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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,

**RECORD ON APPEAL
VOLUME XII OF XII**

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1 testator had capacity when he executed the will, and is,
2 therefore, insufficient to withstand summary judgment.

3 Then they cite -- and this is South Carolina Court of
4 Appeals Langley versus Lynch, May 24th, 2017. And as the
5 Supreme -- U.S. Supreme Court has said, only disputes over
6 facts that might affect the outcome of the suit will
7 properly preclude the entry of summary judgment.

8 Mr. Medlin has not given us a single fact that is
9 relevant to what he says are the elements in his book. Now
10 he's trying to tell you that those aren't the elements.
11 That only applies when he's teaching a course. But, to us,
12 he's gonna tell us oh, you can bring all this garbage from
13 everywhere in the world and pile on.

14 He needs specific facts, first of all, for the first
15 cause of action, February 5, 2015. He doesn't have a single
16 one, and I would like for him to tell you that so we can
17 move on to the second cause of action.

18 THE COURT: well, just so---

19 MS. PAYLOR: He's not gonna have any facts---

20 THE COURT: Alice, just so I understand.

21 Do you think he needs an expert that says that Mr.
22 Barringer lacked---

23 MS. PAYLOR: No.

24 THE COURT: ---capacity during his signing of the will
25 in February of 2015?

1 MS. PAYLOR: No, I don't think he can get an expert to
2 say that because he would have to---

3 THE COURT: My question is does he need one though to
4 survive summary judgment?

5 Does he need one to survive summary judgment?

6 Let's pretend---

7 MS. PAYLOR: Some -- and he doesn't have anything right
8 now.

9 THE COURT: Listen though. No, no, no, no, no.

10 what, what I'm saying is this. As we went through
11 every painstaking attachment, which was every doctor's
12 record, it was a doctor's record.

13 I mean correct me if I'm wrong, I didn't see doctor's
14 reports. I saw medical records and that we were reading
15 from, and maybe one of those was a report after a discharge.
16 But technically these -- pretty much this was medical
17 reports, and while there were things up there, do you agree,
18 do you agree with him that he doesn't need an expert to say
19 she lacked capacity?

20 He can -- listen. He can based on the facts as he
21 reads them and as he cherrypicks them out of the medical
22 records.

23 Do you agree that that's the case cause I, I need to
24 know that?

25 MS. PAYLOR: I -- if he had direct evidence, he would

1 not need an expert---

2 THE COURT: Okay.

3 MS. PAYLOR: ---because he has no direct evidence---

4 THE COURT: Okay.

5 MS. PAYLOR: ---he does need somebody to say he was
6 incapacitated---

7 THE COURT: Okay.

8 MS. PAYLOR: ---and he doesn't.

9 THE COURT: Okay.

10 MS. PAYLOR: Other than himself, he has nobody.

11 THE COURT: Okay. You answered my question.
12 Okay.

13 MS. PAYLOR: Thank you.

14 THE COURT: All right.

15 MR. MEDLIN: Your Honor?

16 THE COURT: So -- yeah.

17 MR. MEDLIN: If I may, I'm sorry.

18 But just to respond to that one cite to the McClam
19 case.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: Again, and we cite all these cases in our
22 memo, the cases looked at a confluence of factors. There's
23 not a bright line test. There's not safe harbor, and, no, I
24 am not changing my understanding of what the law is. The
25 law is the testator has to have the ability to know his

1 property, the people he should give it to---

2 THE COURT: I understand that.

3 MR. MEDLIN: ---and he has to know that he's -- what a
4 will does, and all these factors go into that test for
5 capacity, and it doesn't have to be medical. It can be
6 medical and it's not somebody standing in the execution
7 saying you don't have to have capacity because, if that were
8 the case, the will will never get executed. And, yeah,
9 there are cases overturning wills for lack of capacity.

10 So, all we have to show are these factors that can lead
11 to the reasonable inference that he did not -- was not able
12 to understand, and capacity includes the ability to
13 understand the complexity of what he's doing in a document,
14 and this is, again, you assume -- I grant you assume the
15 lawyer has explained that. But his ability to understand it
16 is a totally different issue.

17 So, no, Your Honor, we don't need an expert, and I'm
18 sorry to prolong it, but we would have---

19 THE COURT: Okay.

20 MR. MEDLIN: ---a dishonest expert and everybody would
21 have a dishonest expert who, after the fact, had to opine
22 about capacity at that exact moment. That's not the law.
23 You have the ability to look at factors before and after
24 just as every case cited---

25 THE COURT: Okay.

1 MR. MEDLIN: ---by Defendant---

2 THE COURT: Okay.

3 MR. MEDLIN: ---in their---

4 MS. PAYLOR: Your Honor?

5 MR. MEDLIN: Your Honor, may---

6 MS. PAYLOR: Confluence of factors is not the standard.

7 The standard is three elements.

8 THE COURT: I know and y'all said them ad nauseam.

9 MR. MEDLIN: How do you prove that?

10 MS. PAYLOR: Even---

11 MR. MEDLIN: How do you prove that?

12 THE COURT: I know.

13 MS. PAYLOR: He can not -- he can not give you one fact
14 that supports his claim that he did not know or understand
15 those three elements. Not one fact. And it has to be at
16 the time he signs it.

17 He can't give you one fact. He's had six years to take
18 John Jolley's deposition. They haven't done it. They
19 haven't taken any depositions.

20 We have people who were with him who said he knew
21 exactly what he was doing. He knew his property. He knew
22 his children, and he knew what he wanted to do. They have
23 to come up with a fact, some summary judgment admissible
24 fact, either a witness who was there, somebody who says no,
25 he didn't --

1 THE COURT: Okay.

2 MS. PAYLOR: -- and they can't do it. We win summary
3 judgment. It's very clear---

4 MR. MEDLIN: Your Honor, again---

5 MS. PAYLOR: ---and that's---

6 MR. MEDLIN: Their witnesses---

7 MS. PAYLOR: --- (indiscernible) all the way over.

8 MR. MEDLIN: Their witnesses weren't in the room either
9 other than Defendant Lights, who was---

10 MS. PAYLOR: And Mrs. Barringer.

11 MR. MEDLIN: ---and her testimony, of course, is going
12 to be self-serving. She's not about to admit she was
13 engaging in undue influence and fraud.

14 The medical evidence, let's just pick February 5th,
15 2015. And, and, again, Courts look at a, a spectrum here.
16 They don't have to go right on that day.

17 The, the odds that somebody's gonna have evidence right
18 on that day is so remote that we wouldn't even have cases
19 about testamentary capacity.

20 So, on January, 2014, he scores a 13 on the mini-mental
21 exam. He doesn't know what he's---

22 THE COURT: And we've already done this.

23 MS. PAYLOR: That's a---

24 THE COURT: Mr. Medlin, you've already done this.

25 MR. MEDLIN: I---

1 THE COURT: I know what the evidence is in there.

2 My question again is how would anyone -- if you're
3 telling me it would be an expert witness that would be
4 untruthful if they turned around and tried to go back and
5 opine whether or not he had capacity at this time, how does
6 12 people in a jury box do it?

7 I mean I understand they weigh the evidence, and it's
8 by preponderance of the evidence. You're just saying a
9 medical expert is not gonna do it.

10 But, again, I don't -- are you telling me that a
11 medical expert would never give an opinion as to whether or
12 not someone had capacity on the day they executed a will
13 unless they were actually there?

14 MR. MEDLIN: Your Honor, I don't know. I would think
15 that would be difficult to say on that day unless there were
16 other doctor's reports from that day. I would think that
17 would be difficult.

18 THE COURT: But see I---

19 MR. MEDLIN: But, Your Honor---

20 THE COURT: I would be surprised if there weren't---

21 MR. MEDLIN: ---we can---

22 THE COURT: ---weren't experts out there that said
23 whether or not someone was, you know, lacked capacity or
24 didn't on that date even if they weren't there. And we have
25 experts opine all the time based on the medical records, and

1 based on the history. So, I guess just---

2 MR. MEDLIN: We can walk -- we can ask our expert. But
3 I, I just don't see how somebody can do that. Maybe she
4 can.

5 THE COURT: See this is the problem, Mr. Medlin.

6 MS. PAYLOR: Your Honor?

7 MR. MEDLIN: It's not necessary. It's not necessary.

8 THE COURT: Mr. Medlin---

9 MS. PAYLOR: Can I give you one more---

10 THE COURT: ---though you should of already done that.

11 MS. PAYLOR: Can I give---

12 THE COURT: You should of already asked your expert.

13 MR. MEDLIN: It's not necessary, Your Honor, to have
14 a---

15 MS. PAYLOR: Can I give you one, one second---

16 MR. MEDLIN: ---a medical expert. Even Defendant---

17 THE COURT: Stop, Alice.

18 MR. MEDLIN: ---agrees with that.

19 MS. PAYLOR: The medical---

20 MR. MEDLIN: Even Defendant agrees---

21 MS. PAYLOR: Unless---

22 MR. MEDLIN: ---I don't need a medical expert.

23 THE COURT: Okay. Okay.

24 MS. PAYLOR: Your Honor?

25 MR. MEDLIN: So, why would I do what I don't---

1 MS. PAYLOR: Before the Court---

2 MR. MEDLIN: ---what I don't need to do---

3 MS. PAYLOR: The Court---

4 MR. MEDLIN: ---and call into question the voracity
5 otherwise of her report based on their doctor's reports?

6 I don't need it because that's not what the law
7 requires, Your Honor. I'm sorry.

8 THE COURT: Okay. But you're asking 12 people to give
9 you 160 million-dollars, and I have a hard time believing
10 they're going to hand that over to you unless you can prove
11 to them that he lacked capacity, and, again, that isn't for
12 my determination. It's for 12 people on a jury box. And so
13 that's why you get expert witnesses. That's why you get the
14 people---

15 MR. MEDLIN: Your Honor?

16 THE COURT: ---who are smarter than the 12 sitting
17 there and say this is what it is. I'm not saying you can
18 create a question. I can't -- I'm not saying you're not
19 right. I'm just saying that's why we have expert witnesses
20 to do something and explain to the jury something that is
21 beyond---

22 MR. MEDLIN: Your Honor?

23 THE COURT: Again, a lawyer arguing whether or not
24 someone lacked capacity doesn't do it. I, I think you need
25 an expert that's a medical expert, but beyond all that,

1 let's back up a second you guys. It's three o'clock right
2 now, and I really feel like we're just going in circles.

3 So, my question to you-all is this. I propose -- we
4 can either keep going for another hour or so, and if we need
5 to reconvene tomorrow morning we can. But I really feel
6 like we need to get to these causes of action, and I really
7 feel like we need to address them.

8 I hear you saying how that you've looked at the Summons
9 and Complaint. That one, seven, eight, and nine causes of
10 action have to do with capacity. I hear you saying that
11 your medical records get you past whether or not there's a
12 question of fact. I, I -- Alice, you can shake your head.
13 I know, but I---

14 MS. PAYLOR: I'm shaking it.

15 THE COURT: I know.

16 MS. PAYLOR: I'm sorry. I apologize.

17 THE COURT: I know. But that is what he's said.

18 MS. PAYLOR: There's one thing I want to say when you
19 finish.

20 THE COURT: I understand that and that's why I asked
21 the question. If he's telling me he doesn't need an expert
22 saying that, then, then I'm taking you for what you're
23 telling me. So -- and, and, again, I don't practice probate
24 law, which is why I always say having dual jurisdiction I
25 don't think is so smart. But, quite frankly, you're here

1 and I've got you. So, I really don't get a choice.

2 So, I'm getting my own education. But the point is we
3 need to move on. I see that your expert witness is saying,
4 Doctor Sanders, in her report that he was subject to undue
5 influence.

6 Alice, I know you're shaking your head, but, really,
7 the report says it. Her actual---

8 MS. PAYLOR: I'm sorry.

9 THE COURT: ---opinion---

10 MS. PAYLOR: I forget you're looking at me.

11 THE COURT: And I'm -- it's okay.

12 So, again, I'm just saying that I see that.

13 MR. MEDLIN: Your Honor---

14 THE COURT: So, what hurdle does that get past as far
15 as causes of action, Mr. Medlin, that makes you survive it
16 based on your own expert because I think you're torturing it
17 when I don't think you need to torture it. I actually
18 think, in this case, for sure, you've got a doctor saying
19 it, and she is saying in her opinion within a reasonable
20 degree of medical, medical certainty based on these records
21 he was susceptible to undue influence, coercion, and
22 mistakes in judgment, and she pretty much clears you from
23 2009 on.

24 So, again, what causes of action are those, and then
25 what does that leave us is, is what I want to know.

1 MR. MEDLIN: Well, Your Honor, may I just say, we have
2 more than medical evidence about capacity. We went through
3 that. We have the Defendant's own testimony. We have
4 the---

5 THE COURT: I---

6 MR. MEDLIN: ---officers---

7 THE COURT: Mr. Medlin, I heard that. I, I --
8 honestly, I know I might---

9 MR. MEDLIN: But you---

10 THE COURT: ---be a little bit slow, but I've heard
11 what you've already said. My question then becomes---

12 MR. MEDLIN: Your Honor?

13 THE COURT: ---again I'm, I'm trying to cut to the
14 chase, and I don't know if you can read through the lines or
15 not, but I'm, I'm just trying to figure out what it is that
16 you have some facts, and I just want to make sure that, if I
17 can get rid of any causes of action, if there isn't any, you
18 know, question of fact, then we'll get rid of them.

19 I'm just asking you right now, and I don't know if
20 anyone on the Plaintiff's side can answer it, but what
21 causes of action are just based on undue influence?

22 I mean---

23 MR. MEDLIN: Your Honor?

24 THE COURT: ---can Mike, can Jim, can someone?

25 I mean if you want me to go through it I'll look

1 through it myself if---

2 MR. MEDLIN: Once again---

3 THE COURT: ---if that's what I need to do.

4 MR. MEDLIN: Your Honor, again, I apologize. First of
5 all, Your Honor, let me please say that---

6 THE COURT: Yeah.

7 MR. MEDLIN: ---that I'm the last person to think that
8 you're in any way (indiscernible). And so I don't---

9 THE COURT: Listen, if I'm not, it's your fault---

10 MR. MEDLIN: I hope I didn't give that implication.

11 THE COURT: ---because you're the one that taught me.
12 So, again, if anyone lacks anything, it's probably due to
13 you because you were my professor. But that said, and
14 aside, I'm going through right now looking at this. I'm
15 looking at two, five -- that's due to mistake.

16 MS. PAYLOR: And---

17 MR. MEDLIN: Eight. Eight, Your Honor.

18 THE COURT: Eight. Thank you. Mistake.

19 Okay. Maybe we need to get to and start talking about
20 fraud, and aiding and abetting, which is the eleventh cause
21 of action, cause I actually do want to hear a little bit
22 about that. I know you touched on the law on that, Mr.
23 Medlin, before.

24 Conversion, you touched on the law of that, but we need
25 to talk about the facts.

1 Obviously, quantum meruit, constructive trust,
2 resulting trust, and intentional interference, and maybe we
3 need to talk about civil conspiracy. At least I think we
4 need to talk about it. I'm gonna admit attorney's fees and
5 costs, you guys are gonna have to show me, and I know you
6 said in the statute where it provides for it, but I need to
7 see that.

8 MS. PAYLOR: They got to win first. If they win, then
9 they would have some argument.

10 THE COURT: Right. Right.

11 Okay. So, what else do we need to talk about?

12 I mean I really think we've beat the dead horse on the
13 capacity and the undue influence.

14 So, what other -- what else do we need to talk about as
15 far as intentional torts and any of the other equitable
16 claims?

17 MS. PAYLOR: Well, that -- Your Honor, I haven't
18 given---

19 THE COURT: Yeah.

20 MS. PAYLOR: I haven't really talked about---

21 THE COURT: Okay.

22 MS. PAYLOR: ---this---

23 MR. MEDLIN: Your Honor, may I, may I---

24 MS. PAYLOR: I mean I'm still looking at the specifics,
25 which, you know, which is what I'm coming from---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---cause I, I read the law to say that.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: They have to give specific facts for each
5 cause of action.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: And as far as the incapacity goes, it has
8 to be directed at the testamentary act itself---

9 THE COURT: I know.

10 MS. PAYLOR: ---and I don't think there's any evidence
11 of that. So, I mean just right there, and he did have,
12 whether he likes it or not, he had an unhampered
13 opportunity. There's no evidence that Merrill Light exerted
14 any influence on him. Her testimony is she did not even ask
15 him for the stock. He didn't know how many shares he had.
16 He thought it was one share, and she thought he had 12
17 because he wasn't in control.

18 There's, there's, you know, there's so much evidence
19 that's out there like Anne Surrentt's testimony. She's the
20 wells Fargo person.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: He knew everything he owned. He knew
23 everything about every investment that he had made. She
24 saw -- the last time she saw him was in 2014. She had no --
25 he was not confused. He, he knew everything that was going

1 on. We've cited that and given you her deposition---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---testimony.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: We've given you Victor Barringer's
6 deposition testimony that nobody ever influenced his father
7 to do anything, and I believe that based on all the stuff
8 that, that I've read, Your Honor. I just want to make sure
9 you know we've got all of that, those facts, cause I hadn't
10 gotten to giving you, to giving you all the facts on the---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: ---on the undue influence, Your Honor.

13 THE COURT: Okay. Just a second, Alice.

14 Mr. Medlin, you want to respond just briefly---

15 MR. MEDLIN: Yes, Your Honor.

16 THE COURT: ---or say something.

17 MR. MEDLIN: Thank you, Your Honor.

18 A couple things.

19 Number one, my cocounsel tells me we're suppose to be
20 able to argue about inferences from facts. In fact, the
21 very first case we cite on Page 1 of our brief talks about
22 that.

23 So, I apologize if somebody thinks I was going astray,
24 but my understanding of the law is I'm able to argue about
25 inferences to be able to put the facts together.

1 THE COURT: Well, I understand.

2 MR. MEDLIN: Number, number two---

3 THE COURT: The facts you're giving me gives an
4 inference. I mean I would assume that's the only reason why
5 you'd be using them.

6 I, I guess the problem I have is, is some of them are
7 pretty darn obvious. So, no, you don't need to connect the
8 dots for me to understand that when someone diagnoses him
9 with, you know, mild stages of dementia that there could be
10 a problem as to his capacity. I don't need you to infer
11 that. I think I can infer that.

12 I'm just trying to figure out, y'all, and, and I'm
13 gonna admit that I'm getting slightly frustrated how we're
14 going about this, and I feel like we're all stepping on each
15 other, and I don't want to do that. I don't want to be
16 frustrated.

17 I just want to know maybe, y'all, are we better off
18 starting again fresh tomorrow?

19 I mean I can -- I don't care what I have to do. I can
20 clear the day. I just think this needs a fair and full
21 opportunity, and I just want to make sure that we're getting
22 it, and completely on the record. And, again -- yes, Mr.
23 Medlin.

24 MR. MEDLIN: Your Honor, I'm -- we were gonna
25 propose---

1 THE COURT: Yeah.

2 MR. MEDLIN: ---and we're fine with doing this anytime.
3 Of course, Your Honor, that maybe we let the Defendant make
4 her argument---

5 THE COURT: Yeah.

6 MR. MEDLIN: ---and I won't interrupt, and let's, let's
7 let her make her whole argument because I think she thinks
8 she didn't get to do it, and then I'll respond to that, and
9 maybe she won't interrupt again. And we'll do it that way
10 in a more orderly fashion, and let's let her go through her
11 arguments. Whether it's today or tomorrow morning, Your
12 Honor, I'll do that, and then we'll respond.

13 THE COURT: I hear you. But really, Mr. Medlin, what
14 Alice and I both wanted to do is, is we have the same
15 agreement of we go through it cause of action by cause of
16 action. I understand there's overlap. Again, I don't need
17 to connect the dots on inferences. But I can't force her to
18 say that, you know, what -- you just need to make your whole
19 entitled argument unless -- I, I guess I can. You're right.
20 I can. That seems to be---

21 MR. MEDLIN: I just want to be---

22 THE COURT: The only way that anyone---

23 MR. MEDLIN: I just don't want to be interrupted
24 anymore. I'm, I'm just trying not to be interrupted. I
25 can't get five words out of my mouth that Alice doesn't

1 interrupt me, and I, I -- I'd like to be able to say
2 whatever I'm gonna say without being interrupted, Your
3 Honor. So, however we can do that---

4 THE COURT: Okay.

5 MR. MEDLIN: ---that's what I'd like to do.

6 THE COURT: Okay. Well let's do this then. Let's
7 start tomorrow morning again at ten o'clock. We'll just
8 have Alice make her entire argument.

9 Alice, just put it all out there. I've heard I think
10 pretty much the law, the facts, and this is what I'm also
11 gonna do too. I always believe in the Bill Howard method
12 of -- he use to ask questions. Certainly when I was in
13 Circuit Court -- when he was on the Circuit Court Bench, and
14 then when he was on the Court of Appeals. I personally
15 liked it because it made me know what he was interested in
16 him, but I'm gonna go ahead and agree to be quiet as well.

17 So, Alice, you just give me everything you need to give
18 me, however long it takes tomorrow morning, and then, Mr.
19 Medlin, you obviously go ahead and reply. And if she needs
20 to make a brief reply, that's fine, and I'll keep my mouth
21 shut.

22 So, I will just -- again, other than I do like it when
23 you-all point me to exhibits. If you say something is in an
24 exhibit or if you, if you can refer to something, that's
25 just helpful to me cause it's just easier for me to visually

1 see it then just to hear you talk about it because,
2 typically, you're paraphrasing or I'm not getting
3 everything.

4 So, that's, that's the only thing I would ask, that,
5 you know, if you're referring to a specific piece of
6 evidence, just say it's in, you know, Attachment, you know,
7 16 of K, and it's Doctor Long's report on such and such a
8 day or his record on such and such a day.

9 Is that, is that okay?

10 Is that fair and I, I -- I need to ask Laura.

11 Laura, time wise.

12 (Pause.)

13 THE COURT: So, Laura's doing double duty. She is --
14 Tommy Houghston is in Colleton trying a criminal case for
15 us, and retired judges don't have law clerks. And so she
16 is -- he is charging a jury tomorrow. He's trying a
17 criminal case, and she has to do the jury charge, and make
18 sure everything is going fine.

19 So -- and so can we start at 11:00?

20 Is that okay with everybody?

21 Is that okay if we start at 11:00 as well?

22 Okay. Let's do that. So, let's just plan on starting
23 at 11:00 tomorrow.

24 You can get there and back you think, and he'll be okay
25 with that?

1 He won't be mad.

2 Okay. Hopefully he won't be angry at me.

3 Yes.

4 MR. MEDLIN: Your Honor, you're asking me questions. I
5 do not consider it to be an interruption. So, I just want
6 to make that clear. I don't mind being asked questions.

7 THE COURT: You know, and, again---

8 MR. MEDLIN: I just ask---

9 THE COURT: I sometimes don't know. I may be, be
10 completely off base and it's also is another way for you to
11 redirect me, but, you know, I'm just gonna -- I'm gonna
12 listen. I'm gonna rely on you-all to tell me what the law
13 is and what's important. You lay out the facts. I'm gonna
14 listen.

15 Alice, what were you gonna say?

16 MS. PAYLOR: I was gonna say the same thing. I
17 actually like questions because it directs me to what you're
18 most interested in hearing.

19 THE COURT: Yeah.

20 MS. PAYLOR: So, I don't have a problem with that.

21 THE COURT: You know, I think that works at times. But
22 I also say, and I said this in my screening yesterday, I
23 certainly have plenty of time and have no problem changing
24 my mind sitting on the bench. So, I don't know if that
25 necessarily, from what I say, from one hour to the next, in

1 a multi hour hearing necessarily says I'm going in one
2 direction or not cause I really truly feel like I'm a little
3 all over the board today.

4 So, let's just plan on eleven o'clock tomorrow.

5 Again, Alice, you're gonna give me everything you need,
6 however long that takes.

7 Mr. Medlin, you're gonna respond.

8 Can we have some kind of agreement though you know -- I
9 use to laugh. I hate it when judges said you only have so
10 much time. But, you know, there is something to Perry
11 Buckner's, you know, this amount of time is enough.

12 So, what do you think, Alice, for tomorrow?

13 what -- how much time roughly?

14 MS. PAYLOR: I don't know. Give us each an hour.

15 THE COURT: Okay. Do you think that that -- Mr.
16 Medlin, can you do an hour?

17 MR. MEDLIN: Your Honor, I will say this. I'm not good
18 at judging time other than 60 minute increments, but I've
19 gotten through the facts about capacity.

20 THE COURT: Okay.

21 MR. MEDLIN: I still have to go through the facts about
22 undue influence---

23 THE COURT: Okay.

24 MR. MEDLIN: ---which will take about as long---

25 THE COURT: Okay. Okay.

1 MR. MEDLIN: ---or that much. And then, for the rest
2 of the causes of action, it will be much quicker to be able
3 to say well, for the same reason as this and that.

4 THE COURT: Okay.

5 MR. MEDLIN: So, I, I -- once we get past undue
6 influence, I think the facts won't take very long to go
7 through.

8 THE COURT: Okay. Okay. Well then let's, let's just
9 plan again---

10 MS. PAYLOR: Let's go have a glass of wine.

11 THE COURT: There isn't enough wine out there, Alice.
12 Let me tell you. There is not.

13 MR. MEDLIN: We're not suppose to be doing that while
14 we're doing this?

15 I didn't realize that was a rule.

16 THE COURT: That's for a whole nother day and whole
17 nother off the record conversation. So, anyway.

18 All right. Y'all, so if you're fine with eleven
19 o'clock tomorrow, let's start -- what I really want to do is
20 can I just give you a total we're not going past four hours
21 tomorrow?

22 So, by 3:00. But it's not because -- I don't have any
23 where to go and nothing to do, y'all. I, I really truly
24 have no life.

25 It's just that, I think, at some point, I've got to

1 give you an end point so, you know, we can kind of get
2 there. But I will say this much, and I hope, I hope you'll
3 understand this, and I feel, I feel like I'm getting a
4 little testy. So, I need to stop that.

5 But I really have a much better handle than you would
6 hope I would after, you know, five hours of this. But I
7 have a much better handle of this case as a result of today
8 than probably at any other time.

9 So, I, I -- truthfully, I feel good about it although I
10 can tell you, after all of this, I kept sitting in my head
11 thinking who can I get to try this case, who can I get to
12 try this case. But I do have a much better handle on it.

13 So, I feel like tomorrow will go faster because I'll
14 have a better knowledge. So, for what it's worth, that's
15 what I'm saying.

16 Okay. So, is that fine, everyone?

17 And I don't want anyone going away angry or, you know,
18 I feel bad because I, I really -- I swore yesterday in my
19 public hearing -- we have a joke in my office, that, you
20 know, when we get tired, there's a signal, and they say be
21 quiet, and Laura actually has leaned over and said it's time
22 for a break two times now.

23 So, I'm getting my signal. I just need to hear it.

24 So, if, if that's okay with you-all, we're good?

25 Yes?

1 Yes?

2 (WHEREUPON, there was no audible response.)

3 THE COURT: All right. All right. I will go ahead and
4 say this for the record and I don't need any more platitudes
5 for you-all. But it's -- you have no idea how much I
6 respect all of you. You know, we talk about, you know,
7 Professor Medlin being a professor. I've known Alice for
8 years and I know how brilliant she is.

9 Mike Macloskie, from the day I went on the bench, took
10 care of me and has been so incredibly wonderful, and I've
11 tried so many cases with him, and Ashley and I have had so
12 many cases together. I mean he really has tried a lot here
13 in Civil Court.

14 So, just please know how much I respect you-all, and,
15 and know that, you know, none of this is gonna be ever based
16 on any specific friendship or necessarily respect. I just
17 got to do what I have to do in this case, and, you know,
18 I'm, I'm just trying to pare it down so I understand so I
19 can make the right choice, you know, and, and narrow the
20 issues if I can. And, if not, let's just try it.

21 So, I'm kind of just looking at an end point for this.

22 So, that's my two cents. I'll see y'all tomorrow at
23 11:00.

24 Is that okay, everyone?

25 Everyone okay?

1 MR. MACLOSKIE: Oh, yeah, thank you, Judge.
2 MR. TWOMBLEY: Yes, ma'am.
3 THE COURT: I appreciate it. I'll see you at 11:00.
4 okay?
5 MS. PAYLOR: Thank you.
6 MR. MACLOSKIE: Thank you, Your Honor.
7 MR. TWOMBLEY: Thank you, Your Honor.
8 MR. MEDLIN: Thank you, Your Honor.

9
10 (WHEREUPON, Court was in recess for the day.)
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wednesday, November 18th, 2020

THE COURT: Okay. All right. There's Mr. Medlin.

MR. MEDLIN: Morning, Judge.

THE COURT: Good morning. Good morning.

So, are we ready to go?

We okay?

(WHEREUPON, there was no audible response.)

THE COURT: Okay. So, should I just go ahead and mute everyone except for -- okay. If you'll do that except for Alice and Mr. Medlin, and we'll just go from there.

Does that sound good?

All right. So, Alice, tell me how you want to start this morning.

MS. PAYLOR: Well, you said you were gonna give us four hours. So I would---

THE COURT: Okay. I'm laughing because---

MS. PAYLOR: ---like to take an hour.

THE COURT: ---actually I have to narrow that and I apologize.

MS. PAYLOR: Okay. That's fine. That's fine.

THE COURT: It's only gonna be three hours. So, sorry.

MS. PAYLOR: Three hours is better.

THE COURT: And, and I can tell you, for some reason we need more time, we can figure out what we're gonna do

1 tomorrow. So -- or Friday. So, it's all good.

2 MS. PAYLOR: Well, what I'd like to do, to make sure I
3 get my time is, for me to take the first hour and finish up
4 what I never got to finish up. And then Mr. Medlin can have
5 the next hour and a half, and then I can have 30 minutes to
6 reply to what he said.

7 THE COURT: Okay.

8 MS. PAYLOR: Then that would give us our three hours.

9 THE COURT: Okay.

10 MS. PAYLOR: Thank you.

11 THE COURT: Okay. So, Alice, whenever you want to
12 start.

13 MS. PAYLOR: Thank, thank you, Your Honor.

14 And I apologize. I got a little undone yesterday
15 afternoon. So, I am, I am back in the saddle and I feel
16 very fresh this morning --

17 THE COURT: Good.

18 MS. PAYLOR: -- and I will proceed to tell you why
19 Merrill Light is entitled to summary judgment---

20 THE COURT: Okay.

21 MS. PAYLOR: ---as to each of her sister, Hampton
22 Luzak's---

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: ---Amended Complaint.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: I started off yesterday with the Swiger
2 case---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---and I want to kind of go back there
5 today because it's so clear---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---and it sets out -- it sets out every
8 basic legal tenant of---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---undue influence. It goes through
11 everything.

12 THE COURT: Yeah.

13 MS. PAYLOR: Swiger clearly states that the burden is
14 always on the Plaintiff. Mrs. Luzak has argued that the
15 burden is on Defendants because she claims that her father
16 suffered from chronic incapacity. She has absolutely no
17 factual support for this assertion.

18 Now, chronic testamentary incapacity---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---is a -- very different from chronic
21 incapacity where someone is committed to an insane asylum.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: And the interesting case that Mr. Medlin
24 mentioned yesterday, the 1851 case, what was the name -- oh,
25 Wright versus Lewis.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: I've got it right here. Wright versus
3 Lewis.

4 This was an 1851 case, Your Honor, and the testator
5 involved had been committed to an insane asylum for over 20
6 years. He, he had had two illegitimate daughters.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: But he had no other children besides those
9 two. And so he's been insane his whole life.

10 He got out at some point, and then he went back into
11 the insane asylum. So, if anybody was chronically
12 incapacitated, it was this man.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: So, the Court said that the burden was on
15 the Plaintiff, which was -- cause he left a will devising
16 all of his property, which were slaves.

17 THE COURT: Right.

18 MS. PAYLOR: So that tells you how old this is.

19 THE COURT: Right.

20 MS. PAYLOR: To, to his two daughters, and called him a
21 lunatic throughout---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---the case. The, the Court found the
24 will to be valid.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: The Court held that if the testator was
2 sane at the execution of the will, and understood the act,
3 which he did---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---it was sufficient. That was all that
6 was required. All witnesses to the execution of the will
7 testified that the lunatic was perfectly sane at the
8 execution of the will, and it was his free and voluntary
9 act.

10 So, when you say chronic incapacity, they're still
11 gonna have to prove that, at the time of the execution---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---he did not meet the requirements of
14 testamentary capacity.

15 They're only three requirements, Your Honor. No matter
16 what Mr. Medlin wants to tell you, in every case it says
17 there are three requirements.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: One, to know what -- a general idea of
20 what your assets are.

21 Two, to know who your loved ones are or your children.
22 However, you want to define that.

23 And, three, to know to whom you want to give your
24 property.

25 The burden is always on the Plaintiff to give us that.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: And as we discussed yesterday, she has
3 absolutely no evidence. Their hired expert did not give an
4 opinion that he was incapacitated. She never gave an
5 opinion that he was ever incapacitated.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: And we asked her that question in her
8 deposition numerous times. She said she could not do it
9 because she had not examined him, which I think is to her
10 credit.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: The requirements that establish
13 testamentary capacity are not great because there is a
14 presumption by the Courts and applicable statutes that
15 any person should be free to devise, to devise his assets as
16 he sees fit.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: Testamentary capacity is the lowest form
19 of capacity under the law. South Carolina Code Section
20 62-3-407 -- this is from the law. Directly from the law.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: "Contestants of a will have the burden of
23 establishing undue influence---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---fraud, duress, mistake, revocation, or

1 lack of capacity -- lack of testamentary capacity. Parties
2 have the ultimate persuasion as to matters with respect to
3 which they have the initial burden of proof." The burden
4 never ever shifts to the Defendant in a (indiscernible).

5 So, in our case, Mrs. Luzak has to prove, prove that
6 her father, Paul Barringer, at the times that he executed
7 all the testamentary documents that are in dispute in this
8 case did not have the ability to know or understand the
9 assets of his estate, to know or understand the objects of
10 his affection, and to know and understand the persons to
11 whom he wished to give his property. And that's straight
12 out of In Re Estate of Weeks, which is a---

13 THE COURT: Right.

14 MS. PAYLOR: ---1997 Court of Appeals case.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: And, Your Honor, it is also a very
17 interesting case because, in that case, Mrs. Weeks, the
18 testator, they had had a guardian appointed for her because
19 she was not able to take care of her day-to-day affairs and
20 her financial. She was still found to have testamentary
21 capacity. It's a very low bar.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Plaintiff wants to void all wills and
24 Trusts executed after she believes, only she believes, that
25 Paul Barringer started having cognitive issues. That is not

1 the standard. Having cognitive issues is not the legal
2 standard.

3 She would have you believe that, after he went to his
4 doctor and said, you know, I'm having trouble remembering
5 things, my memory is not as good as it used to be, he could
6 no longer execute a will or a Trust or make any decisions
7 with regard to his assets.

8 Your Honor, that is not the law. That is not the law,
9 and it can not be the law. In fact, Mr. Medlin, you know,
10 was arguing yesterday that Mr. Barringer had no reasonable
11 basis to give this stock to his daughter after he had
12 changed his first -- his Revocable Trust so that she got it
13 on her death.

14 But, as the cases say, Your Honor, there is no
15 requirement that the testator "have a reasonable basis on
16 which to found his like or dislike of the natural objects of
17 his bounty or to be reasonable in what he decides to do with
18 his asset."

19 In this case, the evidence is clear that he fell out
20 with his daughter. I mean he wrote many, many letters to
21 her, and one of them was attached, was attached to our last
22 memo.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: And he was clearly telling her what he
25 felt and that he had -- and that she should come back.

1 This man had given her properties worth hundreds of
2 millions of dollars just because she was his daughter, and
3 she fell out with him because her husband didn't get his
4 way.

5 In each testamentary act over the four year period of
6 time that Mr. Barringer lived after 2012 --

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: -- Mr. Barringer took more and more away
9 from his daughter with most of his actions occurring after
10 she had written a letter about him or his company. Paul
11 Long has testified he had testamentary capacity up until at
12 least the Fall of 2015.

13 In McCollum versus Banks, a 1948 South Carolina Supreme
14 Court case, the Court said one who relies on insanity proven
15 at another time to invalidate a will has the burden of
16 proving that, at the moment of executing the will, the
17 testator did not have mental capacity to do so. And even if
18 a testator has been previously adjudged non compos mentis,
19 that would not be conclusive that he was insane at the time
20 of the execution of the will.

21 So, this chronic incapacity argument, Your Honor, is
22 not true, unless every time he signed a testamentary
23 document, they have evidence that he did not know his
24 assets, his loved ones, or to whom he wanted to receive his
25 assets.

1 In Re Estate of Weeks, a 1997 Court of Appeals case --
2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: -- the Court stated that to void a will
4 for insanity, insanity at the time of execution of the will
5 must be shown. That's a direct quote.

6 They also cited from McCollum versus Banks, an earlier
7 opinion, which said, and I quote, "ordinarily one need not
8 have full mental contractual capacity in order to make a
9 valid will, iteria (phonetic) or difference.

10 In the Weeks case, the testator, she didn't know what
11 year it was. She didn't know who the president was. She
12 didn't know what property she owned. She had a general idea
13 that she owned some real estate, and they found -- she's the
14 one who had had a guardian appointed also before signing her
15 will.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: And her doctor testified that she needed
18 guidance in handling day-to-day business affairs. But the
19 Court held that she was capable of making major decisions
20 concerning her property, and was competent to make a will.

21 We have medical testimony from Doctor Paul Long, and
22 the medical record of Doctor Baughman from March of 2013
23 that Paul Barringer was capable of handling even his
24 day-to-day affairs. He was still driving. So, he had
25 greater capacity than the Court found sufficient in Weeks or

1 Wright versus Lewis or any of those cases.

2 In, in Mrs. Weeks case, they found that, because she
3 emphatically made known her wishes that her daughters
4 receive the bulk of her estate, and that she only left \$1.00
5 to her son in her will, that this showed her specific wish
6 to provide more for her other children.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: And in all of Mr. -- in Mr. Barringer's
9 late wills, he discusses the fact that he has a daughter to
10 whom -- who is not a beneficiary under his Revocable Trust.

11 So, he emphatically made known his wishes, Your Honor,
12 and that included leaving his CFRC stock to Merrill Light
13 emphatically. In fact, he left it in his amendment to his
14 Trust and then he emphatically left it to her by giving it
15 to her, Your Honor.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The Weeks course -- the Weeks Court held
18 that the capacity test "does not include that the, the
19 proviso or that the testatrix or testator must have a
20 reasonable basis on which to found her like or dislike of
21 the natural objects of her bounty."

22 And this goes to Mr. Medlin's argument that, you know,
23 he didn't have to give the stock to Merrill Light after he
24 left it to her in his, in his Trust amendment, but he
25 decided to. whether it was reasonable or not has nothing to

1 do with it. It was his decision.

2 The standard to prove undue influence, Your Honor, is
3 set forth in that Swiger case.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: Plaintiff must show more "than mere
6 existence of influence." She must show that Mrs. Light
7 "unmistakably and convincingly destroyed the will of Mr.
8 Barringer and supplanted her own." Circumstantial evidence
9 of undue influence includes threats, force---

10 THE COURT: Coercion.

11 MS. PAYLOR: ---restricted visitation, coercion, or an
12 existing fiduciary relationship, and I misspoke yesterday.
13 I said that she had, on paper, she was a fiduciary to Mr.
14 Barringer, but she never, ever exercised any of her powers
15 as a trustee. So, she never did anything -- she never
16 accepted the Trust property, which is set forth in the Trust
17 Code.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: She never had any -- anything to do with
20 it (indiscernible) and that's in line with what the Trust
21 Code and the Probate Code say. Mrs. Light owed no duty to
22 anyone other than the settlor, who is -- who has created a
23 Revocable Trust.

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: Only to the settlor during his lifetime.

1 she owed absolutely no duty to Mrs. Light -- Mrs. Luzak and
2 that is clear in the Probate Code, Your Honor. Because
3 Mrs. Light never exercised any powers as the cotrustee,
4 there is only a fiduciary relationship on paper.

5 Mr. Medlin yesterday made some statement that she used
6 the Trust as her checkbook. This -- Judge Mullen, there is
7 no evidence, none, that Mrs. Light ever took any assets from
8 that Trust that were not intended to go to her. He -- if he
9 has any evidence to refute that, I welcome him to put it in.
10 But just to make a bold, untrue statement like that, Your
11 Honor, I could not let that go.

12 THE COURT: I, I swore I wouldn't interrupt, but I
13 thought he said he used -- that they used the company.
14 That's what I understood him to say. Not the Trust, but the
15 company as their checkbook, her and her husband's checkbook.

16 MS. PAYLOR: Oh, no. Well, if she didn't -- okay.
17 Well, he has no proof of that either, Your Honor.

18 THE COURT: Okay.

19 MS. PAYLOR: Absolutely none. This woman was on the
20 Board of Directors. Her husband got put as the chairman of
21 the board after her father retired.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Neither one of them were dying to run this
24 company, contrary to what Mr. Medlin and Mrs. Luzak say, and
25 Mrs. Luzak wasn't dying to run the company either cause she

1 wouldn't even go on the board of directors.

2 It was may -- it was way more than anything that any of
3 these people wanted. And if she used CFRC as her checkbook,
4 Your Honor, that is a derivative claim, and she would have
5 to bring that on behalf of the corporation. It is not her
6 personal claim, and she has not done that.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: The only substantial transfers between
9 Mrs. Light and her father, while she was a paper fiduciary,
10 was when he asked her to pay his quarterly income taxes when
11 he was in the mountains. She paid them by her check in the
12 amount of \$300,000. Her father paid her back when he got
13 back home.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: That's the only transfer. She loaned him
16 money. Not the other way around.

17 He didn't -- she didn't need anybody's money, Your
18 Honor, nor did Mrs. Luzak. They both got hundreds of
19 millions of dollars in assets.

20 In any event, the case law is clear that an existing
21 fiduciary relationship alone is not sufficient to overcome
22 eye witness testimony of a testamentary act.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: There was no fiduciary relation at the
25 time of the February 28th, 2012, execution of the will and

1 first amendment to Mr. Barringer's Revocable Trust because
2 she was not named cotrustee until he signed that amendment.

3 Plaintiff has the burden to show that the influence was
4 brought directly on the testamentary act. The testamentary
5 act is the execution of the will or the Revocable Trust or
6 an amendment there too.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: To quote from the case law, Your Honor,
9 "while the existence of a fiduciary relationship between the
10 testator and beneficiary references a presumption of undue
11 influence, the proponents of the will must offer rebuttable
12 evidence. However, the proponents of the will do not have
13 to affirmatively disprove the existence of undue influence."

14 The trustee of her father's Revocable Trust beginning
15 on February 28, '12, the only duties she owed to anyone was
16 to her father. Section 67-7-603 of the Probate Code says
17 specifically, "while a Trust is revocable, rights of the
18 beneficiaries are subject to the control of the settlor, and
19 the duties of the trustee are owed exclusively to the
20 settlor."

