. Hr’g Tr. 67:18 – 68:2, June 27, 2018). Consequently, Ms. Luzak sought an order from the court directing Ms. Barringer to comply with her promise and the trust reposed in her not to exercise any testamentary power of appointment given her and to impose a constructive trust for the benefit of Ms. Luzak in the subject property with respect to the intended equal treatment of Ms. Luzak.

In Ms. Luzak’s third cause of action, for enforcement of contract not to revoke and injunction, she alleges, assuming arguendo that there is a valid estate planning document that creates a special testamentary power of appointment over voting stock, that Mr. Barringer and Ms. Barringer entered into a binding contract not to revoke their estate plans, especially with respect to Ms. Barringer’s purported will(s) that did not exercise any power of appointment related to voting stock before Mr. Barringer’s death. This contract not to revoke applied to any valid 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

---

<sup>21</sup> Those documents, if any, that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Ms. Luzak alleges that any of Mr. Barringer’s estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons. By asserting the validity of these post-2011 documents, Defendants thereby assert that the 1998 documents are revoked and therefore invalid.

plan of Mr. Barringer resulting from those actions would be invalid. Consequently, Ms. Luzak sought an order from the court directing Ms. Barringer to comply with the contract not to revoke.

**I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BY FAILING TO IDENTIFY, DETERMINE AS VALID, AND CONSTRUE AS TO HIS INTENT ANY DOCUMENT BY WHICH PAUL B. BARRINGER PURPORTEDLY GAVE DEFENDANT MS. BARRINGER A SPECIAL TESTAMENTARY POWER OF APPOINTMENT OVER CONTROLLING VOTING STOCK IN HIS COMPANY.**

A critical error in the trial court's summary judgment order is the failure to identify, which, if any, of Paul Barringer's estate planning documents, is valid. Paul Barringer executed a will and trust in 1998. Defendants contend that Paul Barringer executed subsequent wills and trusts in 2012, 2014, and 2015. Ms. Luzak contests the validity of all of these post -1998 documents. Defendants, by asserting that the post-1998 documents are valid, thereby dispute the validity of the 1998 documents.<sup>22</sup> Thus, the *validity of all of Paul Barringer's estate planning documents is in dispute*. Until a court determines which, if any, of these documents is valid, then no power of appointment can have been created. Yet the trial court, having failed to determine which if any of these documents is valid, has committed this critical error by effectively finding that a power of appointment was magically created.

Even if the court had found that a disputed estate planning document was valid, and that its language purports to give Ms. Barringer a special testamentary power of appointment, the lower

---

<sup>22</sup> Both the vacated and re-issued power of appointment summary judgment orders failed to address the issue of the summary judgment order by Judge Price, dated July 6, 2021, granting Ms. Light's motion for summary judgment as to the February 28, 2012 will and trust, finding that those documents were valid. Although that order has now been vacated for lack of jurisdiction, it meant at the time of the vacated power of appointment summary judgment order that the 1998 will and trust documents are revoked and thus cannot grant a power of appointment to Ms. Barringer. As discussed below, even if the February 28, 2012 will and trust are the operative documents, Ms. Luzak's contention that Paul Barringer did not intend to give Ms. Barringer a power to appoint voting stock still prevails. And if the February 28, 2012 documents are valid, as determined by Judge Price's now-vacated summary judgment order, then any subsequent documents purportedly executed by Paul Barringer are invalid: if a subsequent document was 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. See *White v. Wilbanks*, 301 S.C. 560, 393 S.E.2d 182 (1990).

court would then have to examine Mr. Barringer's intent to determine what property he intended the power of appointment to cover. The "rules" of a power of appointment are created and governed by the intent of the person creating the power of appointment (the donor of the power of appointment). *See, e.g., Huggins v. Price*, 96 S.C. 83, 79 S.E. 798 (S.C. 1913); Restatement (Third) of Property (Wills & Don. Trans.) § 19.9. The intent is determined in accordance with the donor's intent at the time the power of appointment is *created*. *See, e.g., Estate of Fabian*, 362 S.C. 349, 483 S.E.2d 474 (Ct.App. 1997). Having failed to determine if any of Mr. Barringer's purported estate planning documents was valid, then of course the trial court failed to examine his intent at the time of the creation of the purported power of appointment about the rules he established to govern that power of appointment.

**II. THE TRIAL COURT ERRED IN RULING BY SUMMARY JUDGMENT THAT ANY SPECIAL TESTAMENTARY POWER OF APPOINTMENT THAT PAUL B. BARRINGER PURPORTEDLY GAVE TO MS. BARRINGER INCLUDED THE POWER TO APPOINT CONTROLLING VOTING STOCK IN HIS COMPANY.**

The trial court's order also failed to even consider the evidence showing that Paul Barringer never intended to give Ms. Barringer a power to appoint voting stock. Although the order focuses somewhat on a discussion of the 1998 documents,<sup>23</sup> there is no determination that these documents were the last valid estate planning documents at Mr. Barringer's death. As noted above, Defendants dispute the validity of the 1998 documents, while Ms. Luzak contends that any will or trust documents purportedly executed by Mr. Barringer after 1998 are invalid for undue influence,

---

<sup>23</sup> The order refers to Ms. Luzak's response to interrogatories indicating that any promise would have been made no later than 1998. Ms. Luzak'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 Ms. Luzak'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.

mistake, fraud, tortious interference with inheritance, lack of capacity, etc. in the consolidated actions, leaving the 1998 instruments as the operative documents.<sup>24</sup>