21 So, until he died in May of 2016, and only if Mrs.
22 Luzak were a beneficiary, which she'd be owed a fiduciary
23 duty by or any duty by Mrs. Luzak, and she was not a
24 beneficiary at that time.

25 So, what is the evidence that's been presented to rebut

1 this presumption?

2 We have the testimony of Mrs. Light, of Mrs. Barringer,
3 and of Victor Barringer. They all testified that Mrs. Light
4 did not influence her father with regard to any of his
5 estate plans, and that those plans were based on his
6 decision and his decision alone.

7 That's the rebuttal, Your Honor, and those are from
8 people who were actually talking to and seeing Mr.
9 Barringer. Plaintiff has presented no evidence of threats,
10 coercion, restricted visitation, or isolation on the part of
11 Merrill Light. Plaintiff has presented -- has to present an
12 admissible fact through testimony or other admissible
13 evidence, and she has failed to do that. With regard to any
14 of these transactions, Your Honor, she has failed to do
15 that.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: Because of that failure, the cases require
18 that you grant summary judgment for Merrill Light.

19 As the South Carolina Courts have consistently held,
20 the contestants of the will still retain the ultimate burden
21 of proof---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---to invalidate the will. It never goes
24 to the proponent of the will.

25 In fact, Plaintiff must put forth unmistakable and

1 convincing evidence of undue influence that must be shown to
2 have existed at the time of the testamentary act to
3 withstand a Motion for Summary Judgments, and that language
4 is straight out of the Swiger versus Smith case, Your Honor.

5 Now, Swiger held "sufficient evidence exists to rebut
6 any presumption of undue influence created by the existence
7 of the fiduciary relationship." The proponent of the will,
8 who would of been the one who had the fiduciary relationship
9 in the Swiger case, was not present when the will was
10 dictated and drafted, and other people met with the testator
11 before he executed the will. So, there was no evidence of
12 restricted visitation and there was no evidence that the
13 powers of attorneys in that case were utilized.

14 The Court determined that these facts were not rebutted
15 by the contestant. In our case, that would be Plaintiff,
16 Hampton Luzak, and the proponent was entitled to summary
17 judgment.

18 As we discussed yesterday---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---Your Honor, Paul Barringer had many
21 unhampered opportunities to go to his counsel, to talk to
22 his wife, to talk to his son, to talk to his friends --

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: -- and he had many opportunities to make
25 changes in his will and his amendment -- and his Trust and

1 he did that.

2 There is no evidence anywhere in this case, in any of
3 the depositions, in any of the affidavits, that Merrill
4 Light made any threats or exerted any influence on Paul
5 Barringer. The exact opposite is supported by the evidence.

6 Merrill Light did only what her father wanted her to
7 do. Not the other way around. Unhampered opportunity to
8 make changes defeats even proved claims of undue influence.

9 We don't have a proved claim here, Your Honor.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: But we have the, the additional
12 suspenders, in addition to our belt, to show that there's no
13 claim of undue influence that should, that should go forward
14 in this case.

15 The Plaintiff has no personal knowledge of anything
16 that happened after May of 2012, the last time she was with
17 her father.

18 Contrary to restricting visitation, Mrs. Light, in May
19 of 2012, asked Plaintiff to help her father go see a
20 neurologist, and a urologist at the Medical University.
21 Mrs. Light did not come with them. She did not even have
22 any interactions with them while they were at her house.

23 That is not what an undue influencer would do, Your
24 Honor, and Plaintiff testified that Mrs. Light's actions
25 began well before the end of May of 2012.

1 I've already talked about the undisputed medical
2 testimony, Doctor Long's testimony, Doctor David Baughman's
3 medical record, the Greenbrier doctor, Doctor Dotson---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---who only met with Mr. Barringer, and he
6 got his whole life history from him including what he did
7 for fun, hunting, and he was an active tennis play, and all
8 kinds of things like that. Plaintiff's expert has given no
9 opinion as to Mr. Barringer's capacity.

10 Your Honor, there is no genuine issue of material fact
11 as to Mr. Barringer's capacity to execute any of the
12 documents that he executed. There are medical records that
13 say that he was demented. There are medical records that
14 show that he didn't do very well on the mini-mental exam.
15 But the medical records have nothing to do with testamentary
16 capacity.

17 Nobody asked him those three elements ever when he was
18 at a doctor's office, and that's what even Mrs. Sanders
19 testified -- Doctor Sanders testified.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: She did not know what the legal
22 requirements for testamentary capacity are.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: So, she couldn't testify to that if she
25 wanted to cause no one had even told her what they were.

1 Plaintiffs have also ignored the testimony of a totally
2 disinterested witness, Your Honor, Anne Surrett. She's an
3 employee and still is an employee of Wells Fargo.

4 It -- in 2011, she first met Mr. and Mrs. Barringer,
5 and they were moving their substantial investment assets
6 from BB&T to---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---Wells Fargo---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---because Mr. Barringer no longer liked
11 the CEO at BB&T. So, he wanted to move the assets to Wells
12 Fargo.

13 So, she testified that she met with him, and this is in
14 late 2011, and he knew everything about his assets. He was
15 asking questions about their investment strategies, what
16 they were gonna do to help him, how are they gonna keep him
17 aware of what was going on. She said that he -- talk about
18 being in charge. He was in charge.

19 Now, she met with him a number of other times, and this
20 is where Mr. Medlin gets his nickname for Paul Barringer
21 because she testified that the people at the bank, he was so
22 in charge and so knowledgeable about what he was doing, that
23 they nicknamed him John Wayne.

24 So, this comes from bank employees who had meetings
25 with him and discussions about his assets. He knew what

1 they were, Your Honor.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: He knew what they were up until the last
4 time she saw him, which was in 2014.

5 Mrs. Light sometimes sat in our meeting. Ms. Surrentt
6 said she never said anything other than hello, how are you,
7 small talk.

8 Mr. Barringer ran the meetings, told them what
9 investments he wanted to make. He questioned them about
10 what he was doing.

11 This is not a person who does not know what his assets
12 were and does not understand that he can give them to
13 whoever he wants to.

14 I just ask you to read her testimony, Your Honor,
15 because---

16 THE COURT: Okay.

17 MS. PAYLOR: ---it is so strong that it is -- it's
18 awesome. I mean she just said that he was in control of
19 every meeting that he attended asking detailed questions
20 about his investments.

21 The nickname of John Wayne, Your Honor, is a
22 compliment, and it is evidence of his competence.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: Rule 56(e), Your Honor---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: ---talks about a contestant to a summary
2 judgment motion has to produce. Affidavits shall be made on
3 personal knowledge. Shall set forth such facts as would be
4 admissible in evidence.

5 Mr. and Mrs. Luzak have no personal knowledge, Your
6 Honor, of anything after 2012. Nothing. They can not
7 present any testimony about whether or not he was competent
8 or whether or not he was subject to undue influence. They
9 were not there.

10 They can not rely upon their mere allegations. They
11 have to provide admissible, specific facts that show that
12 there is a genuine issue for trial.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: As the rules says, if Mrs. Luzak does not
15 respond with specific facts showing that there is a genuine
16 issue for trial, summary judgment shall be entered against
17 her.

18 The Plaintiff has not presented any specific summary
19 judgment admissible facts showing that there is a genuine
20 issue for trial regarding any of her causes of action. In
21 fact, in her memo and in Mr. Medlin's argument yesterday,
22 they set forth no specific summary judgment fact. Instead
23 he gave you this big picture of okay, he was having
24 cognitive issues.

25 That is undisputed, Your Honor. He was having

1 cognitive issues. That does not make him testamentor (sic)
2 in -- incapable of doing a testamentary act. He had the
3 necessary capacity.

4 I'm gonna go through the 19 causes of action, Your
5 Honor---

6 THE COURT: Okay.

7 MS. PAYLOR: ---and, you know, I invited Mr. Medlin
8 yesterday to, to give us some specific facts. After I
9 finish all the causes of action, I will invite him again to
10 do that.

11 Again, his first cause of action stated that the
12 February 5, 2015, will was invalid due to Paul Barringer's
13 incapacity. This was the last will that he ever signed,
14 Your Honor.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: This was the will that was submitted to
17 probate, and this is the will that they are basically
18 contesting, but they want to go back for four years also.

19 In Plaintiff's affidavit, her only mention of the day
20 February 5, 2015, is in Paragraph 42. She presents no
21 admissible summary judgment facts regarding the execution of
22 the will.

23 She can't. She was not there. She did not talk to her
24 father since May of 2012. She has no basis on which to say
25 he was testamentary incapable of executing a will.

1 No affidavits have been submitted challenging the facts
2 that we put forth taken from sworn testimony. In
3 particular, we put forth the testimony of Merrill Barringer.
4 She testified that Merrill -- that Mr. Barringer, in her
5 presence, told John Jolley the changes that he wanted in his
6 will prior to Mr. Jolley's drafting it. Mrs. Light was not
7 present then.

8 She further testified that he was competent to sign the
9 will on February 5, 2015, that he knew what he was doing,
10 that he knew the assets he owned, that he knew who his
11 children were, and that he knew to whom he wanted to leave
12 his assets.

13 There were letters shortly after that where Mrs.
14 Barringer sent a letter to her daughter and said that what
15 she had done, and the things that she had, you know, done to
16 the company, and her husband, and her father, were not
17 easily forgiven nor forgotten. It was right after this will
18 was executed where she was not left as a beneficiary.

19 Mr. Barringer wrote to her before this -- after, I'm
20 sorry, after the act telling her---

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: ---how disappointed he was with her.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: She never responded. She never came back.

25 Now, at that point he could of still changed his

1 amended change -- he could of gone in and amended his Trust
2 again. He had the unhampered opportunity to do it if he
3 wanted to.

4 Plaintiff has not met her burden to show that he did
5 not possess testamentary capacity on February 5, 2015.

6 In Hairston versus McMillan, the Court stated "when a
7 witness to the execution testified that the decedent
8 understood the extent of his estate, the potential
9 beneficiaries of his estate, and what he was doing in
10 changing his will, the contestant must present evidence
11 relevant -- relative to the execution of the will."

12 In Hairston versus McMillan, Your Honor, the Plaintiff
13 presented testimony from a toxicologist and a doctor who had
14 reviewed medical records, medical records and say that
15 testator did not have mental capacity much more than
16 Plaintiff's expert has said. The Court upheld the validity
17 of the will because those two people, first of all, had
18 never examined him, and, second of all, they weren't there
19 on February 5, 2015, when he executed -- or whatever date
20 this woman ex -- this person executed a will.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: Mr. Barringer made the decision as to what
23 he wanted in his will and amendment and he executed it.

24 Plaintiff has failed to present any, not any admissible
25 summary judgment evidence, to counter the testimony of the

1 eye witness to the execution, Mrs. Barringer.

2 For that reason alone, Your Honor, Merrill Light is
3 entitled to summary judgment as to the first cause of
4 action.

5 Moving on to the second cause of action, the Plaintiff
6 has alleged here that the undue influence of Merrill Light
7 on Paul Barringer invalidated the February 5, 2015, will.

8 Again, Plaintiff has presented no admissible summary
9 judgment evidence that Merrill Light ever exerted any
10 influence, much less that she took over the will of her
11 father, in order to get him to sign this February 5, 2015,
12 will. Plaintiff has that burden and she can not present any
13 evidence that Merrill Light took over Paul Barringer's free
14 will and coerced him to change his will. That's what she
15 has to prove. She can't just say well, these doctors said
16 he had cognitive impairments.

17 In, in Paragraph 60 of Hampton Luzak's affidavit---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---she makes many allegations and claims,
20 but she has no personal knowledge of any of them. None of
21 it. She makes them up out of whole cloth.

22 She testified at her deposition that her father was not
23 scared of or intimidated by Merrill Light. Well, if he's
24 not scared of or intimidated by her, he's certainly not
25 gonna let her dictate to him what he should do.

1 Again, Merrill Light requested her sister to take her
2 father in May of 2012 to the doctor. That was not---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---what an undue influencer would do, Your
5 Honor.

6 The only threat in evidence in this case is the threat
7 by Kevin Luzak to Paul Barringer that he would never see his
8 grandson again, and he followed through on that. Even
9 Hampton Luzak admitted in her deposition that her father
10 should of been upset by that statement.

11 Again, in Hairston versus McMillan, it said -- the
12 Court said a contestant must show that the influence was
13 brought directly to bear upon the testamentary act upon the
14 execution of the will, of the Revocable Trust. General
15 influence is not enough.

16 Again, Merrill Barringer has testified that Merrill
17 Light did not except any influence on her husband, and he
18 made all of his own decisions. The Hairston Court held,
19 Your Honor---

20 THE COURT: Uh-huh. (Affirmative) quote.

21 MS. PAYLOR: ---"we emphasize that although the
22 proponents of the will, in this case who had a fiduciary
23 relationship with the testator---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---must present evidence in rebuttable,

1 they do not have to affirmatively disprove the existence of
2 undue influence. Instead, the contestants of the will still
3 retain the ultimate burden of proof to invalidate the will."

4 Again, Plaintiff has presented no admissible evidence
5 of undue influence by Merrill Light, and none of the
6 circumstantial evidence discussed by the South Carolina
7 Appellate Courts.

8 There's no evidence of a threat. There's no evidence
9 of restriction on his activities. There's no evidence of
10 isolation.

11 They claim that Mrs. Barringer told her to call.
12 That's not my client. Merrill Light did not do anything.
13 As a matter of fact, Mrs. Luzak told Merrill Light never to
14 contact her again in October of 2012. There's no evidence
15 whatsoever that Merrill Light had anything to do with the
16 February 5, '15 will. She and Merrill Barringer had both
17 denied they exerted influence on Mr. Barringer.

18 Similar to the unhampered opportunity argument I made
19 earlier---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: ---Mr. Barringer could of made any changes
22 that he wanted after he signed that will. He had plenty of
23 opportunity and they were unhampered.

24 Merrill Light didn't live with him. She didn't tell
25 him what he could and could not do. She didn't have a baby

1 monitor on him watching what he did. She didn't have him
2 using hand signals when she was around because he was scared
3 of her. That's not what we have here, Your Honor.

4 We do---

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: ---not have undue influence.

7 In fact, Hampton Luzak testified that, in the Summer of
8 2012, she had called Merrill Light to get her to vote with
9 her husband, and Merrill Light told her she could not go
10 against her father's wishes. That's not undue influence,
11 Your Honor. That's not any influence.

12 The only influence was from her father on her, and the
13 reason she didn't want to go against him was he had given
14 her great wealth, and had supported her throughout her life,
15 and she was doing the same for him.

16 No matter whether the burden is a scintilla or more
17 than a scintilla, Plaintiff has failed to present any
18 evidence concerning any influence brought directly to bare
19 upon Mr. Barringer's testamentary act of signing the will on
20 February 5, 2015. Without that, Your Honor, Merrill Light
21 is entitled to summary judgment on the second cause of
22 action.

23 The third cause of action claims that the February 5,
24 '15 will is invalid because of mistake.

25 In her memorandum Plaintiff did not even discuss the

1 mistake cause of action.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: She has presented no evidence to support
4 her act -- bald allegations that Mr. Barringer made a
5 mistake when he executed his will.

6 Hanahan versus Simpson discusses what a mistake is in
7 the execution of a will, Your Honor. It provides that the
8 validity of a will is not affected by mistake or either law
9 or fact unless the mistake goes to the identity of an
10 instrument or to a fundamental error where, for example, two
11 wills are drafted for different persons and one party signs
12 the will intended for another. A mistake as to the legal
13 effect of the language in a will is no basis for refusal of
14 probate even if it is caused by incorrect legal advice, Your
15 Honor.

16 Mr. Barringer signed the will that he directed
17 Mr. Jolley to prepare. There is no mistake. Defendant,
18 Merrill Light, is entitled to summary judgment on the third
19 cause of action.

20 The fourth cause of action alleges that the
21 September 11, 2012, transfer of stock to Merrill Light is
22 invalid because of incapacity. The only statement in
23 Plaintiff's memo concerning this transaction is found at
24 Pages 32 through 33 where Plaintiff's counsel stated "with
25 respect to the purported stock transfer by Mr. Barringer on

1 September 11, 2012, Jolley drafted the stock power form
2 naming himself as attorney in fact to transfer shares on the
3 books of CFRC. Yet, as corporate counsel, he did not notify
4 plaintiff of the transfer."

5 That statement has nothing to do with Mr. Barringer's
6 capacity on September 11th, 2012, or any time around that
7 date. That's the only statement in their memo. Has nothing
8 to do with incapacity. It has nothing to do with undue
9 influence. It has, has nothing to do with mistake. I'm not
10 sure it has anything to do with anything in this case, Your
11 Honor.

12 What Mr. Barringer directed Jolley to do was to, to
13 change the ownership on the books of the corporation.
14 Plaintiff was not present or around her father on
15 September 11, 2012. She has presented no admissible
16 summary judgment evidence that creates a question of fact
17 about his capacity on September 11, 2012.

18 Rather than provide admissible, admissible summary
19 judgment facts, Plaintiff argues that what Paul Barringer
20 did by giving away the stock does not make sense to her.
21 That is not an admissible fact, Your Honor. That is the
22 opinion of Plaintiff and her counsel, and has nothing to do
23 with the case. The only thing that matters is whether or
24 not Mr. Barringer intended to make a gift to his wife and he
25 understood that.

1 In this case the, the gift is valid if Paul Barringer
2 possessed the mental capacity to form an intent to give the
3 object of a gift to the donee. Our Appellate Courts have
4 stated "a donor has sufficient mental capacity to make a
5 gift when the donor understands and comprehends, in a
6 reasonable manner, the nature and effect of the gift."

7 In her deposition, Hampton Luzak's testimony was that
8 he was incapacitated once he received a diagnosis of
9 Alzheimer's, and, after that, he could never execute a legal
10 document again.

11 Your Honor, that is not the law. That is not what
12 capacity means.

13 In fact, Plaintiff's expert, Doctor Sanders, did not
14 agree with Hampton Luzak. She made no findings concerning
15 Paul Barringer's capacity and instead testified that
16 Alzheimer's disease affects each person in a unique manner.

17 Numerous witnesses testified that Paul Barringer knew
18 what he was doing and discussed giving the stock to Merrill
19 Light. Merrill Barringer and Victor Barringer gave
20 deposition, deposition testimony to that effect. It is what
21 Paul Barringer wanted to do and he did it.

22 Now, Victor Barringer is the brother, Your Honor, and,
23 under the original will, he would of been entitled to
24 one-third of the voting stock. However, he said his father
25 talked with him many, many times about the fact that he

1 wanted to give the voting stock to Merrill Light so that she
2 would have control, so that Kevin Luzak could never, ever
3 get control of this stock.

4 His testimony was very strong, Your Honor. He stated
5 that his father decided to transfer the voting stock to
6 Merrill Light to keep the company from Kevin getting his
7 hands on it. When questioned by Plaintiff's counsel why he
8 didn't want Kevin to be involved with CFRC, Victor Barringer
9 testified "Paul Barringer felt like Kevin Luzak was not
10 interested in the forest products business, which is what
11 was in Paul Barringer's DNA, his whole makeup. He felt that
12 Kevin Luzak wanted to do things that were self-serving. He
13 thought that, that Kevin Luzak were going to do things that
14 were not in Paul Barringer's way of thinking."

15 Victor Barringer testified I didn't care. I listened
16 to my father. I talked to him two or three times a week. I
17 was there. He vented to me, and that was it. It was not my
18 fight.

19 Victor Barringer further testified that he knew of no
20 one who would agree that Paul Barringer lacked mental
21 capacity in 2012 through 2014. This is Paul Barringer's son
22 who talked to him two or three times a week, Your Honor.

23 Your Honor, we also have the medical testimony again of
24 Paul Long that he had capacity in September of 2012. Mr.
25 Medlin testified, not testified, I'm sorry, argued yesterday

1 that Mr. Jolly had a certificate -- Certification of
2 Competency that he wanted to get signed.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: It wasn't signed. He didn't get it. That
5 is not a requirement to show that Paul Barringer was
6 competent.

7 Mr. Medlin also argued that Paul Barringer failed to
8 include the gift in his tax organizer that he completed six
9 months later in March of 2013. That was an error. He
10 didn't remember it. We actually have notes that Mr.
11 Barringer made in his own, own handwriting of the value of
12 the stock and the fact that he would owe no taxes on it
13 because it would be way less than the exemption at that
14 time.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: So, I think there's an inference there
17 that he didn't think he had to file a tax return because it
18 was -- he didn't have -- owe any taxes. In fact, when he
19 subsequently did file a tax return, he owed no taxes. So,
20 there was no question.

21 The Courts have stated, and I quote, "the mere fact
22 that a person's mind has been weakened by old age, accident,
23 or disease is not sufficient to show that he lacks mental
24 capacity. In order to cancel a legal transaction on the
25 basis of incompetency, the proponent must prove that the

1 grant -- the proponents of an -- the incompetency must prove
2 that the grantor was so incompetent as to fail to comprehend
3 the nature of his act."

4 And this is -- we cited the case of Ballenger versus
5 Inman, and this was an interesting case because this was the
6 execution of an annexation petition.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: And the woman owned the property, and she
9 apparently didn't read and write, but her daughter was with
10 her when she signed it.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: And the only testimony her daughter gave
13 was that she explained to her mother what it was. She did
14 not know whether her mother understood that when she signed
15 it.

16 The Court said that the testimony, the evident (sic)
17 was inconclusive regarding her mother's capacity to
18 understand the petition for annexation. So, they found that
19 the Plaintiff failed to prove lack of capacity because she
20 did not have any definite evidence.

21 That's what we've got, Your Honor. All of these cases
22 say that Merrill Light is entitled to summary judgment.
23 Every one of them. There are plenty of cases where they
24 find undue influence, but, in those cases, Your Honor,
25 there's evidence of undue influence. People having baby

1 monitors in the testator's room.

2 In our case, there is not a scintilla of admissible
3 summary judgment evidence that Paul Barringer was not
4 capable of giving a gift on September 11, 2020.

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: The Defendant, Merrill Light, is entitled
7 to summary judgment on the fourth cause of action.

8 In the fifth cause of action, Your Honor, Plaintiff
9 alleges that the September 11, 2012, stock transfer is
10 invalid because of undue influence. Rather than go through
11 everything that I just went through, Your Honor, all of that
12 tells you that he was not subject to undue influence.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: He discussed it with his son, with his
15 wife. He discussed it with his business colleagues.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The one person he didn't discuss it with
18 was his daughter, Merrill Light. She said that he didn't
19 discuss it with her.

20 There's no evidence of undue influence.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: In fact, Mrs. Light testified, and this is
23 uncontradicted, she testified that she never asked him for
24 the stock, that she didn't want the stock, that she did not
25 want to control the corporation. She only did it because he

1 wanted her to do it.

2 Merrill Light, Your Honor, is entitled to summary
3 judgment as to the fifth cause of action.

4 The sixth cause of action says that September 11, '12,
5 transfer was void because of mistake. As we set Court
6 earlier -- set forth earlier, there's no mistake. He knew
7 what he was doing, and they have absolutely no evidence.

8 The seventh cause of action, Your Honor, is lack of
9 capacity to execute amendments---

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: ---and restatements of Revocable Trust on
12 February 28th, 2012, July 20, 2012, and February 5, 2015.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: The Court has to look at each individual
15 testamentary act, and the Plaintiff has the burden of
16 presenting specific summary judgment admissible facts with
17 regard to each testamentary act.

18 The February 28th, 2012, execution, Your Honor, the
19 only substantive change with regard to beneficiaries or the
20 Trust from the 1998 version was that Mr. Barringer made
21 Merrill Light as his cotrustee.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: why would -- Plaintiff testified that both
24 he and John Jolley advised him that he should have a
25 cotrustee because she's still his child and he lived there

1 and they did. Again, the same facts are given regarding the
2 execution of the February 28, 2012, testamentary, and
3 there's been no contrary evidence presented.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: The July 20, 2012, Trust amendment, Your
6 Honor, in that document Mr. Barringer provided that Merrill
7 Light would receive all of his voting shares in CFRC on his
8 death. He also removed Hampton Luzak as a successor
9 cotrustee. He had her in the February 28th trustee as a
10 successor trustee.

11 Paul Barringer was in Alabama. Merrill Light wasn't
12 there when he executed this document, Your Honor.

13 Again, you have to look at was there influence on the
14 testamentary act. There was actually none and Mrs. Luzak
15 can't give you that with regard to the lack of capacity.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The burden is on the Plaintiff. She has
18 failed to meet it.

19 Now, Paul Barringer executed a Trust amendment on
20 June 12th, 2014, but Hampton Luzak did not challenge this,
21 Your Honor. So, it must be valid. I won't even go into it.
22 But even if they had brought it up, it would be valid for
23 the same reasons that we've already discussed.

24 In the February 5, 2015, Trust amendment, Your Honor,
25 is the same as we set forth in -- for the first cause of

1 action.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: And the same arguments go to the eighth
4 cause of action, which we claim -- they claim that the
5 2/28/12, July, 2012, and February 5, '15, amendments were
6 invalid for undue influence. There is no evidence that any
7 influence was brought to bear on any of those testamentary
8 acts.

9 The same with the cause of action with regard to
10 mistake. Again, there is no evidence.

11 The fifth cause of action, Your Honor, claims that Paul
12 Barringer executed documents attempting to deliver his
13 voting stock to his Revocable Trust in May of 2012 when he
14 was incompetent.

15 Your Honor, this is no -- this needs to be thrown out
16 for the simple reason that Paul Barringer executed no
17 documents in May of 2012 or any other time regarding this
18 transaction except on September 11th, 2012. So, we would
19 ask for summary judgment on the tenth cause of action.

20 The eleventh cause of action asserts fraud.

21 Your Honor, there are nine elements of fraud. Mrs.
22 Luzak has not presented facts to support any of these.

23 First of all, no representation was made to Hampton
24 Luzak.

25 THE COURT: Can you---

1 MS. PAYLOR: She directly---

2 THE COURT: Give me one sec.

3 (Pause.)

4 THE COURT: I'm sorry. Keep going. I'm sorry, Alice.

5 MS. PAYLOR: That's okay. No, no, no. You interrupt
6 any time you want.

7 She sets forth no specific acts in her memo -- no
8 specific facts because she can't. She talks about fraud and
9 the inducement.

10 This is a claim for fraud. Nine elements. She has not
11 met any of them, and she states in her memo that Mr.
12 Barringer was the victim of fraud. Mr. Barringer is not the
13 Plaintiff in this case. She does not have standing and
14 actually, actually a cause of action for fraud expires on
15 the death of Mr. Barringer.

16 She doesn't even claim that Merrill Light made a
17 representation to her.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: In fact, Merrill Light told her, back in
20 February of 2012 as set forth in her Complaint, that she was
21 getting involved in her father's estate planning. That's
22 the only thing she ever told her.

23 Did Hampton Luzak ever ask her what that meant?

24 No, she didn't.

25 Mrs. Light had no requirement to tell the sister,

1 especially when her sister had totally isolated herself from
2 the family, of anything.

3 She has made no showing of any adverse reliance on any
4 statement. She has not shown that she suffered any damages
5 because of fraud. She hasn't met any of the nine elements,
6 Your Honor.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: She has to present specific facts as to
9 each one.

10 Similarly, the cause of action for conversion, the
11 claim is that Merrill Light took property from her father
12 and that she is somehow liable to Plaintiff.

13 How is that true, Your Honor?

14 She has no standing to bring a claim on behalf of her
15 father. If her father had a claim, his estate would be the
16 appropriate---

17 THE COURT: Okay.

18 MS. PAYLOR: ---person to bring it.

19 THE COURT: Okay.

20 MS. PAYLOR: The con -- and I'm going quick cause I --
21 my hour is over. We just -- the constructive trust cause of
22 action---

23 THE COURT: Okay.

24 MS. PAYLOR: ---again, there's no claim that Merrill
25 Light took any assets of Hampton Luzak. She couldn't have.

1 Merrill Luzak still has the same -- I'm sorry.

2 Hampton Luzak still has the same tax break that she had
3 before all of this started. Again, Mrs. Light is entitled
4 to summary judgment as to this cause of action.

5 Now, the Fourteenth Amendment is the same cause of --
6 the fourteenth cause of action is exactly the same as the
7 thirteenth. So, I think everyone would agree that you can
8 grant that summary judgment.

9 On the fifteenth cause of action, the resulting trust,
10 they're the same arguments as with the constructive trust,
11 Your Honor. No standing for Hampton Luzak to bring. It
12 belongs to the estate. She has presented no specific
13 summary judgment admissible facts.

14 Sixteenth cause of action, Your Honor, I quoted from
15 the, the Probate Code. Any duty owed by Merrill Luzak was
16 solely to Paul Barringer. Section 62-7-603. While a Trust
17 is revocable, rights of the beneficiaries are subject to the
18 control of the settlor. They're all -- the duties of the
19 trustee are owed exclusively to the (indiscernible).

20 Mrs. Luzak's reliance on 62-7-802 is misplaced because
21 that only applies after the death of the settlor in a
22 Revocable Trust---

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: ---because 62-7-603 governs the other.

25 Hampton Luzak was not a beneficiary under his Revocable

1 Trust. So, she has no duties owed to him.

2 Seventeenth cause of action, intentional interference
3 with a inheritance, Your Honor, the Supreme Court has not
4 adopted this as a cause of action.

5 THE COURT: Yeah.

6 MS. PAYLOR: So, for that reason alone you should grant
7 summary judgment.

8 The (indiscernible) Court said that the Supreme Court
9 would adopt. As we know, the Supreme Court probably is not
10 gonna go along with what Judge Norton said because -- when
11 he didn't send it to them.

12 In any event, Mrs. Luzak has failed to present specific
13 summary judgment admissible facts. She had no expectancy.
14 Once she, once she left her father and her family, she had
15 no expectation of inheritance and she received numerous
16 letters telling her that.

17 THE COURT: Can I -- Alice, can I ask you to back up
18 for just one second?

19 MS. PAYLOR: Okay.

20 THE COURT: On the sixteenth cause of action alleging
21 breach of fiduciary duty, self-dealing, and conflict of
22 interest by the Lights, some -- somehow I missed that and I
23 apologize.

24 MS. PAYLOR: No, I understand.

25 THE COURT: I think I'm pretty much on it, but somehow

1 I missed that one.

2 MS. PAYLOR: Okay. No fiduciary duty was owed by
3 Merrill Light to Hampton Luzak ever.

4 THE COURT: Okay.

5 MS. PAYLOR: The, the Probate Code, Section 62-7-603,
6 specifically states "while a Trust is revocable---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---like Mr. Barringer had, the rights of
9 the beneficiaries are subject to the control of---

10 THE COURT: The settlor.

11 MS. PAYLOR: ---the settlor.

12 THE COURT: Right.

13 And so you're saying that duty would only be to Mr.
14 Barringer?

15 Not to---

16 MS. PAYLOR: Correct.

17 THE COURT: Not to, not to Mrs. Luzak.

18 MS. PAYLOR: And the duties of the trustee are owed
19 exclusively to the settlor.

20 THE COURT: I got you.

21 MS. PAYLOR: Mr. Medlin cited Section 62-7-802 --

22 THE COURT: Okay.

23 MS. PAYLOR: -- which would only apply in a case where
24 the settlor is dead---

25 THE COURT: Okay.

1 MS. PAYLOR: ---when there's a Revocable Trust.

2 THE COURT: Okay.

3 MS. PAYLOR: Because the specific statute overrules
4 that statute.

5 THE COURT: Okay. I'm sorry. You can jump onto 18
6 now. I got it.

7 MS. PAYLOR: Okay. The Eighteenth cause of action
8 seeks attorney's fees. I mean that's done---

9 THE COURT: Okay.

10 MS. PAYLOR: ---after the case. Kevin and Hampton can
11 make a motion. But that's not a cause of action that would
12 ever go to a jury, Your Honor.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: The nineteenth cause of action is the
15 conspiracy.

16 The claim that they put forth in their Complaint is
17 that Merrill Light was slain and various CFRC
18 representatives conspired among themselves for the purpose
19 of injuring Hampton Luzak, and what they argue is that
20 Merrill Light had made plans to sell CFRC.

21 Your Honor, eight years have passed. CFRC has not been
22 sold.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: They sold assets in the ordinary course of
25 business, which they did even when Kevin Luzak was president

1 and CEO. She claims that her family and she have lost the
2 ability to be involved in the family business.

3 CFRC offered her a seat on the board of directors---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---and she declined it. There's no
6 evidence that she did not have the ability to be involved in
7 the family business. She can't bring a cause of action on
8 behalf of---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---her husband or her son. In fact,
11 neither one of them have applied for a job there. So,
12 there's absolutely no evidence that they may not have been
13 hired.

14 Plaintiff testified about a scheme to take over control
15 of CFRC. She had no facts to support that in her
16 deposition.

17 THE COURT: Does she allege that Mrs. Barringer was
18 also part of that conspiracy?

19 MS. PAYLOR: No, ma'am, not in her Amended Complaint.

20 THE COURT: Okay.

21 MS. PAYLOR: She did not.

22 THE COURT: Okay.

23 MS. PAYLOR: The only facts that she has in her memo
24 are these things by Mike, Mike Hagler.

25 THE COURT: Yeah.

1 MS. PAYLOR: But those, first of all, are inadmissible.
2 He's dead. They -- you know, they're, they're trying to
3 admit them for the proof -- the truth of what he asserted.
4 That is hearsay. It is not admissible.

5 There is no question of fact concerning whether Paul
6 Barringer was the initiator of every decision made by him
7 regarding Hampton Luzak and Kevin Luzak.

8 THE COURT: Uh-huh. (Affirmative).

9 Alice, can I ask you just one quick question just---

10 MS. PAYLOR: Sure.

11 THE COURT: ---and this may be completely not where I
12 should be going?

13 where do I have the deposition of Merrill Light?

14 MS. PAYLOR: Well, Your Honor, we---

15 THE COURT: So---

16 MS. PAYLOR: ---included excerpts of it in our original
17 memo.

18 THE COURT: Do I have the whole thing somewhere?

19 MS. PAYLOR: We filed it all, Your Honor.

20 You want me to send you---

21 THE COURT: No, no, no. If it was filed, and if it's
22 in the Clerk's file, then I -- if it's in the electronic
23 file I have it. But I just need you to address for me very,
24 very quickly.

25 My understanding, just correct me if I'm wrong, was Mr.

1 Luzak was the CEO and Mrs. Merrill Light was on the board.

2 My question is, is what kind of day-to-day interactions
3 did she have with the business?

4 MS. PAYLOR: She did not have any day-to-day.

5 THE COURT: But that's what I'm asking---

6 MS. PAYLOR: It was---

7 THE COURT: ---is because it---

8 MS. PAYLOR: It was---

9 THE COURT: It seems to me that most of the control
10 that I'm seeing, and, and, again, I don't know this, but it
11 apparently -- apparently at one point Victor Barringer was
12 either the president or the CEO. At one point then, of
13 course, Mr. Luzak was, and then Mr. Light became.

14 But, but my question is, on a day-to-day basis, when
15 did whoever take over as either CEO of the company, CFRC,
16 and then, at that point, what was Mr. Barringer's roles?

17 was he just on the board or chairman of the board or
18 what, what was his title?

19 MS. PAYLOR: He was chairman of the board.

20 THE COURT: Okay.

21 MS. PAYLOR: Travis Bryant became the chief executive
22 officer.

23 THE COURT: Right.

24 MS. PAYLOR: He had been the chief financial officer.

25 THE COURT: Right.

1 MS. PAYLOR: And then Tom Evans was his right-hand. He
2 was the chief operating officer. Then---

3 THE COURT: And when was that -- when did, when did
4 Travis Bryant---

5 MS. PAYLOR: In the Fall---

6 THE COURT: Because I remember there was an issue about
7 Travis Bryant getting some stock, and some people said oh,
8 he would never do that.

9 And so I'm just wondering what was the time period when
10 Travis Bryant took over?

11 MS. PAYLOR: He took over in August of 2016.

12 THE COURT: Okay.

13 MS. PAYLOR: Mr. Barringer made the decision.

14 THE COURT: Okay.

15 MS. PAYLOR: He did not want to give him an employment
16 contract.

17 THE COURT: Okay.

18 MS. PAYLOR: And this is all -- this, this is all set
19 forth in everything.

20 THE COURT: Okay.

21 MS. PAYLOR: And Mr. Barringer said he wanted him to
22 have some stock so he would have some skin in the game --

23 THE COURT: Got it.

24 MS. PAYLOR: -- and it worked.

25 THE COURT: My other question though is too at what

1 point did Mr. Barringer stop -- and when I say, I don't know
2 if -- I don't know kind of how they're set up. But whether
3 or not he was going into an office every day or if he was
4 running the company remotely.

5 But, but my question is, is when, when did he not -- I
6 mean he sounds like he was very much in it until a certain
7 point and then he stepped off.

8 when was that?

9 MS. PAYLOR: The end of twenty -- 2014 he went off the
10 board.

11 THE COURT: Okay.

12 MS. PAYLOR: He was chairman of the board, Your
13 Honor---

14 THE COURT: Okay.

15 MS. PAYLOR: ---which meant---

16 THE COURT: Yeah.

17 MS. PAYLOR: ---that he visited the facilities---

18 THE COURT: Right.

19 MS. PAYLOR: ---you know---

20 THE COURT: Okay.

21 MS. PAYLOR: ---when he wanted to---

22 THE COURT: Okay.

23 MS. PAYLOR: ---that he talked on the telephone---

24 THE COURT: Okay.

25 MS. PAYLOR: ---to Mr. Bryant and Mr. Evans.

1 THE COURT: Right.

2 MS. PAYLOR: And he made, he made general decisions,
3 big decisions.

4 THE COURT: I guess I'm just trying to figure out at
5 what point he was not literally running any day-to-day
6 operations of the business or I don't know that he ever was,
7 but at least he would of been more involved. I mean
8 everything I've read is that he built this company---

9 MS. PAYLOR: He did.

10 THE COURT: ---and if he built this company, at some
11 point he was running the day-to-day operations or at least
12 overseeing it. So, I'm just saying---

13 MS. PAYLOR: He was president and CEO until he made
14 Kevin Luzak in like 2009/2010.

15 THE COURT: Okay. That's what I need to know.

16 MS. PAYLOR: But he was chairman of the board and he
17 made---

18 THE COURT: Okay.

19 MS. PAYLOR: ---every big decision.

20 THE COURT: I understand. I understand -- I understand
21 that portion of it and -- okay. Okay. I think that --
22 that's my answer.

23 Is there anything else, Alice, you need to address?

24 I need to take like just a literally three minute break
25 because we are so tight on time.

1 But is there anything else?

2 MS. PAYLOR: No, that's fine.

3 THE COURT: You, you---

4 MS. PAYLOR: I am finished with all of my causes of
5 action.

6 THE COURT: Okay.

7 MS. PAYLOR: I'm now inviting Mr. Medlin---

8 THE COURT: Right.

9 MS. PAYLOR: ---to give his speil and then I get a
10 few -- I'd like to have a good 20 or 30 minutes at the end
11 to reply to what he says.

12 THE COURT: Okay. So, let's take three minutes,
13 everybody.

14 MS. PAYLOR: Thank you.

15 THE COURT: Let's just take three minutes and literally
16 three minutes. We'll be right back and we'll start.

17 okay?

18 MS. PAYLOR: Thank you.

19 THE COURT: Thank you.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: All right. Let's go, Mr. Medlin.

22 MR. MEDLIN: Thank you, Your Honor.

23 I want to talk a little bit about the law and
24 particularly about the burden of proof. We disagree in some
25 ways with what Defendant says.

1 First of all, with respect to chronic incapacity --

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: -- the burden, if there is a chronic
4 incapacity, is on the proponent to prove that the testator
5 had a lucid interval. So, if, in fact, Mr. Barringer had a
6 chronic incapacity, then the burden is on the proponent of
7 the will --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: -- and we cite the cases in Footnote 8 of
10 our memo, and, in fact, the restatement of property noted in
11 transfers 8.1(h), which we didn't cite---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---confirms that well known rule of law.
14 whether he has a chronic incapacity or not's a question of
15 fact. She thinks he doesn't and we think he did, and, of
16 course, that's just one of the many disagreements we have
17 about the facts, which is why we think we should prevail
18 about -- on every issue with the summary judgment.

19 The same disagreement arises as to burden of proof for
20 other reasons.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: Yes, there is a difference between the
23 level of capacity required for a will versus a lifetime
24 transfer.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: The will is a lower capacity, and it is --
2 essentially I didn't say differently yesterday. The
3 testator has to have the ability to know what he owns,
4 people he ought to give it to, and he has to have the
5 ability to know that he's making a will and what that does.
6 That's testamentary capacity.

7 It's a higher standard for an (indiscernible) transfer
8 that's irrevocable like that stock transfer that purportedly
9 occurred on September 11th, 2012, because we want to protect
10 people more while they're still alive in case they're
11 incompetent.

12 So, we have a much higher capacity. He has to
13 understand the consequences on himself such as he would no
14 longer be able to control his company that he built up and
15 cared so much about. He'd have to understand that to have
16 that capacity to make a lifetime transfer.

17 So, we have different capacities for different things
18 that are occurring.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: Now, the Defendant got it right yesterday.

21 The Defendant is a fiduciary, and the Defendant is a
22 fiduciary in many ways both to Mr. Barringer, and that's
23 where the will contest and Trust issue cases come up is was
24 there a fiduciary relationship between the testator and the
25 perpetrator. Then of course he did. He was a -- she was

1 the Trustee of his Trust.

2 In fact, in the February 5th, 2015, Trust, she was
3 purportedly made, made the sole trustee. She didn't even
4 share the trusteeship. So, she is a fiduciary to him.

5 There are a couple of cases where, in undue influence
6 situations, the Court said well, somebody had a power of
7 attorney, but that person never used it, and that was one of
8 the factors that was taken into account. You don't just get
9 to say I'm not trustee, and I'm, therefore, not a fiduciary.
10 When you're named as a trustee, when you sign and agreed to
11 do it, as Mrs. Light did, then you're a trustee. You're a
12 fiduciary.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: She was also an -- a director, and Mr.
15 Barringer was a shareholder. She owed him a duty there.
16 They were partners in subdivision, properties, partnerships.
17 She was a fiduciary and she has his power of attorney, and,
18 by the way, she used it. So, she's clearly a fiduciary.

19 She's also a fiduciary to the Plaintiff, Mrs. Luzak,
20 because the rule is that even though a trustee of a
21 Revocable Trust owes a duty only to the settlor, while the
22 settlor's alive -- that's clearly the law, 62-7-603. We've
23 never tried to argue contrary to that. But the law says
24 that once the settlor dies, then the contingent
25 beneficiaries become vested and they are now beneficiaries.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: Now, Defendant makes a self-serving
3 argument.

4 well, Mrs. Luzak isn't a beneficiary because the wills
5 and Trust that we claim to be invalid eventually cut her
6 out.

7 well, we're saying we're getting rid of those. She was
8 a beneficiary. And so, consequently, assuming those wills
9 don't get thrown out, she's still a beneficiary. And, Your
10 Honor, we discussed on Page 31 of our memo, I'm not gonna go
11 back into detail, we talked about it in a little more detail
12 yesterday---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---that it's clear under the law that once
15 the settlor dies, those contingent beneficiaries, now
16 vested, have the standing to assert claims for what the
17 trustee did wrong while the settlor was alive. Otherwise
18 the trustee could get away with murder.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: The trustee could do all kinds of things
21 to the contingent beneficiary's interest --

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: -- and then there would be no remedy.

24 So, of course, the law doesn't allow that, and, again,
25 the, the Uniform Probate Code comment to 7603 says that.

1 Bogart, the leading authority on trusts, says that. There
2 are cases that say that. No South Carolina case on point we
3 admit, but it hasn't come up, but it's clear that there is
4 standing. Not only that, but in the Estate of Brown case,
5 once again, recently, this summer---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: ---the Supreme Court said that a
8 beneficiary can stand in the shoes of a testator, even
9 though there's a personal representative, and assert claims
10 on behalf of that testator.

11 So, we've got standing and there is a fiduciary duty,
12 without question, both to Mr. Barringer, which is what
13 matters with the testamentary capacity in undue influence
14 issues, and with respect to---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---Mrs. Luzak who has claims in her own
17 right. Both of those come into play.

18 So, when there's a confidential relationship, which
19 Defendant admitted yesterday and that's the case, then, when
20 there's a confidential relationship, the burden as to undue
21 influence, she gets first to the proponent, the Defendant in
22 this case, who has to rebut, and the Defendant accurately
23 described this, and then ultimately the burden would go back
24 to the contestant, Mrs. Luzak, in this case. That's for a
25 will or Revocable Trust, and that's without getting into the

1 self-dealing issue because I think that supersedes that.

2 But with respect to an irrevocable transfer, South
3 Carolina case law clearly, this is in Footnote 5 on --
4 again, I'm not gonna get into the cases unless you want me
5 to again, Your Honor, in our brief. The burden is
6 completely and irrevocably on the proponent.

7 So, as to that stock transfer, without question,
8 Mrs. Light has the burden of proof all the way through and
9 our case law says that. The same is true for fraud. When
10 we get into a discussion of fraud, the burden of proof is on
11 the fiduciary in this case, Mrs. Light.

12 So, there's several reasons we think we have the burden
13 of proof on Mrs. Light.

14 Number one. We can show chronic incapacity.

15 Number two. She is a fiduciary, and, therefore, with
16 the irrevocable transfer, that's the ultimate burden, and
17 with the revocable transfer, it's like wills and Trusts, she
18 has a rebuttable responsibility first.

19 With respect to fraud, she has the ultimate burden of
20 proof. And also, although Defendant wants to throw this
21 away claiming that there's no fiduciary duty, there is a
22 fiduciary duty, and 62-7-802 says that any receipt of trust
23 property from a trust where somebody is a trustee, which is
24 exactly what purportedly happened in this case, is
25 self-dealing.

1 That's an irrebuttable presumption under the law, Your
2 Honor. There are things that the trustee has to prove
3 happened, but the burden is on the trustee there. For
4 example, that somebody consented to it. Maybe they can do
5 that, but they have the burden to do that.

6 Now, Your Honor, just a few minutes to deal with some
7 of the points that the Defendant made, and then I'd like to
8 get into our recitation of facts, which we started
9 yesterday, but I'm gonna try to organize them a little
10 better for you today as we go through.

11 There's a famous saying in wills law, whether it's will
12 contexts or will construction cases, it's no will has a
13 brother. That's an old-fashioned saying now.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: We probably today say no will has a
16 sibling.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: But no will has a brother, and that's
19 because every set of facts is unique in a will contest, and
20 we can give some examples of whether there was a baby
21 monitor or this or that, but the ultimate question, when
22 we're dealing with will contests, is that particular set of
23 facts.

24 Does that particular set of facts show a lack of
25 testamentary capacity?

1 Does that particular set of facts show undue influence,
2 et cetera?

3 And we have some guidelines and we've set those out,
4 and we'll talk about them again when we get to a discussion
5 of undue influence, but they're basic factors that Courts
6 look at. There's no bright line, safe harbor. You don't
7 have to check every box.

8 So, we have to look at the facts. The facts are always
9 different.

10 As we discussed yesterday, Your Honor---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: ---doctor reports aren't gospel. We don't
13 even need an expert. In fact, there are many cases where
14 there's not even a doctor let alone an expert. By the way,
15 when it comes to standards of capacity, marriage is actually
16 the lowest standard one has to have. It's even less than to
17 make a will.

18 THE COURT: That's funny.

19 MR. MEDLIN: Yes.

20 THE COURT: Okay.

21 MR. MEDLIN: So, that's led to a couple of interesting
22 cases.

23 We cite Gunnells---

24 THE COURT: Yeah.

25 MR. MEDLIN: ---just to let the Court understand that

1 the position that Defendant had been taking that you can't
2 have proof of lack of capacity, you can't have proof of
3 undue influence unless the perpetrator is in the room, and
4 that's just clearly not the law. Again, the Byrd in the
5 South Carolina Supreme Court case found undue influence when
6 the perpetrator wasn't in the room and the Gunnells case---

7 THE COURT: Okay.

8 MR. MEDLIN: ---did that.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: It's the question of circumstantial
11 evidence as we discussed yesterday and---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---evidence both before and after because
14 nobody can take a snapshot---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---of exactly the moment somebody signs
17 the will---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---or the Trust. In fact, as I'm sure
20 Your Honor knows---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: ---since 1987, I can sign my will today,
23 you can sign as a witness a year from now, and Alice can
24 sign as a witness three years from now.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: When is it a will?

2 I don't think it's a will until all those signatures
3 are done.

4 So, when's the question of capacity?

5 Maybe during that whole three year period.

6 So, the idea that you got to take a snapshot on one day
7 just to determine capacity is not the law. Never has been
8 the law.

9 We disagree with their argument that there's no
10 evidence, and they're undisputed facts. We dispute
11 virtually every fact, and that's exactly why we think we
12 prevail on summary judgment.

13 Your Honor, she raises the issue of John Wayne
14 transferring his stock, and her argument is that it's what
15 he wanted to do.

16 Well, that's a circular argument. It's what he wanted
17 to do if he wasn't unduly influenced. In fact, the
18 inference to be taken from that is that a man who had
19 already created an estate plan where Kevin Luzak could never
20 return to the company, just a couple of months before, would
21 have no need to give his stock away during his lifetime. He
22 already had it covered. He and Merrill Light could vote
23 together to keep Kevin from coming back for the rest of his
24 life based on his July Trust.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: If he thought it was valid, if we were
2 competent, and then when he died, the voting stock would go
3 to Merrill Light, and she'd have 51 percent and she'd
4 keep---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: ---Kevin from coming back to the company.
7 what that proves in that particular situation that,
8 number one, he lacked capacity, and, number two, he was
9 unduly influenced is John Wayne would never have given away
10 control of his company he -- while he was alive, while he
11 was still going to work, while he was still subject to the
12 control of somebody else.

13 why would he do that?

14 He did not need to do it to keep Kevin Luzak from
15 coming back to the company. Instead, he opened the door for
16 Randy Light, whose had two bankruptcies, of course, he
17 didn't know about it because they didn't bother to tell him,
18 but he never put him on the board before because obviously
19 he didn't think he was worthy of being on the board as a
20 businessman, no -- dropped out of college his first year, et
21 cetera, et cetera. I mean this is not the resume item of
22 somebody you want to be controlling your life and your
23 company particularly while you're still alive.

24 THE COURT: Let me ask you, Mr. Medlin, really---

25 MR. MEDLIN: If they had gotten---

1 THE COURT: ---quickly.

2 How do we know what Mr. Barringer knew or didn't know
3 in reference to Randy Light's two bankruptcies, having
4 dropped out of college?

5 I mean how do we know what he knew or he didn't know?

6 I mean does, does, does Merrill say that she withheld
7 that from her dad and that he didn't have the ability to go
8 on the Internet and look to see?

9 I mean he may not be---

10 MR. MEDLIN: Your Honor?

11 THE COURT: ---a stellar person to put on a board, but
12 he is the son-in-law to the man, and that's probably why he
13 was put on the board. It wasn't because he had two
14 bankruptcies and he had dropped out of college.

15 So, how, how do we know any of this?

16 Is this just an assumption?

17 MR. MEDLIN: No, Your Honor. We disagree. That
18 probably wasn't why he was put on the board cause he was a
19 son-in-law. It's because he was incompetent and he was
20 unduly influenced. But -- and that's exactly the point.

21 THE COURT: Okay.

22 MR. MEDLIN: This is -- Alice says my client has
23 hundreds of millions of stocks. So, it's a very valuable
24 company.

25 Those kind of companies don't put first year college

1 dropouts, unless you're Bill Gates, and create your own
2 company, in charge of your company. They don't put people
3 with two bankruptcies and 25 million-dollar bankruptcies
4 filed, by the way, in June of 2012. They don't put those
5 people in charge of their companies.

6 He was never put on the board before, and Merrill
7 testified that she never told her parents about the
8 bankruptcies. That's part of the deception, and, again,
9 when we get into the undue influence---

10 THE COURT: Okay. And that's what I asked.

11 Did Merrill say or admit that her parents knew nothing
12 about the bankruptcies, she never revealed, that she never
13 revealed her husband was a college dropout at some point?

14 MR. MEDLIN: Your Honor, I don't---

15 THE COURT: Does she admit all that?

16 MR. MEDLIN: Your Honor, I don't know about the college
17 dropout part, but I'm, I'm assuming he didn't have a diploma
18 on his wall if anybody wanted to look. But she did say, in
19 her deposition, that they did not tell the parents about the
20 bankruptcy. That was sort of their business.

21 THE COURT: Okay.

22 MR. MEDLIN: And that's more important to know.

23 THE COURT: Okay.

24 MR. MEDLIN: So, again, this is something where, even
25 if he were competent, even if we were an accomplished

1 businessman, even if he were a captain of industry, Randy
2 Light could of gotten all the stock, divorced Merrill, or
3 Merrill could of died first, then he would own control of
4 the company. Mr. Barringer's still alive. Randy Light,
5 very nice person based on, based on what I can tell,
6 personable, nice looking man, I suspect he would maybe think
7 about getting married again, and then he's gonna leave the
8 stock to his new wife or---

9 THE COURT: Oh, we went down this whole rabbit hole in
10 Mrs. Barringer's deposition asking her where Mr. Gilreath
11 said well, what happens if they divorce, what happens if
12 they left. I mean I, I think we need to get past that. I
13 think we need to get past that.

14 MR. MEDLIN: Well, Your Honor, I'm, I'm, I'm sorry. I
15 disagree because any estate planner would talk about that
16 with the client --

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: -- and there's an easy way to make sure
19 you keep control of your company and your family.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: You put it in a Trust and you let the
22 Trust handle it.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: So, I've never had a client that wanted a
25 business to end up in somebody else's family. It's, it's a

1 very important point, and I'm sorry to disagree with you,
2 Your Honor, but that's an important point.

3 All right. So, the unhampered issues she raises again,
4 it's -- the law is clearly, if it's unhampered, that means
5 that the influence no longer continues. But we're gonna
6 show that the influence has continued since 2012, at the
7 earliest, and all the way through the end.

8 When one determines testamentary capacity, there's no
9 rule that you ask your client do you understand your
10 property, do you understand the people you want to give it
11 to, do you understand what a will does. That's not a rule
12 and nobody does that.

13 The way you determine if somebody has testamentary
14 capacity is if the facts and circumstances, both before and
15 after, has the ability to---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---take a movie rather than a snapshot,
18 determines whether that person did know those questions.

19 Your Honor, again, we'll just briefly talk about what
20 we talked about yesterday under 56(e). Everything in
21 Hampton and Kevin's affidavits are from their own personal
22 knowledge either because they observed things up through
23 2012. Yes, they didn't see Paul Barringer a lot after 2012.
24 But they have medical records. They have business records.
25 They have all these other things that they've seen. So,

1 they have personal knowledge of -- and as to Mike Hagler,
2 yes, he's dead, and I'm sure that the Defendant would love
3 to keep that testimony out.

4 But she received all his letters and emails. She got
5 them along with the rest of the board. They can be verified
6 easily and the Defendant herself, who sometimes doesn't
7 remember receiving emails. In fact, if you look at her
8 deposition, she doesn't remember or know much at all about
9 anything. But I think even she would have to admit that she
10 got those emails.

11 They continue to make a deal out of the -- Hampton
12 being upset. They deceived Mr. Barringer when he was in the
13 stages of dementia and Alzheimer's into thinking Kevin was
14 trying to steal his company, and because of that, they
15 continued to influence Mr. Barringer to join with Merrill
16 and fire him, although Merrill and Mrs. Barringer had to
17 coach him at the meeting.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: And that's just not because we have a tape
20 of the meeting, but Mike Hagler, in his emails we talked
21 about yesterday, said---

22 THE COURT: So, so---

23 MR. MEDLIN: ---the same things.

24 THE COURT: So, did they say that Merrill Light also
25 coached?

1 I understood that there was a lot of Mrs. Barringer,
2 Mrs. Barringer said that she was there to make sure
3 everything went the right way and all that.

4 But is there also testimony that Merrill Light in
5 that -- and I think it -- wasn't it a telephonic -- was it
6 not a telephone board meeting?

7 I thought it was.

8 MR. MEDLIN: Telephone.

9 THE COURT: Right.

10 MR. MEDLIN: Mr. -- Mrs. Barringer, Mrs. Light, and Mr.
11 Barringer were in a room with -- at John Jolley's office.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: You can hear the coaching going on.

14 THE COURT: By who?

15 Coaching by who?

16 MR. MEDLIN: Well, according to Make Hagler, he thought
17 it was from both, and, Your Honor---

18 THE COURT: Both who?

19 MR. MEDLIN: ---to be honest---

20 THE COURT: Both who?

21 Both Mrs. Barringer---

22 MR. MEDLIN: It's, it's hard---

23 THE COURT: ---and Mrs. Light?

24 MR. MEDLIN: It's, it's clearly female voices. But
25 somebody's in there helping to coach. You don't have one of

1 them saying oh, no, no, no, dad, you do what you want to do
2 or no, no, no, husband, you do what you want to do.

3 THE COURT: And---

4 MR. MEDLIN: It's a concerted effort---

5 THE COURT: Well, this is the problem though.

6 MR. MEDLIN: ---but the coaching is going on.

7 THE COURT: The only thing I'm asking you this is when
8 you're -- I'm looking. I'm reading on your Page 22 of your
9 brief, and it says facts supporting undue influence. And
10 the first page talks about Mrs. Merrill Barringer exerting
11 undue influence, and then -- and it goes on -- the only
12 thing I'm seeing so far that you say is that Mrs. Light
13 produced what was a earlier given presentation by Mr. Luzak.
14 I, I remember someone saying it was some kind of PowerPoint
15 or something that, that showed he wanted to take the company
16 in a direction that was more investment related, and had
17 nothing to do with forestry products.

18 But I, I -- I'm trying just to look straight at what
19 you're saying as to what Merrill Light's undue influence --
20 what, what the evidence is of that. I know it's
21 circumstantial evidence. But, again, I'm trying to figure
22 out exactly what you're saying other than she ended up being
23 the one that benefited from it---

24 MR. MEDLIN: Your Honor, we believe---

25 THE COURT: ---in the end.

1 MR. MEDLIN: We believe she coached as well.

2 THE COURT: Okay.

3 MR. MEDLIN: She was in the room. And so, again,
4 that's what our belief is.

5 By the way, Randy Light, in his own email, admitted
6 that Mr. Barringer would not let him have, let him have
7 anything to do with the business. That was in 2011.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: And, all of a sudden, that seemed to
10 change conveniently after he gets Alzheimer's and they
11 deceive Mr. Barringer about Kevin Luzak, who never tried to
12 steal the company. None of that was true. Again, we went
13 through that yesterday.

14 That's exactly the point, Your Honor. Undue influence
15 can be overt or covert, and that's why the Court says you
16 need circumstantial evidence, and we have exactly the kind
17 of circumstantial evidence that at least will get us past
18 summary judgment on the issue of whether they committed
19 undue influence.

20 Now, after the Lights and Mrs. Barringer get Kevin
21 fired---

22 THE COURT: Okay.

23 MR. MEDLIN: ---then, two months later, in August, get
24 him -- and that's, that's a board meeting getting him fired
25 as CEO.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: Two months later, in August, Mr. Barringer
3 is not present. John Jolley is representing Merrill Light
4 who is moving Mr. Barringer's shares.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: So, again, that's a fiduciary relationship
7 where she's acting and they fire Kevin again just to make
8 sure, as a CEO, wouldn't have a board meeting, but, as a
9 shareholder, they fire him from the board. And Merrill
10 Light seems to be pouting that Hampton is upset about that
11 with her.

12 Of course she is and she's upset about what they're
13 doing to their father. And letter after letter shows that
14 she's trying to protect her father first and foremost. In
15 fact, she had to bring the conservatorship because, while
16 Mr. Barringer was in a secured daycare center unkempt and
17 unshaven---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---having been determined he can't testify
20 in Court because he's incompetent, they're claiming he
21 doesn't need a conservator. Somebody's got to protect her
22 daddy. She's doing it. That's, again, what this is all
23 about for her.

24 THE COURT: Where was he being kept again?

25 I apologize. I remember that portion of it where they

1 said when he visited, and he was a very meticulous man
2 always. So, he would of never been unshaven and not well
3 dressed.

4 where was he?

5 Do you know?

6 MR. MEDLIN: Your Honor, I don't know the name. It was
7 an adult -- secure adult daycare center because, when you,
8 you have Alzheimer's, you tend to disappear.

9 THE COURT: It wasn't Memory Matters, was it?

10 It wasn't Memory Matters on Hilton Head?

11 MR. MEDLIN: I think, I think that may be it, Your
12 Honor, but I don't---

13 THE COURT: Yeah.

14 MR. MEDLIN: I honestly---

15 THE COURT: Okay.

16 MR. MEDLIN: ---don't remember, but yeah.

17 THE COURT: It's like a day program. But okay. Okay.
18 okay.

19 MR. MEDLIN: Again, he can't, he can't act and yet they
20 claim he doesn't need protection.

21 THE COURT: Okay.

22 MR. MEDLIN: Now, Paul Barringer was removed from the
23 board on February 19th, 2015.

24 THE COURT: Okay.

25 MR. MEDLIN: And here's John Wayne being removed.

1 By the way, they don't even put that in the minutes,
2 and that's when they made Randy the chairman of the board.
3 And the idea that, within a couple weeks after that
4 February 5th, 2015, will that Defendant says we have no
5 evidence about, he is so incompetent, so subject to undue
6 influence, he allows himself to be removed from the board.

7 THE COURT: What was that date again?

8 MR. MEDLIN: He's voted off---

9 THE COURT: What was that date again, Mr. Medlin, that
10 he was removed from the board?

11 MR. MEDLIN: February 19th. February 19th, 2015.
12 It's in our Exhibit---

13 THE COURT: Okay.

14 MR. MEDLIN: ---CCC.

15 THE COURT: Got it.

16 MR. MEDLIN: There aren't nine elements of fraud in a
17 will fraud inducement case, and that's clearly what we're
18 bringing. We discussed that in, in our brief. I won't say
19 anything moreover than that.

20 The, the, the argument that he didn't sign over his
21 stock in May of 2012, that's just inaccurate. To go into
22 his Revocable Trusts, it doesn't magically happen. When you
23 own stock, you have to sign it or some stock power or some
24 assignment to get the stock where you want it to go.

25 So, yes, and, by the way, Kevin Luzak signed as the

1 CEO. He didn't think anything was funny about it because he
2 didn't mention that Merrill was cotrustee. He didn't
3 mention Paul was cotrustee. Again, part of the secrecy---

4 THE COURT: Okay.

5 MR. MEDLIN: ---which is one of the factors of undue
6 influence that we'll talk about---

7 THE COURT: Okay.

8 MR. MEDLIN: ---more in just a little bit, Your Honor.

9 THE COURT: Can I ask you one other question just so I
10 understand?

11 MR. MEDLIN: Sure.

12 THE COURT: You didn't sue John Jolley for either civil
13 conspiracy or undue influence or anything along those lines.

14 What, what are you -- what do you believe or what do
15 you think his actions show, in circumstantial evidence, his
16 involvement in all this because, to me, it's a concern
17 because I think, for him to be have done and facilitated all
18 this, he's got some problems.

19 So, my, my question is what, what, what are you
20 thinking is his, his role?

21 I mean you talk a lot about well, he served as the
22 attorney for both the Lights and the Barringers. He also
23 served as the corporate attorney, and you seem to allege
24 there is a lot of conflict potentially of interest and
25 having to serve a lot of masters here.

1 So, so, what, what are you saying he did?

2 I mean, again, you didn't name him. So -- and you
3 didn't list him, I don't think, in your civil conspiracy
4 cause of action as far as being someone that was involved in
5 all this, but you seem to throw his name in a lot.

6 MR. MEDLIN: Do I answer that question, Your Honor?

7 THE COURT: Yeah, because I think that's a big part of
8 all this.

9 MR. MEDLIN: I'm not gonna be involved in a case suing
10 a lawyer. It's just that simple.

11 THE COURT: Okay.

12 MR. MEDLIN: Plaintiff had a choice. They could have
13 me --

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: -- or they can sue John Jolley.

16 THE COURT: Okay.

17 MR. MEDLIN: They chose to have me.

18 THE COURT: Okay. And you can clearly choose who you
19 wish to sue, and we all understand that, and the client can,
20 and I get that cause they're many cases where they find
21 someone that is potentially complicit or whatever, but they
22 don't want to sue that person, and I, and I understand that.

23 I just -- it just is concerning to me that I just see
24 his name thrown in here a lot as part of circumstantial
25 evidence of this undue influence or, at a minimum, just

1 remaining silent, and it's a concern. I just -- I'm not
2 sure how you deal with that. I'm not sure how you're gonna
3 deal with it at trial either, but that's not my problem. I
4 know that's yours. But I just wanted to know just from your
5 standpoint.

6 Okay.

7 MR. MACLOSKIE: Judge Mullen?

8 THE COURT: Yeah.

9 MR. MACLOSKIE: This is Mike Macloskie.

10 May---

11 THE COURT: Yeah.

12 MR. MACLOSKIE: May, may I try to answer that question
13 for you?

14 THE COURT: Sure.

15 MR. MACLOSKIE: The reason---

16 THE COURT: Sure.

17 MR. MACLOSKIE: The reason Mr. Jolley comes up has
18 nothing really to do with him. It has everything in the
19 world to do with the Lights influencing the Barringers to
20 use their attorney, and also the, the Lights, particularly
21 Merrill Light, influence over CFRC, putting him as secretary
22 of the board, putting him, putting him as a, as a member of
23 the board, putting him as, as corporate counsel.

24 All that has really nothing to do with, with John Light
25 or John Jolley being a part of any conspiracy. It has

1 everything in the world to do with Merrill Light's
2 ability---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MACLOSKIE: ---to control corporate business, and
5 control her parent's personal business.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MACLOSKIE: And, and---

8 THE COURT: Okay.

9 MR. MACLOSKIE: ---the control of the corporate
10 business goes to the damages that, that we allege---

11 THE COURT: Okay.

12 MR. MACLOSKIE: ---occurred because of Hampton Light's
13 loss of control.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MACLOSKIE: And if anybody else wants to jump in
16 there and---

17 THE COURT: Okay.

18 MR. MACLOSKIE: ---help me out or, or tell me I'm
19 crazier than an outhouse rat, that's fine.

20 THE COURT: The only concern I have, Mike, about that
21 is, is it requires---

22 MR. TWOMBLEY: Judge, can I---

23 THE COURT: ---it requires undue influence. Just
24 having influence isn't a problem. It's whether or not it's
25 undue, and it would require -- and, and this is how I look

1 at it is it would require John Jolley to promote someone
2 else's agenda or someone else's benefit, which, again, is an
3 inherent conflict if he did it. And so that's what concerns
4 me about it, and that's, that's what I keep hearing. I
5 don't---

6 MR. MACLOSKIE: Judge, we're concerned---

7 THE COURT: ---know.

8 MR. MACLOSKIE: We're concerned about it too, but don't
9 forget---

10 THE COURT: Okay.

11 MR. MACLOSKIE: ---that, that Mr. Jolley was the, was
12 the person who generated---

13 THE COURT: Right.

14 MR. MACLOSKIE: ---this Certification of Competency,
15 which is still an issue.

16 THE COURT: When you say generated, I don't know that
17 he necessarily generated it. I -- the form I saw where it
18 said a psychologist that was crossed out, I may be wrong,
19 but I, I will probably guess that most wills, Trusts, and
20 estate lawyers have that as a form. It was printed off. It
21 wasn't even signed by Paul Long at the beginning when
22 allegedly it could of happened.

23 I mean I, I don't know about the generate other than
24 did he -- was he the one that reached out and said -- I
25 thought he gave it to Mrs. Barringer to get Mr. Long or

1 Doctor Long to sign it.

2 No?

3 Did he actually do it himself?

4 MR. TWOMBLEY: He gave -- he emailed---

5 MR. MACLOSKIE: Your Honor?

6 MR. MEDLIN: He emailed it to Merrill Light.

7 THE COURT: Okay.

8 MR. MEDLIN: He emailed it to Merrill Light---

9 THE COURT: Okay.

10 MR. MEDLIN: ---in August of 2012.

11 THE COURT: Okay.

12 MR. MEDLIN: And, Your Honor, I'm, I'm not -- I'm, I'm
13 not, in any way, condoning what happened---

14 THE COURT: Yeah.

15 MR. MEDLIN: ---with the lawyers in this case.

16 THE COURT: Okay.

17 MR. MEDLIN: Mike's absolutely right, of course, and,
18 and that's a different issue about how we think he was a
19 tool, and---

20 THE COURT: Yeah.

21 MR. MEDLIN: ---we don't -- I don't agree with all the
22 interests that he had.

23 THE COURT: Okay.

24 MR. MEDLIN: We can't even get an engagement letter or
25 a waiver --

1 THE COURT: Uh-huh. (Affirmative).
2 MR. MEDLIN: -- when we've asked in discovery.
3 THE COURT: Okay.
4 MR. MEDLIN: And we're gonna depose him. We'll see.
5 THE COURT: Okay.
6 MR. MEDLIN: Your question to me was why he wasn't---
7 THE COURT: All right. Mr. Macloskie---
8 MR. MACLOSKIE: I want---
9 THE COURT: Yeah.
10 MR. MEDLIN: Your question to me was why he wasn't
11 sued, and I'm---
12 THE COURT: Yeah.
13 MR. MEDLIN: ---not gonna be involved with suing a
14 lawyer. It's just that simple.
15 THE COURT: Okay. Okay.
16 MR. MACLOSKIE: One other thing, Judge.
17 THE COURT: Yeah.
18 MR. MACLOSKIE: One other thing, Judge.
19 THE COURT: Yeah.
20 MR. MACLOSKIE: John Jolley was listed as a witness on
21 their Answers to Interrogatories.
22 THE COURT: Okay.
23 MR. MACLOSKIE: They were listed---
24 THE COURT: Okay.
25 MR. MACLOSKIE: That's all I want to say.

1 THE COURT: Okay. Okay.

2 MR. TWOMBLEY: Your Honor, may I make one comment---

3 THE COURT: Sure.

4 MR. TWOMBLEY: ---in response to what Mr. Macloskie
5 said?

6 There is no evidence anywhere that Merrill Light or
7 Randy Light improperly influenced the Barringers to use John
8 Jolley in any way, shape, or form. There is no evidence of
9 that whatsoever.

10 Kevin Luzak was using the McNair firm at the same time
11 that Merrill Light was, and at the same time Paul Barringer
12 was, and the assertion that some -- sudden -- there is no
13 evidence whatsoever that there was ever anything improper on
14 that, and if there is, I'm sure the Plaintiffs will show it
15 to you and, and---

16 THE COURT: Okay.

17 MR. TWOMBLEY: ---point it out to you. They're just
18 assuming---

19 THE COURT: Okay.

20 MR. TWOMBLEY: ---that simply because the fact he was
21 used, and that there must be something improper, and that's
22 not the case.

23 THE COURT: Okay.

24 MR. MEDLIN: Well, Your Honor, now that he's---

25 THE COURT: Let's let Mr. Medlin---

1 MR. MEDLIN: Now that he's joined in, I'll respond to
2 that too.

3 THE COURT: Yeah.

4 MR. MEDLIN: There are a number of cases where, in
5 fact, a factor that the Court takes into account is where
6 the perpetrator of undue influence gets the testator to
7 their lawyer.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: And that is exactly what happened here
10 regardless of whether the company had used the McNair firm
11 before or not. John Jolley had represented the Lights for a
12 number of years, and, all of a sudden, they show up,
13 introduced, for estate planning purposes. So---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: ---again, it's a factor that fits into the
16 cases.

17 THE COURT: I understand that.

18 MR. MEDLIN: So, Your Honor, we don't have to show that
19 it was anything sinister.

20 THE COURT: Okay.

21 MR. MEDLIN: It's just a factor.

22 THE COURT: Okay. I understand that.

23 MR. MEDLIN: All right.

24 THE COURT: Okay.

25 MR. MEDLIN: All right. Your Honor, again, I apologize

1 for---

2 THE COURT: No, no. You're good. You're good.

3 MR. MEDLIN: I just---

4 THE COURT: Keep going. Keep going. You're fine.

5 MR. MEDLIN: I, I -- yeah, I personally would rather
6 not get into a discussion about those issues on the record
7 if---

8 THE COURT: Yeah, I just don't know.

9 MR. MEDLIN: Of course, I will, Your Honor, if, if---

10 THE COURT: I just don't know---

11 MR. MEDLIN: ---you want to.

12 THE COURT: ---how you're handling this, and that's---

13 MR. MEDLIN: I, I---

14 THE COURT: ---that's what I don't understand. But
15 okay.

16 Okay. That's -- keep going.

17 MR. MEDLIN: I, I appreciate that, that, Your Honor.

18 Let's talk about the issue of -- oh, one more point I
19 want to mention. Two more points actually---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---in response to Alice's opening.

22 CFRC hasn't been sold even though the evidence was
23 clear that Merrill wanted to sell it as soon as daddy was no
24 longer able to be in control, and the reason it can't be
25 sold is because there's been this dispute going on for all

1 this time.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Nobody's gonna buy the company when it's a
4 question about who owns the company and who controls the
5 company.

6 So, until that's resolved, I don't think anybody's
7 gonna buy the company. That's, that's not an answer.

8 Your Honor -- Your Honor, let's look at the capacity
9 issue first, if I may, and that goes to the first cause of
10 action, the fourth cause of action, and the seventh cause of
11 action, and I'll put, chronically, if I can remember to do
12 it, where each of the critical documents comes up in the
13 evolution. And let's start with an understanding that
14 dementia, whether it's Alzheimer's or not, is a devolution.
15 You don't get better.

16 As we discussed in the Gatti versus Douglas case
17 yesterday, the brain cells just keep dying. And so it's not
18 like you're gonna have a recovery. You're gonna continue to
19 get worse.

20 And so we have to take that span into account, which
21 Courts often do in looking at testamentary capacity and to
22 the extent undue influence is affected by a weakened
23 testamentary capacity, undue influence.

24 So, we're gonna look at that evolution, and let's start
25 with Doctor Sanders' report, which is Exhibit K, Your Honor,

1 and---

2 THE COURT: I've read it twice now in two days. So,
3 I've got it.

4 MR. MEDLIN: Great. So, I just was gonna point out two
5 quick things for the record.

6 Patients can become vulnerable persons even in the
7 early stages of the disease meaning they're susceptible to
8 undue influence and decision making.

9 THE COURT: Right.

10 MR. MEDLIN: The disease and it -- is inexorably
11 progressive. So this situation only---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---ultimately worsens over time.

14 Persons with Alzheimer's disease may have trouble
15 reasoning, following chronology, making decisions, and
16 evaluating complex information. This can occur as early as
17 the mild stage of the disease, and is expected by the time
18 the moderate disease stage is reached, is reached, and then
19 she goes into a discussion of the evolution.

20 I'm gonna get into a little more detail of that with
21 Your Honor, but in a more chronological way.

22 But she points out that, as early as May, when he is
23 discharged for what Defendant says was just a bad urinary
24 infection, he's put on not the medicine you get for kidney
25 infections. He's put on medicine for Alzheimer's.

1 So, he's got these problems and our own expert notices
2 that, and he forgets significant issues. He can't deal with
3 language, and he can't remember things such as buying a
4 building. That's from their doctor's report that she notes.

5 So, the important thing about that, Your Honor, is her
6 indication -- and, again, we don't need an expert. We don't
7 have to have one in a will contest. You don't have to have
8 doctors, as we've noted. We're using their own doctor's
9 reports as evidence of this continuing devolution again
10 remembering the standards.

11 And not only do we have the medical evidence, but we
12 have the Defendant's own statements. We have the
13 Plaintiff's statements, of course. We have company
14 officials, board members. We have all these people who will
15 tell you that he is having problems.

16 THE COURT: Mr. Medlin?

17 MR. MEDLIN: So---

18 THE COURT: Mr. Medlin, I'll go ahead and cut to the
19 chase right now. I think there's a question as to fact
20 whether or not he was incapacitated or not incapacitated. I
21 got to tell you, and I know Alice is shaking her head, but
22 sorry. There's enough there.

23 So, my question and my point is, is that I need to see
24 where the undue influence is. I need to see whether or not
25 you have a cause of action for conversion, for fraud because

1 those I don't see.

2 So, I think that's what you need to address for me at
3 this point because we've got another, you know, half hour to
4 45 minutes, and that's where your concern is. I can read
5 the medical records. I understand where that question
6 comes.

7 I do not know, and, again, I just need -- and, again,
8 you've said there's circumstantial evidence for the undue
9 influence. I hear you.

10 Again, it's -- so, you know, maybe let's talk about --
11 let's, let's talk about the fraud. Let's talk about the
12 conversion. I know we talked about the fraud very, you
13 know, little bit. But I mean fraud's hard to prove. I mean
14 it's just hard. And so you got to be able to show it.

15 MR. MEDLIN: We understand we've got to convince a
16 jury, Your Honor. But we certainly have the facts to get
17 past summary judgment. Even if we have to show more than a
18 mere scintilla, but as I've indicated, the burden is really
19 on the Defendant in this case. Whatever burden we might
20 have, and we don't, we satisfy.

21 So, Your Honor, if I may skip to that, I'll skip to
22 that. Let's---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---talk about undue influence. And, and,
25 again, let's start with Doctor Sanders' report, Exhibit K,

1 where she says you're susceptible at the early stages---

2 THE COURT: Right.

3 MR. MEDLIN: ---to undue influence.

4 THE COURT: And, and I understand---

5 MR. MEDLIN: That's one of the factors.

6 THE COURT: I understand she's saying that. Again, in
7 your brief, what you mostly talked about was undue influence
8 by Mrs. Barringer. Not by Mrs. Light. And that's, that's
9 what I'm asking you.

10 And so, if they're working in concert and that goes for
11 your civil conspiracy complaint, I understand that. But,
12 again, it requires more.

13 So, again, you know, other than her using their
14 attorney, you know, other than Mrs. Light being the one that
15 benefits from any undue influence, again, I, I just --
16 that's where I need you to talk to me about all the facts
17 that show what, in fact, exactly Mrs. Light did to unduly
18 influence him.

19 MR. MEDLIN: Your Honor, I think we can show you plenty
20 of that, and I'm gonna go through a chronology. And, again,
21 we're gonna start with Doctor Sanders report that somebody
22 is susceptible.

23 So, susceptibility, we list these factors on Page 7 of
24 our memo, classic factors that one looks at for undue
25 influence. Susceptibility is one of them, having a weakened

1 capacity, and you've already recognized that we have an
2 argument about weakened capacity. Then we've got
3 susceptibility.

4 Mrs. Barringer, in her deposition, in our Exhibit M,
5 says it's easy to influence Paul Barringer in 2012. She
6 didn't say in 2012. She says it's easy to influence him
7 cause she wanted Travis Bryant to become CEO.

8 Exhibit J. Mrs. Barringer says I was at a board
9 meeting making sure what she said and to correct him in any
10 manner. So, she's there for that purpose. It shows he
11 didn't know what he was doing, and he could be influenced,
12 and Merrill Light's in the room doing the same thing.

13 Exhibit A, Attachment 9, Merrill Light becomes the
14 cotrustee of the Trust. Again, she owes a fiduciary duty to
15 Mr. Barringer. That's what matters with undue influence.
16 But she also is a fiduciary duty as we discussed to Hampton.

17 When you look at Exhibit R and John Jolley's affidavit,
18 which is an Exhibit S, and Randy Light's affidavit, which is
19 at Exhibit U, Jolley had represented the Lights for years,
20 and the Lights directed the Barringers to him for estate
21 planning. Jolly also served as general counsel and
22 corporate secretary among his many ties to the Lights.

23 Exhibit V. Randy Light emails Kevin on
24 October 25th that they're moving the -- 2011. They're
25 moving the account to the individual trustee at the law firm

1 he likes to do business with.

2 Exhibit W. Merrill Light's deposition testimony that
3 John Jolley serves as the Light's trustee for multiple
4 trusts. The PowerPoints that clearly upset Mr. Barringer in
5 his demented state where he completely turned on Kevin.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: He went from being like a father to Kevin
8 and thinking that he was the best CEO ever, and the evidence
9 shows that with emails---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---from Paul and conversations at the
12 board meetings, all of a sudden, when he gets these
13 documents that Merrill Light gave him, he becomes angry,
14 thinks that Kevin's trying to steal the company. Those
15 documents don't show that at all---

16 THE COURT: Is this---

17 MR. MEDLIN: ---and Merrill Light---

18 THE COURT: Just let me ask you, Mr. Medlin.

19 Is the simple fact that they had been presented before
20 and she gave them to him later on, is that enough to show?

21 I mean he authored them. He presented them earlier.
22 They were what he thought should happen, and is it because
23 we're further now down the line, you believe he was probably
24 further incapacitated, and she used it just to insight him?

25 I mean is, is that what we're saying is that -- I mean

1 if that's what it is I get it. But you think she---

2 MR. MEDLIN: It's undue influence.

3 THE COURT: Pardon?

4 MR. MEDLIN: That's undue influence.

5 THE COURT: And I understand that.

6 MR. MEDLIN: That's absolutely undue influence.

7 THE COURT: Yeah, that's -- and that's what I'm asking.

8 But I mean when you say -- I mean he documented. He wrote
9 these things. He had presented them once before.

10 MR. MEDLIN: No, ma'am.

11 THE COURT: He didn't?

12 MR. MEDLIN: No. No, Your Honor. Kevin presented
13 these PowerPoints---

14 THE COURT: Right.

15 MR. MEDLIN: ---and these presentations.

16 THE COURT: Right.

17 MR. MEDLIN: When you say he, I thought you meant Mr.
18 Barringer.

19 THE COURT: No. Obviously it's not Mr. Barringer cause
20 I can't imagine why, even if he's incapacitated, why he'd be
21 upset about something he brought up himself. So, again---

22 MR. MEDLIN: He didn't remember them period.

23 THE COURT: Okay.

24 MR. MEDLIN: This, this goes back to March of 2011 at
25 board meetings and family meetings.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: These things have popped up constantly---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---and Mr. Barringer is saying this is
5 great stuff.

6 THE COURT: But it was never acted on.

7 MR. MEDLIN: In fact---

8 THE COURT: But it was never acted on is what I
9 understood is or is that part of the they started buying
10 apartment complexes, and they started to diversify and
11 invest?

12 Is that what your argument is?

13 MR. MEDLIN: All of it's subject to Mr. Barringer's
14 control, of course, and that's part of the undue
15 influence---

16 THE COURT: Okay.

17 MR. MEDLIN: ---to make him think that Kevin's trying
18 to pull off a coup, which would be impossible to do if
19 anybody understood anything about corporate governance. It,
20 it just couldn't be done. We've got the taped discussion
21 where Kevin's saying Paul, you're the boss. I'm never gonna
22 do anything you don't want to do.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: And so that precipitated it and Merrill
25 Light did not try to diffuse the situation, and instead

1 continues to be involved with having Kevin fired, and then
2 continuing to fuel that anger to have Hampton disinherited
3 from the voting stock, and then who actually received the
4 voting stock, which is something he would never do.

5 Again, undue influence is typically circumstantial and
6 it's often covert. But this is a little more obvious than
7 covert because it's the presentation of those PowerPoints.

8 why would Merrill Light give him those PowerPoints from
9 over a year ago and immediately he changes his opinion of --
10 about Kevin Luzak?

11 That's the trigger point of all this undue influence
12 right there, Your Honor. That's---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---the trigger point.

15 THE COURT: Okay.

16 MR. MEDLIN: And it was after---

17 THE COURT: I get that.

18 MR. MEDLIN: It was within weeks after he can't touch
19 his ear with his fingers. He can't remember that he bought
20 a building. And he can't remember that he had ordered the
21 sale of a plane.

22 So, he is clearly susceptible, and, of course, I've
23 lived with this. My mother had Alzheimer's for 12 years. A
24 common factor of Alzheimer's is change of personality and
25 mood swings. He got angry and part of that's frustration

1 that you can't process.

2 And so she was able to convert that anger. She could
3 have said daddy, Kevin's a great CEO, which is, by the way,
4 what she always thought communicating with Kevin and
5 Hampton, and at board meetings, and at family meetings up
6 until that moment. He could of tried to say no, don't give
7 me the stock, and the, and the canard that she didn't ask
8 for the stock.

9 First of all, we don't know whether she asked for the
10 stock.

11 How would we ever prove that?

12 Maybe we can. Maybe somebody else overheard a
13 conversation, but, again, that's how undue influence
14 operates in the dark. The caretaker's saying if you don't
15 give me something in the will, I'm going to send you to the
16 nursing home. That's the kind of things that goes on with
17 undue influence.

18 That, Your Honor, is a fact---

19 THE COURT: Okay.

20 MR. MEDLIN: ---and that fact is where we see that
21 Merrill is first seriously getting involved in the undue
22 influence.

23 Now, again, remember, she's in a fiduciary
24 relationship. If that February, 2012 Trust is valid she is.
25 If it's not valid, then she's a constructive trustee and

1 subject to the duties of a trustee and the fiduciary
2 relationship under trust law. Bonnie v. Grainger being the
3 case that says that.

4 So, here we are at this critical point.

5 Now, opportunity not only existed there, but you've got
6 the Defendants living near the Barringers in constant
7 contact. That's Exhibit X and Exhibit Y.

8 Randy Light testified he was in constant contact with
9 Mr. Barringer. He also admitted he communicated with
10 Mr. Jolley regarding general matters regarding Mr. and Mrs.
11 Barringer's estate planning.