Paul Barringer never allowed Ms. Barringer to have anything to do with the company, either CFRC or its predecessor. (ROA p. ). She is not and was not ever an officer, not a director, not an employee, and not a stockholder. (ROA p. ). Until his dementia subjected him to Defendants' improper influence, Ms. Barringer had no say and no involvement in the company whatsoever. (ROA p. ). Paul Barringer never made Ms. 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 deposition of Neill McBryde was devastating to Ms. Barringer in that it exponentially increased the genuine issues of material fact as to the 1998 documents — the only documents McBryde was involved with. McBryde could recall very little, if any, specifics about his estate planning with Paul Barringer and Merrill Barringer. 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. He met only with Paul Barringer until the execution of the documents. Ms. 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

---

<sup>24</sup> For a thorough discussion of the voluminous medical and non-medical evidence proving Ms. Luzak's contention about the invalidity of any post-1998 will and trust, see Plaintiff's Memorandum in Opposition to Merrill U. Barringer's MSJ, pages 6-11 of September 28, 2020 and Exhibit G, Attachments 1-26. (ROA p. )

arrived and their travel to Charlotte without benefit of legal consultation, assuming they ever received the drafts in time.<sup>25</sup>

McBryde 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. (ROA p. ). 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. (ROA p. ). 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 Ms. Barringer.<sup>26</sup> McBryde admitted that his notes did not necessarily mean that he discussed that issue with a client, but were often simply reminders to himself to do something.<sup>27</sup> (ROA p. ).

Importantly, *McBryde testified that he did not tell Paul Barringer or Ms. Barringer that the powers of appointment could affect control of the company.*<sup>28</sup> (ROA p. ).

Also importantly, evidence reflects that Paul Barringer could not have intended to give Ms. Barringer a power of appointment over controlling voting stock in the 1998 documents because he

---

<sup>25</sup> 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 Ms. Luzak's memorandum opposing Merrill Barringer's 2021 summary judgment motion, with excerpts from his files of Paul Barringer at Exhibit 3. (ROA p. ).

<sup>26</sup> 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 Merrill Barringer any power of appointment over any voting stock. (Ex. 8, McBryde dep. pp. 170-71.)

<sup>27</sup> Similar facts apply to Jolley and the February 28, 2012 documents. *Nowhere* in Jolley's notes or communications did he discuss or demonstrate a power of appointment. *Nowhere* in his notes or communications did he discuss voting 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. (ROA p. ). (Ex. 5, John Jolley Dep. 4-21-21, pp. 56, lns. 20-25, p.57, lns. 1-20.)

<sup>28</sup> (ROA p. ). Ex. 8, McBryde Dep. p. 258, lns. 18-25.

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.<sup>29</sup> It was not until the corporate reorganization in 2004 that Mr. Barringer regained enough stock to align with either daughter to effect control of CFRC. (ROA p. ). 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,<sup>30</sup> so Paul Barringer could not have intended to give such a power of appointment in 1998 because he knew he did not have enough stock to affect control.

The language of the powers of appointment in all the documents<sup>31</sup> states that Ms. 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.<sup>32</sup>

Evidence also shows that 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 Ms. Barringer and the children — and/or to sell the trust property. Evidence reflects that he never named Ms. 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 Ms. 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.

---

<sup>29</sup> (ROA p. ). See voting agreement, Exhibit A, Attchm't 7, to the first summary judgment motion, incorporated by reference into Ms. Luzak's response to the second summary judgment motion.

<sup>30</sup> See, e.g., *Estate of Fabian*, 362 S.C. 349, 483 S.E.2d 474 (Ct.App. 1997).

<sup>31</sup> Again, because of the grant of summary judgment, Ms. Luzak was deprived of the opportunity to show a jury the voluminous evidence as to why all of the post-1998 documents are invalid.

<sup>32</sup> 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.

Ms. 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.<sup>33</sup> His very actions are evidence that he did not care about future behavior affecting voting control because he had already irrevocably given away control.

**III. THE TRIAL COURT ERRED IN RULING BY SUMMARY JUDGMENT THAT DEFENDANT MS. BARRINGER WAS NOT PRECLUDED FROM EXERCISING ANY SPECIAL TESTAMENTARY POWER OF APPOINTMENT OVER CONTROLLING VOTING STOCK IN THE LEGACY COMPANY BECAUSE OF A PROMISE RELATED TO A FIDUCIARY AND/OR CONFIDENTIAL RELATIONSHIP.**

Even if the language of the valid documents, if any, successfully gave Ms. Barringer a power of appointment over voting stock, she promised not to exercise it. There are several ways that such a promise can be enforceable. One is a contract not to revoke or not to exercise; another is by an *express* unilateral promise based upon a confidential or fiduciary relationship; and another is by an *implied* unilateral promise based upon a confidential or fiduciary relationship. *The contract not to exercise requires the elements of a contract and must satisfy the requirements of S.C. Code section 62-2-701. The express or implied unilateral promise does not require the elements of a contract and is not governed by S.C. Code section 62-2-701.*

Judge Bonds erred in failing to adequately distinguish these differences and focused instead on the requirements of S.C. Code section 62-2-701. Ms. Luzak recognizes that S.C. Code § 62-2-701 provides the sole means for proving a contract, as discussed below, but § 62-2-701

---

<sup>33</sup> 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.

expressly addresses contracts...not unilateral promises. Unilateral promises, express or implied, are governed by the common law that found expression in *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990). 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). The *Chapman* case therefore remains valid law and is unaffected by the statute.<sup>34</sup>

To focus exclusively on a contract diverts attention away from the common law and *Chapman*.

Thus, the common law, and not § 62-2-701, applies to the enforceable promise cause of action — Ms. Luzak’s second cause of action.

Ms. Luzak 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. This principle of law applies to any fact pattern in which a unilateral promise is made in a fiduciary or confidential capacity, and it is not necessary that the exact fact pattern match *Chapman*. The holding in *Chapman* is logical: a unilateral promise made in a fiduciary or confidential relationship is sufficient to make the promise enforceable and does not have to be supported by mutual consideration. It is the substance of that relationship that supports the promise, not a mutually bargained-for exchange, and it is not logical for any statute

---

<sup>34</sup> Moreover, *Chapman* was decided in 1990, while section 62-2-701 became effective in 1987.

like S.C. Code § 62-2-701 to require a decedent to set forth the terms of a unilateral promise when the decedent was not the promisor.

Importantly, the *Chapman* court, citing a leading national authority on trust law, stated that the promise did not even have to be express. *Id.* at 479, 395 S.E.2d at 452. Rather, the promise could be implied, even by silence. The *Chapman* court specifically and expressly adopted the rule from one of the leading national experts on trusts, Bogert, Trusts, §89 (6th Ed. 1987), noting that the promise by the fiduciary or the one in a confidential relationship may be express or implied, even by silence. *Id.* Judge Bond's order granting summary judgment to Ms. Barringer is in direct contravention to the rule announced by this Court of Appeals in *Chapman*. Ms. Luzak clearly has demonstrated sufficient evidence to create a genuine issue of material fact as to whether Ms. Barringer made such a fiduciary or confidential promise, even if only by silence or acquiescence.

Even Ms. Barringer's silence on this issue in this litigation has been deafening. She has yet to provide testimony or even a mere affidavit denying the allegations and evidence of Ms. Luzak on this issue.<sup>35</sup> The record in this matter, including the Luzak affidavits, shows that the Barringers and their children held regular family estate planning meetings from at least 1992 through 2011, and at each one of those meetings, Mr. Barringer made his intent clear to treat his children equally, and then after son Victor had received his inheritance in advance, to treat the two daughters equally. (ROA p. ). This evidence is unrefuted by testimony or affidavit from any family member at those meetings, including Ms. Barringer. That is why Mr. Barringer would comment that his

---

<sup>35</sup> 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.”)

daughters would share equal control of CFRC and would have to “work together,” and never once did Ms. Barringer speak up or state any contrary intention. (Affids. of H. Luzak filed 9/28/2020, ¶¶ 51-56 and K. Luzak filed 9/28/2020, ¶¶ 57-65). Ms. Barringer’s silence confirmed the plan. Judge Bonds ruled in contravention of this unrefuted testimony from the Luzaks.

In Ms. Luzak’s second cause of action, for constructive trust and injunction, Ms. Luzak alleges that Ms. 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 Ms. Barringer a testamentary power of appointment over such voting stock, which Ms. Luzak disputes, Paul Barringer relied on Ms. Barringer’s express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous purported estate planning and succession documents of Paul Barringer,<sup>36</sup> he always had and always intended to treat his daughters — Ms. Luzak and Defendant Ms. Light — equally, especially with respect to control of CFRC. Based on the estate planning documents produced by Ms. Barringer and assertions made by her counsel in court, she intends to disregard her promise to Mr. Barringer and/or the trust reposed in her by him by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner inconsistent with his intent. (ROA p. ).

Until dementia and the defendants took hold of Mr. Barringer’s mind no later than early 2012, all of the known estate planning instruments (dating at least from 1998) and all of the

---

<sup>36</sup> 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. Ms. Luzak alleges that any of Mr. Barringer’s estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons. Defendants dispute the validity of the 1998 documents by asserting that subsequent documents are valid, which would revoke the 1998 documents.

dispositive intentions of Mr. and Ms. Barringer pointed to a continuing agreement between them to treat the children equally and not to unilaterally change their joint estate planning, confirmed by Ms. Barringer's silence.

Ms. Barringer's 1998 will made an express promise to her deceased husband by stating that she would not exercise her power of appointment. (ROA p. ). The Barringers' 1998 estate planning documents dovetailed each other. (ROA p. ). Each will expressly decline to exercise any powers of appointment.<sup>37</sup> *Id.* Accordingly, Ms. Barringer never attempted to exercise the power of appointment over his trust for the rest of Paul Barringer's life. Evidence shows that only after his death did Ms. Barringer abandon her promise and undertook to exercise her purported power of appointment inconsistent with her 1998 will. Fact finders may draw a reasonable inference from the facts, and such inferences do create a genuine issue of material fact. Summary judgment is not appropriate if the fact-finder could infer from the facts that Paul Barringer understood and believed that his wife would ensure that the daughters were treated equally as he had done over the decades before dementia seized his mind. The evidence from which such a conclusion could be drawn are the decades of estate planning where the children were treated equally and the Barringers dovetailing their documents to mirror each other in order to protect that intent. All of that is evidence sufficient to create a genuine issue of material fact.

The evidence to which the defendants argue to oppose that inference is evidence occurring after the onset of dementia. For summary judgment to be sustained on this issue would require the Court to engage in weighing the evidence as opposed to merely determining if there are issues of

---

<sup>37</sup> See M. Barringer Last Will & Testament of Dec. 4, 1998, Item III, where Ms. Barringer expressly declines to appoint to her own revocable trust any property from another person's estate over which she may have had a power of appointment, stating: "All of the rest, residue, and remainder of my property... (*but not including any property over which I may have a power of appointment*), I devise to the then acting Trustee of The Merrill U. Barringer Revocable Trust..." (emphasis added). (ROA p. ). The Last Will and Testament of Paul Barringer executed at the same time contains reciprocal language in Item III. See P. Barringer Last Will & Testament of Dec. 4, 1998, Item III. (ROA p. )

fact in dispute and if those issues are material. Paul Barringer failed to exercise any power for the rest of his competent life, and even for the rest of his life once Paul Barringer was incompetent. There were numerous other situations where Ms. 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.<sup>38</sup>

*Yet, according to Judge Bond's order, 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 Ms. Barringer's silence in itself speaks volumes.*

Ms. Barringer argued that it would make no sense for Paul Barringer to give Ms. 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 S.C. Code § 62-2-701 regarding contracts not to exercise, discussed more fully below, governs.