12 All right. There's another fact.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: A year earlier Randy Light is emailing Mr.
15 Barringer won't let me have anything to do with the company,
16 and now, all of a sudden, the son-in-law is involved with
17 the estate planning?

18 And they try to wash that away by saying well, it was
19 nothing substantive.

20 Well, what does that mean?

21 If you're talking to somebody about estate planning,
22 then you've been brought in with an opportunity to influence
23 somebody, and again opportunity is one of the factors, to
24 influence their estate planning.

25 Around about this time, again, Mr. Hagler writes these

1 letters talking about the coaching, et cetera, and Paul's
2 incapacity in Exhibit F. So now we have an outsider saying
3 those two people in the room were influencing him to vote.

4 Again, it's all part of a pattern, all part of a
5 process, and the first step in taking over the company is to
6 get rid of Kevin. Turn Mr. Barringer against Kevin, and to
7 get rid of Kevin.

8 Your Honor, John Jolley's billing records show very
9 little contact with Mr. Barringer before the two most
10 critical changes in his estate planning. This is Exhibit
11 CC.

12 THE COURT: Right.

13 MR. MEDLIN: The purported July 20th, 2012, Trust
14 amendment, which left the voting stock to Merrill Light at
15 his death, and the purported stock transfer of September 11.
16 But he's got a billing entry with a telephone conversation
17 with Randy Light on July the 18th.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: And we heard yesterday, and we already
20 knew according to the airplane records and the signatures,
21 that Randy Light is with Mr. Barringer in Alabama on
22 July 20th, 2012.

23 Now, I have, on only two occasions in all the wills
24 that I've prepared for clients---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: ---and most of them were friends and
2 colleagues since I've been a professor, there have been lots
3 of them, hundreds if not into the thousands, only in two
4 emergency situations, one was a deathbed situation, one was
5 a buddy of mine who I'd done several wills before who was
6 leaving going along Doctors Without Borders, the idea that
7 I would send a complicated Trust document out that was
8 changing control, changing the pattern of somebody after his
9 long dispositive history, equal treatment among his
10 siblings, his children, and then eventually his daughters to
11 run his legacy empire, without having him in the room with
12 me so that I can explain the documents and execute the
13 signing, is incomprehensible to me. And I don't know of
14 many really good estate planners who do that, and I doubt
15 John does that a whole bunch, and what was the rush?

16 why couldn't we wait for Mr. Barringer to get back from
17 Alabama so we could have him in the room?

18 Another factor in undue influence cases, Your Honor---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---is that the perpetrator is present.
21 Again, doesn't require it, but it is another factor, and
22 guess what?

23 THE COURT: Okay.

24 MR. MEDLIN: We have presence all over the place.

25 THE COURT: Okay.

1 MR. MEDLIN: Randy Light is present when, when Mr.
2 Barringer signs that critical document. Merrill Light is
3 present when he transfers the stock.

4 Again, another critical factor in undue influence. We
5 check the boxes in both cases.

6 THE COURT: Okay.

7 MR. MEDLIN: Your Honor, on July 3rd, 2012, this is
8 after Kevin has been fired, John Jolley sends an email to
9 Merrill Light about company ownership. He doesn't copy Mr.
10 Barringer.

11 Now, this is gonna be a pattern going along moving
12 forward in our undue influence evidence. Mr. Barringer is
13 being cut out of these conversations. If he really is John
14 Wayne, and he really is in control, and he really is the guy
15 who's making decisions---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---why are Merrill and Randy and John
18 Jolley sending emails back and forth about issues critical
19 to Mr. Barringer?

20 And they're not copying Mr. Barringer. That's the
21 secrecy that's also an important factor.

22 THE COURT: Okay.

23 MR. MEDLIN: Your Honor, on August 1st, Merrill
24 procured a proxy purportedly signed by Paul at the
25 shareholder's meeting. Again, it was faxed from John

1 Jolley's office, Exhibit BB.

2 Paul Barringer did not attend the August 3rd, 2012,
3 shareholder meeting and board meeting where all
4 relationships with Kevin was terminated. Merrill has her
5 proxy -- his proxy that she had procured it at the meeting
6 by not saying how she was voting his stock. She certainly
7 didn't say she was doing it as cotrustee. We have an
8 audiotape of that meeting. She just said she was there to
9 vote on behalf of Mr. Luzak.

10 THE COURT: Okay.

11 MR. MEDLIN: Excuse me. Mr. Barringer. I'm sorry.

12 THE COURT: I understood.

13 MR. MEDLIN: Mr. Luzak's being fired at these meetings.

14 THE COURT: I got it, yeah.

15 MR. MEDLIN: All right. So, in the Virginia lawsuit, a
16 long time later, we finally end up having to demand
17 shareholder minutes. Actually I think this occurred before.

18 But, in any event, we have to demand the shareholder
19 minutes, and, finally, the shareholder minutes show on an
20 attachment, in small print, that actually Merrill Light is
21 the cotrustee of Paul's Trust. That's the first time
22 Hampton Light (sic) ever found out about it.

23 Now, again, she's a beneficiary at that time.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: And so she's entitled to knowledge under

1 the Trust Code. So, she's not been being told that. She's
2 also a shareholder where Merrill Light is a director and
3 owes a fiduciary duty there.

4 She's entitled to that information. She's not getting
5 the information that's pertinent to both her relationship as
6 the beneficiary but also pertinent to her relationship as a
7 shareholder of the company.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: John Jolley ended up -- oh, and by the
10 way, if Mr. Barringer was so dead set on getting rid of
11 Kevin Luzak---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---and he was at that June 28th, 2012,
14 board meeting---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---where he was fired as CEO the first
17 time, why didn't he show up this time?

18 If he's John Wayne, if he wants to make sure all these
19 things are going on, he didn't even bother to show up at the
20 meeting cause it's not he's embarrassed to fire Kevin cause
21 he was at the other meeting.

22 John Jolley drafted the stock for him naming himself as
23 attorney in fact to transfer all shares on the books to
24 Merrill Light. He's corporate counsel. He owes a duty to
25 the shareholders. He doesn't notify Mrs. Luzak of the

1 transfer. He's also Merrill Light's personal attorney.
2 He's also trustee, et cetera, et cetera, as we've talked
3 about before. But, again, it shows the secrecy that's going
4 on in this case.

5 Now, we're gonna tie this back in a little bit later
6 too because several months from now, when they can't figure
7 out when they're suppose to say the stock transfer took
8 place and---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: ---there's emails saying well, it's -- Mr.
11 Barringer signed, why can't we get Mr. Barringer to sign,
12 all that sort of stuff, but John Jolley had the stock power.
13 He could of signed for him. So, there shouldn't have been
14 any question about that. That's in Exhibit GG, Your Honor.

15 Nine days after this purported stock transfer on
16 September the 11th, Randy Light sends an email to Travis
17 Bryant. Defendants fought long and hard with Your Honor
18 before they produced this, and then they said oh, well, it's
19 nothing.

20 Travis, who was described as a puppet by Mike Hagler,
21 and that would be puppet of the Lights, said I have an idea.
22 Let's take 5 million-dollars from the company. Let's give
23 it to Paul and gin up some reason to distribute to him and
24 no other shareholder cause remember they're other
25 shareholders in addition to Anthony. The shareholders owned

1 18 percent of the company.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Let's take 5 million-dollars from the
4 company, give it to Paul, and let Paul give it to Merrill as
5 a gift cause we can give away 5 million-dollars.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: That shows several things.

8 It shows their motive in making the company their
9 personal pocketbook, and we'll see other examples of how
10 they do that.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: No concern whatsoever about the other
13 owners, and that fact that it's other people's money that
14 they're talking about.

15 Now, Defendant's going to say well, it never happened.

16 well, it doesn't matter that it never happened. It
17 shows how he thinks---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---and it got shot down as it should have
20 been shot down. But here's how he's thinking. It also
21 shows he has the opportunity to do it.

22 Guess who he didn't copy on that email, Your Honor?

23 Paul Barringer.

24 Again, this secrecy, this idea that it's our company
25 now, that we pulled this off, and that we're gonna keep Paul

1 Barringer unaware of what's going on because we can.

2 Again, Your Honor, as we talked about before, in
3 Exhibit II, Merrill Light, in her deposition, says she never
4 told Paul Barringer about Randy's bankruptcies and business
5 failures.

6 Again, that would be important information for Mr.
7 Barringer to know.

8 As we say in our brief, that's not exactly the resume
9 item of somebody you want running your company, but
10 particularly somebody you want to control your company once
11 you supposedly had given away control of it while you're
12 still alive, son-in-law or not.

13 Exhibit A, Your Honor, talks about---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: ---the (indiscernible) documents that in
16 Attachments 1 through 6, 9 through 21, prove the history of
17 Paul Barringer treating his daughters equally, equally with
18 respect to voting control.

19 I'm sorry, Your Honor. That's Exhibit A, Attachments 1
20 through 6, 9 through 21. Consistent with the 1998 estate
21 planning.

22 Exhibit III Travis Bryant, John Jolley, and Randy Light
23 email themselves about getting Paul to transfer his voting
24 stock to Merrill, but they do not copy Paul Barringer except
25 on one email, and that's where John Jolley says Paul, can we

1 get those certificates signed.

2 On November 12th, 2013, Plaintiff's assistant emails
3 Mr. Barringer's company assistant and says that Hampton has
4 been trying to call her mother's cell number, but she could
5 not get through, and asked if she has a new number, and the
6 company assistant responded without answering the question.

7 Now, the Lights control the company at this point.
8 Hampton is asking how can I get in touch with my family,
9 and, by the way, she's trying to find that out because her
10 mother has told her don't call your daddy, call me.

11 So, we are having restricted visitation in that regard.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: May 12th, 2014, Randy Light emails John
14 Jolley asking him to forward the new estate planning
15 documents the Barringers will be executing, and that John
16 Jolley discussed with Randy Light the previous week.

17 Exhibit HHH, Your Honor.

18 THE COURT: Okay.

19 MR. MEDLIN: March 24th, and June 20, June, 2014, we
20 have notes from dad wishing Hampton a happy birthday, and
21 notes from Mrs. Barringer sending a note to Hampton thanking
22 her for her birthday gift to Paul Barringer, and the poem
23 Wade wrote for her. This is a couple years after they claim
24 Hampton is estranged herself from the family. She's still
25 sending Father's Days present, and birthday presents, and

1 all that to her father.

2 Around about this time, in June of 2014, Paul Barringer
3 supposedly executed another Revocable Trust amendment
4 completely disinheriting Hampton. Either of these people
5 are awfully duplicitous, and I mean by that the Barringers.

6 Hi, sweetie. We love you. Thank you for the gifts.
7 Have a happy birthday. Give Wade a handshake for me and a
8 hug for me. And, by the way, I'm not telling you, but I
9 just disinherited you.

10 We don't think Mr. Barringer was that kind of person.
11 We don't think Mrs. Barringer was that kind of person.

12 Now, Your Honor, just a couple more on the undue
13 influence. I got to find it.

14 In fact, Your Honor, on February 25th, 2015, again
15 Defendant talks about these letters that Paul Barringer sent
16 talking about her disapproval. By the way, his disapproval
17 of her for suing the company.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: She never sued the company. All she did
20 was when, in February of 2015, she saw in a footnote that
21 Travis Bryant effectively had been given stock. He, he got
22 the stock, gave a note for it, and was allowed to pay off a
23 note from dividends. That's after being given the stock.
24 And she thought her daddy would never want to do that. And
25 she wrote concerned about that.

1 In the Summer of 2012, she wrote concerned about what
2 was happening to her daddy. Again, she's concerned about
3 her daddy, and it's being termed against her.

4 Defendant admitted Mr. Barringer got mad about that.

5 Well, if Mr. Barringer wasn't being unduly influenced,
6 he would of appreciated his daughter trying to protect him.
7 In the Exhibit III, Merrill emails Mr. Barringer's assistant
8 on February 25th, 2015, which, again, is right around the
9 time he supposedly did these 2015 documents---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---to his assistant about Dad is working
12 on a letter. I will forward it to you. And then the next
13 day Merrill emails dad's assistant. Dad's not doing this.
14 It's his assistant. Merrill's doing it. Please put the
15 letter on dad's stationary and return it to me.

16 On February 3rd, two days before the 2015 documents,
17 of course, we don't have any evidence according to the
18 Defendant about things going on the 2015 documents---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---two days before, Merrill Light, they're
21 emails with Merrill Light and Victor on preparing the new
22 estate planning documents, Mr. Barringer's estate planning
23 documents. Nothing from Mr. Barringer. From them.

24 Two days before, Cindy Sprouse, trustee, emails Randy
25 and says don't you think we need to get Paul Barringer off

1 as a cotrustee?

2 There's only one reason to do that. That's because he
3 can't handle and it gives Merrill total control.

4 And guess what?

5 The February 5th, 2015, Trust gets rid of Paul as
6 cotrustee. So, not only did it show their opportunity, and
7 their motive, and the acts and the secrecy, but it's pretty
8 blatant what they're doing not only to Hampton, but what
9 they're doing to Mr. Barringer, they're firing him from the
10 board of directors. They're taking him out as cotrustee of
11 this Trust. None of these emails include him.

12 Let's talk about company govern -- governance, company
13 governance. He's not on it.

14 Let's talk about taking money and giving it to him and
15 then, then giving it to us. He's not on it.

16 why wouldn't you include him on those emails?

17 So, Your Honor, with respect to undue influence, we
18 think we have plenty of facts that certainly---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---survive whatever test we might have to
21 survive. But, again, because of the fiduciary relationship
22 and the self-dealing, the burden is on the Defendant. Not
23 us. I, I don't even know how you have a summary judgment
24 issue on that case because the burden's on them, not even on
25 us, with respect to that.

1 well, Your Honor, those, for now, are the bullet points
2 of undue influence.

3 THE COURT: Okay.

4 MR. MEDLIN: All right. Your Honor, before I move on
5 to the rest, do you want to take a break?

6 How, how -- it's up to you.

7 THE COURT: I got to tell y'all, I mean I have to leave
8 before -- just a couple minutes before two o'clock. So, it
9 doesn't matter where we are, I got to go. So I'm just
10 telling you.

11 MR. MEDLIN: Well---

12 MS. PAYLOR: I'm entitled to reply, Your Honor. I mean
13 I, I -- he's had almost an hour and a half, which he's
14 entitled to, and then I would like the rest of the time to
15 reply.

16 THE COURT: Okay.

17 MS. PAYLOR: Thank you.

18 MR. MEDLIN: Your Honor, I'm happy for her to have a
19 reply, but I'd like to finish our argument.

20 THE COURT: Okay. Well, I can tell you that y'all have
21 fully briefed it, and it really is up to me how much
22 argument I allow you to have. And between yesterday, five
23 hours, and now today, another three hours, I've given y'all
24 a total of eight hours. So, I'm, I'm pretty comfortable
25 that I can give y'all sufficient -- and it's been well

1 briefed. I mean clearly.

2 So, let's go ahead and just let Mr. Medlin finish, and
3 then, Alice, if I decide I need more or I want you to reply,
4 I guess we'll hear more later.

5 So, go ahead, Mr. Medlin. Just finish up.

6 MS. PAYLOR: Can I just say one thing --

7 THE COURT: Yeah.

8 MS. PAYLOR: -- before he goes forward?

9 Your Honor, he had four hours yesterday and now he's
10 gonna have---

11 THE COURT: I know.

12 MS. PAYLOR: ---two hours today. I, I broke my time up
13 so that I would be able to respond to things that he said,
14 and I do want to respond to them.

15 THE COURT: And that's fine. You, you can. Again,
16 it's -- whether or not you can get a hearing is up to me. I
17 could of decided this on briefs. So --.

18 MS. PAYLOR: Well, I agree with you, but I think it's
19 not fair if I don't get equal time that he gets.

20 THE COURT: Okay. Go ahead, Mr. Medlin. Finish up.

21 MR. MEDLIN: Your Honor, my time yesterday was mostly
22 taken up by her by interrupting. So, this is the first real
23 opportunity I've had a chance, without interruption, to make
24 a cogent presentation.

25 So, that covers the undue influence, Your Honor. That

1 covers capacity.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Now, mistake, Your Honor, would go a lot
4 towards the same facts, and that's what I told Your Honor
5 yesterday. If I can get through the facts that talk about
6 capacity and the facts that talk about undue influence, then
7 I think this could be significantly truncated, and I'll try
8 to be as brief as I can, Your Honor, and, of course, you
9 have the absolute right to shut me down any time you want.

10 But with respect to mistake, he's mistaken because of
11 his lack of capacity and the undue influence about what's
12 going into his documents and what he's doing. And one of
13 the classic mistakes that we see that if he had taken care
14 of it originally---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---we wouldn't be in this case was, in
17 May, he attempted to put this voting stock into his
18 Irrevocable Trust, and then, a few days later, that
19 certificate gets canceled---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---and it goes into his Revocable Trust
22 where Merrill is cotrustee.

23 Now, Your Honor, that Irrevocable Trust divided the
24 stock equally --

25 THE COURT: Right.

1 MR. MEDLIN: -- and it couldn't be changed. And
2 despite what---

3 MS. PAYLOR: Your Honor, there was no Irrevocable
4 Trust. You know, this is where I'm not gonna get to
5 respond. He hasn't put an Irrevocable Trust into evidence.
6 There wasn't one.

7 MR. MEDLIN: The Irrevocable Trust, Your Honor, is in
8 evidence. The only question is, and this is the issue of
9 mistake, is did he use the correct date. There was an
10 Irrevocable Trust in December and Defendant knows that, and,
11 in fact, by -- that Irrevocable Trust got amended in a
12 Probate Court action where Mrs. Light's, excuse me, Mrs.
13 Barringer's life interest was voluntarily given up, and
14 everybody consented to that. And the question is whether he
15 put down the date of December 22nd, and we're not aware of
16 a revocable -- an irrevocable trust dated December 27th,
17 1998, or whether he meant to put it in his Irrevocable Trust
18 of December the 4th, and that's a question of his intent.

19 That technicality wouldn't make a difference if he
20 intended to put it in the revocable -- Irrevocable Trust
21 that did, in fact, exist.

22 So, that's a question of mistake.

23 Did he mistakenly take it back out or was that part of
24 an undue influence?

25 That too is an important factor, Your Honor, in our

1 discussion of all this.

2 So, not only---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---would his documents resulting from lack
5 of capacity or undue influence be the result of mistake, but
6 not successfully putting it into the Irrevocable Trust that
7 he, that he intended to, and then somehow magically wanting
8 to take it back out, which, by the way, unless that Trust
9 doesn't exist, I don't think you can undo that. It's an
10 Irrevocable Trust. Then we wouldn't even be here today.

11 The idea that Mr. Swain and Mr. Jolley told him, in
12 February, to transfer the property to this Revocable Trust,
13 he's just getting around to it in May?

14 So, again, we think all that goes to mistake, Your
15 Honor, and that applies to all the transfers that we're
16 talking about.

17 The tenth cause of action that deals with the recall of
18 the transfer of personal property, including the stock, is,
19 is based on the lack of capacity, undue influence, and the
20 mistake arguments.

21 Now, conversion is, as we noted yesterday, the taking
22 of someone else's property.

23 Well, if Mr. Barringer's post 2011 estate planning
24 documents are invalid---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: ---Hampton has an equitable interest in
2 that Trust. When Mr. Barringer dies, it goes from
3 contingent to vested, and obviously the Court -- the law
4 allows, no South Carolina case law on point I, I admit, Your
5 Honor---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: ---but the exact same language of the
8 statute, the Uniform Probate Code, says that contingent
9 beneficiary, once vested, can sue. And so she's had her
10 property taken by Mrs. Light. And so she does have standing
11 for conversion, and it fits the classic definition of
12 conversion.

13 Quantum meruit, Your Honor, is the thirteenth cause of
14 action --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: -- and it goes to unjust enrichment. It's
17 a different remedy from a constructive trust with it based
18 on the same concepts. So, it's not the same cause of
19 action. It's a different cause of action, and Mrs. Light
20 has ended up with property she's not entitled to.

21 So (indiscernible).

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: Again, she has standing regardless of
24 whether she can sue a trustee.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: The trustee has property that belongs to
2 her. It happens to be in Merrill Light's hands
3 individually, but she has it.

4 Constructive trust is our fourteenth cause of action,
5 and, with a constructive trust, Your Honor, again, as we
6 noted yesterday, the remedy is simply to take property away
7 from somebody who took it from Hampton. And if Mr.
8 Barringer's documents are invalid, and that irrevocable
9 transfer is invalid, then Merrill Light shouldn't have it.

10 The same with a resulting trust. When somebody
11 mistakenly gives property to someone and doesn't intend for
12 them to have it, equity imposes a resulting trust, deposits
13 it back, and it goes to the rightful owner.

14 Now, with respect to fraud, Your Honor, and I'm sorry I
15 skipped over fraud. I'm trying to follow along with the
16 causes of action.

17 Again, many of the factors that we talked about, that
18 obviously I won't repeat, for undue influence and lack of
19 capacity go to fraud. You don't have to show the nine
20 elements of fraud as we point out in our brief with cases
21 cited when we're talking about fraud in the inducement, and
22 you will, which is clearly what we're arguing about, that
23 the Defendants defrauded Mr. Barringer, and also Hampton
24 Luzak, by taking that voting stock from Mr. Barringer, and
25 eventually from Hampton Luzak.

1 And, remember, not only does Hampton have standing to
2 sue for herself because now she would be a vested
3 beneficiary, and can chase after what somebody did to the
4 Trust even while it was revocable, even if the property was
5 suppose to go into the Revocable Trust to begin with, she
6 also has standing under the Estate of Brown despite the
7 existence of a personal representative, Mrs. Barringer,
8 who's not going to do that, has the standing, under Estate
9 of Brown, to assert claims her own father would have because
10 the property was taken from him while he was alive, but
11 eventually from---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---Hampton because she was gonna end up
14 with it.

15 Again, Your Honor, I'll point out that a fiduciary has
16 a duty to disclose, and, again, Mrs. Light is a fiduciary to
17 both Mr. Barringer and to Mrs. Hampton Luzak.

18 Here's the misrepresentation. She gives him the
19 papers---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---that confuse him and angered him, and
22 she eggs that on, and she doesn't try to stop it---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---and she has a duty to stop it if she's
25 a trustee or if she's a fiduciary in any other way, which

1 she is as a director of the company, the duties owed to Mr.
2 Barringer and to Hampton Luzak.

3 So, she should of corrected anything that resulted that
4 was a mistake and she didn't. That's an intentional
5 misrepresentation and an intentional, I should say,
6 omission, which is treated like an intentional
7 misrepresentation under the law. And she hid all this over
8 the years from Hampton Luzak, and she hid a lot of things
9 from Paul Barringer, again, with duties to disclose as a
10 fiduciary to both of them.

11 She didn't try to correct Paul Barringer who said in
12 the April board meeting Kevin threw a book at her, which, of
13 course, no rational person would believe happened. Her
14 silence eggs it on. She knows Mr. Barringer is claiming
15 that he threw a book. She's talking to Kevin like they're
16 best buddies before she sticks a knife in his back, and, at
17 the same time, a knife in Hampton's back. Kevin's still
18 trying to help her and he always has, and rather than saying
19 daddy, that didn't happen, she let's him continue to believe
20 that that is a horrible thing that Kevin did to her.

21 All right. Your Honor, back in line again, sorry, the
22 sixteenth cause of action is breach of fiduciary duty, and,
23 again, I want to just take this into context.

24 Mrs. Barringer, Mrs. Light I should say, owes a
25 fiduciary duty to Mr. Barringer in several ways, and despite

1 what Defendant said earlier today, you can't agree to be
2 trustee and said I don't owe a duty. When you're a trustee,
3 you owe a fiduciary duty. That's simply the way it works.

4 I don't care that the document, for a few years, gives
5 the power to either cotrustee to act on behalf of the Trust.
6 That's simply a question of who can act, but you have a
7 panel duty. And, in fact, South Carolina Probate Code
8 follows the general rule on responsibilities between
9 cotrustees. 62-7-703 deals with that.

10 So, not only does Mrs. Barringer -- sorry, Your Honor.
11 I'm getting tired. So I keep---

12 THE COURT: It's okay.

13 MR. MEDLIN: ---bringing Mrs. Barringer in, and I'm
14 trying to rush, not only does Mrs. Light owe a duty to Paul,
15 even Defendant admits that because of 62-7-603, as the
16 beneficiary, she owes a duty to the cotrustee.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: So, the notion that there's no duty as
19 owed as trustee is just fallacious, and, again, she owes a
20 duty as director. She owes a duty as a partner. She owes a
21 duty as his agent---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: ---under power of attorney, which she does
24 use.

25 And, again, Your Honor, and I want to just cite our

1 discussion on Page 31 of our memo, the law is clear that she
2 also owes a duty to Hampton Luzak.

3 Now, owes a duty, and she admitted this in her
4 deposition, as a director owes to a shareholder. And, by
5 the way, the idea of -- I'm sorry, Your Honor. That
6 reminded me of one other thing.

7 THE COURT: Go ahead.

8 MR. MEDLIN: In Florida, we have an admission now
9 finally, again, they fought long and hard about this---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---that in the Virginia lawsuit, which
12 CFRC, under the control of the Lights, brought against
13 Hampton---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: ---to determine who owned the stock,
16 simply because she has exercised her shareholder's rights in
17 asking what's going on, I want the minutes. I want
18 (indiscernible).

19 Now that I think things are going on behind my back,
20 which I'm entitled to know about as a shareholder, I want to
21 know who owns the stock in the company. Three requests from
22 the company to simply give her what she was clearly entitled
23 to under the law, which was the ownership records. They
24 don't -- still don't want her to know about this transfer.
25 Again, the secrecy is important cause while (indiscernible)

1 don't lie, Hampton's gonna be better able to do something
2 about that.

3 So, there is this recalcitrance on the part -- part of
4 the company daddy had, and what's happening at the same time
5 is Merrill Light is telling Mrs. Barringer that Hampton is
6 suing the company, Paul is sending a nasty letter, whether
7 he drafted or not we're not quite sure, but sending a nasty
8 letter to Hampton saying I can't believe you're suing the
9 company, this is awful, this is my legacy, and, again,
10 whether he had capacity to that or not is real problematic,
11 and we don't think actually he did, but, in any event, to
12 the extent that that angered him as well -- and, again,
13 let's notice the difference in time.

14 In 2012, Hampton sends a letter to the board saying
15 daddy, we need to take care of daddy. In 2015 she's asking
16 the company to give me the company records that I'm entitled
17 to, and Mrs. Barringer hears from Merrill that Hampton's
18 suing the company. She's not suing the company. She's just
19 asking for information she's entitled to.

20 Mr. Barringer supposedly writes a letter saying I hate
21 you. It's not quite that cruel, but it's pretty cruel, that
22 says that he thinks she's suing the company.

23 Again, Merrill Light has lit that fuse. She has told
24 something that's not true to Mr. and Mrs. Barringer, and
25 they're acting on it, if he's competent to act on it, but

1 certainly he may be mad because he might understand
2 somebody's trying to tear down his legacy. Although, you
3 know, within a few weeks of this he's been deposed as
4 chairman of the board and the board member by the Lights.

5 So, we have this going on in 2015 where, once again, we
6 see how susceptible Mr. Barringer is and how dishonest
7 Merrill Light is. And so we get into this lawsuit, and it's
8 expensive, just like I suspect this one is, and you're
9 right, Your Honor, we're dealing with wealthy people.

10 So, it turns out Merrill Light's individual fees in the
11 lawsuit are paid by the company.

12 Now, when we got into this action and Hampton got sued,
13 as I know Your Honor recalls, she counterclaimed, and one of
14 the counterclaims was well, you don't own the stock now that
15 I found out about it cause we've got an agreement that the
16 company gets to buy it back first.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: And so now Merrill is an individual
19 defendant---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---to Hampton's counterclaim.

22 This is not a claim against the company. This is not
23 something the company should pay for, and yet we now know
24 that the company paid her legal fees.

25 They still resist giving us a whole bunch of

1 information.

2 MS. PAYLOR: She paid them back. They paid them and
3 then she---

4 MR. MEDLIN: I'll make that---

5 MS. PAYLOR: ---paid (indiscernible).

6 MR. MEDLIN: ---for you right now. You don't need to
7 make it for me. I'll make it.

8 And that, again, it shows Defendant doesn't understand
9 the point. The comptroller says she paid them back after
10 Hampton got involved with the conservatorship, and it was
11 clear that there was gonna be a lawsuit after Mr.
12 Barringer's death. That's when they got paid back.

13 But that's not the point. The point is that it, it
14 shows the motive and opportunity and the personal pocketbook
15 that they think the company is because, when they take an
16 advance for somebody's personal fees, which we think may be
17 close to a couple million bucks, they're taking it from
18 other people.

19 Hampton Luzak is a shareholder. The Conger family are
20 shareholders, and they won't show us the records --

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: -- even though their shareholders.

23 Now, again, that's not a derivative action. It shows
24 motive and propensity in the undue influence case.

25 Now, maybe it's also a derivative action, but that's

1 not what we're raising this for in this case, and it doesn't
2 matter that she's paid it back. The fact that she took it
3 to begin with, whether she would of paid it back if Hampton
4 had started nosing around, I don't know. But even the fact
5 that she borrowed it without any kind of documentation,
6 without any kind of notice to the board or the shareholders
7 shows just exactly how they think other people's property is
8 theirs, including Mr. Barringer's.

9 So, Your Honor, again, I'm sorry. I got off track, but
10 I, again, being in a hurry, forgot to mention that point.

11 So, back to the self-dealing. It's clear that, once
12 Mr. Barringer dies, Hampton vests as a beneficiary, and she
13 has the right to sue a trustee for improper actions during
14 Mr. Barringer's life. Otherwise, as I've noted a couple of
15 times now, Your Honor, and it's really in context here, the
16 trustee could get away with anything, could steal from the
17 trust reducing or eliminating what the now vested
18 beneficiary will receive on the settlor's death.

19 The law doesn't say oh, because it happened while the
20 settlor was alive you don't have a remedy, and it's
21 particularly problematic, in fact, there's some bracketed
22 language in the UPC that goes on, we don't have that
23 question in South Carolina.

24 What happens if somebody is incompetent as a settlor
25 and Mr. Barringer was?

1 He was incompetent and subject to undue influence. So,
2 it makes it even easier for the trustee to do something that
3 Hampton Luzak, the now vested beneficiaries, property, and
4 that's where 62-7-802 comes in. That's the self-dealing
5 statute.

6 You don't need a statute to know that the law doesn't
7 allow self-dealing with the trustee. If the trustee
8 receives trust property, even if it's purchased, that's
9 self-dealing. But if it just comes out of the Trust,
10 without any kind of consideration, that is blatant
11 self-dealing. But any kind of self-dealing is conclusively
12 presumed to be self-dealing, and the burden is on the
13 trustee to show that one of the recognized exceptions to the
14 self-dealing statute applies, and that would be the consent
15 to the beneficiaries, and we don't have Hampton's consent
16 here.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: It would be a ratification by a Court. We
19 don't have that here. And it would be the approval of the
20 settlor, and we can't have that here because he's subject to
21 lack of capacity and undue influence.

22 So, we've got the self-dealing statute, which, again,
23 puts the burden to show why she should be allowed to keep
24 that property.

25 And, again, one more point on that issue. She is the

1 sole trustee, according to the 2015 Trust. Again, all --
2 none of which, since 2011, we think are valid, but if they
3 want to argue it's valid, then they've got a problem with
4 self-dealing.

5 All right, Your Honor. Intentional interference with
6 an inheritance.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: And I'm just gonna talk briefly about the
9 elements. Defendant says it's automatic summary judgment
10 because South Carolina doesn't recognize that. But, Your
11 Honor, under that theory---

12 THE COURT: Mr. Medlin, I, I think you covered this
13 yesterday. I, I heard it. I, I know you said you talk
14 about not wanting to know what the Supreme Court argue is --
15 our Supreme Court does these days, but I tend to agree with
16 you. I actually think they would adopt it.

17 So---

18 MR. MEDLIN: Can I just make one quick point about that
19 argument?

20 THE COURT: Sure.

21 MR. MEDLIN: If that were the case, if a nonissue was
22 always thrown out on summary judgment---

23 THE COURT: I know.

24 MR. MEDLIN: ---we'd never get a resolution of that
25 issue---

1 THE COURT: I understand that.

2 MR. MEDLIN: ---of that case.

3 Okay.

4 THE COURT: Okay.

5 MR. MEDLIN: So, Your Honor, and, and I won't get back
6 into the law of the existence of an expectancy, et cetera,
7 et cetera. I'll just talk about what we have and we have
8 the evidence in the Luzak's affidavits that get us to where
9 we need to go, and I'm gonna start with Kevin, Paragraph 3,
10 that there was an expectancy.

11 Kevin says, and the documents also prove, that there
12 was suppose to be equal treatments between the daughters.

13 Paragraph 5 -- this is Exhibit B, Your Honor.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: He entered into a stock purchase agreement
16 with the kids to make sure that the stock remained equal.

17 Paragraph 5. Family meetings. He's saying the same
18 thing. We've gone into that that -- those family meetings.

19 Paragraphs 7 through 11. He creates trusts and does
20 others estate planning that are spelled out in our Exhibit A
21 with 40 exhibits, and then other exhibits, Your Honor, ad
22 nauseam, to show that. So, we won't get into that cause I
23 know you don't want to hear that again.

24 Paragraph -- I'm gonna be showing the facts that we
25 have to get past summary judgment.

1 Again, at Paragraph 57, Kevin recites all the ways that
2 we get there, and, in 59, he talks about the understanding
3 among the family as well.

4 In Exhibit A, Attachment 5, you have that 1998
5 Irrevocable Trust amended with the consent of all the family
6 at the Probate Court, and then you have similar assertions
7 by Hampton in her affidavit, Exhibit C, Paragraphs 1 through
8 3, Paragraphs 5 through 9, 51 and 52.

9 So, otherwise the factors that go into particularly
10 undue influence that we discussed would apply to intentional
11 interference.

12 The influence, also the fraud that was practiced on Mr.
13 Barringer, interfered with Hampton's expectancy, which is
14 clearly spelled out in the documents.

15 So, under that cause of action, if this Court
16 recognized it, and this Appellate Courts agreed, then we
17 have a separate claim for that directly against the Lights,
18 and we're entitled to punitive damages, and I want to talk
19 more about punitive damages in just a minute too, Your
20 Honor.

21 THE COURT: Okay. Mr. Medlin, I got to tell y'all, I,
22 I got to go. So, this is what I plan on doing. I think
23 that was the last cause of action we needed to address.

24 So, again, I told you I believe that there is some
25 evidence of it. Whether or not it's proven, and there is

1 punitive damages is something that is to be determined at
2 trial.

3 But is there any other cause of action you did not
4 address?

5 MR. MEDLIN: Your Honor, I didn't get into the
6 attorney's fees and costs issue.

7 THE COURT: I don't think you need to address that---

8 MR. MEDLIN: And, again---

9 THE COURT: ---at this point. I mean that's not---

10 MR. MEDLIN: All right.

11 THE COURT: ---where we're at. So, that, that doesn't
12 matter right now.

13 what else?

14 MR. MEDLIN: And then, and then I didn't get into the
15 conspiracy issue, which---

16 THE COURT: Okay. So, this is what we're gonna do.

17 MR. MEDLIN: Your Honor, can we just---

18 THE COURT: This is what---

19 MR. MEDLIN: ---rest on our brief with that---

20 THE COURT: Sure.

21 MR. MEDLIN: ---Your Honor?

22 THE COURT: That'd be great.

23 Okay. Yes, that would be good.

24 Alice, is an hour enough tomorrow morning to respond?

25 MS. PAYLOR: Yes, ma'am.

1 THE COURT: Okay. I mean -- and tell me if you want
2 longer. If you want an hour and a half, you can have it.
3 My thought is---

4 MS. PAYLOR: An hour is plenty. An hour is plenty.

5 THE COURT: Okay. So, 9:30 tomorrow morning by WebEx.

6 MS. PAYLOR: Okay.

7 THE COURT: 9:30 and I'll just let Alice finish up.
8 Okay.

9 MR. MEDLIN: Now, Your Honor---

10 MS. PAYLOR: Thank you.

11 MR. MEDLIN: -- I would like you to consider an
12 opportunity for me to deal with new issues that Alice
13 raises---

14 MS. PAYLOR: Can I have a---

15 MR. MEDLIN: ---you're gonna allow us to do.

16 MS. PAYLOR: ---respond (sic)?

17 THE COURT: We can go back and forth forever. No,
18 she's just gonna respond. That's enough. She's -- we're,
19 we're good.

20 MR. MEDLIN: (Indiscernible) responds, that's fine.

21 THE COURT: Okay.

22 MR. MEDLIN: But, again, if she brings up something
23 new, I'd like to at least ask the Court for the opportunity
24 to do that.

25 THE COURT: Absolutely. If there's anything new, I'd

1 be surprised.

2 So, anyway, so 9:30 tomorrow morning, WebEx.

3 MS. PAYLOR: Thank you.

4 THE COURT: Okay. 9:30.

5 MR. MACLOSKIE: Your Honor please?

6 MR. MEDLIN: Your Honor, may---

7 THE COURT: Yeah.

8 MR. MEDLIN: May I just -- I know you got to get out of
9 here, and I'm sort of talking against myself here. I, I
10 never try to use class as a reason, but tomorrow is the last
11 day of class---

12 THE COURT: Okay.

13 MR. MEDLIN: ---and review and it starts at noon. So,
14 even if you let me respond to something new that Alice
15 raises, I promise you---

16 THE COURT: We'll be done by 11:00?

17 MR. MEDLIN: ---it will be over -- yes, ma'am, unless
18 you make---

19 THE COURT: Okay.

20 MR. MEDLIN: ---make me stay, but I would ask the Court
21 not---

22 THE COURT: Of course not.

23 MR. MEDLIN: I'll manage that class tomorrow.

24 THE COURT: Okay. All right.

25 MS. PAYLOR: It's my, it's my motion. I get to do the

1 reply, Your Honor.

2 THE COURT: Exactly. So -- okay. That, that sounds
3 good. We'll be done then.

4 So, tomorrow morning, 9:30.

5 Alice, take an hour. You're welcome to, and if you can
6 do a reply to anything new, then we'll just go from there.

7 Okay?

8 MR. MACLOSKIE: Your Honor?

9 THE COURT: Okay.

10 MR. MACLOSKIE: If Your Honor please?

11 THE COURT: Yes.

12 MR. MACLOSKIE: Would -- may I be heard for just a
13 moment?

14 I have surgery scheduled on my right-hand at seven
15 o'clock tomorrow morning.

16 THE COURT: Okay.

17 MR. MACLOSKIE: I wish you would excuse me---

18 THE COURT: Of course.

19 MR. MACLOSKIE: ---tomorrow.

20 THE COURT: You be well. You be well.

21 MR. MACLOSKIE: I will.

22 THE COURT: I hope someone good is doing it.

23 MR. MACLOSKIE: It will be fine.

24 THE COURT: Good.

25 MR. MACLOSKIE: Thank you.

1 THE COURT: Okay. Anything else?
2 we good?
3 MR. HOGAN: Thank you, Judge.
4 THE COURT: All right. Thank y'all. I appreciate it.
5 MR. MEDLIN: Thank you for your patience.
6 THE COURT: Thank you.
7 MR. MEDLIN: And, Alice, I appreciate your patience.
8 MS. PAYLOR: Thank you. I don't have much.

9
10 (WHEREUPON, Court was in recess in this matter.)
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Thursday, November 19th, 2020

THE COURT: All right. Well good morning again. I think we're now all on the record.

So, Groundhog Day. We're back and I think we just need to finish up.

Mr. Medlin, I think you had a few things you needed to just wrap up.

Am I still correct on that?

It's almost like I have no memory.

MR. MEDLIN: No, Your Honor. If you, if -- you allowed us to rest on our brief on the civil conspiracy issue---

THE COURT: Yeah.

MR. MEDLIN: ---I, I think we have taken care of that.

THE COURT: Okay.

MR. MEDLIN: I, I do want to clarify one---

THE COURT: Uh-huh. (Affirmative).

MR. MEDLIN: ---comment from yesterday.

THE COURT: Okay.

MR. MEDLIN: I, I think I mentioned, whichever Groundhog Day it was, maybe yesterday, that, even though it didn't matter whether Merrill Light ever acted as trustee because you can't turn the trustee fiduciary faucet on or off once you're a trustee or a trustee --

THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: -- she, in fact, did vote the stock for
2 Mr. Barringer, and that wasn't the August 3rd, 2012,
3 shareholder meeting. Again, when I went back and looked at
4 our brief yesterday, I'm not sure we cited that in the
5 brief.

6 So, just for your information, it's at Exhibit EE---

7 THE COURT: Okay.

8 MR. MEDLIN: ---in our materials.

9 THE COURT: Thank you.

10 MR. MEDLIN: And, Your Honor, I think, with that, we
11 would, again, like the opportunity to, to respond to
12 whatever Alice raises that's new.

13 THE COURT: Okay.

14 MR. MEDLIN: But, otherwise, I think we're done.

15 THE COURT: Okay.

16 All right, Alice.

17 MS. PAYLOR: Thank you, Your Honor.

18 would you allow Bijan to share his screen?

19 He's gonna put up some documents---

20 THE COURT: Sure.

21 MS. PAYLOR: ---for me so that you can see those.

22 THE COURT: Sure.

23 MS. PAYLOR: Thank you.

24 And I want to correct an error that I made yesterday.
25 I misspoke.

1 You asked when Travis Bryant became CEO---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---and I believe I said August of 2016.

4 He became CEO on August 3rd, 2012.

5 THE COURT: Okay.

6 MS. PAYLOR: So---

7 THE COURT: Okay.

8 MS. PAYLOR: ---I just wanted to make sure the record
9 is clear on that. He, he came in right after Mr. Luzak was
10 gone, Your Honor.

11 THE COURT: Okay.

12 MS. PAYLOR: Your Honor, what I'd like to do is to look
13 at the -- each, each of the causes of action, and see what
14 facts were there---

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: ---to support incapacity---

17 THE COURT: Okay.

18 MS. PAYLOR: ---first.

19 I don't believe that the Plaintiff has presented any
20 evidence that Mr. Barringer was incapacitated on
21 February 28th, 2012, which is the first will and Trust
22 that they are hoping to invalidate.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: As we've gone over numerous times, there
25 are three elements of testamentary capacity.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: It's a very low bar.

3 THE COURT: Yeah.

4 MS. PAYLOR: The Defendant presented evidence that he
5 did meet those requirements at the time of each testamentary
6 act. Plaintiff failed to present any facts that he did not,
7 and the cases are clear that the proponent of the will has
8 to show, at the time of the testamentary act, that the, the
9 decedent knew what he owned, his loved ones, and to whom he
10 wanted to leave his assets.

11 There's no requirement that the decedent have a
12 reasonable basis for what he wants.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: Mr. Medlin never mentioned, even one time,
15 that Paul Barringer did not know his heirs --

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: -- did not know what property he owned, or
18 that he didn't know to whom he wanted to give his assets.
19 He didn't give you one day when they have any evidence of
20 that, Your Honor, and that is what the Courts require.

21 I'm not requiring it. That is what the Courts require.

22 THE COURT: Uh-huh. (Affirmative).

23 Can I ask a question just really quick, and I, I didn't
24 want to interrupt you, but obviously I still am having a
25 concern about no expert being able to tell me that he was

1 incapacitated, and I understand we have these doctor's notes
2 that Mr. Medlin has pulled up, you know, obviously going
3 through saying, you know, he's, you know, got dementia and
4 he's got these issues, and he's having difficulty finding
5 his words.

6 Do you think, Alice -- and I know you, you don't
7 consider that evidence, but I, I still am having a hard time
8 with how that's gonna be presented to a jury, and for them
9 to make that determination, and---

10 MS. PAYLOR: Well, Your Honor---

11 THE COURT: You know, I guess I'm just tied in how do
12 you -- how can it, as lay people, we decide?

13 How, how can we decide whether or not he had capacity
14 at the time without an opinion---

15 MS. PAYLOR: It's on the basis of all the witnesses---

16 THE COURT: ---without having---

17 MS. PAYLOR: ---who were with him.

18 THE COURT: Okay.

19 MS. PAYLOR: And that's what the cases say. It's not a
20 medical incapacity, Your Honor.

21 THE COURT: I understand.

22 MS. PAYLOR: It's a testamentary incapacity.

23 THE COURT: I understand that, but I also do think that
24 it's something that medical testimony would help with. And
25 so -- and I'm going to presume, and, of course, we, we don't

1 know, and Paul Long's deposition hasn't been taken, but I'm
2 presuming all your doctors are continuing and will continue
3 to say that they believe that he had legal capacity, you
4 know, and he understood those three things. I mean I, I --
5 I'm guessing.

6 MS. PAYLOR: I'm sure -- yes, I mean---

7 THE COURT: Right.

8 MS. PAYLOR: ---Mr., Mr -- Doctor Long has already
9 testified to it.

10 THE COURT: Okay. Okay.

11 MS. PAYLOR: And Doctor Baughman gave an, in his
12 medical record, said that he had capacity to handle his
13 affairs in March of 2013.

14 THE COURT: Okay.

15 MS. PAYLOR: So, based on those two, I don't know how
16 you can set aside the February 28, '12, will or the July 20,
17 2012, Trust amendment.

18 THE COURT: Okay.

19 MS. PAYLOR: He---

20 MR. TWOMBLEY: Your Honor, may I---

21 MS. PAYLOR: He had capacity for those two --

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: -- because here we've got -- and, and all
24 the cases say that Alzheimer's is a progressive---

25 THE COURT: Right.

1 MS. PAYLOR: ---discipline, and I want to read you from
2 Gatti versus Douglas.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: And Bijan's gonna put up -- this is the
5 case that Mr. Medlin was relying on---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---for that chronic capacity --
8 incapacity.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: But -- and we're gonna go to Footnote
11 12---

12 THE COURT: Looking at it.

13 MS. PAYLOR: ---that's up on the screen.

14 THE COURT: Yeah.

15 MS. PAYLOR: And it says, this is the Court, we, in no
16 way, suggest that all people suffering some degree of
17 dementia from Alzheimer's disease or otherwise invariably
18 lack contractual capacity.

19 Now, contractual capacity is more than---

20 THE COURT: Right.

21 MS. PAYLOR: ---testamentary capacity.

22 THE COURT: I understand that, and, and, and, and I get
23 that. Again, it's why I have such a hard time with how in
24 the world a jury is suppose to figure out whether or not he
25 knew those three things when -- anyway.

1 MR. TWOMBLEY: Your Honor, may I make a comment about
2 that?

3 THE COURT: Sure. Sure.

4 MR. TWOMBLEY: Your Honor, typically, in these types of
5 cases---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. TWOMBLEY: ---when you're proving that the decedent
8 didn't know his heirs, you have witnesses come in---

9 THE COURT: Okay.

10 MR. TWOMBLEY: ---that say I act -- you know, he didn't
11 recognize me.

12 THE COURT: Okay.

13 MR. TWOMBLEY: I asked him who his children were, and
14 he didn't know who his children were. You know, he didn't
15 recognize his brother.

16 THE COURT: Okay.

17 MR. TWOMBLEY: And that usually comes in the form of
18 evidence -- you know, it can even be from the barber or the
19 guy who cuts the grass or an accountant---

20 THE COURT: Okay.

21 MR. TWOMBLEY: ---or someone of that nature, and the
22 points I think Alice is trying to make is---

23 THE COURT: We don't have that.

24 MR. TWOMBLEY: ---really I listened very carefully to
25 Mr. Medlin. He never -- no one has ever said, at any point

1 in time, Mr. Barringer didn't know who his children were or
2 who his---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. TWOMBLEY: ---wife was. No one has ever said he
5 didn't know what his assets were.

6 THE COURT: Right.

7 MR. TWOMBLEY: And those are the, as to capacity---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. TWOMBLEY: ---legal capacity, the lowest standard
10 under the law.

11 THE COURT: Right.

12 MR. TWOMBLEY: And he just -- there's no affidavit.
13 There's no deposition. There's no anything that supports
14 those three elements.

15 THE COURT: Okay.

16 MR. TWOMBLEY: But that's how you would present it to
17 the jury---

18 THE COURT: Okay.

19 MR. TWOMBLEY: ---and that's what they can't do.

20 THE COURT: Okay. Okay. Thank you, Ashley.

21 MS. PAYLOR: Well, in, in going on, I'm -- Bijan's
22 gonna put up a handwritten letter from Paul Barringer to
23 Hampton Luzak---

24 THE COURT: Yeah.

25 MS. PAYLOR: ---dated December 15, 2012.

1 THE COURT: I read it yesterday and, yeah, I -- it was
2 attached I think to your reply, one of your reply briefs,
3 and I actually -- I had it in front of me yesterday and I
4 read the whole thing, and it's, quite frankly, well written
5 as to be expected, I guess, of a man who was that
6 successful, and I'm sure defense counsel's gonna, or I'm
7 sorry, Plaintiff's counsel is gonna argue that, you know,
8 someone else told him what to write.

9 But okay.

10 MS. PAYLOR: We have, we have evidence---

11 THE COURT: Okay.

12 MS. PAYLOR: ---that he wrote it, and he has a peculiar
13 way of expressing himself and---

14 THE COURT: Yeah.

15 MS. PAYLOR: ---he's doing it in here. I mean you can
16 see.

17 THE COURT: Yeah.

18 MS. PAYLOR: And you had distanced yourself from the
19 Barringer family.

20 THE COURT: Yeah.

21 MS. PAYLOR: We all suffer.

22 THE COURT: Right.

23 MS. PAYLOR: He, you know, he, he was a southern UVA
24 guy and---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: ---it's -- they were kin to Wade
2 Hampton---

3 THE COURT: Yeah.

4 MS. PAYLOR: ---and, you know, they had all of this
5 sufficient. He was very proud of his heritage---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---and you can see it in this letter.

8 THE COURT: Oh, yeah.

9 MS. PAYLOR: This is not written by an insane person.

10 THE COURT: Yeah.

11 MS. PAYLOR: He knew what he was doing.

12 THE COURT: Well, at the end he says we don't want to
13 lose you.

14 MS. PAYLOR: And I -- and she never responded, Your
15 Honor. Never responded. This is the letter -- this is the
16 end of 2012.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: So, we have three acts before this letter
19 was written. We have the will, February of 2012.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: We have the personal -- we have the second
22 amendment to the Trust in July of 2012, and we have the
23 transfer of the stock on September 11th of 2012.

24 THE COURT: Okay.

25 MS. PAYLOR: He had capacity, Your Honor. There is no

1 evidence that he did not, and this is -- you know, you talk
2 about circumstantial evidence. That's what you've got.
3 You're never gonna have, you might have, somebody who's at
4 his doctor's office while he's signing, and they, they go
5 through that.

6 THE COURT: Yeah.

7 MS. PAYLOR: But what lawyers do is they ask questions
8 to ascertain that they are there, and they don't let you
9 sign the will unless you show that you know those three
10 basic tenants.

11 THE COURT: which, which is why I asked yesterday what
12 John Jolley's duty was when he, you know, is changing a will
13 and doing things, and that's what I wanted to know. And I
14 assume, you know, with the, with the transfers as well.

15 MS. PAYLOR: well, that's it. That is his duty to make
16 sure that he -- that he has the being -- capacity to do
17 it---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---and that's what he wants to do, and
20 he's -- that's, that's what he wants to do.

21 THE COURT: Okay.

22 MS. PAYLOR: And he knows what he's doing.

23 THE COURT: Okay.

24 MS. PAYLOR: I mean the cases all say, Your Honor, that
25 a person adjudicated insane -- even a person adjudicated

1 insane and housed in an institution was found to have
2 testamentary capacity.

3 THE COURT: I understand that.

4 MS. PAYLOR: It's -- this, this -- I mean this is for
5 the Court to make a decision. This should not go to the
6 jury --

7 THE COURT: Okay.

8 MS. PAYLOR: -- because they are not gonna understand
9 the law the way you -- the judge does, and it's up to you to
10 be able to take -- there's no question of fact, and take
11 that away from the jury, and that's what we're asking you to
12 do.

13 Let's get rid of some of these causes of action where
14 there is no basis in fact. It's gonna be a lot easier for
15 you. It's gonna be a lot easier for the jury. And it's
16 gonna be a lot easier for us to try. You're gonna cut down
17 many witnesses. But there is no fact that supports him
18 being incapacitated at anytime in 2012. All of the facts
19 are the opposite.

20 THE COURT: Okay.

21 MS. PAYLOR: He was taking himself to the doctor, Your
22 Honor, because he was concerned about his cognitive issues.

23 THE COURT: Okay.

24 MS. PAYLOR: But just being aware of them tells you
25 that he had capacity right there cause he was going to the

1 doctor and doing those things.

2 The Probate Code provides that the contestant, the
3 Plaintiff, always has the ultimate burden of proof.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: She has not provided any facts with regard
6 to his lack of testamentary capacity. All she's given is
7 some general medical records. That is it. There are no
8 facts that support chronic testamentary capacity, which
9 is -- Professor Medlin is trying to sell to you.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: That is not true.

12 He may of had some general medical cognitive issues
13 that impaired his capacity, but it was never impaired low
14 enough for him not to have capacity and write a will and to
15 sign a Trust.

16 THE COURT: Okay.

17 MS. PAYLOR: Even if the burden is on Defendant,
18 Merrill Light has met that burden by presenting witnesses to
19 the executions who testify that he had testamentary
20 capacity. Their testimony is uncontradicted and undisputed.
21 There is no genuine issue of material fact as to whether or
22 not he has testamentary capacity on the days that we're
23 talking about --

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: -- especially in 2012 when he was in the

1 early stages of, if he had Alzheimer disease when he died,
2 when he was in the early stages of that.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: I mean we can look back at what Gatti
5 versus -- you know what everybody says about Alzheimer's
6 disease. There's another case, I think it's Byrd versus
7 Byrd, that mentions Alzheimer's disease.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: Bijan, you got that one?
10 well -- maybe it was Weeks. It was In Re Weeks.
11 Have you got that up there?

12 Oh, yeah, it was In Re Weeks.

13 They're talking about this woman who -- she didn't know
14 what her property was. She didn't know a lot of things, but
15 she knew the people to whom she wanted to leave her assets.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: And this is what her doctor said. He
18 said -- he included that Ms. Weeks probably suffered from
19 Alzheimer's disease --

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: -- the same diagnosis that they made of
22 Paul Barringer, and he expressed his opinion, the doctor
23 did, that she had capacity to write a will, to sign a will,
24 to do what she wanted.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: And, in this case, she cut her son out.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: And she said in there that she was only
4 giving him a dollar, and she wanted him to know that she
5 didn't want him to have any, any of her assets, and he
6 brought this case against her. They found she had capacity.

7 This is the woman they had appointed a guardian for
8 her, a guardian for her. She made -- she -- this is where
9 she emphatically made known her wishes that her two
10 daughters receive the bulk of her estate.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: She had had a guardian appointed for her,
13 and conservators over her property, but that does not mean
14 she lacked testamentary capacity.

15 These folks made the same argument that Mr. Medlin
16 made. She had a guardian appointed. She couldn't have
17 capacity to write a will. The Court determined that she
18 did, Your Honor, and they found that she did, and they
19 upheld it, and they said -- and they cited in here a person
20 is not incompetent to make a will because he has been
21 adjudicated to be of unsound mind or insane or has been
22 combined -- confined in an institution for the insane.

23 None of these things happened to Paul Barringer. He
24 was having cognitive issues. He was going to the doctor.

25 Your Honor, and I, and I invite you to---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---tell me have you heard a fact presented
3 by Mr. Medlin that Paul Barringer did not meet these three
4 elements with regard to any of the executions of his wills
5 or Trusts. I didn't hear him give us a single fact as to
6 any of them including the last will in 2015. And I'm
7 telling you, he had capacity to make a will when he did
8 that. Paul Long said he did, his own doctor who saw---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---him on a monthly basis pretty much.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: There is no evidence, Your Honor. This is
13 ripe for summary judgment, and you need to grant it because
14 it's the right thing to do. It's in accordance with the
15 law. The Swiger case was a summary judgment case.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The Russell case was a summary judgment
18 case.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: The, the Court of Appeals, in these types
21 of cases, has indicated to the Circuit Court do your job.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Get rid of these cases so we're not
24 burdened with them when there are no facts to support the
25 allegations. Nobody's gonna bring a case unless they got

1 some basis, they got some dementia, they got something, and
2 if you look at all of the cases, they hardly ever, ever find
3 anyone incapacitated---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---to such an extent that he can not
6 execute a will.

7 And, in our case, we have Paul Barringer, John Wayne,
8 whatever you want to call him, he had capacity to do what he
9 wanted to do. He knew what he wanted to do.

10 If you read that letter to Hampton Luzak, there's no
11 question that he was not happy with her. He was begging her
12 to come back and all she had to do was come back and
13 apologize or makeup or whatever you have to do. But she
14 could not do that.

15 She didn't do it with her brother for 22 years. She
16 still hadn't made up. And she couldn't do it with her
17 father and -- or her sister, and she's the one, Your Honor,
18 she told her sister not to ever communicate with her again
19 or her son.

20 It's not my client restricting visitation. The
21 Plaintiff is, which takes us to undue influence.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: All of the cases cited by the Defendant
24 where the undue influencer was not present at the execution
25 of the testamentary document --

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: -- and the documents were found to be
3 void, void for undue influence, had evidence of threats---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---coercion, restricted visitation, or
6 isolation.

7 Your Honor, the, the Plaintiff is asking you to find
8 that Paul Barringer, who ran his own company, who built his
9 company from nothing, was unduly influenced by his daughter
10 for four years, continuing over four years.

11 There is no case anywhere where a Court finds undue
12 influence over four years and five different executions of
13 testamentary done. There is none. And there is no evidence
14 of it in this case. Plaintiff has not shown a shred of
15 admissible evidence that Mrs. Light did anything other than
16 what her father asked her to do.

17 Mr. Medlin cited Byrd versus Byrd repeatedly and
18 Bijan's gonna put, put this up. The testator in that case
19 was found to have sufficient mental capacity to execute the
20 will in question, but the jury found that the will was the
21 product of undue influence exerted upon the testator.

22 If you look here on the screen, this is from the case,
23 and the Court said of particular importance on the question
24 of undue influence is the proof of continuing threats made
25 to the testator by the appellate to place him in a nursing

1 home even though his fear and dislike of nursing homes was
2 well known to his children. We don't have that here.

3 Numerous friends of the decedent testified that the son
4 with whom she was living always threatened her with that,
5 always threatened her with that, and they also found -- they
6 said there was also evidence of a purpose and design by
7 James and the members of his immediate family to restrict
8 the visits and to prevent communications between the
9 testator and the testator's children prior to and following
10 the execution of the will.

11 There's no evidence of that, Your Honor.

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: My client -- he was -- Paul Barringer was
14 doing his own thing. He was flying to Alabama. He was
15 going to North Carolina with his wife. He went to
16 Charlottesville for months on end.

17 He was living his life. No one was restricting him.
18 He was doing that up until basically the end of 2015, Your
19 Honor.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: He was going to football games. He was
22 hunting, hunting.

23 In this case that Mr. Medlin relies on so heavily,
24 there was a witness who said that the proponent of the
25 will -- this is what she said. He said I've got daddy to

1 change the will and fix it so I can hire nurses and I don't
2 need you anymore. That was to his sister. That's what he
3 said.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: So, they accepted that as evidence that he
6 admitted that he got his father to change the will.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: This is strong evidence of undue
9 influence, Your Honor. None of this is present in this
10 case.

11 In Byrd, the testator lived with his son and he made
12 him -- and he was also the signor on all of the testator's
13 accounts. This is so much more than anything that we have
14 here, and this was a very close case, Your Honor.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: There was a -- there was a strong dissent
17 in it --

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: -- and it was, you know, three to two. If
20 you read it here, it said these circumstances, all of the
21 things that I just told you about---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---combined with proof of a fiduciary and
24 confidential relationship, so you need both, and James'
25 admission of his role in the procurement of the will---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---clearly distinguished this case from
3 Calhoun, which was an earlier case that they had to cite,
4 and required submission to the jury of the issue of undue
5 influence.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: Now, I'm gonna -- we're gonna talk
8 about -- let's go to the Calhoun case which they cite in
9 here as being distinguishable---

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: ---cause in that case they did not let the
12 issue of undue influence go to the jury, Your Honor.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: And this is a 1982 Supreme Court case.

15 In here they talk about the testator's condition. It
16 is undisputed that the testator was in a feeble physical
17 condition during the last several years of his life. Mr.
18 Barringer wasn't in a feeble condition until shortly before
19 his death.

20 Respondents allege that on the date of the will's
21 execution, the testator had a weakened mental capacity.
22 However, the test -- testator continued to transact his
23 usual business affairs for a period of approximately three
24 years subsequent to the will's execution. witnesses
25 described him as an honest, brute trader, shrewd trader, and

1 hard worker who used profanity frequently, was rough at
2 times, but he was also generous and kind.

3 Paul Barringer carried on for years. He didn't give up
4 managing his business affairs. He was still doing it in
5 2014 when he met with Wells Fargo.

6 THE COURT: Alice, I'm sorry.

7 Can I ask you a question?

8 So where---

9 MS. PAYLOR: Sure.

10 THE COURT: ---do I have Paul Long's testimony in
11 Probate Court?

12 MS. PAYLOR: It's attached to my initial memorandum.

13 THE COURT: Okay. And is, is that the only testimony
14 we have from him?

15 MS. PAYLOR: Yes, ma'am.

16 THE COURT: Okay. I just wanted to make sure his
17 deposition had been taken.

18 Okay. Okay.

19 MS. PAYLOR: It has not. No doctor's depositions have
20 been taken.

21 THE COURT: Okay. Okay.

22 MS. PAYLOR: Testator --.

23 THE COURT: Hold on one second, Alice.

24 MS. PAYLOR: Okay.

25 (Pause.)

1 THE COURT: I'm sorry. Go ahead, Alice.

2 MS. PAYLOR: Testator drafted a will and gave
3 everything to this woman who visited with him---

4 THE COURT: Right.

5 MS. PAYLOR: ---when he was in the nursing home. She
6 came almost every day. The testator would fuss at her he
7 was frustrated. The testator was one day overheard to say
8 that, that she wanted it all. However, proponent was not
9 present when the testator had conference with his
10 attorney---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: ---and was not physically present when he
13 executed the will.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: Merrill Light was not present when Paul
16 Barringer discussed his wills and his Trusts with John
17 Jolley. They also said that there was no evidence that the
18 proponent interfered with the making of the will.

19 The Court said she may have been interested in the
20 will, and may have had more opportunities for persuasion
21 than the respondents.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: However, this alone does not constitute
24 undue influence.

25 Your Honor, that's, that's what they're claiming, you

1 know, Merrill Light. She was around him. She was. She
2 lived near him. He was her father. She would visit her
3 parents, you know, once a week, bi-weekly, whenever. She
4 did not tell him what to do with his estate plans. He did
5 it all on his own.

6 There is no evidence anywhere in the record. Let's
7 look at February, 2012 will.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: There is no evidence. She was not with
10 him when he told John Jolley what he wanted. No evidence.

11 They advised him, and that's -- Robert Swain's
12 deposition testimony is in evidence. He advised him to name
13 a cotrustee.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: And they let him -- and he looked at his
16 three children, and he said well, Merrill's closest. I'm
17 gonna name her first, and Victor had had some issues. And
18 so he was actually the last one although he had been the
19 original successor trustee in the 1998 Trust.

20 So, he moved things around. He wasn't -- he, he didn't
21 do anything with Hampton. She was the second successor
22 trustee if Merrill Light didn't take it or something
23 happened to her.

24 There is no evidence, none, that he---

25 THE COURT: Okay.

1 MS. PAYLOR: ---was unduly influenced with regard to
2 the February 28, 2012, will.

3 THE COURT: Okay.

4 MS. PAYLOR: And I want you---

5 THE COURT: Yeah.

6 MS. PAYLOR: ---to really look at each of these, Your
7 Honor.

8 Yeah, I -- Bijan, can you find that?

9 It should be towards the beginning of my exhibits and I
10 apologize.

11 THE COURT: Laura is looking for me for it right now.
12 She was asking me if it looked -- if it was a deposition
13 transcript, and I said no, it's a -- it's---

14 MS. PAYLOR: It looked like a transcript.

15 THE COURT: It does look the same.

16 MS. PAYLOR: Yeah. And I'm looking for it too.

17 THE COURT: And, Alice, can I ask one more question and
18 this is where I'm gonna probably show that I really -- was
19 there a reason -- I know you feel like you don't have to
20 show -- and why didn't you just get an affidavit from John
21 Jolley saying -- or do you just think you don't need to?

22 You know, saying listen, at the time this was
23 executed---

24 MS. PAYLOR: At this point I don't think I need to,
25 Your Honor. I think we have---

1 THE COURT: Okay.

2 MS. PAYLOR: They don't have any facts.

3 THE COURT: Okay. And, and I guess my question is---

4 MS. PAYLOR: Now, you know, if you want to, if you want
5 to -- if you're on the fence, and you want to wait for John
6 Jolley's deposition, it's scheduled to be taken in December,
7 and we can come back and present that to you.

8 But, right now, the only evidence that we have is that
9 he had capacity, Your Honor, and he had -- was not subject
10 to undue influence. I mean their argument about
11 February 28, 2012, is pretty outrageous, and the only reason
12 they're doing that is cause they don't want a new will after
13 1998.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: But that -- this -- and that's what we've
16 got here is he, he exercised his capacity to execute a new
17 will.

18 THE COURT: Okay.

19 MS. PAYLOR: And I know we've had -- we've talked about
20 unhampered opportunity, Your Honor.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: The basis are very, very clear that, even
23 if a testator was subjected to undue influence --

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: -- if he had time and unhampered

1 opportunity to change his will---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---after that, that -- you can not -- you
4 have to grant summary judgment to us --

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: -- to my client, Merrill Light. We've
7 got -- he went to John Jolley and signed the February 28,
8 2012, 2012 will.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: There's no evidence of any undue
11 influence. He then went back to him in the Summer---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---of 2012---

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: ---after he got angry at his daughter --

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: -- and he amended his Trust so the CFRC
18 stock would go to Merrill Light, and there's a reason why he
19 did it.

20 Oh, here's the Probate Court---

21 THE COURT: Yeah, I'm seeing it. Laura's having a hard
22 time putting her hands on it. I don't know why, but---

23 MS. PAYLOR: well, you know, I couldn't find it in here
24 either. So, I'm --.

25 THE COURT: Okay. Okay.

1 MS. PAYLOR: We, we don't have very much in here. I
2 know that we also have Paul Mazzeo's information.

3 THE COURT: Okay.

4 MS. PAYLOR: Bijan, can you find where he talks about
5 capacity?

6 Yeah, I'm having a hard time finding it also, Your
7 Honor.

8 THE COURT: Okay.

9 MS. PAYLOR: I know we refer to it and we can send you
10 that, you know, his -- all of his testimony if you would
11 like. I think it's 40 -- I can't find it either.

12 The evidence is clear that Paul Barringer got angry at
13 Kevin Luzak after the April board meeting. The evidence is
14 also clear that he asked Merrill Light to bring him the
15 PowerPoints. She didn't just go get them to him to confuse
16 him. He asked her for them.

17 That is the only evidence, and that's what she told
18 Kevin cause she was talking to Kevin and Hampton. She was
19 very concerned because she didn't want to have a falling out
20 in her family. She wanted things to be civil and pleasant.
21 The last thing she wanted for -- was for all this to happen.

22 Merrill Light testified that no one threw a book at
23 her, and that she told her father that was not true. You
24 know, Paul Barringer was a guy who he just bowled his way
25 through.

1 So -- and he -- I mean Kevin wanted to, you know, bring
2 Merrill over there one day when he was meeting with him, and
3 Paul Barringer said, and this is in a transcript, Paul
4 Barringer said I don't want to bring her in here. This is
5 between you and me.

6 He hadn't been talking to her. She hadn't been
7 influencing him. Here's the transcript of---

8 THE COURT: I'm reading it.

9 MS. PAYLOR: ---his testimony.

10 Okay. So---

11 THE COURT: Yeah, Paul Long basically says that Mr.
12 Barringer had, you know, if you wanted to, was able to
13 marry, vote, have a driver's license, enter into a contract.
14 He says yeah, I would.

15 MS. PAYLOR: And a, and a will.

16 THE COURT: Yeah.

17 MS. PAYLOR: Would you have placed any restrictions on
18 him?

19 THE COURT: Right.

20 MS. PAYLOR: No, I wouldn't have.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: Of course, getting married and all of
23 that, voting, driver's license---

24 THE COURT: Yeah.

25 MS. PAYLOR: ---requires capacity, as we know.

1 THE COURT: Right.

2 MS. PAYLOR: Driving requires capacity.

3 THE COURT: Well, it's in the contract and obviously
4 that's a higher standard. So, I understand.

5 Okay. Okay.

6 MS. PAYLOR: Well, and then he goes on and he says
7 that---

8 THE COURT: Yeah.

9 MS. PAYLOR: ---in 2014, he wouldn't place any
10 restrictions on him either. And then, when he was asked the
11 question when did his conditions begin to deteriorate so
12 that you would of placed limitations, and he talks about
13 Alzheimer's disease---

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: ---being a stair step---

16 THE COURT: Right.

17 MS. PAYLOR: And one down unfortunately. There's a
18 spectrum and he said basically he would guess some time in
19 mid 2015.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: He died in May of 2016.

22 THE COURT: Okay.

23 MS. PAYLOR: The last testamentary document that he
24 signed was in February of 2015.

25 THE COURT: Okay.

1 MS. PAYLOR: This was after that and he never placed --
2 he said he never placed any restrictions. I know that he
3 quit driving on, on his own. He and his wife made that
4 decision together.

5 THE COURT: Okay.

6 MS. PAYLOR: But, you know, he hadn't placed any
7 restrictions on him.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: Your Honor, the facts show if you -- they
10 talk a lot about the June 28, 2012, board meeting---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: ---and alleging that some coaching was
13 going on.

14 Your Honor, we have the recording of that and we will
15 be happy to send it to you. There is no evidence of any
16 coaching.

17 THE COURT: Okay.

18 MS. PAYLOR: You can listen to the entire -- okay.
19 Bijan, will you make sure that happens?

20 THE COURT: Yeah.

21 MS. PAYLOR: We'll send that recording to you.

22 THE COURT: And, Bijan, did you ever find this
23 testimony from the Probate Court anywhere?

24 (WHEREUPON, there was no audible response at this
25 time.)

1 THE COURT: Bijan, do you mind also emailing that to
2 me, the Probate Court testimony that you're doing right now?

3 Okay.

4 MR. GHOM: Yes, ma'am.

5 MS. PAYLOR: I know I referenced it in my memo and
6 probably---

7 THE COURT: Yeah.

8 MS. PAYLOR: ---whoever was gathering these---

9 THE COURT: We just can not find it, and I mean if---

10 MS. PAYLOR: I couldn't find it either.

11 THE COURT: Okay. So, yeah, and if -- yeah, send me
12 that. Yeah.

13 MS. PAYLOR: Well, the interesting thing also in that
14 recording, Your Honor, is that---

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: ---Paul Barringer stated at the meeting
17 that he had discovered that Kevin Luzak was self-dealing
18 because he intended to receive fees from his dis --
19 diversification using CFRC asset, and that's in the
20 transcript of the board meeting.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: Paul Barringer was a very capable man.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: And, yeah, he had some cognitive issues,
25 but he also knew what was going on, and he knew that he was

1 mad at Kevin Luzak, and he needed to apologize, and get back
2 on the train if he wanted to.

3 So, their reliance on that board meeting is totally
4 displaced. Mrs. Barringer testified -- well, they were
5 getting ready to go to the mountains. So, she was waiting
6 for him to get finished, and she testified that she helped
7 her husband do what he wanted to do.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: And if you hear it, she like moves to
10 adjourn.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: Things, things like that.

13 THE COURT: Okay.

14 MS. PAYLOR: Now, I find no evidence of coaching when I
15 listened to the recording. In the transcript that Mr. Hogan
16 had of the recording, there's no coaching on there either,
17 and that is in Exhibit 2 to the transcript.

18 Your Honor, there's -- he made -- Mr. Medlin made
19 numerous horrible statements about Randy Light.

20 First of all, I want the record to be clear. Randy
21 Light never filed personal bankruptcy.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: He never filed personal bankruptcy. He
24 was involved in some real estate deals in Texas back when,
25 you know, the real estate market---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---plummeted back the end of the -- 2009,
3 2010, 2011 --

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: -- when everything just bottomed out---

6 THE COURT: Yeah.

7 MS. PAYLOR: ---he was involved in some deals with some
8 other guys, and they basically left him there to take care
9 of them, which we did. So, he hired a lawyer and they put
10 the entities---

11 THE COURT: Into bankruptcy.

12 MS. PAYLOR: ---into bankruptcy.

13 THE COURT: I understand that, yes.

14 MS. PAYLOR: That is a far cry---

15 THE COURT: I understand.

16 MS. PAYLOR: ---from Randy Light filing bankruptcy. In
17 fact, Randy Light ultimately got a release from all his
18 debts for a payment of -- with regard to what we're talking
19 about in this case---

20 THE COURT: Yeah.

21 MS. PAYLOR: ---an insignificant amount of money, and
22 he paid it himself.

23 He did not get it from Paul Barringer. He did not get
24 it from CFRC. Randy Light was actually a successful
25 businessman. He had his own businesses and he was in real

1 estate, and he and Paul Barringer had some dealings together
2 way back when Paul Barringer was a very sharp businessman
3 with no cognitive issues, Your Honor, and they made money
4 together.

5 He and Paul Barringer were friends. He never asked
6 Paul Barringer to put in -- him on the board. He had plenty
7 to do, and he was older. When he, when he died I think he
8 was 75, 76. He, he wasn't looking for a career at CFCR, but
9 he---

10 THE COURT: Okay.

11 MS. PAYLOR: ---Mr. Barringer asked him to accompany
12 him on trips so he knew a lot about the company, and he'd
13 met all the people involved, but he wasn't asking.

14 After Kevin Luzak left, Travis Bryant and Tom Evans
15 asked Randy Light to come on the board and he did. He did
16 it. These, these are total misstatements and
17 mischaracterizations, mischaracterizations, Your Honor.

18 Randy Light was a great guy. He was not a fool as they
19 want to portray him. He did a lot for CFRC when he was on
20 the board and as chairman of the board. He's spent a lot of
21 his time dealing with their issues.

22 Now, Randy Light did send an email to Travis Bryant and
23 John Jolley in September of 2012.

24 But the question you need to ask yourself is, if his
25 wife had total control over Paul Barringer, who had

1 submitted himself to her will, why didn't she just take the
2 5 million-dollars from him?

3 And if she used CFRC as her pocketbook, why didn't she
4 just take the 5 million-dollars from the company?

5 This is not evidence of undue influence. This is
6 evidence that they didn't exercise undue influence. They
7 asked a question and it never happened. That's what we're
8 talking about here, Your Honor.

9 THE COURT: Okay.

10 MS. PAYLOR: The state -- and the statement by Mr.
11 Medlin that Paul Barringer was removed from the board in
12 February of 2015, that is not true. Mr. Barringer retired
13 from the board of directors at the end of 2014. They had a
14 going away party for him, a retirement party, in Alabama.
15 He went, went there and, and told everybody, you know,
16 good-bye.

17 This is not, you know, some fool. He's still doing it.
18 He wanted to get out. He wanted to know that his company
19 was in good hands. He felt confident in Travis Bryant, and
20 Tom Evans, in his daughter, and in his son-in-law, the
21 Lights.

22 There is no evidence at all to support them saying that
23 he was removed from the board of directors. He voluntarily
24 retired because he wanted to leave the board.

25 Your Honor, they're claiming that Merrill Light unduly

1 influenced Paul Barringer for four years beginning in
2 February of 2012, I guess, and lasting up until the day that
3 he died in 2016. They have no evidence of restrictive
4 visitation. They have no evidence of domination. They have
5 no evidence of coercion. They have no evidence of threats.

6 Paul Barringer led his own life without doing what his
7 daughter wanted him to do. He did what he wanted to do and
8 he, at all times, had the unhampered opportunity to change
9 his wills and Trusts.

10 Your Honor, there is -- there are no facts to support
11 undue influence, and this is another area that you need to
12 grant summary judgment on.

13 There is no -- absolutely no evidence of it. They
14 don't have anything other than their speculative innuendo
15 inferences. That is not sufficient, Your Honor. They need
16 to have a fact, a specific admissible fact, and they do not
17 have them.

18 And, and for them to say that, in 2012, she was doing
19 all those things, I mean that, that is so crazy it is beyond
20 belief, and there's no question that, in February of 2012,
21 she was not exerting undue influence on him. There's no
22 question that, in July of 2012, she was not exerting undue
23 influence on him. There's no question that, on
24 September 11th, 2012, she was not exerting undue influence
25 on him.

1 He talked about all of these things with his son,
2 Victor, and you have Victor's testimony---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---where he clearly said this is what he
5 wanted to do. He talked to me two or three times a week.

6 He didn't talk to Merrill Light. Victor wasn't talking
7 to Merrill Light. He was talking to his father, and
8 that's -- it was his father's idea.

9 Your Honor, let's go to mistake. I mean the Hanahan
10 case is so clear, Your Honor, about what a cause of action
11 for mistake with regard to a will or a Trust is. They have
12 no fact that Paul Barringer was mistaken in anything that he
13 did.

14 I mean look at that December 15, 2012, letter, Your
15 Honor. He knew what he was doing. He told her to come
16 back, and he wrote her a number of times saying come back
17 before it's too late.

18 That is him talking. I mean if Merrill Light were at
19 his control, I'm assuming she would tell him not to write
20 her at all, just keep her out. But that didn't happen, Your
21 Honor.

22 Paul Barringer never had and he will -- he never had a
23 personal irrevocable trust. Not at all. The irrevocable
24 trust that's in their document is either the Gertrude
25 Barringer Revocable -- Irrevocable Trust or the family

1 trust. Neither of which would Paul Barringer put his
2 personal assets into, and we have evidence showing that Brad
3 Herring, who was corporate counsel for CFRC---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---made a mistake. He thought he heard
6 irrelevant or the other thing that -- if you look when Paul
7 Barringer signs his name, he always puts the two out
8 there---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---roman numeral two.

11 So it would be Paul B. Barringer, II Revocable Trust.
12 He might of thought that said irrevocable the way it was
13 written. In any event, he recognized it was a mistake, and
14 he changed it the next day.

15 Mr. Barringer didn't have anything to do with that.
16 His advice was to put his assets, including the stock, into
17 his Irrevocable Trust, and that's what he did. There's no
18 mistake. There's no evidence of mistake.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: In the Hanahan case, Your Honor, we've
21 got -- this is straight from Hanahan. It is the general
22 rule that the validity of a will is not affected by a
23 mistake of either law or fact unless a mistake goes to the
24 identity of the instrument or to fundamental error as where,
25 for example, two wills are drafted for different persons,

1 and one party signs the will intended for another.

2 That did not happen here, Your Honor. This is another
3 area where this -- these causes of action should be
4 dismissed on summary judgment. There's no basis. There's
5 no case ever cited, like Mr. -- in South Carolina like Mr.
6 Medlin wants you to, to find that this was.

7 He didn't make a mistake. He knew exactly what he was
8 doing. Look at the letter he wrote to Hampton. You can
9 look at the dates when he, when he took his actions. They
10 were after Hampton Luzak made him mad, after she sent him a
11 letter saying he was mentally incompetent. He didn't like
12 that. I can promise you. You don't tell a man like Mr.
13 Barringer that he's mentally incompetent, and that's what
14 she did over and over.

15 Your Honor, Mr. Medlin was talking about fraud in the
16 inducement. I read the Amended Complaint again, Your Honor.

17 They tried to plead the nine elements of fraud. There
18 were all on information and belief, but it doesn't say --
19 the word inducement is, I don't believe, even in his cause
20 of action. He's trying to plead a fraud case. In that case
21 he has to provide evidence of the nine elements---

22 THE COURT: Nine elements.

23 MS. PAYLOR: ---of fraud and I set those out. We all
24 know what they are. Fraud is a very hard cause of action to
25 prove.

1 Even if this case is fraud and inducement, by the case
2 of Smith versus Smith says the Plaintiff must show the
3 Defendant made a false representation relating to a present
4 or preexisting fact. They also must prove the Defendant
5 intended to deceive the Plaintiff, and the Plaintiff had a
6 right to rely on the false representation.

7 There's no false representation ever made by Merrill
8 Luzak -- Merrill Light to Hampton Luzak. As a matter of
9 fact, she told her, in February of 2012, that her dad had
10 asked her to get involved in his estate planning. She has
11 that in her Complaint, Your Honor. She says that and she
12 testified to that.

13 She had a duty, if she wanted to find out in what way
14 she was getting involved, to ask her or to ask her father.
15 She never, ever, ever did.

16 So, she was on notice that her sister was getting
17 involved. That can be -- I mean I don't know how you get
18 involved other than as the cotrustee or trustee or power of
19 attorney.

20 Well, he didn't give her power of attorney. He named
21 her as cotrustee on his Revocable Trust.

22 The intent to deceive is an essential element of this,
23 of this action. She told her sister she was getting
24 involved.

25 How can there be an intent to deceive when she told

1 her?

2 She had no duty to tell her anything after that. None
3 whatsoever. Her sister quit talking to her and told her
4 never, ever to communicate with her again.

5 No reasonable person, Your Honor, is going to call her
6 up after she gets that letter from her, and so, oh by the
7 way, I'm the cotrustees on daddy's trust. It's none of her
8 business actually. I mean if she wanted to know, then she
9 should of asked her father what are you doing with your
10 estate plans, and he could of told her if he wanted to.

11 I -- my children know nothing about my estate plans. I
12 don't have any duty to tell them. I mean most parents
13 don't, and they don't do it.

14 Your Honor, there are no other representations that
15 they claim that Merrill made. None. Zero. In fact, she
16 said that Merrill Light told her that she was gonna vote
17 with her father to fire Kevin. That wasn't a false
18 representation. She did it.

19 There is no evidence of intent to deceive. She told
20 her everything that was important, and then Hampton Luzak
21 walked out and shut the door with her husband and her son,
22 and said I never want to have anything to do with you.

23 Hampton Luzak didn't rely on anything that Merrill
24 Light told her or didn't tell her. She had no reason to.
25 She wasn't talking to her. I mean this is the most absurd

1 of all of the claims that they've got.

2 They can not meet any of the elements, Your Honor. It
3 is just not there and I'm asking you to please grant summary
4 judgment on the fraud cause of action.

5 THE COURT: Okay.

6 MS. PAYLOR: That is a terrible thing to accuse your
7 sister of when she did nothing wrong.

8 I know I'm running out of time.

9 Conversion. All of these other claims, Your Honor,
10 conversion, quantum meruit where she's asking, asking for a
11 constructive trust, the constructive trust, the resulting
12 trust, Plaintiff is asking this Court to give her money --
13 the voting stock.

14 That's -- that would of never happened, Your Honor,
15 because no matter what will, it's the last valid will.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: She is not entitled to any stock.

18 Even under the 1998 will, Your Honor, as we already
19 know, Mr. Barringer signed a will. All of his assets, on
20 his death, went to his wife. They made no provision for his
21 stock in that 1998 will.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Then the February, 2012 will didn't
24 specify anything about the CFRC stock either, and it all
25 went to his wife on his death.

1 The only time it changed was when he signed the
2 July 20th, 2012, Trust amendment and he specifically said
3 that his CFRC voting stock was going to Merrill Light.
4 That's the only time it changed. Prior to that, no matter
5 whether he owned it individually or in his Revocable Trust,
6 it was going to his wife.

7 Mrs. Luzak never, ever was going to get it unless his
8 wife decided, after she got it, that she would let her have
9 some. That is not gonna happen, especially now, after she's
10 cut everybody off.

11 So, for all of those causes of action, Your Honor---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---she can not state a claim because she,
14 first of all, never owned the stock. Never once.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: She didn't own any of that -- of his
17 voting stock, and she was never a direct beneficiary of the
18 voting stock.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: There is no -- not a scintilla of evidence
21 that she was entitled to inherit that stock. Nothing. She
22 never had control.

23 So, she's the same place she was. She can't say she's
24 entitled to something that would of never gone to her ever.
25 As of today, it wouldn't have gone to her because

1 Mrs. Barringer is still alive no matter what she ended up
2 doing.

3 Those causes of action, Your Honor, all need to be
4 thrown out. They're all based on Hampton Luzak saying she's
5 entitled to the stock. Those are also equitable causes of
6 action, Your Honor, which you would have to make the
7 decision on---

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: ---anyway.

10 THE COURT: Right.

11 MS. PAYLOR: So, I would ask you to come -- look at
12 those and let's take them out of this case.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: There's, there's no basis for it.

15 THE COURT: Alice, really quickly, and the other thing
16 that I need to obviously decide in this case is Mr. Twombly
17 and your joint motion to bifurcate the trial. We talked
18 about this if we tried the case just as to Mrs. Barringer,
19 and whether or not she agreed or contracted with her husband
20 not to change the will in any way.

21 I mean do you still see that as the, as the best way to
22 go about this?

23 I mean I, I have---

24 MS. PAYLOR: Your Honor, that's totally different. I
25 mean that has -- that's -- according to them, it was made

1 before 1998. So, I mean they can put in evidence that okay,
2 they didn't change it. I think we'll stipulate to that. We
3 can probably stipulate to just about everything in a case
4 like that, Your Honor.