Judge Bonds' order conflates § 62-2-701 with the common law remedies that still exist for Ms. Luzak and therefore errs by reasoning that only § 62-2-701 is controlling.

**IV. THE TRIAL COURT ERRED IN RULING BY SUMMARY JUDGMENT THAT DEFENDANT MS. BARRINGER WAS NOT PRECLUDED FROM EXERCISING ANY SPECIAL TESTAMENTARY POWER OF APPOINTMENT OVER CONTROLLING VOTING STOCK IN CFRC BECAUSE OF PROMISSORY AND/OR EQUITABLE ESTOPPEL.**

Ms. Luzak's second cause of action is also supported by the doctrine of equitable estoppel, which enforces a promise that is not contractual.<sup>39</sup> This is akin to the foregoing argument on unilateral promises made in a confidential or fiduciary relationship. Just as § 62-2-701, dealing

---

<sup>38</sup> For example, the estate planning related documents discussed at footnote 4, *supra*.

<sup>39</sup> Judge Bonds' order states that Ms. Luzak has not asserted a claim for promissory estoppel. That is incorrect. Ms. Luzak's complaint alleges that, separate and apart from any promise pursuant to a contract, Ms. Barringer promised not to exercise any power of appointment. (See Ms. Luzak's second cause of action (Compl. ¶¶ 134-40) including but not limited to ¶ 137 thereof). (ROA pp. ). Promissory estoppel involves a promise, as does the fiduciary/confidential relationship argument involve a promise, neither of which need be part of a contract.

exclusively with contracts, consequently does not and cannot supersede common law enforcement of non-contractual promises based on fiduciary or confidential relationships, §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.<sup>40</sup> As with the fiduciary/confidential promise issue, Judge Bonds' order failed to distinguish the difference between equitable estoppel, which does not require a contract, and a contract not to revoke, which is governed by § 62-2-701.

Judge Bond's order also misconstrues *Satcher*,<sup>41</sup> 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.<sup>42</sup> In this case, Paul Barringer relied on the promise of Ms. Barringer, and the doctrine of equitable estoppel clearly applies. There is evidence he relied on his wife's promise, whether express or implied, by (a) 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, (b) by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and (c) by participating in or acquiescing in other acts evidencing the intent to treat the children equally. The evidence demonstrates classic promissory estoppel.

---

<sup>40</sup> 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 Prop. Regime v. Greenwood Development Corp.*, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006); *Hedgepath v. Am. 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).

<sup>41</sup> *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002).

<sup>42</sup> *Satcher* was decided some 15 years after the effective date of section 62-2-701.

*Yet, according to Judge Bonds' order, 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. That is simply erroneous, based on evidence plainly of record.*

The trial court order conflates Section 62-2-701 with the common law remedies that still exist for Ms. Luzak and therefore errs by reasoning that only Section 62-2-701 is controlling.

**V. THE TRIAL COURT ERRED IN RULING BY SUMMARY JUDGMENT THAT THERE WAS INSUFFICIENT EVIDENCE THAT DEFENDANT MS. BARRINGER WAS PRECLUDED FROM EXERCISING ANY SPECIAL TESTAMENTARY POWER OF APPOINTMENT OVER CONTROLLING VOTING STOCK IN CFRC DUE TO A CONTRACT NOT TO REVOKE HER 1998 WILL WHICH DID NOT EXERCISE ANY SUCH POWER — I.E., DUE TO A CONTRACT NOT TO EXERCISE ANY SPECIAL TESTAMENTARY POWER OF APPOINTMENT OVER VOTING STOCK.**

Separate and apart from the fiduciary/confidential relationship and equitable estoppel arguments, either of which is supported by sufficient facts for Ms. Luzak to avoid summary judgment, is Ms. Luzak's argument that a contract not to exercise existed, which in itself is supported by sufficient facts for Ms. Luzak to preclude summary judgment. With respect to contracts not to revoke, Ms. Luzak recognizes that § 62-2-701 governs. Nevertheless, Ms. Luzak satisfied the requirements of § 62-2-701, and certainly sufficient evidence suffices to prevent summary judgment, necessitating reversal of Judge Bonds' order.

The trial court's misunderstanding about Section 62-2-701 is further demonstrated by its failure to determine whether the "decedent" in the statute is Paul Barringer or Ms. Barringer. The will that is subject to the contract is Ms. 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. Ms.

Barringer's will would breach the contract, which is why Ms. Luzak sought an injunction against her breaching that contract.<sup>43</sup>

In Ms. Luzak's third cause of action, for enforcement of contract not to revoke and injunction, Ms. Luzak alleges that Paul Barringer and Ms. Barringer entered into a binding contract not to revoke their estate plans, especially with respect to Ms. Barringer's will (s) that did not exercise any power of appointment, which included the power of appointment over the 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, 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 Ms. Barringer a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him.<sup>44</sup> Even if Ms. Barringer and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Ms. Barringer in 1998, Ms. Barringer'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, declined to exercise that testamentary power of appointment when she declined *any* power of appointment, including the one given to her mere minutes earlier by Mr. Barringer in his trust.

---

<sup>43</sup> 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).

<sup>44</sup> As discussed above, Ms. Luzak asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Ms. Barringer, Ms. Luzak, and Ms. Luzak's husband Kevin Luzak, and others, there is no evidence that either Paul Barringer or Ms. Barringer knew about or really understood that these documents, if valid, gave Ms. Barringer a testamentary power of appointment over voting stock.

Thus, if Paul Barringer knew he was giving Ms. Barringer a testamentary power of appointment in his 1998 documents, he also knew that Ms. Barringer 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 Ms. Luzak has produced significant proof that Paul Barringer never made another will or trust when he was competent and/or free from improper influence,<sup>45</sup> he thus spent the rest of his cogent un-influenced life<sup>46</sup> understanding that Ms. Barringer had agreed not to exercise that testamentary power of appointment. That understanding between Paul Barringer and Ms. 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 Ms. Luzak's assertions in addition to there being no intent for Paul Barringer to give Ms. Barringer a power of appointment over voting stock.

The pattern of other planning related acts<sup>47</sup> 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. That is indisputably the way the company operated when Paul Barringer was alive and competent, and serves as evidence of his intent going forward, which evidence precludes summary judgment.

---

<sup>45</sup> 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 accompanying Plaintiff's Memorandum in Opposition to Merrill U. Barringer's Motion for Summary Judgment of Sept. 28, 2020, pp. 6-12, in the 2020 summary judgment motion and also more fully in the filings accompanying Plaintiff's Response in Opposition to Defendant Merrill B. Light's Motion for Summary Judgment filed November 9, 2020. (ROA p.)?

<sup>46</sup> Meaning that any document he executed after 2011 was invalid because he lacked capacity and was unduly influenced, etc.

<sup>47</sup> The voluminous and detailed evidence of these other estate planning related acts is found in the filings accompanying Plaintiff's Memorandum in Opposition to Merrill U. Barringer's Motion for Summary Judgment filed Sept. 28, 2020 in the 2020 summary judgment motion and incorporated into Ms. Luzak's response to the 2021 and 2024 summary judgment motions of Ms. Barringer.

These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Ms. Barringer a special testamentary power of appointment while Ms. 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 of record that creates a genuine issue of material fact that Ms. 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 Ms. Barringer executed reciprocal documents multiple times between 2012 and Paul Barringer's death. (ROA p. ). Importantly, none of the documents prepared by Jolley and executed by Ms. Barringer exercised any testamentary power of appointment. (ROA p. ). Ms. 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, Ms. Barringer and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Evidence is undisputed that not once during Paul Barringer's lifetime did Ms. Barringer attempt to exercise any testamentary power of appointment.

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 Ms. Luzak 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. Ms. 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 Ms. Barringer’s estate plan. Although these Barringer 1998 estate planning documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Ms. 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 Ms. Barringer gave him in her 1998 revocable trust.

The evidence of record shows that ff Paul Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Ms. Barringer, then he also understood that Ms. 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 Ms. Barringer's 1998 will, are sufficient to satisfy the requirements of S.C. Code § 62-2-701(1), but are also augmented and corroborated by the following evidence of record: The pattern of the reciprocal wills and trusts executed by Paul Barringer and Ms. Barringer beginning in 2012 (although Ms. Luzak contends Paul Barringer's post-1998 wills and trusts are invalid), none of which exercised any power of appointment, until Ms. 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 Ms. Barringer; corporate documents demonstrating Paul Barringer's intent to keep voting control equal; communications among the family and with advisors; and 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 Ms. Barringer. These documents and events form a consistent and continuing pattern of evidence, which precludes summary judgment.<sup>48</sup>

---

<sup>48</sup> The voluminous and detailed evidence of these other estate planning related acts is found in the filings accompanying Plaintiff's Memorandum in Opposition to Merrill U. Barringer's Motion for Summary Judgment filed Sept. 28, 2020 in the first summary judgment motion and incorporated into Ms. Luzak's response to the second summary judgment motion of Ms. Barringer. (ROA pp. ).

South Carolina Code §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 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 Ms. Barringer are obviously signed writings. As discussed above regarding subsection (1), Paul Barringer and Ms. Barringer’s 1998 documents, if valid, create special testamentary powers of appointment and Ms. 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.<sup>49</sup>

Presumably in the context of section 62-2-701(1), Judge Bonds held that Ms. Luzak 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 declination 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 the basis for the “material provisions of the contract,” section 62-2-701(1) does not preclude additional evidence. As discussed above,

---

<sup>49</sup> The voluminous and detailed evidence of these documents is found in the filings in this and the prior summary judgment motions incorporated herein.

there is substantial additional evidence to show the continuing agreement between Paul Barringer and Ms. Barringer.

Presumably in the context of section 62-2-701(3), Judge Bonds held that Ms. Luzak had failed to identify *any writing* signed by Paul Barringer and Ms. Barringer evidencing an alleged contract. Again, as discussed above, Ms. Luzak 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, Ms. Luzak has produced testimony, including affidavits, showing their intent. Judge Bonds' order 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.<sup>50</sup> Yet, *according to Judge Bonds' order, 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.

#### **VI. THE TRIAL COURT ERRED IN RULING BY SUMMARY JUDGMENT DESPITE THE INABILITY TO OBTAIN TESTIMONY FROM DEFENDANT MERRILL BARRINGER.**

Much has been made by Ms. Barringer's counsel as well as by Judge Bonds' order<sup>51</sup> about her age. While Ms. Luzak (and her counsel) wish her nothing but the best physical and mental health for a long time, Ms. Barringer has chosen never to testify about the power of appointment issue. Ms. Barringer's counsel cut short her deposition in March 2019, over objection, after Ms.