5 THE COURT: Uh-huh. (Affirmative).

6 UNIDENTIFIED SPEAKER: Your Honor, this is---

7 MS. PAYLOR: Very easy to try unless -- I don't know.
8 Ashley had to step out.

9 UNIDENTIFIED SPEAKER: Your Honor?

10 MS. PAYLOR: I do want to address---

11 MR. TWOMBLEY: I'm here.

12 MS. PAYLOR: ---the (indiscernible), Your Honor.
13 That's the last one, Judge, that I, that I was gonna talk
14 about.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: The breach of fiduciary, self-dealing, and
17 conflict of interest.

18 Your Honor, a principal, in this case that would be Mr.
19 Barringer, is entitled to make a gift to his agent as agent
20 must act in good faith, and make sure that Paul Barringer
21 knew what he was doing---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---and he did. She knew that.

24 Now, the other thing I want to -- well, I got some
25 stuff -- okay. If you look at 62-7-802---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---there are exemptions when a trustee can
3 receive gifts or whatever, property from the Trust.

4 THE COURT: Right.

5 MS. PAYLOR: Okay. The first exception is the
6 transaction was authorized by the terms of the Trust.

7 Your Honor, I have the Trust. It's, it's in Mr.
8 Medlin's materials.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: It's Attachment 1 and it's Page 3, and
11 it's got a bates stamp number, and it's -- she's put -- can
12 you put that up, Bijan?

13 Here it is.

14 THE COURT: Yeah.

15 MS. PAYLOR: This is the Trust, Your Honor. This is
16 the one from 2012.

17 Settlor's right to amend, change, or revoke the trust
18 agreement. The settlor, Paul Barringer, made by signed
19 instruments delivered to the trustee during the settlor's
20 life, withdraw property from the Trust in any amount and at
21 any time upon giving reasonable notice in writing to the
22 trustee.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: Paul Barringer's the one who took this
25 property out of the Trust.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: He gave it to her. He signed as the
3 trustee, and this specifically allows him to do it. So, it
4 falls under the first exception in the section that Mr.
5 Medlin---

6 THE COURT: Okay.

7 MS. PAYLOR: ---keeps arguing to you.

8 That's, that's what we have, Your Honor. We have a
9 gift that he made. He had capacity to make it. He wanted
10 to make it. He talked about it with everybody he knew and
11 he made it, and there was no self-dealing because Merrill
12 Light didn't give herself the property. Mr. Barringer gave
13 it to her.

14 THE COURT: Okay.

15 MS. PAYLOR: He gave it from his Revocable Trust to her
16 Revocable Trust, and this is specifically allowed by Section
17 62-7-802. It is not self-dealing. She is not giving
18 property to herself, Your Honor.

19 Intentional interference, we still, for purposes of
20 appeal, we want to assert that it's not a recognized cause
21 of action---

22 THE COURT: I understand.

23 MS. PAYLOR: ---and I understand where you're coming
24 from.

25 There's also no reasonable certainty that the

1 expectancy would have been realized because she never --
2 Paul Barringer -- as we discussed earlier, that stock was
3 never going to her. Never.

4 They also have produced not a scintilla of evidence
5 that Merrill Light did anything to intentionally interfere
6 with Hampton Luzak getting her inheritance. There's
7 nothing.

8 There are no facts in evidence that support the
9 incapacity, that support undue influence, that support
10 mistake, that support any of the equitable claims they have,
11 that support conversion.

12 THE COURT: Fraud.

13 MS. PAYLOR: Kevin Luzak didn't own that stock.

14 How could he -- how could she steal it from her?

15 She didn't. That's so Black letter law, Your Honor.

16 You have to give us summary judgment.

17 Your Honor, I'm asking you to look very closely---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---at the causes of action.

20 THE COURT: Okay.

21 MS. PAYLOR: I'm asking you to look and remember that
22 Mr. Medlin didn't give you a single fact regarding Mr.
23 Barringer's lack of testamentary capacity. Not one. None
24 near or around the times that he---

25 THE COURT: Okay.

1 MS. PAYLOR: ---executed of his documents.

2 In addition, there's no evidence of undue influence.
3 There's no evidence that Merrill Light did anything other
4 than what her father wanted her to do, and if you look even
5 at the medical records, the one when he's talking to Doctor
6 Dotson of the Greenbrier---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---he's, he's concerned about Mr.
9 Barringer still being involved in his company. He said oh,
10 no, I have transitioned that to my daughter, and she is
11 taking care of it.

12 It was his whole idea, his plan. She just did what he
13 asked her to do.

14 Your Honor, thank you very much. I did not address
15 anything that had not been addressed before. And if you
16 give Mr. Medlin a chance to talk, I get to end because it's
17 my summary judgment motion, and I get to have the last word.
18 But I'm asking that we, we leave today now and---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---we will send you whatever you need,
21 whatever you think you don't have.

22 THE COURT: Okay.

23 MS. PAYLOR: If you would just let us know and we'll
24 get it to you.

25 Thank you very much for your patience and your

1 consideration cause this is very, very important to my
2 client, Merrill Light, Your Honor. She wants to get this
3 behind her. At least some of it.

4 THE COURT: Okay.

5 MS. PAYLOR: Thank you very much.

6 THE COURT: Okay. Thank you.

7 Mr. Medlin.

8 MR. MEDLIN: Your Honor?

9 THE COURT: Do you think anything new was raised?

10 MR. MEDLIN: I, I do, Your Honor, and---

11 THE COURT: Tell me what that is.

12 MR. MEDLIN: ---I, I would like---

13 THE COURT: Just tell me what that is.

14 MR. MEDLIN: Well, Your Honor, I have about two pages
15 of notes where they raised some facts that I don't think
16 were raised properly, and that they didn't argue it in that
17 way before. And they -- I mean I just have -- it will take
18 me 20 or 30 minutes, Your Honor, to, to tick through it
19 including things such as the argument about the letter,
20 about the -- which was first written in Mrs. Barringer's
21 handwriting. We have that which we can show you on the
22 screen.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: So, she wrote it in her handwriting. By
25 the way, that came from discovery from Mr. Barringer's

1 assistant. Not from the Defendants. They didn't show us
2 where Mrs. Barringer had handwritten that before.

3 But also some different takes on the testimony from
4 Long and things they showed on the screen, Your Honor. I,
5 I, I just really like the opportunity to, to deal with that
6 shortly, and I, and I promise I'll be as brief as I can.
7 But I think, in fairness to my client, we've had summary
8 judgment arguments and other arguments before where we were
9 the movant and people got to argue back and forth and got
10 past the reply stage.

11 So, we would like that opportunity, Your Honor, and,
12 again, I'll be brief.

13 MS. PAYLOR: Your Honor?

14 THE COURT: In those summary judgment motions, did the
15 Court actually give you eight hours?

16 MS. PAYLOR: No.

17 THE COURT: I'd love to know that cause I'd love to
18 know. I never had a judge give me eights hours on any kind
19 of summary judgment motion.

20 So, let's just do this. I am gonna give you about 15
21 minutes right now.

22 Alice, if there's anything you need to briefly respond
23 to after that, that's fine. But I got to tell y'all I have
24 another hearing at eleven o'clock. So, if that tells you --
25 I'm gonna be gone at 11:00. So, I---

1 MR. MEDLIN: All right.

2 THE COURT: I think it -- I think there's a few things,
3 Alice, that, that I've asked Bijan to send me so I can look
4 at a few things, and also too there's some other cases I
5 need to look at.

6 And, Mr. Medlin, you can go ahead. But I will say
7 this, if you're saying something that I've heard, I'm gonna
8 tell you you've already said this, let's move on.

9 Okay?

10 MR. MEDLIN: Understood, Your Honor, and I, and I, I
11 appreciate that.

12 So, again, these cases are based on facts. And so all
13 the cases are different, and we need to look at these
14 particular facts.

15 This is summary judgment. Jury arguments made, that
16 needs to be made in front of the jury, and, by the way, as
17 to any issues you may have to decide, we need a chance to
18 show our evidence too.

19 Your Honor, you asked how the jury would determine,
20 again we've talked about this, but the jury will base it on
21 facts, not necessarily medical testimony, but on facts.

22 Now yesterday I was getting ready to get into a lengthy
23 list of our facts of medical testimony and other facts, and
24 I understood you to say that you were okay with capacity,
25 and for me to move on. So, I did and I'd like the

1 opportunity not to go through all that again. It's in our
2 brief.

3 THE COURT: I don't need medical facts. Go ahead and
4 tell me your other facts. I mean -- and I---

5 MR. MEDLIN: Well---

6 THE COURT: I, I feel bad. I shouldn't have cut you
7 off, but, again, I can read the medical.

8 what, what are your other facts?

9 MR. MEDLIN: Your Honor, we had facts where the
10 Defendants themselves are indicating that Mr. Barringer had
11 problems with capacity as early as 2011 where the most
12 reliable witness in this case, the only real independent
13 witness in this case, Mike Hagler, talks about Paul's total
14 lack of capacity as, as the sole independent director.

15 We have.

16 MS. PAYLOR: He's already gone through all this, Your
17 Honor. I just responded---

18 THE COURT: Yeah.

19 MS. PAYLOR: ---to what he said yesterday.

20 MR. MEDLIN: I'm answering her question, Alice.

21 So, we have testimony from John Jolley. We have
22 testimony from other people, who are not just the medical
23 reports, about his lack of capacity. It's in our brief---

24 THE COURT: This is---

25 MR. MEDLIN: ---Your Honor. So---

1 THE COURT: This is the problem though that I have with
2 that. I don't hear John Jolley saying in this case that he
3 lacked capacity to know what he was doing, know his assets,
4 and know who he wanted to give it to. And so you're, you're
5 saying that he may of said I'm concerned about certain
6 things at certain times.

7 I still have a fundamental problem right now, and I can
8 tell you I'm -- you know, whatever I said before, I told you
9 I easily change my mind. I mean I'm not someone who decides
10 one thing.

11 I don't know how a jury in this case or me is suppose
12 to make a determination that he was incapacitated at the
13 time he signed the will. I, I don't see how -- and based on
14 what we have, and that's my concern. I, I don't know how.

15 That's why in, in -- I hear Ashley telling me that it's
16 based on, you know, certain facts and people saying certain
17 things and doctors and the rest of it. But, but, in this
18 case, we've got Paul Long. We've got John Jolley. I mean
19 John Jolley's there. He's saying he's fine. Miss
20 Barringer -- Mrs. Barringer, I'm sorry, is saying he's fine.

21 I just don't know what a jury is suppose to do with
22 that, and when you tell me -- you know I'm looking at
23 this -- obviously it's a summary judgment stage. We're
24 gonna be in the same place if we're trying the case and
25 we're at the directed verdict stage. I still am trying to

1 put together how someone can decide this without someone
2 giving an opinion, and, and your expert, Mr. Sanders,
3 didn't. Doctor Sanders doesn't do it as to capacity.

4 MR. MEDLIN: Your Honor, they, they don't have an
5 opinion about that either although they just argued that
6 did.

7 Doctor Long was not asked in the conservatorship here's
8 the legal test for capacity. Now, based on this legal test,
9 what do you opine.

10 THE COURT: But that's so low.

11 MR. MEDLIN: By the way, Doctor Long---

12 THE COURT: But, Mr. Medlin, it's so low that, even if
13 they asked it, I, I am guessing again, and this is where I
14 feel slightly handicapped, is that if you went and took his
15 deposition today, and I can't assume anything, but based on
16 what he said in the Probate Court, he's gonna say he had
17 capacity, and, again, I don't---

18 MR. MEDLIN: Your Honor, he had, he had records showing
19 that Paul is scoring zeros on a mini-mental test, and yet
20 he's claiming Paul was competent into the Fall of 2015.
21 That's impeachable testimony.

22 MR. TWOMBLEY: That is not---

23 THE COURT: So, wait.

24 MR. TWOMBLEY: ---factually correct---

25 MR. MEDLIN: Anyway, the cases---

1 MR. TWOMBLEY: ---at all.

2 THE COURT: Just a sec.

3 MR. TWOMBLEY: That is not true.

4 THE COURT: Mr. Medlin, back up a second.

5 MR. MEDLIN: It is absolutely true, Ashley.

6 THE COURT: Shhh. Listen. Stop for a second please.

7 when did he score zero on the mini-mental evaluation?

8 MR. TWOMBLEY: 2016.

9 THE COURT: Exactly.

10 MR. MEDLIN: He scored a zero on---

11 MR. TWOMBLEY: That is not correct.

12 MR. MEDLIN: ---on June the 12th, 2015. June the 12th,
13 2015. Look at Exhibit G, Attachment 22, Your Honor. We
14 have that---

15 MR. TWOMBLEY: Okay. Even if it's June 15th---

16 THE COURT: Exactly.

17 MR. TWOMBLEY: Even if it's June 15---

18 THE COURT: It's not 2012.

19 MR. TWOMBLEY: We're talking about 2012.

20 MR. MEDLIN: He scored a thirty -- we're talking about
21 impeaching Doctor Long, and Doctor Long is testifying that
22 Paul was fine and fell off a cliff in the Fall of 2015.

23 THE COURT: Okay.

24 MR. MEDLIN: He's got evidence showing that he scored a
25 13 in January of 2014, and less than a 17 is severe

1 dementia. So, Doctor Long---

2 MR. TWOMBLEY: For an 85 year old it's not.

3 MR. MEDLIN: ---is not a trustworthy witness---

4 MR. TWOMBLEY: I---

5 MR. MEDLIN: ---number one.

6 Number two, that Gatti versus Douglas case says the
7 testimony of an internist is not as important as a
8 neurologist.

9 Doctor Baughman said, in 2013, that Paul could handle
10 his personal affairs. Doctor Baughman said, in May of 2012,
11 that Paul couldn't remember buying a building or opening a
12 bank account, and he didn't know how much stock he owned
13 based on the letter he wrote to Kevin Luzak in May of 2015.

14 Those are the kinds of things, Your Honor, that a jury
15 has to decide when determining if somebody has the capacity
16 to know his property.

17 THE COURT: This is the problem that I have---

18 MR. MEDLIN: So the statement -- Ashley saying earlier,
19 despite -- excuse me, Your Honor.

20 Despite Ashley saying it earlier that there's
21 absolutely no evidence that he, he didn't have capacity, he
22 didn't know if he bought a building. He didn't know about
23 his airplane. He didn't know he had opened up a, a bank
24 account. He didn't know how much stock he owned. He, he
25 thought he owned double the stock of everybody else in his

1 legacy company.

2 Those are all facts that a jury would take into account
3 to determine if he had capacity, and I didn't get into those
4 detailed discussions yesterday. They're in our brief---

5 THE COURT: Oh, I've heard them many times.

6 MR. MEDLIN: ---because, again, my assumption was I
7 didn't need to.

8 THE COURT: And I've heard them many times. So, it's
9 not as if I don't know those.

10 Okay. What else?

11 MR. MEDLIN: All right. So, again, Your Honor, we can
12 show you the letter if you'd like, but we can also just send
13 it up to save time.

14 THE COURT: Send it.

15 MR. MEDLIN: This letter---

16 THE COURT: You say the letter was handwritten by
17 Mrs. Barringer before he wrote it, correct?

18 MR. MEDLIN: Yes.

19 THE COURT: So, just send it to me.

20 MR. MEDLIN: We'll do that, Your Honor. Thank you.

21 I didn't rely on Byrd for anything other than to say
22 that the testator can still be found incompetent without the
23 perpetrator in the room or subject to undue influence.

24 It, it is absolutely not true that Merrill Light was
25 not present. She testified herself that Exhibit one --

1 Footnote 132 in our brief, Exhibit I, that she was present
2 at estate planning meetings with lawyers. She was present
3 because she had to sign documents as a trustee.

4 We already know Randy Light was present when Mr.
5 Barringer signed the critical document on July 20th, 2012,
6 in Alabama. She's testified she was present at the stock
7 transfer, the other critical time.

8 So, the idea that she is not present is just not true,
9 Your Honor.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: I said she wasn't---

12 MR. MEDLIN: In February---

13 MS. PAYLOR: ---present when they discussed the
14 estate -- what he wanted done.

15 MR. MEDLIN: She said she was there at, at meetings
16 when, when they discussed it. It's in her own testimony.

17 THE COURT: Okay.

18 MR. MEDLIN: So, in February---

19 THE COURT: Can I just ask one more question really
20 quickly?

21 MR. MEDLIN: The February will, Your Honor, changes
22 nothing about Mr. Barringer's dispositive plan, and that
23 dispositive plan was to, on the death of Mrs. Barringer and
24 Mr. Barringer, have that stock come out of trust in equal
25 shares.

1 All the February will did was name Merrill Light as a
2 cotrustee.

3 MR. TWOMBLEY: That is---

4 MR. MEDLIN: That's the only change that took place.
5 That, that's also not true---

6 MR. TWOMBLEY: That's not true, Your Honor.

7 MR. MEDLIN: ---Your Honor, that Mrs. Barringer got the
8 stock. Mrs. Barringer, if she has the Power of Appointment,
9 and, again, we disputed that and I think we've produced
10 plenty of evidence that she didn't, but if she did, she
11 didn't get the stock. All she had was the opportunity to
12 direct it and she's still alive. And that has to take place
13 at her death.

14 So, the way these documents would be described by most
15 estate planners is that Hampton has an equitable interest
16 until Mrs. Barringer dies. Mrs. Barringer doesn't have the
17 stock either. And, when she dies, all the assets in the
18 Trust go equally, with some nuance, not really important
19 what we're talking about here, Your Honor, to between the
20 beneficiaries of -- among the beneficiaries.

21 So, she would be entitled to the stock under the idea
22 of a constructive trust.

23 I'm not aware that Paul Barringer asked to see those
24 documents. It seems strange to me that he would ask to see
25 documents he couldn't even remember, but it wouldn't really

1 matter because, again, even if he had asked for them,
2 Merrill Light didn't try to dissuade him of his confusion
3 about them. She lit that match and that was important.

4 The coaching, I don't care what you might be able to
5 hear on the tape. It's heard and we have documented
6 evidence of that.

7 Mike Hagler, during the meeting, called them down for
8 coaching him. It's in the meeting transcript.

9 Kevin and Hampton were listening to it. They heard it.
10 It's in their affidavits.

11 So, regardless of what the -- Alice might hear, or I
12 might hear cause I don't have great hearing now, it's
13 documented about what he said.

14 THE COURT: Okay.

15 MR. MEDLIN: Randy Light -- the companies filed
16 bankruptcy. Most people create companies to do deals today.
17 He was a principal. In fact, partners in both of those
18 companies accused him of some really underhanded things.
19 That's in Court records, and, in fact, that's evidence that
20 we have here.

21 MS. PAYLOR: None of them was (indiscernible) to be
22 true. That's Courts---

23 MR. MEDLIN: He borrowed---

24 MS. PAYLOR: Everybody makes claims. That's---

25 MR. MEDLIN: He borrowed---

1 MS. PAYLOR: ---not -- Your Honor?

2 MR. MEDLIN: He borrowed over a million dollars from
3 his---

4 MS. PAYLOR: He's disparaging---

5 MR. MEDLIN: ---wife.

6 MS. PAYLOR: ---a dead man for something he didn't do
7 is terrible.

8 MR. MEDLIN: We're just basing it on the records,
9 Alice. I'm just telling you what his partners accused him
10 of. I'm not accusing him of it. I'm telling you what his
11 partners accused him of.

12 MS. PAYLOR: Well, that's not evidence. It's not
13 admissible evidence. You can't say they accused him of it.
14 He's already -- that is not admissible evidence.

15 MR. MEDLIN: We're just showing that he has a history
16 of bankruptcies in his business and that's a reason to
17 understand why Mr. Barringer would not want him to, to be
18 the---

19 MS. PAYLOR: (Indiscernible.)

20 THE COURT: Sorry.

21 MR. MEDLIN: ---chairman of his board.

22 MS. PAYLOR: You've got your assistant there. I like
23 it.

24 MR. MEDLIN: I do too and I feel like I'm barking now,
25 Your Honor, but you, you---

1 THE COURT: It's okay.

2 MR. MEDLIN: ---gave me a brief time limit and I
3 apologize.

4 Randy Light had to borrow well over a million-dollars
5 from his wife that---

6 MS. PAYLOR: Okay.

7 MR. MEDLIN: ---based upon the time of our deposition.

8 THE COURT: Okay.

9 MR. MEDLIN: She testified to that and hasn't been
10 repaid as of the time of the deposition or she didn't know.

11 THE COURT: Okay.

12 MR. MEDLIN: The idea that Tom Evans and Travis Bryant
13 asked him to join the board, they weren't on the board. In
14 fact, Randy Light was put on the board in August of 2012,
15 and then the board voted to hire Travis Bryant as CEO.

16 The reason they didn't take the 5 million-dollars is
17 because nobody was gonna let them do that. It just shows
18 how they think in their motive and opportunity. Taking the
19 money from the company to pay her private legal fees did
20 happen. So, it does show that they'll do that.

21 And, again, mistake, the statute's now supplant the old
22 case law, and I've cited that -- those to Your Honor.

23 THE COURT: Yeah.

24 MR. MEDLIN: In 62-2-601(b).

25 THE COURT: Uh-huh. (Affirmative.)

1 MR. MEDLIN: 62-7-415.

2 THE COURT: Okay.

3 MR. MEDLIN: Regardless of what we pleaded to try to
4 cover the (indiscernible) was fraud, as Alice herself noted,
5 when you're having a fraud argument about a will case,
6 defrauding somebody into making a will, that's fraud in the
7 inducement. You don't have to show the nine elements of
8 fraud. You just have to show what Alice described
9 accurately in that case, and this is what we've done so far.

10 Telling Hampton that she's going to be involved in her
11 father's estate planning is not a get out of jail pass for
12 not being deceptive. In fact, it's more deceptive. Hampton
13 trusted her. She didn't think the statement would mean I'm
14 gonna steal stock from daddy --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: -- and ultimately from you. So, that's
17 the ultimate deception by saying she did into that. But,
18 again, she has a duty to Hampton---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---and she has a duty to Mr. Barringer,
21 and part of the duty is a duty to disclose, and, again, Your
22 Honor, all of that is cited in our brief.

23 THE COURT: All right.

24 MS. PAYLOR: That's 15 minutes, Your Honor.

25 THE COURT: Okay.

1 MS. PAYLOR: So, I get---

2 MR. MEDLIN: Your Honor?

3 MS. PAYLOR: ---time to respond.

4 THE COURT: Yes.

5 MS. PAYLOR: Thank you.

6 THE COURT: We're good, Mr. Medlin.

7 Alice, do you need to go ahead and -- anything?

8 MR. MEDLIN: Can, can -- Your Honor, I've got two more

9 point to make just to---

10 MS. PAYLOR: I think there's still---

11 MR. MEDLIN: ---address.

12 MS. PAYLOR: ---the bifurcation issue that I think you

13 wanted to take up.

14 MR. MEDLIN: This is on---

15 MS. PAYLOR: I don't know that---

16 MR. MEDLIN: This is on---

17 MS. PAYLOR: It doesn't---

18 MR. MEDLIN: This is on the bifurcation issue---

19 MS. PAYLOR: I'd like to address it.

20 MR. MEDLIN: ---and this is on---

21 THE COURT: Hold on.

22 MR. MEDLIN: ---the new argument, the new argument---

23 THE COURT: Hold on.

24 MR. MEDLIN: ---that she raised about the trust

25 language.

1 MS. PAYLOR: I really wanted to---

2 MR. MEDLIN: ---which she did not raise in her first
3 argument.

4 THE COURT: Let me ask you.

5 MS. PAYLOR: I didn't have to raise it.

6 THE COURT: Hold on.

7 Is it in your brief?

8 Mr. Medlin, is it in your brief?

9 MR. MEDLIN: No, Your Honor. Not about that because---

10 THE COURT: Please if you -- not the bifurcation issue.
11 The other one.

12 Is it in your brief?

13 MR. MEDLIN: It's not, but I can deal with that in one
14 minute.

15 THE COURT: You've got one.

16 Go ahead.

17 MR. MEDLIN: 62-7 -- 62-7-802 says that the burden is
18 on the trustee.

19 THE COURT: Okay.

20 MR. MEDLIN: All the---

21 THE COURT: Go ahead.

22 MR. MEDLIN: All the language shows---

23 MS. PAYLOR: He's already talked about this, Your
24 Honor.

25 MR. MEDLIN: It's an irrebuttable presumption of

1 (indiscernible) dealing, Your Honor.

2 THE COURT: You already said this.

3 MS. PAYLOR: He's already said this.

4 MR. MEDLIN: And all the -- all the language in the
5 Trust says is that he has the power, of course, as settlor
6 of an irrevocable trust---

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: ---but that's not a power he can exercise
9 if he is incompetent. So, again, it's a circular argument
10 they make.

11 If he's competent, and he's not unduly influenced, and
12 he's not subject to all the other issues that we described,
13 then we don't have a case, and the jury will find that we
14 didn't. But if he was incompetent, having the ability to
15 revoke is meaningless because he can not do so if he's
16 incompetent.

17 And then, finally, Your Honor, on the bifurcation---

18 MS. PAYLOR: But that's (indiscernible).

19 MR. MEDLIN: On the bifurcation issue, Your Honor,
20 cause I didn't get a chance to weigh in on that, we've had
21 that argument before. We will need all witnesses just
22 about, all the evidence just about, to try the Power of
23 Appointment case.

24 THE COURT: You said that last time. Someone from your
25 side said that last time. I, I need anything new.

1 MR. MEDLIN: I, I said it last time but I wanted to
2 just -- you asked the question again, Your Honor. So, I'm
3 just responding.

4 THE COURT: Let me ask you.

5 Is there anything new that you need to tell me that you
6 didn't put in your motions to bifurcate and a response?

7 MR. MEDLIN: That is---

8 THE COURT: That's what I'm asking.

9 MR. MEDLIN: That is -- Your Honor, I'm done and I
10 appreciate the opportunity to---

11 THE COURT: Okay.

12 MR. MEDLIN: ---make those points.

13 THE COURT: Okay.

14 MR. TWOMBLEY: And, Your Honor, I can---

15 THE COURT: Let me ask one other question.

16 Can I just ask whose deposition is scheduled to be
17 taken in December?

18 And I am most interested right now in Paul Long. I'm
19 most interested in John Jolley. I see Victor Barringer's
20 deposition was taken.

21 Correct?

22 MS. PAYLOR: Correct.

23 THE COURT: Okay.

24 MS. PAYLOR: Yes, ma'am.

25 THE COURT: And that's -- and it's not planning on

1 being again?

2 I, I assume not, but I just want to make sure.

3 MS. PAYLOR: It's -- yeah.

4 THE COURT: Okay.

5 MS. PAYLOR: We, we did attach that. I saw that when I
6 was looking for it.

7 THE COURT: Okay.

8 MS. PAYLOR: So, Paul Long.

9 THE COURT: And I know that -- I heard 27 different
10 depositions have yet to be taken by the Defendants from the
11 Motion for Continuance.

12 But -- so just so I'm clear, are you taking Paul Long's
13 deposition?

14 And I hear you say yes. John Jolley's has been noticed
15 for December.

16 MR. MEDLIN: December 21st I believe, Your Honor, and
17 we will take Paul Long's deposition.

18 THE COURT: And you take Paul Long's deposition.

19 What about any of the other doctors that you relied on
20 their medicals as facts for you showing that he has
21 Alzheimer's, or dementia, or can't remember his words, or
22 anything along those lines?

23 Who else?

24 MR. MEDLIN: Your Honor, we plan to do that too.

25 THE COURT: Okay. I figured.

1 Okay. Okay. That's all I need to know.

2 Let's just do this. If there is anything new that
3 anyone has not already argued on their motions to bifurcate,
4 you can do it by memo.

5 Okay. And---

6 MR. TWOMBLEY: I would just like to say one thing.
7 It's not new argument, but I just want to remind you---

8 THE COURT: Yeah.

9 MR. TWOMBLEY: ---at the last hearing what you said you
10 were gonna do, Judge Mullen, and I thought it was a great
11 idea. Is during all of this summary judgment argument, you
12 were gonna make a list -- you said I'm gonna be listening.

13 THE COURT: Right.

14 MR. TWOMBLEY: I'm gonna make a list---

15 THE COURT: Of what the witnesses---

16 MR. TWOMBLEY: ---of the things---

17 THE COURT: ---would be testifying as to the -- I know.
18 I know.

19 MR. TWOMBLEY: Right. And I, and I just wanted to
20 point out that, after the past three days of hearing all of
21 this back and forth---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. TWOMBLEY: ---nothing, absolutely nothing came up
24 about whether or not Paul and Merrill Barringer entered into
25 a contract---

1 THE COURT: Contract.

2 MR. TWOMBLEY: ---on December the 4th of 1998. Please
3 seriously consider bifurcating that issue. Otherwise it's
4 gonna be an unmanageable---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. TWOMBLEY: ---mess if we try it all together---

7 THE COURT: Okay.

8 MR. TWOMBLEY: ---respectfully.

9 MR. MEDLIN: Your Honor, those issues wouldn't have
10 come up in, in this argument. We've already made our
11 argument about bifurcation, and how we're gonna need all the
12 witnesses who---

13 THE COURT: You've already said that.

14 MR. MEDLIN: ---who sue Paul and Merrill---

15 THE COURT: I've heard it.

16 MR. MEDLIN: ---all the way through his death. And so
17 that's a -- that's a canard, Your Honor.

18 THE COURT: Okay. Okay. All right. So, I have
19 another hearing that I have to get on on another WebEx.

20 So -- sorry. It's on this one. Sorry.

21 Okay. I will let you know -- oh, I see.

22 Okay. So, I'm not gonna promise you when I'm gonna
23 rule on this cause I don't know. But I can tell you this.
24 It will -- when I do, and even potentially before, I will
25 rule on the motion to bifurcate as well. So, just to let

1 you know, and that may come before this. I don't know.

2 I'm just gonna go through everything one more time, and
3 go ahead and give me the meeting minutes. Not the minutes.

4 I'm sorry. I want to hear the audiotape.

5 MS. PAYLOR: Audiotape.

6 THE COURT: Thank you.

7 MS. PAYLOR: Yes, ma'am.

8 THE COURT: And we'll go from there.

9 Okay. Yeah.

10 MR. MEDLIN: And, Your Honor, you wanted a copy of the
11 handwritten letter. We can just send that without---

12 THE COURT: Yeah. I'm gonna assume it's the same one
13 you -- exactly written in Mrs. Barringer's handwriting,
14 correct?

15 I'm gonna take your word for it. You're telling me.
16 So, I believe it.

17 MR. MEDLIN: We'll, we'll send it, Your Honor.

18 THE COURT: I believe that it's---

19 MS. PAYLOR: Your Honor, there's, there's no testimony
20 on when that was written. She may have -- it went to Mr.
21 Barringer's secretary to type and mail.

22 THE COURT: Right. Okay.

23 MR. MEDLIN: We'll send it, Your Honor.

24 MS. PAYLOR: I think she might of copied what he
25 wrote---

1 THE COURT: Okay.

2 MS. PAYLOR: ---and sent it to her.

3 Thank you.

4 THE COURT: Okay. Okay.

5 MS. PAYLOR: There's no evidence that what he -- of
6 what he's saying.

7 MR. MEDLIN: You'll see, Your Honor.

8 THE COURT: Okay. Thank you. Just send it to me.

9 Okay. All right. Y'all have a nice Thanksgiving.
10 okay?

11 MR. MEDLIN: You too, Your Honor. Thank all of y'all.

12 MR. TWOMBLEY: You as well.

13 THE COURT: Appreciate it.

14 All right. Thank you.

15

16

17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina, on the 17th, 18th and 19th days of November, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 18th, 2020



PAMELA E. GREEN, Court Reporter

EXAMINATION OF NEILL G. MCBRYDE

By Mr. Twombly 10

By Mr. Medlin 67

DEPOSITION EXHIBITS

EXHIBIT	DESCRIPTION	PAGE

Def Exhibit 12	Notes from file from the October 1, 1998 meeting	62
	Bates 149-156 of Exhibit 1 (not marked separately)	

Exhibit 1	Defendant's Exhibit Notebook to Deposition of Neill G. McBryde	

Exhibit 2	Plaintiff's Exhibit Notebook to Deposition of Neill G. McBryde	

1 and by December 4th, they were very glad to have
2 submitted that change, so that the last of them to die
3 could make the final decisions as to how and who
4 within the descendants framework were to receive the
5 property, passing onto the will and the revocable
6 trust.

7 Q. So tell me as much as you recall about the
8 specific discussions with them regarding powers of
9 appointment?

10 A. All I can say is, I can absolutely state
11 that I would have spent considerable time going over
12 that because -- and -- and considerable time over the
13 documents generally because these, you know -- any
14 time you're dealing with a new set of documents, you
15 want to make darn sure they -- it's exactly what they
16 want and that they understand all of the implications.

17 And I would have said upon their desire to
18 keep the flexibility of dealing with descendants on
19 the second death as a very customary framework for
20 clients with multiple siblings and the like.

21 So that's -- that's -- that's the whole
22 point of why we started in August is to end up with
23 the planning they wanted to implement, look at other
24 things that they could implement, that Robert Slain
25 and other third parties had pushed in front of them,

1 and -- and but what was most importantly, get those
2 documents signed.

3 I think you may have noted, you didn't
4 mention it -- that -- that they wanted to get it done
5 by December, and we got it done by December.

6 And they were fully informed. I can't tell
7 you exactly what I said, but I know what I've done for
8 over 50 years, and I think you -- and I'm very
9 thorough and very good and make sure they know what
10 they're -- they're doing and that that's what they
11 want to do.

12 Q. So this is based on not your recollection
13 specifically, but based on your practice?

14 A. Yes.

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: I'm not going to put
17 the documents in front of them and say,
18 sign them. And I don't prepare them unless
19 I've had -- in this context because we were
20 and are talking about substantial wealth,
21 it was very important that they understand
22 the implications of what they were doing.

23 So I have no question but that I
24 spent ample time as -- as I think you can
25 sort of see the process. But it moved

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

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

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

14 A. I don't.

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

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

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

24 MR. MACLOSKIE: Asked and answered.

25 BY MR. TWOMBLEY:

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

8 MR. MACLOSIE: Asked and answered.

9 BY MR. TWOMBLEY:

10 Q. Do you have any such evidence?

11 A. I -- I do not.

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

14 A. Sure.

15 Q. Luzak 142.

16 A. Yes.

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

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

20 Q. 19 --

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

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

25 MR. GILREATH: You got a page number?

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
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COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II.

HAMPTON B. LUZAK,) TRANSCRIPT
PLAINTIFF,) OF
VS.) RECORD

MERRILL B. LIGHT, MERRILL U. BARRINGER,)
AS PERSONAL REPRESENTATIVE OF THE ESTATE)
OF PAUL BRANDON BARRINGER, II, J.)
RANDOLPH LIGHT, JR., MERRILL B. LIGHT)
AS PUTATIVE TRUSTEE OF THE PAUL B.)
BARRINGER, II, REVOCABLE TRUST DATED)
DECEMBER 4, 1998, AND MERRILL B. LIGHT)
AS TRUSTEE OF THE MERRILL BARRINGER)
LIGHT REVOCABLE TRUST,)
DEFENDANTS.)

2016-CP-07-1253
2016-CP-07-1294

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II.

HAMPTON B. LUZAK,)
PLAINTIFF,)
VS.)
MERRILL U. BARRINGER,)
DEFENDANT.)

August 10th, 2021
Beaufort, South Carolina

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B E F O R E:

THE HONORABLE ROBERT J. BONDS, Judge.

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

WILLIAM M. HOGAN, CHARLES B. MACLOSKIE, ALAN
MEDLIN, THOMAS W. TRAXLER, AND DESA BALLARD
ESQ.
Attorneys for the Plaintiff

ALICE PAYLOR
ESQ.
Attorney for the Defendant Merrill B. Light,
individually and as Trustee

ASHLEY TWOMBLEY
ESQ.
Attorney for the Defendant Merrill U. Barringer as
Personal Representative of the Estate of Paul B.
Barringer, II

Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

1 P R O C E E D I N G S

2

3 THE COURT: Mr. Traxler, I saw where you guys filed an
4 Emergency Petition for Declaration of Automatic Stay
5 pursuant to Rule 241(a) of the South Carolina Rules of
6 Procedure. And so what I'd like to do is to hear from you
7 on that, and then what your position is as it relates to
8 moving forward on any matters including motions today.

9 MR. TRAXLER: Yes, sir, if it pleases -- if it pleases
10 the Court.

11 I am Tom Traxler on behalf of the Plaintiff.

12 First of all, again, Mr. Gilreath has been an integral
13 part of this litigation team for the entire litigation. He
14 wasn't at the hearing last time before you because of health
15 issues. Those health issues continue. He apologizes for
16 not being here but he, he is not here.

17 To address your question, if you would not mind, I
18 would defer to Ms. Ballard, who is really handling the
19 appeal issues for us, to address that motion.

20 THE COURT: Okay. All right.

21 MS. BALLARD: Thank you, Your Honor. Desa Ballard for
22 the Plaintiff.

23 we did file a motion to declare that an automatic stay
24 is in effect.

25 As an appellate practitioner, it is easier to deal with

1 an automatic stay when there's not an automatic stay in
2 effect and you have to move for a supersedeas and ask the
3 Court of Appeals to stay your case.

4 In a case like this, under Rule 241(a), the appeal
5 itself operates as an automatic stay as to anything
6 unaffected by the or as to anything affected by the Orders
7 that are on appeal. And it became apparent in the last few
8 days that the Defendants take the position that our appeal
9 does not stay the Trial Court proceedings. So, yesterday,
10 we filed a motion for an emergency declaration of the fact
11 that the automatic stay is in effect.

12 Rule 241 is not a complicated rule.

13 THE COURT: Hold on. Let me, let me ask you something.

14 MS. BALLARD: Yes, sir.

15 THE COURT: I thought -- I thought Mr. Traxler told me
16 last week, or maybe it was the week before, the last time we
17 were in Court, that despite the appeal, this Court still had
18 jurisdiction to move forward on the, on the bifurcated
19 matter.

20 MS. BALLARD: That was a prior appeal. That was an
21 appeal that was filed in February of this year---

22 THE COURT: Oh, yeah, yeah.

23 MS. BALLARD: -- of 2021.

24 THE COURT: Okay. The other appeal.

25 MS. BALLARD: Yes.

1 THE COURT: All right.

2 MS. BALLARD: And the Court of Appeals still has that
3 file open.

4 THE COURT: I'm with you.

5 MS. BALLARD: The, the status of that is that, when the
6 Court received -- the Court of Appeals receives an appeal,
7 they do a preliminary review, the staff attorneys do a
8 preliminary review, to determine if an appeal is
9 interlocutory or not and---

10 THE COURT: Right.

11 MS. BALLARD: ---what they did in this case, from the
12 February appeal, is they sent letters to both sides saying
13 we think this might be interlocutory. Would you please tell
14 us what your position is.

15 So, both sides briefed it and the Court of Appeals
16 ruled that it was an interlocutory appeal. But, in May of
17 this year, the Plaintiff filed a Petition for
18 Reconsideration of that dismissal of the appeal, and then I
19 think two weeks ago the Court of Appeals wrote to opposing
20 counsel and said we'd like you to file a response to the
21 Petition for Rehearing in May.

22 The reason that's significant, Your Honor, is, is it's
23 the only, the only motion before an Appellate Court to which
24 the other side can't automatically file a response. In
25 fact, the rule says that when someone petitions for

1 rehearing, you may not file a response unless the Court
2 invites you to do so.

3 So, the Court, in late July, invited---

4 THE COURT: Okay.

5 MS. BALLARD: ---them to draft or to re -- respond to
6 that initial appeal. So, that one is still pending.

7 Then we filed, filed a new appeal last week which
8 appealed numerous Orders, one of which granted summary
9 judgment in favor of Merrill Light on the February, 2012
10 estate planning documents finding that they were valid, and
11 there are several others. And we also asked the Court of
12 Appeals to continue -- to combine the two appeals.

13 The, the rule provides that the, the appeal operates as
14 an automatic stay unless it falls into exceptions that are
15 set forth in Subsection B and there's 11 exceptions. This
16 case doesn't fall within one of them.

17 So, we're in a situation where the appeal is automatic.
18 But because it's automatic, we're not in a position to
19 petition the Court of Appeals and say would you grant us a
20 supersedeas cause we don't need a supersedeas. We have one.
21 We have a stay of the Trial Court proceedings by virtue of
22 the appeal that was filed last week.

23 And if I could mention briefly, and then I'll defer to
24 Mr. Medlin, it -- if you look at the case -- at the causes
25 of action that Judge Mullen ordered be tried first and prior

1 to any other causes of action in any of these four
2 consolidated cases, she said that the case -- the, the
3 causes of action that should go first were the second and
4 third in the Complaint filed by my client, and in -- her
5 order says first and prior to. Unfortunately, that cause of
6 action relies largely, or at least in part, on estate
7 planning documents that were executed in 1998, and then a
8 series of events that occurred after that.

9 By virtue of having obtained summary judgment on the
10 issue of whether the 2012 estate documents are valid is,
11 is -- essentially is a matter of law since summary judgment
12 was granted. That moots a great deal of the issues that
13 we're suppose to try in front of Your Honor starting on the
14 30th because the 2012 estate documents revoked the 1998
15 documents. And when Judge Mullen issued the order
16 bifurcating those two cases -- causes of action to go first,
17 summary judgment had not been granted as to the 2012
18 documents. So, it made sense at the time.

19 But now that summary judgment has been granted, and as
20 a -- and as a matter of law, which we've appealed, there is
21 a finding that the 2012 estate planning documents are valid,
22 the issues that we're suppose to try, according to Judge
23 Mullen's bifurcated order, are, are moot because the 1998
24 documents were revoked by the 2012 document.

25 So, the, the reason the Court wrote Rule 241(a) the way

1 they did is because it necessarily affects the final
2 judgment. That's when an automatic stay goes into effect
3 when it necessarily, necessarily affects the final judgment.

4 For instance, if summary judgment was granted tonight
5 on the 2012 estate documents, that issue has been
6 adjudicated and it's final. But it's necessary to know what
7 the Appellate Court's answer to that will be before we try
8 all the other issues, whether it's the second and third
9 causes of action bifurcated by Judge Mullen in her February
10 order, or any of the other causes of action because there
11 are estate planning documents from 1998, from 2012, from
12 2014, and 2015.

13 So, if the finding that the 2012 documents are valid,
14 that was necessarily a finding that the 1998 documents are
15 not valid, 19 -- the 2014 documents are not valid, the 2015
16 documents are not valid, so, we got no case. We're -- we,
17 you know, we're gone. So, we have to have the ability to
18 appeal at this interlocutory stage to get a final judgment
19 from the Court of Appeals before this Court can go further
20 on any of the causes of action that remain before the Court.

21 Now, there are -- pursuant to Rule 205 in the Appellate
22 Court rules, it's clear that the Appellate Court -- the
23 Trial Court can proceed with matters unaffected by the
24 appeal.