---

<sup>50</sup> With respect to the contract claim, Judge Bonds' order 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.

<sup>51</sup> See, e.g., Summ. J. Hr'g Tr. 26:13-15, 29:2-7, and 50:13-17, Aug. 10, 2021.

Luzak had just short of three hours to depose her.<sup>52</sup> (ROA p. ). Ms. 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. (ROA p. ). Her estate planning documents provided crucial information about the power of appointment issue. Because of the refusal to produce these documents, Ms. Luzak did not have access to them at Ms. Barringer's deposition, which was noticed by Defendants and conducted in 2019 before Ms. Luzak received these documents. Ms. Barringer, whom presumably would have something to say about the power of appointment issue, failed to provide any affidavit, including for this summary judgment.<sup>53</sup> Because an appeal is now Ms. Luzak's sole recourse on this issue, the opportunity to hear from Ms. Barringer is lessened.<sup>54</sup>

## **VII. THE TRIAL COURT ERRED BY FAILING TO RULE ON THE ORDER BIFURCATING TRIAL.**

In the re-issued power of appointment summary judgment order, Judge Bonds also erred by declining to rule on Ms. Luzak's Motion to Reconsider and to Vacate a previously filed order granting Mrs. Barringer's December 30, 2020 Motion to Bifurcate the Contract Claims from the other claims in these consolidated cases for trial ("Motion to Reconsider"). In his order, Judge Bonds states: "In light of the Court granting Defendant's Motions for Summary Judgment on Plaintiff's Contract Claims, the Motion to Reconsider is either (a) moot because the Bifurcation Order separated the two causes of action for which summary judgment is now granted; or (b) not

---

<sup>52</sup> The substantive amount of time was considerably less, given the constant and lengthy objections interposed by defense counsel. Notably, Defendants, not Ms. Luzak, noticed her deposition and questioned her first

<sup>53</sup> See note 35, *supra*.

<sup>54</sup> Although Ms. Luzak did not want to have two lengthy repetitive trials, which is why she opposed bifurcation (Pl. MTR Order to Bifurcate, p. 12), she does want her day in court, which because of the summary judgment orders will be delayed even more.

ripe until there is a final resolution on Plaintiff's Second and Third Causes of Action. In other words, if this Order granting summary judgment is not appealed, then the issue is moot; if this Order granting summary judgment is appealed, making a ruling on the Motion to Reconsider is premature as an affirmation of summary judgment would, again, render the Motion to Reconsider moot." Thus, the Court is holding Plaintiff's Motion to Reconsider in abeyance until there is a final resolution of Plaintiff's Second and Third Causes of Action. That decision is an error and is in direct violation of the dictate of the Supreme Court. As discussed above, Judge Bonds has effectively, albeit implicitly, ruled that there is a power of appointment over voting stock, which also implicitly asserts, without properly examining the issue, that there is a valid document creating such a power of appointment over voting stock and, without properly examining Mr. Barringer's intent, decides that he did intend to create a power of appointment over voting stock. These are effectively factual findings that, for the reasons below, Ms. Luzak has the right to have a jury determine. By not reversing the bifurcation order and nevertheless granting a summary judgment on equitable issues, Judge Bonds has taken away her right.

**1. The Supreme Court of South Carolina directed this Reconsideration in its January 17, 2024 Memorandum Opinion:**

"In light of everything that has elapsed in this case—particularly the clarification that Luzak will not pursue any derivative claims—we direct that *all matters regarding mode of trial, including the order bifurcating trial, shall be reconsidered by the circuit court on remand.*" [emphasis added]. Order of the Supreme Court dated January 17, 2024. That directive is clear and stands on its own. The Bifurcation Order was *not* an issue addressed by the Supreme Court until it undertook on its own initiative to address it in its Opinion of January 17, 2024. Clearly the bifurcation issue is of such concern to the Supreme Court that it issued the directive that the matter be revisited by the Trial Court on remand.

**2. The Bifurcation Order improperly bifurcated the trial(s) of the causes of action because there are common questions of fact and law permeating all causes of action, which made bifurcation inappropriate.**

All causes of action arise from a common core of facts that are universally applicable to all causes of actions and defenses. Ms. Luzak has set forth the facts above in her Statement of Facts, and they do not need to be reiterated here, but it should be clear that a common factual thread weaves all of the causes of action together. Such is the nature of a conspiracy. The two causes of action slated for the first trial under the Bifurcation Order are purely equitable in nature. They seek an injunction against Ms. Barringer from revoking her will and exercising any power of appointment over the assets of Mr. Barringer inconsistently with her agreement with and promise to Mr. Barringer and the imposition of a constructive trust for the benefit of Ms. Luzak in the subject property. The facts and law supporting such causes of action, and the defenses raised by the Defendants, all revolve around the common core of facts involving the manipulation of Mr. Barringer and his estate plan to vest the family legacy business in Ms. Light to the detriment of Ms. Luzak as set out in the other causes of action.

Those equitable causes of action enforce the relief from the legal claims which is the bedrock purpose of equitable relief. “It is well known that equity follows the law.” *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007). That is why the legal claims must be resolved first. The parties do not dispute that Mr. Barringer had testamentary capacity when he executed his 1998 will and trust, but the parties intensely dispute the validity of his subsequent testamentary instruments that he executed in 2012 (two times), 2014, and 2015 and his gift of stock to Ms. Light on September 11, 2012. That is what this entire litigation revolves around. It is rudimentary probate law that any subsequent valid will or trust effectively revokes any prior wills or trusts, *White v. Wilbanks*, 301 S.C. 560, 393 S.E.2d 182 (1990), but this litigation focuses on whether *any* of the testamentary instruments after 1998 were valid, or whether the 1998

instruments are the governing instruments, as well as the validity of the gift to Ms. Light of his voting stock.

When the trial court addresses whether to issue the injunction against Ms. Barringer and impose a constructive trust, it must necessarily determine which will and which trust, among the multiple sets of purported estate planning documents, are the prevailing and governing documents. Since validly executed wills and trusts revoke prior wills and trusts, the fact finder must first determine if the last instruments in 2015 are valid; if it determines that the 2015 instruments were invalid, then it backs up to the next most recent instruments (2014) to determine if they are valid. That process continues in reverse chronological order until the jury finds valid instruments. Ms. Luzak maintains that the last valid instruments were the 1998 instruments; the Defendants argue that the 2015 instruments were the most recent valid instruments. Each post-1998 document and gift will be subject to challenge for lack of capacity, undue influence, mistake, fraud, and the like.

The evidence presented for that determination will be the same evidence presented by Ms. Luzak in support of her other causes of action that are slated for a clean-up trial after the trial on the two equitable causes of action. Under the Bifurcation Order, two separate trials with two separate fact finders will be asked to determine their separate versions of the facts. This will be true regardless of whether the first trial on the equitable claims is by jury or the bench. The facts and law will significantly overlap each cause of action, and when facts and law and causes of action overlap, bifurcation is inappropriate. “A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice. Where evidence relevant to the issues of both liability and damages overlap, bifurcation is inappropriate.” *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998) (internal citation omitted); *see also Winthrop Univ. Trustees v. Pickens Roofing and Sheet Metals Inc.*, 418 S.C. 142, 167, 791

S.E.2d 152 (Ct. App. 1996). The Bifurcation Order prevents a common fact finder to find common facts in both phases. The evidence relevant to each cause of action in this case overlaps, and the issues in this case are markedly similar causing separate trials of each cause of action alone to result in injustice if inconsistent verdicts are reached. It is the remedy associated with each cause of action that is different, not the underlying facts. The bifurcation of the trials has a distinct risk of having conflicting findings of fact. What may happen with the request for equitable relief in light of conflicting factual findings will be another quagmire. This issue will persist regardless of whether the first phase of the trial is by jury or the bench, because the problem lies with having two separate fact finders in a bifurcated trial making their own separate findings on a common set of facts.

3. **The Bifurcation Order then improperly sequenced the order of trials by singling out two *equitable* causes of action and trying them before *legal* causes of action in violation of South Carolina law which mandates the trial of legal claims before equitable claims when there are such common issues of fact.**
4. **The bifurcation of the causes of action for separate trials and the improper sequencing of the trials impair the Plaintiff's right to have her legal causes of action completely determined by a jury as guaranteed by the Seventh Amendment to the United States Constitution and by the South Carolina Constitution in Article I, Section 14.**

Judge Mullen erred in ordering any bifurcation, but it aggravated the problem and further erred by ordering that the two (2) equitable causes of action for injunction and constructive trust be tried first, with the legal causes of action to be tried in a second trial. That sequencing of trials is contrary to the declared law of this State and violates Ms. Luzak's right to a jury trial. Sequencing rules mandate that when a case contains both legal and equitable causes of action and there exists disputed common factual issues relevant to both equitable and legal claims, *the legal claims must be tried first*, with the court in the trial of the equitable claims being bound by the findings of fact made by the jury. *See Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014);

*Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987); *Plantation Fed. Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013); *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (Ct. App. 2004). The South Carolina Supreme Court has stated: “If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the ‘most imperative circumstances,’ the ‘at law’ claim must be tried first.” *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897 (internal citations and quotations omitted). The purpose of the sequencing rules is to “assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues.” *Id.* at 55, 354 S.E.2d at 897.

This issue is not some esoteric, technical procedural issue; instead, it goes to the heart of Ms. Luzak’s right to have a single jury adjudicate her case. Only by applying the sequencing rules adopted by the appellate courts of this State can a trial court comply with constitutional, statutory, and case law mandates to preserve a party’s right to trial by jury inviolate. Even if the two (2) equitable causes of action are tried by jury, the judge’s order, findings of fact, conclusions of law, and even evidentiary rulings on the equitable remedies may have a binding, or, at least, prejudicial effect on the trial by jury of the legal causes of actions and their elements. Stated differently, anything short of a full jury trial on all legal causes of action before a ruling on the equitable remedies will substantially and severely prejudice Ms. Luzak’s right to trial by jury. Under the Bifurcation Order, the equitable remedies suddenly become paramount, and a jury trial on common issues of fact takes a backseat to the trial judge’s rulings. There are necessarily disputed issues of fact that are common to all of the causes of action, and that is why the cases were consolidated to begin with. That is why the Order to Bifurcate has far-reaching and inappropriate consequences on the mode of trial and the sequencing of trial beyond the mere label of an Order to Bifurcate.