25 THE COURT: Right.

1 MS. BALLARD: Rule, Rule 205 has a dearth of case law
2 that construes it. But what it does with -- the, the few
3 cases that exist tell us that, if somebody's issued a
4 verbal -- if a trial judge has issued a verbal ruling, and
5 somebody files a notice of appeal, does the trial judge
6 still have jurisdiction to sign the order?

7 well, of course he does because he ruled before the
8 appeal was taken.

9 Other examples that the Appellate Courts have held are
10 issues such as the case is over, the case is on appeal, but
11 there's a pending motion for post-judgment of attorney's
12 fees, and clearly that can go forward because that's
13 separate, that's separate from the merits of the action.
14 You see a lot of case law in this area in the Family Court
15 because the Family Court retains jurisdiction at all times
16 to decide issues relating to the best interest of the
17 children.

18 But, in this situation, when we're talking about estate
19 planning documents, especially a series of estate planning
20 documents, and we suddenly find ourselves with an order
21 saying that the 2012 documents are valid, that's essentially
22 a decision on the whole case because that means the 2014 and
23 '15 documents didn't mean anything, and the 2000 -- and the
24 1998 documents didn't mean anything.

25 So, we have to appeal now, and we have to find out what

1 the Appellate Court's answer to that is before we can try
2 any of the other issues. Otherwise, if it were otherwise,
3 we would run the risk of multiple and conflicting jury
4 verdicts on various issues, which is to be avoided, and
5 that's why, why the case -- why Rule 241 makes it an
6 automatic stay.

7 The 11 exceptions to Rule 241's automatic stay are, are
8 situations in which you can move for a supersedeas under
9 proper circumstances. For instance, on a money judgment,
10 you can appeal a money judgment, but it's not ordered --
11 automatically stayed unless you post the appeal bond --

12 THE COURT: Right.

13 MS. BALLARD: -- which is what -- one of the
14 exceptions. If you post an appeal bond, then it's stayed.

15 And the others, judgments directing the sale of real
16 property, there's a logical reason why an Appellate Court
17 should look at those particular circumstances and determine
18 whether, under those particular cases, a stay should be in
19 place or not during the appeal. Otherwise, every other
20 appeal automatically operates as a stay.

21 Your Honor, we -- it became apparent to us that there
22 was some dispute about whether there was a stay in effect by
23 virtue of the appeal that we filed last week. So, we filed
24 the emergency petition with the Court of Appeals yesterday
25 and, at 5:04 yesterday afternoon, they sent a letter to

1 opposing counsel, both opposing counsel here and in the
2 courtroom, as well as the counsel that represents CFRC,
3 which is no longer a party to the Trial Court action, and
4 they requested a response no later than August 13th.

5 what's significant about that, Your Honor, is that the
6 Court of Appeals is expediting there. The Court of Appeals
7 is gonna try to answer this just as quick as they can.

8 THE COURT: Well, you asked them to, didn't you?

9 MS. BALLARD: I did. I---

10 THE COURT: Good.

11 MS. BALLARD: ---asked them to. And they're, they're
12 looking at it in an, an expedited fashion. Normally you
13 would have 15 days to respond to a motion in the Appellate
14 Court---

15 THE COURT: Right.

16 MS. BALLARD: ---and then five days to file a reply.
17 But because we've got trial on the 30th, we've asked them
18 to expedite it and they have done so.

19 So, our position is there's an automatic stay and only
20 the Court of Appeals can tell us that. And I think if we go
21 forward on anything else at this point, we're wasting your
22 time and our client's time and money, and it's just an
23 exercise in futility until the Court of Appeals decides like
24 what orders that are now on appeal, if any, are going to
25 remain in effect because we can't try what's left with that

1 one Order out there.

2 I mean you learn fairly early in your practice that
3 summary judgment can be your enemy because if you, if you
4 move for summary judgment on part of your case and you get
5 it, you're stuck for two years while the case goes through
6 the, the Appellate Courts.

7 So, if you want to expedite litigation, you never move
8 for summary judgment because that causes exactly this
9 problem.

10 THE COURT: So, how does this case move forward?

11 MS. BALLARD: Well---

12 THE COURT: Hypothetically, let's assume that they
13 say -- grant you the relief that you -- that you're seeking.

14 MS. BALLARD: My---

15 THE COURT: So what does that mean as far as this case
16 moving forward?

17 Tell me about that.

18 MS. BALLARD: If there's an automatic stay under Rule
19 241(a), all Trial Court proceedings are stayed unless the
20 court finds there is some portion of the case that is
21 unaffected by the appeal.

22 THE COURT: Until?

23 MS. BALLARD: Until the appeal is concluded.

24 THE COURT: Okay.

25 MS. BALLARD: And---

1 THE COURT: And that's the appeal that has been -- that
2 was filed back several months ago?

3 MS. BALLARD: It's both. When we filed our appeal last
4 week, we, we referred to the original February appeal and
5 said we're also adding this -- the February appeal to this
6 appeal.

7 THE COURT: The summary judgment motions?

8 MS. BALLARD: Yes.

9 THE COURT: Okay. So---

10 MS. BALLARD: We added both of those---

11 THE COURT: ---you just kind of put them all together
12 and said here?

13 MS. BALLARD: We asked the Court to, to put them
14 together. The Court didn't initially. They've assigned
15 them separate appellate case numbers. But obviously
16 they've, they've not had it except since last I think
17 Wednesday or Thursday is when we filed the Notice of Appeal.

18 So, it hasn't been reviewed enough to determine whether
19 they're gonna consolidate it. We'll probably move to
20 consolidate the appeals because that's more expeditious and
21 moves it more quickly.

22 But because there's an automatic stay, the Trial Court
23 can do nothing at this point. The Trial Court has to
24 respect the automatic stay, and, as I said, it's unfortunate
25 that people do move for summary judgment because it creates

1 these problems. It creates a fix and start to the
2 litigation, which is not what any of us want. But because
3 the other causes of action that we have pending are affected
4 by the ruling on the 2012 documents, our hands are tied and
5 all we've asked---

6 THE COURT: Well, you're saying that, that basically we
7 can't even move forward on the second and third -- I think
8 it was the second and third causes of action.

9 MS. BALLARD: The second and third, correct.

10 THE COURT: We can't do that now because of the summary
11 judgment motions that were granted?

12 MS. BALLARD: Yes.

13 THE COURT: So, until those are decided 18 months from
14 now or whenever it is, there's just nothing we can do for
15 the next year and a half.

16 Is that fair?

17 MS. BALLARD: That's fair unless there's some portion
18 of the case that is found to be unaffected by the appeal.

19 THE COURT: What -- like, like what?

20 Like what could there possibly be?

21 MS. BALLARD: What the Appellate Courts have done in
22 the past, and I, I don't know whether it will occur in this
23 case or not, but, in the past, the Appellate Courts have
24 allowed discovery to continue while an appeal is pending.
25 They are---

1 THE COURT: Y'all got more discovery to do?

2 MS. BALLARD: No, I'm giving you---

3 THE COURT: I didn't think so. Good God.

4 MS. BALLARD: I'm just giving you a for instance.

5 THE COURT: This is two -- 2016, right?

6 MS. BALLARD: One of them is 2016.

7 THE COURT: All right.

8 MS. BALLARD: Your Honor, the Court of -- Court of
9 Appeals grants certain ability to go forward under certain
10 circumstances. One of them, by way of reference only, was
11 to allow the appeal to -- the discovery to go forward while
12 the appeal is pending so we don't have to waste the time
13 that is created by the automatic stay. And I don't know
14 whether there's any portion of this case that is not
15 automatically stayed or not, which is why I asked the Court
16 of Appeals to tell us.

17 THE COURT: So but for the summary judgment motions, we
18 could be moving forward --

19 MS. BALLARD: The other problem---

20 THE COURT: -- on, on two and three?

21 Is that right?

22 MS. BALLARD: No.

23 THE COURT: Why not?

24 MS. BALLARD: The other problem is the Order that was
25 granted allowing intervention by CFRC because CFRC came in

1 as an intervening party, and they moved to strike our action
2 for civil conspiracy, and that motion was granted as well.

3 So, that too is a final order. We just can't proceed
4 on any of the other claims until the action is decided, the
5 question's decided on our civil conspiracy cause of
6 action---

7 THE COURT: All right.

8 MS. BALLARD: ---because we can't try any of the other
9 cases, any of the other causes of action until we know if
10 civil conspiracy is going to be a part of those trials.

11 I -- other than discovery, off the top of my head, I
12 can't think of what would be unaffected by the appeal. But
13 the Court's asked for expedited responses, and I think
14 they'll, they'll let us know. I think today we are -- our
15 hands are tied. I think---

16 THE COURT: Unfortunately.

17 MS. BALLARD: I think so and I think, because the Court
18 of Appeals has asked for this expedited return, they'll move
19 pretty quickly on it. They generally do.

20 They've given us only two days to reply. So, I think
21 the Court is intending, I'm just speculating based on my
22 experience with the appeal -- Appellate Court, I think the
23 Court's gonna try to rule prior to the August 30th trial
24 date. I'm just guessing. But I don't know whether they'll
25 accomplish that or not.

1 THE COURT: Of course, if they rule by the
2 August 30th trial date --

3 MS. BALLARD: Yes.

4 THE COURT: -- they're not gonna rule on your summary
5 judgment motions.

6 MS. BALLARD: No.

7 THE COURT: So, so y'all are still in the same place we
8 can't go, right?

9 MS. BALLARD: No, not necessarily. Here's what I'm
10 asking them to rule on.

11 THE COURT: Okay.

12 MS. BALLARD: I'm asking them to rule on whether there
13 is an automatic stay. If they come back and they say that
14 no, there's not auto -- not an automatic stay, everything
15 can go forward, then we have to make the decision whether we
16 ask for a supersedeas to stay everything for the benefit of
17 judicial economy or whether we don't.

18 THE COURT: Yeah. But now, in representing your
19 client -- now, now -- never mind. Go ahead.

20 MS. BALLARD: The other thing that the motion by the
21 intervenors did was to strike a number of the categories of
22 damages that we're seeking in several of the causes of
23 action. And since those damages have been stricken, any of
24 the causes of actions that seek damages are clearly stayed
25 because we can't ask for damages with summary judgment

1 granted as to that.

2 It's -- it is -- it's, unfortunately, it's, it's a
3 morath (phonetic). I've done appellate work for almost 40
4 years, and it -- it's unfortunate when this happens.

5 I start -- my first job out of Law School, Your Honor,
6 was clerking for a circuit judge, and the lawyers would come
7 in the courtroom, and they'd say the case was on appeal.
8 we'd draw a line through it on the roster. It's on appeal.
9 There's nothing we can do.

10 It got a little more complicated than that when people
11 started paying attention to the rule because there are
12 categories of appeals that do not stay the Trial Court
13 proceedings. Unfortunately, for us, this Court -- this,
14 this Trial Court proceeding is stayed.

15 THE COURT: well, hopefully what they'll do is they'll
16 give us the decision, and I know that the minute they do, if
17 it's before the 30th, then we'll be in a position to move
18 forward on two and three.

19 MS. BALLARD: If the stay---

20 THE COURT: Cause everybody wants that. Everybody
21 wants to rush to get this thing to trial.

22 MS. BALLARD: If they say there's---

23 THE COURT: Everybody's tired of it. I know y'all are.

24 MS. BALLARD: If they say there's no automatic stay,
25 you're exactly right, and what we talked about when we were

1 before you last time is we would then set a schedule for
2 when you name your witnesses, and when you disclose your
3 exhibits, and all that stuff. And clearly the Court of
4 Appeals is attempting to move quickly to do it.

5 THE COURT: Right.

6 MS. BALLARD: And that -- that's the answer to the
7 question.

8 The other causes of action that remain at the Trial
9 Court level are affected by the summary judgments that have
10 already been granted. So, we have to know the answers to
11 those questions before we can answer---

12 THE COURT: Okay.

13 MS. BALLARD: ---everything else. I hope that answers
14 your question.

15 THE COURT: That answers them all.

16 MS. BALLARD: Thank you, Your Honor.

17 MS. PAYLOR: Your, Your Honor?

18 THE COURT: That answers them all.

19 MS. PAYLOR: May we address that?

20 THE COURT: I'm gonna, I'm gonna let Mr. Twombly or
21 whoever wants to talk to me on this talk to me now.

22 MR. TWOMBLY: Thank you, Your Honor.

23 The Plaintiff has been making this argument, I don't
24 know, for years now. Literally for, for years.

25 The argument is this. The argument is that the

1 resolution of the issue in claims two and three, which is
2 was there a contract in place, was a promise made, is
3 somehow inextricably intertwined with the rest of the
4 Barringer litigation.

5 Okay. So, that is the threshold question. I mean if
6 they are intertwined with one another, then one would affect
7 the other, and the appeal of one would affect the resolution
8 of the other. But if, if they're not tied together, if
9 they're separate issues, and that one can be resolved
10 irrespective of the resolution of the other, then the
11 resolution of one doesn't affect the resolution of the
12 other, and that is why the standard is, when there is an
13 appeal, there is a stay of the matters affected by the
14 appeal. There is no rule anywhere that says, when there's
15 an appeal taken, it stops the Trial Court from doing
16 everything, and we can provide you with a hundred cases that
17 say that.

18 So, the question the Court has to answer, and this is
19 already been resolved three or four times in the Circuit
20 Court, and I think at least once, and now I would say twice,
21 in the Court of Appeals, and let me explain that. The
22 Plaintiffs argued to Judge Mullen for a day, a full day, you
23 can't bifurcate this case, Judge Mullen. The resolution of
24 the contracts claims is inextricably intertwined with the
25 resolution of the other claims. We've got to have one big

1 trial.

2 Judge Mullen said no, we don't, and we're not going to.
3 She said we're gonna have one trial on these claims, and
4 then we'll deal with the rest of the case.

5 So, that's the first time they lost that argument.
6 They then filed a Motion to Reconsider, and they said, Judge
7 Mullen, you've got to reconsider this. You can't possibly
8 resolve these contract claims without, without resolving all
9 the rest of these claims.

10 Judge Mullen said no, I disagree with that. Your
11 motion to reconsider is denied. We will go to trial on
12 claims two and three. They then appealed that Order.

13 They go to the Court of Appeals. They told the Court
14 of Appeals, Court of Appeals, you have to let our appeal
15 proceed. You can't -- the Trial Court can't possibly
16 resolve claims two and three until they resolve other -- all
17 the other claims. The Court of Appeals said get out of
18 here. That's not right. You can have a trial.

19 Now they filed this new appeal, Judge, and they asked
20 the Judge -- the, the Court to consolidate the old appeal,
21 that's already been dismissed, with the new appeal.

22 why?

23 Because they're inextricably intertwined between each
24 other. You can't possibly resolve one without resolving the
25 other.

1 Their motion, the Court preliminarily declined
2 appellate's request in the Notice of Appeal to consolidate
3 these two appeals. They've been told four times now. The
4 last time we were in front of the Supreme Court with their
5 appellate arguments, Chief Justice Beatty said it was
6 nonsensical. Nonsensical. That's his word. Not mine.

7 So, the Court, I guess now five times, they have been
8 told -- they have been arguing -- I think I told you the
9 last time we were in front of you, they have argued this
10 over and over and over. They're not inextricably
11 intertwined between each other for a couple of reasons.

12 Claims two and three solely seek to establish one issue
13 or two issues, is there a contract in place between Merrill
14 and Paul Barringer, did Mrs. Barringer promise Mr. Barringer
15 that she, she would do or not do this, that, or the other.

16 None of that has -- the, the resolution of those
17 questions, it doesn't matter which, which will and Trust are
18 valid. It could be '98. It could be '12. It could be '14.

19 Is there an agreement in place?

20 Is there a contractual agreement in place?

21 So, the resolution of these appellate issues on -- in
22 the big case is I guess what I'd call it where they're
23 appealing the grant of summary judgment on the derivative
24 damages. They're appealing the grant of summary judgment on
25 the validity of the 2012 document. That has nothing to do

1 with whether or not there's a contract or a promise in
2 place, and I've got the discovery here today to show you.

3 They've said the whole time that this promise was made
4 in 1998. That has nothing to do with this appeal.

5 Your Honor, we take the position that your role is
6 clear and they've, they've conceded this almost by going to
7 the Court of Appeals. They have now asked the Court of
8 Appeals please tell Judge Bonds that there's an automatic
9 stay. They'll either say there is or they'll either say
10 there's not.

11 THE COURT: And if they say that there is, then we've
12 got to wait and let things do---

13 MR. TWOMBLEY: If, if---

14 THE COURT: Correct?

15 MR. TWOMBLEY: If---

16 THE COURT: Is that right?

17 MR. TWOMBLEY: I don't, I don't know. I, I, I don't
18 know if they---

19 THE COURT: Well, it's a thing you know.

20 MR. TWOMBLEY: Well, the reason that---

21 THE COURT: So, I'm, I'm happy to---

22 MR. TWOMBLEY: The reason that -- is because I don't
23 think they're going to specifically address that issue
24 between now and August the 30th.

25 THE COURT: And that's what's (sic) concerns me is

1 that -- is whether or not they address the issue that's
2 actually going to allow this matter to move forward.

3 MR. TWOMBLEY: Right.

4 And that's why, Your Honor, you have to decide whether
5 or not if you agree with Judge Mullen who told them twice,
6 Judge Price who told them twice, and the Court of Appeals is
7 already told them once.

8 what -- we can resolve the issue of the existence of a
9 contract or agreement, and it is not inextricably inter --
10 that's the whole foundation of Judge Mullen's Bifurcation
11 order. The whole foundation of that. The whole reason she
12 did that is because, as we argued, these are separate and
13 dis---

14 THE COURT: Let me, let me ask you then.

15 Then what about the -- what about the summary judgment
16 motions that have been granted by Judge Price that basically
17 does away with or basically does away with the other wills
18 and so forth, what happened -- what interplay?

19 Tell me about that.

20 There's got to be some type of interplay.

21 MR. TWOMBLEY: It has no, no interplay at all. No
22 interplay at all.

23 whether or not Mr. Barringer's 2012 documents are valid
24 has nothing to do with whether or not they entered into a
25 contract with each other in 1998. I mean he could of

1 executed a will in '11, and '12, and '13, and '14, and '15,
2 and '16.

3 well, the question is did they enter into a contract, a
4 contractual agreement with one another.

5 THE COURT: In '98?

6 MR. TWOMBLEY: In '98 or any time thereafter.

7 So, the -- these are separate and distinct issues. It
8 was the entire foundation of Judge Mullen's decision to
9 bifurcate. It was the foundation of Judge Price's decision
10 to go ahead and, and set these matters for trial, and every
11 time that the Plaintiff has made this argument and tried to
12 delay this trial they have been told no.

13 My client is 89 years old, Judge. She is 89 years old
14 and they have filed a lawsuit saying she is a party to a
15 contract where she has agreed to never change her will.
16 Never. We've been doing this for years and years and we're
17 trying to get this one simple issue resolved.

18 Now, let me just make one other argument if I may.

19 There is no way in the world that what's happening on
20 appeal could affect Your Honor's ability to resolve motions
21 for summary judgment. There is no way they could affect
22 Your Honor's ability to resolve motions for summary
23 judgment. In fact, if Your Honor's gonna grant summary
24 judgment, and we think you will, you got to go ahead and do
25 it so they can package it all up with these other issues.

1 I mean think about if the Trial Court were to wait
2 every time somebody filed an appeal. You'd be ping-pong-
3 ponging back from Columbia and back down. You'd never get
4 anything done. And that's what they're -- it's just totally
5 trying to constipate the wheels of justice in their favor,
6 and we're just trying to get some issues resolved, and it
7 doesn't have to be every issue.

8 There's, there's no rule that says well, you know, if,
9 if we can't resolve everything, then we will -- then we
10 won't resolve anything. That's letting perfect get in the
11 way of good.

12 And so we are pleading with Your Honor and we have
13 waited forever to get this trial date. Judge Mullen's gonna
14 try this case in March. Then she had to recuse herself, and
15 then Judge Price was gonna try the case, and then he
16 thought -- we, we want a trial on this issue and it's just
17 common sense argument that has been rejected over and over
18 and over again. Whether or not a contract or an agreement
19 exists that they say was established in 1998 is totally
20 irrelevant.

21 The summary judgment orders, Your Honor, was whether or
22 not they could seek money damages from conspiracy. The
23 summary judgment order was whether Mr. Barringer had
24 testamentary capacity to enter a, a will in 1998. I'm
25 sorry. In 2012. I apologize.

1 So, these issues are separate and distinct. It's been
2 argued over and over again, and we would just ask you to
3 please proceed and not let them derail this thing yet again.

4 MS. PAYLOR: Your Honor?

5 MS. BALLARD: May I reply, Your Honor?

6 THE COURT: Well, hold on, hold on.

7 MS. BALLARD: Okay.

8 THE COURT: Yeah, I'm gonna let you -- I'm gonna --
9 yeah, let me hear from you.

10 Yes, ma'am.

11 MS. PAYLOR: Thank you, Your Honor.

12 I'm Alice Paylor. I represent Merrill Light, who is
13 sister of Hampton Luzak and the daughter of Merrill
14 Barringer.

15 It was her motion that was granted with regard to the
16 February, 2012 documents. I just want to be clear as to
17 what they just said.

18 Now -- and Your Honor repeated that. They have told
19 the Court that if that is upheld by the Appellate Courts,
20 that grant of the February, 2012 documents, the case is over
21 cause those are the valid documents. And if that is their
22 position, I'd like for them to affirm it now.

23 THE COURT: Sure. That---

24 MS. PAYLOR: That, that is going to be upheld. There
25 was no evidence and Mr. Twombly has prepared his motion to

1 show you that they have no evidence of this contract. And
2 on behalf of Merrill Barringer, who I know and respect, who
3 is 89 years old, and would like to see this taken care of
4 before she dies, and, unfortunately, that's what we're
5 afraid the Plaintiff wants is for her not to be here by this
6 delay tactic that they have imposed, and that's what --
7 that's what we ask.

8 The Plaintiff has no evidence. It's the Emperor with
9 no clothes. They have a lot of talk and no evidence.

10 Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. BALLARD: Very briefly, Your Honor.

13 Neither Ms. Paylor nor Mr. Twombly addressed Rule 241.
14 So, I, I won't go back through that again.

15 The only point I would make is that we've asked the
16 Court of Appeals to tell us whether there's a stay in this
17 case. Mr. Twombly spent 20 minutes telling you what he
18 needs to put in a brief and send to the Court of Appeals so
19 they can answer the question.

20 I don't think we can answer the question at this point.
21 I think our hands are tied.

22 I would like Mr. Medlin to address the, the reason the
23 current appeals necessarily involve the remaining cases
24 because I have not used the word inextricably intertwined.
25 But Rule 42, in fact, which consolidated the cases to start

1 with, and then bifurcated two of the causes of action out,
2 only, only under some circumstances is that a factor to
3 consider.

4 THE COURT: All right. Before I hear from the
5 professor, what about it on the rule?

6 MR. TWOMBLEY: Sir?

7 THE COURT: She says you didn't address the rule. So
8 --.

9 MR. TWOMBLEY: I apologize. I didn't refer to it by,
10 by the rule number but I did.

11 THE COURT: Okay.

12 MR. TWOMBLEY: 241 provides service of a notice of
13 appeal in a civil matter stays only matters "decided in the
14 appealed order." The Trial Court quotes, and this is from
15 205 and 241, retains jurisdiction over matters not affected
16 by the appeal including the authority to enforce matters not
17 stayed by the appeal.

18 So, that's why I started off -- Your Honor, the whole
19 analysis here is tied to whether or not these things are
20 connected to each other in a way that one can't be resolved
21 without the other and Ms. Ballard is correct.

22 At the very beginning of the second case when nobody
23 really knew diddly squat about what Plaintiff was alleging,
24 we all said yeah, let's put it together and let's
25 consolidate it. But, of course, as we got into it, we were

1 able to convince Judge Mullen twice, and Judge Bonds twice,
2 that -- I'm, I'm sorry, Judge Price twice, that these two
3 things are not sufficiently connected to each other, and we
4 ought to go to trial on one before we go to trial on all
5 these other issues, and we convinced the Court of Appeals---

6 THE COURT: All right.

7 MR. TWOMBLEY: ---that as well.

8 THE COURT: All right. I'm happy to hear from---

9 MS. BALLARD: Thank you, Your Honor.

10 THE COURT: ---the professor.

11 Yes, sir.

12 MR. MEDLIN: Thank you, Your Honor.

13 If it please the Court.

14 I think it's clear we didn't ask for the summary
15 judgments and we've been arguing about---

16 THE COURT: Not a lot of people do. That's been my
17 experience in practicing law. I've been on the bench a few
18 months. But most people --.

19 MR. MEDLIN: We've, we've actually asked for one now.
20 But we didn't ask for the ones that are causing the problem,
21 Your Honor, and we did fight the bifurcation because we
22 thought it was going to create duplicate trials that were
23 gonna take a long time, and I'm gonna, with your indulgence,
24 talk a little bit more about that in a minute.

25 This is a different argument about whether there should

1 be bifurcation or not. We did lose that argument twice. I
2 lost that argument twice. I'm the one who argued it. Maybe
3 I shouldn't of mentioned that.

4 This is about whether the summary judgments that they
5 asked for and got affect the second and third causes of
6 action, and, with your indulgence, Your Honor, I want to
7 explain to you how that has to be.

8 Now, I'd like to correct a couple of things that I
9 think need correcting.

10 First of all, as Ms. Ballard pointed out, we did ask
11 for an appeal of the bifurcation order. We were rejected.
12 But as she pointed out, the Court seems to have taken a new
13 interest in it by asking for a reply from the other side.
14 That's a separate and apart issue.

15 Now, again, we asked to consolidate all that just to
16 try to get everything put together and resolved. But that's
17 a separate issue.

18 If I'm recalling correctly, Chief Justice Beatty did
19 not say that our bifurcation argument was nonsensical. He
20 said that, when we were in -- trying to get into the weeds
21 about whether the case had been properly assigned to Judge
22 Price, that's when he used nonsensical. That -- that's not
23 a correct statement about -- also Judge Mullen never set a
24 trial for March. Never set the length of a trial.

25 Now, again, the question is are the second and third

1 causes of action that we didn't think should of been
2 bifurcated cause we were anticipating these kinds of
3 problems, are they affected now by the appeal. And as
4 Ashley -- as Mr. Twombly pointed out, the second and third
5 causes of action, we're saying that we don't believe that
6 Mrs. Barringer has a Power of Appointment, and the real
7 issue is over the voting controlled stock.

8 Okay. That's, that's what this is about and we've got
9 several arguments. We argue that he didn't never intend to
10 give her a Power of Appointment. We argue that if he did,
11 she entered into a contract not to exercise the power over
12 voting stock. And, even if there's not a contract, she made
13 a promise not to do it.

14 Now, here's why their summary judgments now impact
15 those arguments. They've now arguing (sic) to Judge Mullen
16 and to Judge Price, somewhat to you, although they're
17 starting to move away from that now, although they're coming
18 back to it with the recent motion in limine, that the only
19 document that matters is a 1998 document. Mr. Barringer, we
20 have no belief whatsoever that he was incapacitated, unduly
21 influenced, subject to tortuous interference, mistake,
22 fraud, civil conspiracy in 1998. We actually think those
23 are the last valid documents that he executed.

24 But as Ms. Ballard pointed out, and I know Your Honor
25 knows, he executed purportedly more documents in February of

1 2012, and in July of 2012, and in June of 2014, and in
2 February of 2015 each one of which would of revoked the
3 earlier document.

4 And so if, if you're going to have a discussion about a
5 contract or a promise about something, you have to know what
6 the contract is about. Even I know that a basic premise of
7 contract law is -- one of the material terms is what's the
8 subject of the contract.

9 THE COURT: Right.

10 MR. MEDLIN: Well, if the 1998 Power of Appointment is
11 the one that's what we're gonna dispute, number one, it's in
12 the document. But, again, did he mean to do that, did she
13 agree not to exercise it either through contract or promise,
14 then we look at the facts and circumstances surrounding that
15 time.

16 Now, they keep saying we responded to an interrogatory,
17 and, again, this is how we had to read the interrogatory.

18 When was there a contract?

19 What was -- the first and we think only valid document
20 was 1998. We think that's when there was a contract or a
21 promise about that Power of Appointment. But we didn't say
22 anywhere in our interrogatory responses if some of the
23 subject -- subsequent documents are valid, revoking the
24 '98 document creating a new Power of Appointment under
25 different facts and circumstances, we couldn't produce

1 evidence about that. We think we can.

2 But you and I, Your Honor, can not make a contract
3 today for me to sell you blank.

4 (WHEREUPON, an indiscernible statement was made at this
5 time by an unidentified speaker.)

6 MR. MEDLIN: We have to know what it is I'm selling and
7 you're buying. We can't decide about a Power of
8 Appointment, if it exists, and if it can be exercised if it
9 does, without knowing which Power of Appointment we're
10 talking about.

11 Now, it just so happens that our arguments in the
12 bifurcated case are going to coincide with our arguments in
13 the main case. We're gonna show that the -- we were
14 planning on showing, until we got this summary judgment that
15 the 2015 documents weren't valid, the 2014 documents weren't
16 valid, the July, 2012 Trust wasn't valid, the February, 2012
17 Trust wasn't valid, and get back to the '98 document.

18 And, in fact, you, Your Honor, astutely pointed out to
19 me last time we were talking, there's one set of documents
20 you want to work on and you're absolutely right. It's the
21 '98 documents because we think they're the only valid ones.

22 And as we will see whenever we get around to this,
23 which, again, is not our fault, we're gonna see that this is
24 the one set of documents where Mrs. Barringer, sitting at
25 the table with the estate planning attorney, everybody

1 signing documents together, is given a Power of Appointment
2 by Mr. Barringer and she signs a will right there and says I
3 expressly decline to exercise the Power of Appointment.
4 That's not an exact quote but that's the essence of what she
5 did. In any of the subsequent documents, she didn't do
6 that.

7 So, we have an easier time arguing about contract
8 language with the '98 document.

9 well, guess what's happened now?

10 we've had that taken away from us.

11 So, in both cases, the main case and the bifurcated
12 case, we've got to decide the validity of each one of those
13 documents going all the way back to '98 because if any of
14 the subsequent documents is valid, the '98 documents aren't
15 and we can't focus on the '98 Power of Appointment because
16 there's not one. We have to focus on the document that
17 creates the power, and the facts and circumstances at that
18 time.

19 That's been taken away from us in a couple ways by
20 these summary judgment orders.

21 Number one, the February, 2012 will has been declared
22 to be valid.

23 Now, I know, based on conversations that Ms. Ballard
24 and I have had on many occasions now, what she's referring
25 to is the case is over, the case about the '98 documents

1 over if the February, 2012 will is valid. By the way, that
2 is a more nuanced issue. Argued unsuccessfully against
3 summary judgment in front of Judge Price. We already won
4 that one with Judge Mullen. We didn't have any less
5 evidence, and yet somehow we didn't get by summary judgment
6 in front of Judge Price.

7 But to declare, declare that document valid without
8 taking into account the 2014 or the 2015 documents, either
9 of which would revoke the 2012 will, it leaves us in a
10 conundrum. But that's just a nuance dealing with
11 Ms. Paylor's question.

12 We can not prove that Mr. Barringer did not intend to
13 create a Power of Appointment over the voting control,
14 that---

15 THE COURT: Well, you can't prove that he didn't?
16 What, what was---

17 MR. MEDLIN: Your Honor?

18 THE COURT: That was like a double -- maybe a double
19 negative in there, and I was trying -- I'm trying to figure
20 that out. I'm sorry.

21 MR. MEDLIN: And I, and I mumbled.

22 We can not prove that he did not intend to give a Power
23 of Appointment over the voting stock. We can not prove that
24 even if he did, Mrs. Barringer agreed not to exercise it
25 either by contract or a unilateral promise, either of which

1 is permissible under South Carolina Law, until we know what
2 Power of Appointment we're talking about. And they have now
3 created a conundrum.

4 Until we can have the Appellate Court decide whether
5 that February, 2012 will is really valid or not, we can't
6 try the second and third causes of action, and we certainly
7 can't focus on the '98 documents, which is what they---

8 THE COURT: Well, they're not really establishing by
9 law that it's valid. They're just saying that Judge Price
10 erred in granting summary judgment.

11 Then wouldn't it -- wouldn't, wouldn't that be a jury
12 matter?

13 Wouldn't a jury hear some of that -- some of those
14 issues?

15 I'm asking. I don't know.

16 MR. MEDLIN: He issued a summary judgment. He said---

17 THE COURT: No, no, no.

18 If the, if the Appellate Court overturned that, right?

19 That's what you're appealing?

20 MR. MEDLIN: Right.

21 THE COURT: That's what you want overturned?

22 MR. MEDLIN: Right.

23 THE COURT: Okay. The fact that it's overturned, then
24 that's gonna be -- a jury's gonna be able to consider that,
25 right?

1 MR. MEDLIN: Yes, Your Honor. That's exactly right.

2 THE COURT: Okay. So -- right.

3 So -- okay. So, I just wanted to make sure. So, it's
4 not necessarily a winner. It could still be a loser.

5 MR. MEDLIN: Sure. And, again, hopefully the jury will
6 decide other than the way Judge Price decided it.

7 THE COURT: I understand.

8 MR. MEDLIN: Right.

9 But we get a chance to do that, and we can't deal with
10 the Power of Appointment causes of action without knowing
11 which document we're dealing with.

12 Now, also important to me is the civil conspiracy cause
13 of action that was dismissed by Judge Price in the summary
14 judgment, separate order, because in order to be able to
15 prove all of those subsequent wills and Trusts aren't valid,
16 we need a tool set that the law allows us to have. We had a
17 tool set, undue influence. Got lack of capacity. We had
18 civil conspiracy and that's been taken away from us now too.
19 So, a tool that we could use to show that none of those
20 documents are valid has been taken away from us.

21 So, Your Honor, the case is complicated even more now
22 because of the bifurcation and now the bifurcation is being
23 affected by the second and third causes of action, the Power
24 of Appointment causes of action by the summary judgment
25 finding that the 2012 will, which revokes the '98 documents,

1 is valid and we get a right to appeal that so we can argue
2 about which of these documents is valid.

3 Again, you asked me last week. I want to get back to
4 the -- '98, but I can't do that now. That's the premise
5 they've been saying all along, the '98 documents, '98
6 documents.

7 They took the '98 documents out of play by asking for
8 the summary judgment. We didn't do that and, again, the
9 civil conspiracy takes away a tool. That's the effect
10 without being able to go through the whole panoply in front
11 of a jury and let the jury decide what documents are valid.
12 We can't get back to '98, which is where I would prefer to
13 be.

14 Now, if some other subsequent will is valid, then we
15 get into some different issues. February, 2012 will is
16 valid, we have to look at that and look at the facts and
17 circumstances that existed at that point, and talk about the
18 evidence of whether there's a Power of Appointment over
19 voting control there, whether she contracted not to exercise
20 it, whether she promised not to exercise it. But we can't
21 do that without knowing which will it is.

22 So, that's why we're affected, Your Honor.

23 THE COURT: All right.

24 MR. TWOMBLEY: Your Honor, I have a brief response if I
25 may.

1 THE COURT: Oh, hold on one second.

2 (Pause.)

3 THE COURT: Ms. Ballard?

4 MS. BALLARD: Yes, sir.

5 THE COURT: If the Court, if the Court comes back and
6 doesn't grant you the relief that you're seeking, what
7 rights, if any, or additional appeal, do you have?

8 MS. BALLARD: The appeal can continue to go forward.
9 It simply doesn't stay the Trial Court proceedings.

10 THE COURT: Okay.

11 MS. BALLARD: So, the Court would decide the same
12 issues. They would just do it while other matters were
13 proceeding at the Trial Court level, which our position is
14 we can't. The summary judgment of the 2012 documents kind
15 of blew that up, and, and, again, as I've pointed---

16 THE COURT: But you couldn't, you couldn't take this
17 Emergency Petition to the Supreme Court if the Court of
18 Appeals -- what I'm asking is -- what I want to know right
19 now is, and you are an expert on this---

20 MS. BALLARD: I, I---

21 THE COURT: ---obviously.

22 MS. BALLARD: ---understand, Your Honor.

23 THE COURT: But my question is, because I already know
24 if the summary judgment motions, if you lose them, you have
25 to protect your client's rights. So, I understand

1 completely. And I've already been instructed last week or
2 week before last that, if those matters are not decided in
3 your favor, that you will seek cert to the Supreme Court.

4 So, my next question -- and that's a fact. That's what
5 was -- is on the record, was revealed to me. Mr. Traxler I
6 think, in fact, told me that.

7 So my question is this.

8 Is there a way for you, in the event that this
9 Emergency Petition is not granted, okay, can you then appeal
10 that matter to the Supreme Court?

11 Is there any other avenue of appeal for you?

12 MS. BALLARD: The rules aren't clear about that, Your
13 Honor. It has been done. People have taken what I would
14 call an interlocutory order from the Court of Appeals, and
15 they have sought writ of Certiorari on it before the Supreme
16 Court. But my understanding of the law is that the Court of
17 Appeals -- the Supreme Court will not address the merits of
18 the issue that were interlocutory when the Court of Appeals
19 decided.

20 So, I think the answer -- my position would be that if
21 the Court of Appeals says that there is no automatic stay,
22 then, as I said earlier, we have to decide whether we want
23 to ask the Court of Appeals for an automatic stay, for a
24 supercedes, because of these complicating issues that Mr.
25 Medlin has already talked about. But the -- now, now we

1 have done, not, not in this case---

2 THE COURT: Again---

3 MS. BALLARD: ---I'm---

4 THE COURT: ---what I'm trying to figure out is, you
5 don't get what you want from the---

6 MS. BALLARD: Right.

7 THE COURT: ---Court of Appeals in regard to this
8 matter that was filed yesterday?

9 Right?

10 MS. BALLARD: The appeal was filed last week but this
11 motion was filed yesterday, yes, sir.

12 THE COURT: Yeah, this motion.

13 MS. BALLARD: Yes, sir.

14 THE COURT: If you don't get what you want in this
15 motion --

16 MS. BALLARD: Yes, sir.

17 THE COURT: -- is there any avenue for you to take an
18 additional appeal?

19 That's what I want to know.

20 MS. BALLARD: Not that I know of.

21 THE COURT: So you're saying you wouldn't cause there
22 isn't one?

23 MS. BALLARD: I'm not aware---

24 THE COURT: Is that correct?

25 MS. BALLARD: That's correct.

1 THE COURT: Is anybody in the courtroom aware of one?

2 MR. TRAXLER: I don't know the answer to the question.

3 I think the alter -- the avenue that we have to explore is
4 what Ms. Ballard said, and that is whether or not we ask
5 this Court or the Court of Appeals for a supersedeas keeping
6 in mind also, as Ms. Ballard said, the Court of Appeals is
7 looking at the appeal of the bifurcation. So, we got both
8 of those things there. But in terms of if they deny the
9 Petition for a Stay, I'm not sure---

10 THE COURT: Right.

11 MR. TRAXLER: ---where that leaves us, whether it may
12 be a supersedeas.

13 THE COURT: I'm sorry. May be the --?

14 MR. TRAXLER: It may be the avenue of a supersedeas at
15 that point. I just don't know.

16 MS. BALLARD: I think, if the Court of Appeals denies
17 our request for a declaration that there is an automatic
18 stay, then the only step left for us is to ask the Court of
19 Appeals to issue a supersedeas, not to go to the Supreme
20 Court. I think that was the question you were asking.

21 THE COURT: Yeah.

22 what I'm trying to figure out is, you know, what other
23 breaks are out there in the event the Court of Appeals
24 because I'm just -- I don't know. I -- you know far more
25 about this than I do obviously. And so that's why I'm

1 asking the question. I'm trying to figure out, you know,
2 what -- what's next.

3 MS. BALLARD: Well, when the Court of Appeals was
4 created in, in 1983 -- don't get me started because I can
5 talk about that for a long time. But when the Court of
6 Appeals was created, the flow of appeals was changed
7 dramatically so that all appeals that used to go to the
8 Supreme Court now go to the Court of Appeals with the
9 exception---

10 THE COURT: Right.

11 MS. BALLARD: ---of six kinds of cases, six types of
12 cases that are spelled out by statute that have to be
13 directly appealed. So, as a result of that, what we now
14 have is reviews of, of Court of Appeals decisions, in civil
15 cases at least, are discretionary. It's just like the
16 United States Supreme Court has discretionary review over
17 the final decision of the State Court.

18 THE COURT: Right. Okay.

19 MS. BALLARD: So, in -- now that the Court system has
20 been restructured and the Court of Appeals has been
21 recognized as a Constitutional Court, the Court of
22 Appeals -- the Supreme Court was relieved of a burden of
23 being the only Court of last resort. They eliminated 75
24 percent of the appeals they had to hear as the primary
25 Appellate Court.

1 The Court of Appeals is now the primary Appellate
2 Court, and the only way the Supreme Court will hear
3 something is on a Writ of Certiorari---

4 THE COURT: Right.

5 MS. BALLARD: ---which is discretionary.

6 THE COURT: So, let me ask you this, Ms. Ballard.

7 Let's assume for the sake of this example or, or my
8 application, let's assume that the Court of Appeals
9 indicates that -- they don't grant your relief, and as a
10 result, we can move forward---

11 MS. BALLARD: Correct.

12 THE COURT: ---with two and three. I understand you
13 have all your other objections---

14 MS. BALLARD: Yes, sir.

15 THE COURT: ---and so forth. If we get that before the
16 30th, but maybe -- I don't know.

17 Are y'all ready to go?

18 MS. BALLARD: They have us on---

19 THE COURT: I mean what -- where are we?
20 where are we?

21 MS. BALLARD: ---an expedited schedule.

22 well, we -- last week we were gonna talk about a
23 scheduling order, and Your Honor said you wanted to wait
24 until after we had these motions today to talk about a
25 scheduling order. We were ready to discuss what those dates

1 would be with an August 30th trial date.

2 But I don't know if the Court of Appeals will rule
3 before then. But I can tell you they're on it. We don't
4 see them move this fast very often.

5 THE COURT: So, it's your position that we can't talk
6 about any of this until we get their ruling?

7 MS. BALLARD: There can't be any -- there can't be any
8 ruling on anything pending before this Court until we find
9 out if there's an automatic stay.

10 THE COURT: So then how do we prepare to have this case
11 ready to go by the 30th?

12 If they come back on the 29th and say we can go
13 forward, how do we go forward on the 30th when or, or
14 will, or will we be able to move forward on the 30th?

15 MS. BALLARD: If they wait to rule until the 29th --

16 THE COURT: Uh-huh. (Affirmative).

17 MS. BALLARD: -- it will be pretty hard for us to go to
18 trial the next day. I think we would have to meet, agree on
19 a scheduling order. But I think we can try the case within
20 the month if people will stop moving for summary judgment.

21 THE COURT: Well, I can tell you, if they come back and
22 say you can go, you'll be trying it on the 30th.

23 okay?