**5. The bifurcation of the causes of action for separate trials is extremely inefficient in terms of judicial economy since the trials of all causes of action**

**will require the same witnesses and evidence, meaning that the Trial Court will be faced with two lengthy bifurcated trials instead of one trial that should be no longer than a single bifurcated trial.**

The trial of this case will be lengthy. No one disputes that. It will last weeks. The Defendants have stated it could take “weeks and weeks.” Because each phase of the trial will involve the same facts, each phase of the trial will involve the same witnesses and the same documents. All of the post-1998 estate planning documents and gift must be considered at each trial, and each must be separately considered for lack of capacity, undue influence, fraud, and mistake, which necessarily involves the same witnesses and documents. Further, a second trial is inevitable regardless of the outcome of the first trial. Even if the Defendants prevail at a first trial so that Ms. Barringer is determined to have an unfettered power of appointment over the voting stock, that does not avoid, or significantly shorten, a second trial, where capacity, undue influence, fraud, etc., will still be relevant and still require essentially the same witnesses and evidence.

Ms. Luzak has tens of millions of dollars in damages claimed against Defendants regardless of the bifurcated equitable causes of action, and the liability and damages portion of the trial will go on regardless of the outcome of any bifurcated trial; the liability and damages portion of the trial will not be avoided or made more efficient by any premature determination of the power of appointment issue. Each phase of the bifurcated trial will also involve agreements and promises between Mr. Barringer and Ms. Barringer to treat each daughter equally and not to exercise the power of appointment, resulting in the same evidence and witnesses.

The intent to simplify the resolution of these cases by bifurcation actually creates a procedural morass that will essentially double the total trial time and will result in two different fact finders each finding their own facts from the same evidence and will violate Ms. Luzak’s right to a trial by jury, a single jury.

**VIII. THE TRIAL COURT ERRED BY EFFECTIVELY REVERSING JUDGE MULLEN'S PRIOR DENIAL OF DEFENDANT MERRILL BARRINGER'S VERY SAME MOTION FOR SUMMARY JUDGMENT IN 2020.**

In improperly rejecting Ms. Luzak's contention that reversing Judge Mullen's prior denial of Ms. Barringer's power of appointment summary judgment motion created precedent for judge-shopping and a never-ending series of bites of the same apple, with the resulting judicial inefficiency and uncertainty, Judge Bonds cited two cases as authority for being able to consider again the exact same summary judgment motion denied by Judge Mullen. Neither is precedent or authority for the position he stated. The first, *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d 471 (Ct. App. 1989), is clearly inapposite. That case did not involve a second summary judgment motion on the same issue; rather, it involved whether a trial judge deciding the case on the merits at trial was bound by a prior judge's order denying summary judgment. Unlike the present case, the party in *Weil* was not seeking two bites of the summary judgment apple. The second case cited by Judge Bonds, *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 *Breedlove*, 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 *Breedlove*, discovery had been completed. In contrast, Judge Mullen ordered that a material issue of fact existed at the time she denied Ms. Barringer's same summary judgment motion in 2020; at that time, considerable discovery had occurred, including depositions of all parties. That material issue of fact did not disappear by the time of Judge Bonds' summary judgment orders, nor did the three depositions, taken after Judge Mullen's 2020 denial of summary judgment, cited by Judge Bonds eliminate any issue of material fact or reduce the evidence in Ms.

Luzak'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.

### **CONCLUSION**

Substantial and sufficient evidence of record exists, in the pleadings, depositions, affidavits, and discovery, such that Ms. Luzak must prevail. Judge Bonds issued his order without determining which estate planning document, if any, was valid and whether that valid document effectively created a power of appointment. Ms. Luzak has been deprived of her opportunity to present evidence about the validity of any estate planning documents, which is crucial to the case.

Ms. Luzak 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.

Therefore, Ms. Luzak respectfully asks this Court to vacate and reverse the summary judgment order of Judge Bonds. Ms. Luzak further respectfully asks this Court to vacate and reverse the Bifurcation Order of Judge Mullen and remand to the trial court with instructions to try all of Ms. Luzak's causes of action and claims for damages in case numbers 2016-CP-07-1919, 2019-CP-07-1253, and -1294 in one consolidated trial consistent with Ms. Luzak's thorough briefing on this issue throughout her appeals. Alternatively, Ms. Luzak would ask this Court to remand the bifurcation issue for reconsideration pursuant to the Supreme Court's opinion of January 17, 2024 along with a reversal of the summary judgment order.

Respectfully submitted,

BALLARD & WATSON

By: s/ Desa Ballard.

Desa Ballard (SC Bar No. 498)

Harvey M. Watson III (SC Bar No. 74053)

226 State Street  
West Columbia, South Carolina 29169  
Telephone 803.796.9299  
Facsimile 803.796.1066  
desab@desaballard.com  
harvey@desaballard.com

James R. Gilreath (S.C. Bar No. 2133)  
William M. Hogan (S.C. Bar No. 65272)  
THE GILREATHLAW FIRM, P.A.  
110 Lavinia Avenue (zip 29601)  
P.O. Box 2147  
Greenville, South Carolina 29602  
Telephone: 864.242.4727  
Facsimile: 864.232.4395  
jim@gilreathlaw.com  
bhogan@gilreathlaw.com

Thomas W. Traxler (S.C. Bar No. 5624)  
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.  
900 East North Street (29601)  
P.O. Box 10828 (29603)  
Greenville, South Carolina  
Telephone: 864.242.3566  
Facsimile: 864.232.1558  
tom.traxler@carterlawpa.com

S. Alan Medlin (S.C. Bar No. 3924)  
1713 Phelps Street  
Columbia, South Carolina 29205  
Telephone: 803.777.7465  
Facsimile: 803.777.7465  
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)  
MACLOSKIE LAW FIRM  
P.O. Box 280  
Beaufort, South Carolina 29901  
Telephone: 843.524.0909  
Facsimile: 843.521.1379  
macloskielaw@outlook.com

**Attorneys for Appellant Hampton Barringer Luzak**

March 7, 2025  
West Columbia, South Carolina.