24 MS. BALLARD: I understand.

25 THE COURT: You don't have to worry about that.

1 MS. BALLARD: I understand.

2 THE COURT: Don't have to worry about that. We'll be
3 picking a jury on Monday.

4 All right. Anything else as it relates to -- I guess
5 now the question is what are we, what are we gonna do about
6 motions, and I understand I think what your position is. I
7 understand what your position is.

8 MS. BALLARD: Thank you, Your Honor.

9 MR. TWOMBLEY: Your Honor, I'd still like to be heard
10 if that -- if I can---

11 THE COURT: All right. I'll listen.

12 Go right ahead.

13 MR. TWOMBLEY: Just a couple points that I wanted to
14 make Your Honor aware of. I still feel like there's a
15 little bit of a disconnect between this contract and promise
16 and what were Mr. Barringer's final estate planning
17 documents, and I think this is a, a way to, to look at it.

18 Let's, let's just assume, for purposes of this
19 discussion, that the 2015 documents are good, that, that
20 Mr. Barringer had testamentary capacity.

21 Okay. Plaintiff will still argue there's a contract
22 and promise in place. That doesn't affect anything of their
23 argument.

24 Let's assume, if the 2014 documents are valid,
25 Plaintiff still alleges there's a contract or promise in

1 place. Judge Price's ruled that the 2000 -- February, 2012
2 documents are valid. They still take the position that
3 there's a contract and promise in place. That issue is
4 going to have to be resolved no matter what.

5 No matter which document's in place, no matter when
6 Mr. Barringer may or may not have lost testamentary
7 capacity, that is an underlying fundamental issue that has,
8 has got to be resolved, and it's gonna have to be resolved
9 now or it's gonna have to be resolved later. The point is
10 it should be resolved now because it is not affected by the
11 appeal.

12 I would point out, Your Honor, that -- I mean the, the
13 Plaintiff filed a motion for summary judgment.

14 THE COURT: All right.

15 MR. TWOMBLEY: It's, it's a -- it's scheduled to be
16 heard today.

17 THE COURT: All right. We're gonna be at ease. I've,
18 I've heard---

19 MR. TWOMBLEY: Okay.

20 THE COURT: I heard enough.

21 MR. TWOMBLEY: Thank you, Judge.

22 MS. BALLARD: Thank you, Your Honor.

23 THE COURT: Uh-huh. (Affirmative).

24 (WHEREUPON, a short recess was taken at this time.)

25 THE COURT: All right. I've heard the arguments and

1 what I will say is this.

2 I do not believe that the emergency position --
3 petition is going to deprive this Court of moving forward.
4 I don't believe that the issues are the same. I don't
5 believe that they're the same issues that are on appeal, and
6 I believe that the contractual issues, as it relates to the
7 second and third causes of action, can move forward.

8 I don't believe that it's gonna be a whole lot of
9 prejudice to the Plaintiff. I know that there's gonna be
10 duplication. I know there's gonna be cost involved, and it
11 may not be the most -- it may not facilitate judicial
12 economy.

13 But when I look at this, I have to weigh it, and when I
14 look at an 89 year old woman, who has been here dealing with
15 this for six years, when I weigh judicial economy, when I
16 weigh that cost, and I weigh it with that, I'm telling you,
17 it doesn't come close. It does not come close in my mind.

18 So, what I will say is we're gonna proceed until the
19 Court of Appeals tells me otherwise.

20 MS. BALLARD: Thank you, Your Honor.

21 THE COURT: All right.

22 MS. BALLARD: Thank you.

23 THE COURT: So, what we're gonna do now is there's some
24 motions that need to be heard, and I'm gonna tell you right
25 now, motions concerning one and four, I'm not hearing those

1 motions. I don't need to hear them. So, I, I -- there were
2 motions -- maybe they were yours, Mr. Twombly, or somebody
3 had motions on one and four. I'm not touching those. I'm
4 not gonna entertain them.

5 So, whatever motions those were, we are not gonna --
6 this Court is not gonna address that because, again, I'm
7 dealing with two and three, and, Mr. Twombly, I'm taking
8 you -- I've listened, I've looked, and I do believe that
9 they're not so intertwined, the contractual issues, I
10 don't -- that's one of the reasons or perhaps the main
11 reason I don't think -- that's why I think we can move
12 forward and why the Court of Appeals is not gonna rule that
13 we can not as relates to those issues.

14 So, what motions do we have to hear?

15 Let's just kind of outline.

16 What motions do we have from the Plaintiff?

17 Do we have any motions -- and I understand your ongoing
18 objection and you can note that for the record. That's
19 fine.

20 MS. BALLARD: Thank you very much, Your Honor.

21 THE COURT: Sure.

22 Do you want to go ahead and do that now?

23 MS. BALLARD: Your Honor?

24 THE COURT: Cause I'm gonna ask you to argue motions.

25 MS. BALLARD: Yes, sir. We, we understand Your Honor's

1 verbal ruling and, and we -- we'll comply. We just want to
2 note our exception for the record.

3 THE COURT: I under -- I understand completely.

4 MS. BALLARD: Thank you very much.

5 THE COURT: So, are there any motions that y'all have
6 that we need to hear because what I'd like to do is like --
7 I'd like to at least get those down so we know what motions
8 we need to hear.

9 MS. BALLARD: There are a number that I think we can
10 hear. I think the first one was one that Mr. Macloskie was
11 gonna address. We---

12 MR. MACLOSKIE: I apologize---

13 MS. BALLARD: We've printed out the roster that the
14 Clerk of Court's Office had --

15 THE COURT: Is that---

16 MS. BALLARD: -- and we're just going based on that
17 order?

18 THE COURT: Is that this right here?

19 UNIDENTIFIED SPEAKER: Yes, sir.

20 THE COURT: Okay.

21 MR. TWOMBLEY: Your Honor, I---

22 MS. BALLARD: I'm gonna swap places with him so he can
23 --.

24 MR. TWOMBLEY: Your Honor, if I might, I think there's
25 only three motions that are pending related to causes of

1 action two or three. We have two motions for summary
2 judgment we filed on June the 14th relating to cause of
3 actions two and three, and I think the Plaintiff has
4 essentially filed a cross motion for summary judgment on two
5 and three. All the other motions, in my opinion, they may
6 disagree---

7 THE COURT: Well.

8 MR. TWOMBLEY: ---with that, I don't think they relate
9 to causes of action two and three.

10 THE COURT: Well, let me hear what Mr. Macloskie's got.
11 Go ahead.

12 MR. MACLOSKIE: This is, this is an easy one. This is
13 a motion that I filed for an Order of Protection. It has to
14 do with the deposition of Ellie (phonetic) Thomas.

15 MR. TWOMBLEY: Your Honor, we will withdraw that
16 motion. We will---

17 THE COURT: Well, what motion was that one?

18 MR. MACLOSKIE: What happened is Mr. Twombley asked the
19 question about our attorney's fees. I objected.

20 THE COURT: And I'm not gonna allow that.

21 MR. MACLOSKIE: Okay.

22 THE COURT: Then he's with -- you're withdrawing that?

23 MR. TWOMBLEY: Yes, I'll, I'll withdraw.

24 THE COURT: All right. I'm not -- I wouldn't allow
25 that anyway.

1 MS. BALLARD: Thank you, Your Honor.

2 MR. TRAXLER: Your Honor, I believe the next motion is
3 from the Plaintiff to exclude experts for late disclosure.
4 We can argue that now or however you wish to proceed.

5 THE COURT: That's fine.

6 Is this -- that's number two, Mr. Traxler?

7 MR. TWOMBLEY: Yeah.

8 MR. TRAXLER: Yeah, I don't have the roster in front of
9 me.

10 MR. TWOMBLEY: Correct.

11 MS. BALLARD: Yes, it is.

12 THE COURT: Go ahead. I'm happy to hear from you on
13 the motion to exclude Defendant's expert.

14 MR. TRAXLER: Thank you, Your Honor.

15 If it please the Court.

16 We had filed that motion to exclude the experts, and I
17 am not -- they had filed a response and the like, and I am
18 not going to go into the (indiscernible) about this. But
19 the expert witness matter, multiple Court hearings before,
20 and more or less kind of kicked down the road if you will.

21 The essence of, and I'm not asking that they -- telling
22 you that they're in violation of some order or something
23 like that, but the essence of this issue is this, that they
24 discloses -- Mr. Twombley disclosed, on June 21st, a
25 couple witnesses that he intended to use. We submitted---

1 THE COURT: Of -- '20?
2 of '21.

3 MR. TRAXLER: Yes, sir.

4 THE COURT: Okay.

5 MR. TRAXLER: June 20 -- June 21 of 2021.

6 THE COURT: Yes, sir.

7 MR. TRAXLER: We have disclosed our experts back in
8 December of 2019 consistent with a scheduling order that, at
9 that time, was in place. Judge Mullen, in her -- ordered us
10 to provide the identity of the experts, expert reports by
11 December 10th, I believe it was, in 2019. We did that.
12 They had some dispute with whether or not we had provided
13 sufficient reports and the like.

14 But the bottom line is that they deposed our experts.
15 They got the opinions from our experts. The last one
16 included July 1st of, of this year, Mr. Thomas, that Mr.
17 Macloskie was just addressing. They did not disclose any
18 experts to us until -- Mr. Twombly did until June 21st of
19 this year. Ms. Paylor disclosed experts July 6th of this
20 year. Mind you that we had been told by Judge Price that he
21 expected discovery to be over with by the end of July.

22 We still have not received expert reports as Judge
23 Mullen's Scheduling Order had required. They had disclosed
24 to us the CV, opinions of the experts, the area of
25 testimony, and the CVs of those experts. But they have not

1 given us any expert reports that Judge Mullen's Order
2 required. Since then -- in fact, we have found ourselves in
3 a position of okay, looks like we're getting ready to go to
4 trial, and we don't have any expert reports, and we don't
5 have any depositions that we can get done on this particular
6 case.

7 So, Mr. Twombly, in response to the motion I think
8 filed something last night that said, and I read it this
9 morning, that says that they have one expert that they
10 intend for the week of August 30th. This issue may be --
11 we may be able to resolve this issue where, if they can give
12 me an expert report tomorrow on this expert, tell me who it
13 is, give me an expert report tomorrow, let me depose that
14 expert next Monday, I think that resolves it. We can do the
15 rest of the experts later, cause as I understand it from
16 them, they will testify in the second phase of the
17 bifurcated trial.

18 So, we had that motion to recuse. I think the answer
19 is give me an expert report within---

20 MS. BALLARD: No. Exclude.

21 THE COURT: Exclude.

22 MR. TRAXLER: What did I say?

23 MS. BALLARD: Recuse.

24 THE COURT: Recuse.

25 MR. TRAXLER: Oh, exclude. Excuse me.

1 Give the expert report tomorrow. Let me depose them
2 next Monday if I so choose so long as it, as it is a
3 discovery deposition and not a de bene esse deposition to go
4 by. But I think their expert is probably somebody from
5 Florida, and then the other issue, the issue of the other
6 experts being, other than that, decided at a later date if
7 they tell me that this is an expert they're gonna use at the
8 trial of August 30th.

9 THE COURT: Mr. Twombly.

10 MR. TWOMBLEY: Your Honor, there is a long history and
11 some confusion about experts. But it really all stems from
12 the Plaintiff, and I just want to give you a brief
13 background.

14 THE COURT: Well, hold on, hold on. I don't need to
15 get into that.

16 How many experts you got?

17 How many experts are you calling on the 30th, sir?

18 MR. TWOMBLEY: If you limit the case to just causes of
19 action two and three, and not any of the capacity, undue
20 influence, then we'll be calling one expert. But I, I just
21 mention that, Your Honor, because the Plaintiff has
22 consistently taken the position that they're gonna try to
23 put in the whole case on cause of action two and three,
24 capacity people, economic experts, and everything else. And
25 if they do, we'll have to call our experts as well. But if

1 your---

2 THE COURT: How many experts you got?

3 MR. TWOMBLEY: I think we have three.

4 THE COURT: You have three experts?

5 MR. TWOMBLEY: Yes, sir, three or four.

6 THE COURT: Okay.

7 MR. TWOMBLEY: I'm not -- I think it's three.

8 THE COURT: Okay. How many experts y'all got?

9 MR. TRAXLER: Three or four.

10 THE COURT: Hold, hold, hold, hold, hold on. Hold on.
11 Four -- three or four?

12 MR. TRAXLER: Three or four, yes, sir.

13 THE COURT: All right.

14 MR. TRAXLER: We, we do not expect to use the economics
15 expert or our damages expert in the -- on the first trial.

16 THE COURT: Okay. So, Mr. Twombley, if you've got
17 three or four experts --

18 MR. TWOMBLEY: Yes, sir.

19 THE COURT: -- you've named them back in June?

20 MR. TWOMBLEY: Yes, Your Honor.

21 THE COURT: Okay. Is there any reason that by --
22 today's Tuesday?

23 Today -- all right. Today's Tuesday.

24 Is there any reason, by Thursday, sir, that you can't
25 give them some type, or Friday, that you can't give them

1 some type of information or report as relates -- I mean I
2 think it's very reasonable what he's asking for, sir.

3 Is there any reason -- is there a problem and I think
4 he absolutely should be able to take a de bene esse
5 deposition of the expert or what -- or, excuse me, what do
6 you want, a general discovery?

7 MR. TRAXLER: Discovery but not---

8 THE COURT: Yeah, a general, a general discovery.
9 Excuse me. I apologize. You should absolutely be able to
10 take a general discovery deposition of an expert after you
11 have some type of report.

12 Can you get him that report by Friday, sir?

13 MR. TWOMBLEY: Yes, I -- we will.

14 THE COURT: Yes.

15 MR. TWOMBLEY: We will do that, yes, Your Honor.

16 THE COURT: You can get them that report by Friday, and
17 then, what I want to know is, when do want to depose them?

18 I mean the -- he'll -- he's gonna have to make them
19 available. I'm not gonna let you -- I mean --.

20 MR. TRAXLER: I, I, I don't know, with the
21 August 30th trial date, the time.

22 THE COURT: All right.

23 MR. TRAXLER: There's no fat in the schedule for this.
24 As I understood their response that they filed last night,
25 they had one expert. I said okay. I can work with that.

1 Three experts?

2 THE COURT: Well, I mean by Thursday, by Thursday, sir,
3 Mr. Twombly, I want you to give him a report of those
4 experts, and it may be from the report that you do need or
5 don't need to take the deposition of all of them.

6 But, in the mean time, Mr. Twombly, you make those
7 experts available to him or one -- any member of his team
8 when Mr. Traxler says that you make them available. So, if
9 Monday's good or Tuesday's good for Mr. Traxler or whenever
10 that is, then those experts have got to be made available
11 cause I'm not gonna -- that's un -- I'm not gonna let him go
12 and sit around and wait and all of a sudden and I'm -- I'm
13 giving you a -- I'm giving you this afternoon, and then
14 tomorrow if your experts -- I don't know what your experts
15 have and have them put together. But Thursday, before close
16 of business, sir, I want something and I, I don't mean any
17 skimmer. I mean I want a report that Mr. Traxler is
18 getting.

19 And, Mr. Traxler, once you get that report, then you
20 get with -- you get with Mr. Twombly and he will make
21 himself available for, for some dates and get that done. If
22 there's a problem with that, somebody email and cc my law
23 clerk.

24 Okay. Is that all right, sir?

25 I mean I, I understand perhaps nothing's all right.

1 But I, I want to accommodate you as it relates to your
2 experts.

3 MR. TRAXLER: And I, I do appreciate that. I mean just
4 doing three of them with an August 30 trial date, all that
5 we've got is an enormous amount of pressure. But that'd---

6 THE COURT: Well---

7 MR. TRAXLER: ---be trying to make it work. I would
8 ask the Court that listen -- at least set aside Monday and
9 Tuesday of next week for the deposition. Then I can decide,
10 based on what I get from them, as to whether that will be
11 necessary.

12 THE COURT: I think that's fine.

13 Mr. Twombly.

14 MR. TWOMBLEY: I will do my best. I will get on the
15 phone with these experts as soon as we walk out of this
16 courthouse, and I will -- won't have any problem with my
17 schedule and I'll---

18 THE COURT: Report by Thursday before close of
19 business. Make him available Monday or Tuesday. I mean you
20 got Zoom. You got whatever. Let's get that done.

21 okay?

22 MR. TWOMBLEY: Yes, sir.

23 THE COURT: All right. Mr. Traxler, is that all right?

24 I just want to make sure you -- and, and I'm not trying
25 to---

1 MR. TWOMBLEY: I know.

2 THE COURT: I just want to make sure that you -- that
3 I'm not missing something, sir, and you may believe -- you
4 know, each of -- all of y'all may think I'm missing
5 everything.

6 But what I want to know is, as it relates to this
7 little matter, do you -- in other words is you just said
8 Monday and Tuesday. I gave you Monday and Tuesday.

9 You understand?

10 I'm just asking---

11 MR. TWOMBLEY: Yes, sir.

12 THE COURT: ---are we onboard?

13 MR. TRAXLER: Yes, sir, I think we can make that work.

14 THE COURT: All right.

15 MR. TRAXLER: Again, I just have to make calls. Got a
16 lot to do now, now we're starting this. But that takes care
17 of that issue, yes, sir.

18 THE COURT: All right. What's next?

19 I've got a number three motion for partial summary
20 judgment.

21 All right. Whose -- what do -- what do y'all have?

22 Do y'all have anything else?

23 I'm sorry.

24 MS. BALLARD: I'm checking with my crew, Your Honor.

25 THE COURT: Go right ahead. Take your time.

1 (Pause.)

2 THE COURT: All right. Other motions from the
3 Plaintiff?

4 MR. TRAXLER: The other only motion from the Plaintiff
5 I believe, Your Honor, is Defendants filed a motion for
6 summary judgment on cause of action -- causes of action two
7 and three, and we filed a cross motion essentially.

8 THE COURT: Okay.

9 MR. TRAXLER: And I think that's where we are.

10 THE COURT: All right. That's your motion then, Mr.
11 Twombley?

12 MR. TWOMBLEY: Yes, Your Honor.

13 THE COURT: All right. Are you ready to argue that?

14 MR. TWOMBLEY: I am. I'll just let you know this is an
15 extensive motion. It's gonna take some time. I don't know
16 if they'll be time for my argument and Mr. Medlin's. I'm
17 happy to do whatever Your Honor would like to do. I just
18 want to let you know that.

19 THE COURT: How long you think your argument's gonna
20 take?

21 MR. TWOMBLEY: 30 to 45 minutes.

22 THE COURT: The same?

23 MR. MEDLIN: Your Honor, we've argued this before
24 successfully, and it took probably longer from our side than
25 30 or 45 minutes. Probably more than an hour. I'll talk

1 real fast. Faster than usual.

2 MS. BALLARD: But you won't mumble.

3 THE COURT: Can y'all come back Friday?

4 MR. MEDLIN: Well, Your Honor, I---

5 THE COURT: I'm just asking.

6 MR. MEDLIN: I, I never---

7 THE COURT: If you can't, you can't. I'm, I'm not---

8 MR. MEDLIN: I never let my other life get in the way
9 of Court. I'm rarely a lawyer in a case. This Friday I'm
10 making an ABA national address Friday afternoon and I
11 really---

12 THE COURT: Congratulations.

13 MR. MEDLIN: I do this a lot, Your Honor. I, I can't
14 not do that.

15 THE COURT: Sure. No problem.

16 MR. MEDLIN: I mean -- but it's that afternoon.

17 (Pause.)

18 THE COURT: All right. The following week I have
19 General Sessions Court here.

20 MS. BALLARD: The week of the 16th, Your Honor?

21 THE COURT: Is that the week of the 16th?

22 UNIDENTIFIED SPEAKER: Yeah.

23 MS. BALLARD: Thank you, Your Honor.

24 THE COURT: What I would say is I feel confident that
25 Friday I could have it heard.

1 okay?

2 MS. BALLARD: That's the 20th.

3 THE COURT: I've got a TRO or something in the morning
4 but that won't take any time. I could have y'all probably
5 come in at 10:30. But I, again, I mean based on what I'm
6 hearing, it's ten till 4:00 now.

7 MR. TWOMBLEY: Your Honor?

8 THE COURT: What's y'all, what's y'all's choice?

9 MR. TWOMBLEY: Well, Your Honor, because of all of the
10 extensive preparation that's gonna have to go into the
11 trial, I think everyone would benefit from having the
12 summary judgment motion resolved as soon as possible.

13 THE COURT: Well---

14 MR. TWOMBLEY: I'm happy to, you know, if Your Honor
15 wants to give me 30 minutes, and him 30 minutes, and then
16 maybe give me five or ten minute rebuttable, you know---

17 THE COURT: I tell you what. I think you're right. I
18 think that, given the load of work that each side is gonna
19 have to put in between now and the, and the 30th, it's
20 probably best to go ahead and have those motions heard
21 today, and I hate to keep the staff on this. But I think
22 you're right cause otherwise we're putting this thing at
23 the -- the motion off for two weeks and every -- everybody's
24 wondering what's gonna happen.

25 All right. What I want to know is this.

1 Do y'all -- are y'all ready to go or do you need a --
2 do you need a minute before you make your argument?

3 Do you want that?

4 Do you want five minutes?

5 MR. TWOMBLEY: I would take two just to use the rest
6 room, come right back, I'm ready.

7 THE COURT: well, you can take five.

8 All right. So, we'll just be at ease until -- how
9 about this?

10 we'll be at ease until four o'clock.

11 All right?

12 MR. TWOMBLEY: Yes, sir.

13 THE COURT: All right.

14 MS. BALLARD: Thank you, Your Honor.

15 MR. MEDLIN: Your Honor?

16 THE COURT: Yes, sir.

17 MR. MEDLIN: I apologize for the schedule problem for
18 Friday. I --.

19 THE COURT: That's no problem.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: All right. Mr. Twombley, I'm happy to hear
22 from you on your motion, sir.

23 MR. TWOMBLEY: Thank you, Your Honor.

24 May it please the Court.

25 Obviously Ashley Twombley here for Merrill Barringer,

1 and, Your Honor, we'd move for a -- summary judgment on
2 causes of action two and three in what we refer to as
3 Barringer 2, which is the second lawsuit that the Plaintiff
4 filed.

5 My client's 89 years old and they have essentially
6 alleged that she's a party to a contract or that she
7 promised her husband, back in 1998, that she would never
8 change her will in the future. And so the simple questions
9 that Your Honor's gonna have to decide in this hearing is,
10 is there any evidence of a contract or is there any evidence
11 of a promise. Because there's no evidence, we think you
12 should grant summary judgment in our favor.

13 Your Honor, I have prepared a pretty detailed
14 presentation to explain to Your Honor where we've been, and
15 where we got, how we got to the spot where we are today on
16 this promise and contract claims, and educate you a little
17 bit about this litigation because it's -- it will -- I think
18 it's very important to know where we've been and how we got
19 to where we are today.

20 Your Honor, this case is gonna -- I'm gonna tell you
21 some, some background. It's gonna be helpful to explain.
22 But, again, at bottom, the law's clear and the facts are
23 clear that summary judgment is -- should be in our favor.

24 These are the, the five Barringer family members, Paul
25 Barringer, Merrill Barringer, my client, and then there are

1 three children, Merrill Light, Victor Barringer, and Hampton
2 Luzak over on the right. Mrs. Luzak has not -- didn't have
3 really any communication with Mr. Barringer since 2012, very
4 little with her mother since 2012, hasn't spoke to Merrill
5 Light since then, hasn't spoken to her brother for decades.

6 It's important that you understand, Your Honor, that
7 Mrs. Luzak's already received hundreds of million of dollars
8 worth of the stock, approximately 75 million-dollars in
9 dividends since 2012, millions of dollars in cash gifts
10 she's never paid anything for. Everything came from her
11 mother and her father. That's important because you're
12 gonna -- Plaintiff will suggest that she's been cut out of
13 her father's estate and cut out of his will. But she's
14 received more money than a hundred people in a hundred
15 lifetimes. What this case is about is more.

16 She filed this lawsuit in 2016. When she first filed
17 it, she just named her sister, Merrill Light. In this
18 Complaint, Complaint, Your Honor, I didn't put it all up
19 there, but it's over 80 pages long. She actually filed two
20 different lawsuits, both over 80 pages long, and she
21 basically alleges everything under the sun, but it's all
22 focused on what happened between 2012 and 2015.

23 Mr. Barringer executed a number of wills and Trusts
24 during this time, and made some corporate gifts of stock.
25 Recall Mrs. Luzak was no where around during that time, and

1 she believes that all these awful things have happened,
2 fraud, conversion, conspiracy, everything else.

3 So, this is the timeline, Your Honor, and she seeks to
4 set aside or unwind what happened in February of 2015. She
5 seeks to unwind what happened in June of 2014 back to
6 September, 2012, July, and you just keep going back. She
7 says everything that happened in 2012 to the time of her
8 father's death needs to be unwound, and we asked Mrs. Luzak
9 in her deposition, you know, what she, what she was trying
10 to obtain, what was her goal in this lawsuit. And as you
11 can see, what she said is I can tell you that the stock
12 transaction should be unwound. All the amendments to my
13 father's will should be unwound. Anything that happened as
14 of 2012 should be unwound.

15 So, in 20 -- from 2016, Your Honor, to 2019, during the
16 time this first lawsuit was pending, Luzak wanted to unwind
17 everything back to 2011. In other words, if we went back to
18 2011, Your Honor, as far as Mr. Barringer's estate planning
19 was concerned, she would of been fine, and that's exactly
20 what she said she wanted to do.

21 well, that begs the question what, what was
22 Mr. Barringer's Estate plan prior to 2011?

23 If we con -- if we assume, without conceding, that
24 everything she says is correct, and we go back in time to
25 2011, what happens to Mr. Barringer's Estate plan?

1 well, the gifts that he made during this time would go
2 back to Mr. Barringer, they would be unwound, and we would
3 apply whatever will and Trust was in place prior to 2011.

4 So, as you suspect, Your Honor, after this lawsuit was
5 filed, one of the first orders of business was to go and see
6 what Mr. Barringer's will and Trust said prior to 2012, and
7 that's what we did. And the next will and Trust that
8 Mr. Barringer had executed, as you can see here, was all the
9 way back in 1998. All the way back to 1998.

10 And recall Mrs. Luzak says she just wanted to unwind
11 everything back to 2011, and, of course, presumably then she
12 would of been fine with Mr. Barringer's 1998 will and Trust,
13 right?

14 There's no allegation he was sick then, suffering from
15 any type of capacity problem. Nothing.

16 well, what does that mean for Mr. -- Mrs. Luzak?

17 Let's go and see what the December 4th, 1998,
18 Revocable Trust says. So, we found Mr. Barringer's Trust,
19 and as you can see here, it's a, it's a, it's a, it's a
20 lengthy document. I apologize. It's, it's a lengthy
21 document here. But there's actually only two or three
22 sentences in the entire document that says who's gonna get
23 what.

24 So, let's look and see after -- what this will says and
25 let me just, let me just show you.

1 So, Mr. Barringer's will was a classic pour over will.
2 It pours everything over to his Trust. That's what his will
3 said. So, we then looked at the terms of his Trust.

4 what his Trust said is that all of the assets within
5 his estate were to be divided into three sub-trusts and they
6 were called the A Trust, the B Trust, and the residuary or
7 the Item 5 Trust.

8 Now, significantly, Your Honor, all of the assets in
9 these three Trusts are all held in another Trust primarily
10 for Merrill Barringer for life.

11 Okay. All these assets in all three Trusts are held
12 for -- primarily for Mrs. Barringer for life.

13 So, then the big question is what happens when Mrs.
14 Barringer dies?

15 well, let's go look, look at the Trust.

16 who gets what after Mrs. Barringer dies?

17 well, if we go to these two pages in the Trust, Page 8
18 and 13, I'm gonna show you exactly what Mr. Barringer's 1998
19 Trust said. As to A Trust and the B Trust, this is what it
20 says.

21 Upon the death of my said wife, the property remaining
22 in the A Trust and the B Trust shall be distributed by the
23 trustee free of Trust to or among my descendants and in such
24 manner and trust or otherwise as my said wife may appoint in
25 such wife's Last will and Testament or Codicil thereto. As

1 my wife may appoint in her Last Will and Testament or
2 Codicil thereto to or among the descendents in any way she
3 chooses.

4 The Item 5 Trust, Your Honor, says the exact same
5 thing. My wife shall have the power, upon her death, by her
6 Last will and Testament and Codicil, to appoint any part or
7 all of this Trust to or among my descendents in Trust or
8 otherwise.

9 Now, there is a provision in the Trust that applies if
10 Mrs. Barringer does not exercise her right to say who gets
11 what. But that only applies if Mrs. Barringer does not make
12 the decision.

13 Now, let's talk about the Power of Appointment. That's
14 what we call this right, this right that Mrs. Barringer has
15 to decide, at the time of her death, who among the kids are
16 gonna get what is what we call a Power of Appointment and
17 what are we -- what did we read about this one.

18 Number one. Mrs. Barringer doesn't have to decide
19 until she dies.

20 Number two. It affects all the property, any or all of
21 the property in all three Trusts. It requires the trustee
22 to distribute that property to anyone Mrs. Barringer says,
23 any descendents, and Mrs. Barringer can only say, in her
24 Last will and Codicil, who gets what. She can put it in
25 another Trust for the kids if she wants to. But she has to

1 make expressed reference to this power when she is doing so.
2 Of course, she must make express reference to it cause we
3 don't want someone to exercise it by accident if they don't
4 choose to exercise it.

5 Now, this is textbook estate planning. Literally, Your
6 Honor, I brought the textbook with me that is used to teach
7 the Law School students at the University of South Carolina,
8 and I'm happy to leave a copy with Your Honor, but it talks
9 about Powers of Appointment and why we use them. And I've
10 blown up the page I think you need to read. Let's take a
11 look at it.

12 Now, this is not it. This is not the actual textbook.
13 This is another treatise from here in South Carolina. But
14 it explains, down at the bottom, a Power of Appointment is
15 the device by which one who is not the owner of property,
16 that would be Mrs. Barringer, is authorized to select,
17 nominate, or designate the recipient of the property. In
18 other words, the property owner, Mr. Barringer, makes a
19 gift. But he gives someone else the authority to decide who
20 gets the gift.

21 A testamentary power of appointment is where
22 Mrs. Barringer decides in her Last Will and Testament, and
23 here is the first page of the chapter on Powers of
24 Appointment. And it says that the settlor may also provide
25 for a nonfiduciary power to distribute Trust property. Such

1 a power is known as a Power of Appointment.

2 Now, this is the best part, Your Honor, and this is why
3 this is textbook estate planning because it's literally on
4 the first page of the textbook. Consider a typical example.

5 H, that's husband, devises property to X, that's the
6 trustee, in Trust, to distribute income quarterly to wife,
7 and, on wife's death, to distribute the principal to one or
8 more of the husband's descendants as wife shall appoint in
9 her will. H is the donor of the power. W is the donee and
10 H is descendants are to objects.

11 Here's the important part. By this power which W holds
12 in a nonfiduciary past -- capacity, W may decide who among
13 H's descendants will take the Trust property at the wife's
14 death. In this way, H empowers -- husband empowers wife to
15 deal with changing circumstances in the interim between
16 their deaths which may span decades. The wife can take into
17 account births, deaths, marriages, divorces, the changing
18 ability of children, or more remote descendants to manage
19 property, changes in the economy, and the law, and other
20 circumstances that husband could not have foreseen, but wife
21 will observe firsthand.

22 So, why do we use these Powers of Appointment?

23 Flexibility, changing circumstances after death.

24 Mrs. Barringer could live another 15 years, 20 years.
25 could be decades in-between the time of her husband's death

1 and her death. who knows what might happen in the future.
2 There could be the changing ability of the children to
3 manage property and a host of other things.

4 How does this Power of Appointment affects Luzak's
5 unwind lawsuit?

6 Think about it.

7 For four years Hampton Luzak said I want you to unwind.
8 I want you to go back to the way things were in 2011.

9 Okay. well, if we do that, she gets nothing. She's
10 not entitled to anything. The 1998 documents say Merrill
11 Barringer gets to decide who among the kids get what. You
12 know, Your Honor, in almost all these will contests cases,
13 you know the Plaintiff can point to a will that says the
14 Plaintiff inherits.

15 well, there is no will in this case anywhere ever
16 executed that ever provides for Hampton Luzak to be a
17 distributive beneficiary of anything.

18 So, what does she do, Your Honor?

19 She's says I want to go back. I want to go back to
20 2011. I want to -- she said that for '16, and '17, and '18,
21 and '19.

22 well, what does she do?

23 She files a new lawsuit and it's the lawsuit we call
24 Barringer 2, and, in this lawsuit, there are two unique
25 claims and also a very unique theory, and the -- it's

1 important, Your Honor, that while she's litigating for all
2 these years, she never mentions anything about this new
3 claim, this contract promise claim.

4 But, in 2019, she files this new lawsuit and she now
5 says that, all the way back to 1998, that her mother and her
6 father, they were in their sixties, entered into a secret
7 contract with each other where they agreed that, even though
8 the documents say that Mrs. Barringer can decide to or among
9 the descendants, there's a secret contract and promise out
10 there where she really can't.

11 Here's what she said in her third cause of action,
12 enforcement of contract. Paul and Merrill Barringer entered
13 into a binding contract not to revoke their estate plan.

14 THE COURT: What -- and when was this, the -- go, go,
15 go back -- can you go back a slide?

16 All right. So, when, when did she -- when did this
17 promise -- when is -- when are they saying this promise
18 occurred?

19 MR. TWOMBLEY: Well, I'm gonna show you that. I'll
20 fast forward it to you.

21 THE COURT: Sorry.

22 MR. TWOMBLEY: That's okay.

23 THE COURT: But that's okay.

24 MR. TWOMBLEY: I'm not sure. It's, it's way deep. But
25 let me -- can I just tell you?

1 I promise you I'm gonna show it. It's -- but they say
2 that it occurred in 1998.

3 THE COURT: Okay.

4 MR. TWOMBLEY: It's says by no, no later than
5 December 4, 19---

6 THE COURT: All right. I didn't mean to mess you up.
7 I just---

8 MR. TWOMBLEY: 1998.

9 THE COURT: ---didn't get that down.
10 Thank you.

11 MR. TWOMBLEY: And, Your Honor, while you've made that
12 point, let me tell you why they said December 4th, 1998.

13 They had to allege that it took place by then because
14 Mr. Barringer had to rely on the promise before he gave her
15 the Power of Appointment. In other words, he had to say
16 well, I'm gonna give you this Power of Appointment right
17 now, but you -- you're gonna agree you're not gonna exercise
18 it.

19 That's why it had to happen by December 4th, 1998.
20 That's why they put that in their discovery responses.

21 But they say she entered into a binding contract. They
22 say that, if she didn't enter into a contract, she promised
23 them, she made an expressed or implied promise that she
24 would not exercise the Power of Appointment, and at the
25 bottom at 138, Decedent, Paul Barringer, relied on Mrs.

1 Barringer's express promise or appointment not to exercise
2 the Power of Appointment.

3 Now, Your Honor, think about what Mrs. Luzak is
4 alleging, and let's think about some, some common sense
5 about it.

6 Now, the written documents that Mr. Barringer
7 exercised, what they provide her on the left, and what Mrs.
8 Luzak says the secret promise is on the right. So, the
9 written document says Merrill Barringer has complete
10 discretion to choose among the descendents. Mrs. Luzak says
11 her mom has no discretion. The documents say that
12 Mrs. Barringer can choose any decedent. But Mrs. Luzak's
13 secret promise says no, you can not choose. You chose 23
14 years ago.

15 The will and Trust says Mrs. Barringer can change her
16 mind for any reason she wants to. But Mrs. Luzak says you
17 can never change your mind. Merrill -- the will and Trust
18 says Merrill Barringer makes the choice at her death. Mrs.
19 Luzak says Merrill Barringer made her choice in 1998.

20 The will and Trust says that Mrs. Barringer can observe
21 the children's behavior and make choices based upon her
22 observations. But Mrs. Luzak's secret contract and promise
23 provides that it doesn't matter what type of behavior the
24 kids engage in. It doesn't matter what they do in the
25 future, that Mrs. Barringer is legally obligated to treat

1 the kids equally.

2 Two simple questions is -- you've got to decide to
3 judge today, Your Honor.

4 was there a contract?

5 was there a promise?

6 Is there any evidence of it and what law applies?

7 Now, I point out, under Mrs. Luzak's theory, after 1998
8 she can never speak to her parents again. Entitled,
9 entitled to a third of the estate no matter what.

10 One of the kids could go to jail for bank robbery.
11 They're entitled to a third of the estate.

12 They can engage in morally offensive behavior. Still
13 entitled.

14 You could marry Jeff Bezos and win the lottery. You're
15 still entitled.

16 So, the Court's got to decide are you -- is it gonna
17 follow the terms of the Trust or is it gonna follow the
18 terms of the secret contract and promise. Now, these two
19 things are diametrically at odds for each other and provide
20 diametrically different results.

21 THE COURT: Let me ask you.

22 Is that your intention that it's a secret contract or
23 promise?

24 I mean where does the word secret come from?

25 I just want to make -- I --.

1 MR. TWOMBLEY: The word---

2 THE COURT: I just want to---

3 MR. TWOMBLEY: Okay. I'll tell you why it's secret.

4 THE COURT: I'm, I'm not, I'm not being smart. But I
5 mean I want to know. This is being, you know, described
6 throughout as a secret promise or contract.

7 And so what I want to know is where do the terms -- I'm
8 assuming they're alleging that -- I mean she, in a
9 deposition, somebody didn't call it a secret promise or
10 contract, did they?

11 MR. TWOMBLEY: Well, Your Honor, I call it that and
12 I---

13 THE COURT: Okay.

14 MR. TWOMBLEY: I'll, I'll tell you why I call it that.

15 The reason I call it that is because we have deposed, I
16 don't know, 40 some odd witnesses.

17 THE COURT: That's all right. I don't need to get into
18 it.

19 MR. TWOMBLEY: Nobody knows anything---

20 THE COURT: It's your---

21 MR. TWOMBLEY: ---about it.

22 THE COURT: I understand. But that -- that's -- the,
23 the use of the word secret is what you're using. That's
24 your term of art for lack of a better word.

25 MR. TWOMBLEY: Yes, sir.

1 THE COURT: Is that fair?

2 MR. TWOMBLEY: Yes, sir.

3 THE COURT: All right. Go ahead.

4 MR. TWOMBLEY: I apologize.

5 THE COURT: That's all right.

6 MR. TWOMBLEY: I interrupted with that last bit.

7 THE COURT: You know, you don't have to --.

8 MR. TWOMBLEY: So, the question, Your Honor, is what
9 type of law applies to this type of case, right?

10 I mean what does the law say when somebody comes
11 forward and says no, my, my parent's estate doesn't pass
12 according to the terms of their will and Trust. There's a,
13 there's a side deal. There's an agreement. There's a
14 promise. And there's two options.

15 You've got the common law or you've got the Probate
16 Code, and, Your Honor, we believe the Probate Code applies.
17 I'm gonna tell you and show you why, but, fortunately, we
18 win whether the Probate Code applies or the common law
19 applies.

20 Now, let's start with the common law. And before I
21 tell you what the common -- these, these, these types of
22 allegations from children and people, they're not new. I
23 mean people have been making these allegations that I had a
24 contract with a dead person, and they -- this dead person's
25 suppose to do something with respect to their will and

1 Trust. They've been making these types of claims for
2 hundreds of years. So, there's a long body of law on it.

3 Now, let's start some fundamental premise of --
4 premises here. Number one is a -- that the South Carolina
5 Supreme Court says the right to change your will is a fixed
6 principal of law.

7 Now, you can contract away your right to make a will.
8 But our Supreme Court has said, when one attempts to
9 establish a contract to make a will by parole evidence, it
10 is regarded with suspicion and not sustained except for the
11 strongest evidence. The evidence to sustain it should be
12 received and scrutinized with the greatest of care. The
13 terms of such agreement should be definite and certain and
14 established by clear and convincing evidence.

15 That's what the common law says. Vicks v. Castle, it
16 must be definite, certain, clear, and convincing, which
17 makes sense, right?

18 We don't pass estates by some agreement somebody says
19 exists. We pass estates based on what somebody's will and
20 Trust says.

21 THE COURT: But are you saying it's a matter of law?

22 MR. TWOMBLEY: It is a matter of law.

23 So, the evidence though's got to be clear, cogent, and
24 convincing, and, of course, the Dead Man's Statute will
25 apply.

1 Now, here's where things get interesting. Because
2 we've had these types of allegations for over a hundred
3 years, in 1987, South Carolina adopted the Uniform Probate
4 Code, and it, in particular, adopted 62-2-701 that addresses
5 contracts not regarding succession and, in particular,
6 contracts not to revoke a will, and this is what the South
7 Carolina Code says.

8 A contract to make a will or devise or not to revoke a
9 will, if executed after the date of this Act, can be
10 established only, only by the three ways.

11 Okay. Number one, provisions of will of the decedent.
12 Mr. Barringer is the decedent. He's deceased. But it
13 doesn't matter who is the decedent there because nobody's
14 will has the provisions of a contract.

15 Number two, an expressed reference in a will of the
16 decedent to a contract, and, number three, a writing signed
17 by the decedent evidencing the contract.

18 This is the only way you can do it. That's what the
19 Legislature said in 1987. The official comments to the
20 Uniform Probate Code, which this statute came from the
21 Uniform Probate Code, it is the purpose of this section to
22 tighten the methods by which contracts concerning succession
23 can be proven. It says that these types of allegations have
24 given rise to litigation in a number of states, and, in some
25 states, if two people execute a will at the same time, some

1 Courts have found that they're mutual, reciprocal, and are
2 binding on the other.

3 No more. Not after 1987. After 1987, we got to have
4 clear evidence, written evidence signed by the decedent.

5 Now, what does a contract not to revoke look like?

6 I mean what -- if we were looking for one of these
7 contracts, what would we look for?

8 I've got some examples.

9 Number one, this comes from an Alabama case where a
10 Court was looking at one of these contracts. My spouse and
11 I are executing our wills at the same time and such wills
12 are intended to be and should be construed as contractual.
13 Neither will shall be subject to revocation.

14 From the LexisNexis Murphy's will Clause Book, each of
15 the parties covenants and agrees with the other not to
16 revoke or no or cancel or modify or change.

17 They're all over the place. It's clear what they say.
18 They say you are no longer allowed to change your will.
19 This is a contract that we've entered into about it.

20 One from Kentucky. One from North Carolina. We and
21 each of us contract. After 1987, and the passage of
22 62-2-701, the Legislature has spoken. If you don't have a
23 signed writing evidencing the contract, you can not proceed
24 with these claims period. The policy is aimed at protecting
25 the integrity of the process of succession.

1 The writings are required in the expectation of
2 increasing the reliability of proof of the decedent's true
3 will, and it, and it says 62-2-701 will be construed --
4 presumably it will be construed as preempting the field,
5 Your Honor, rendering all such statutory and case law
6 provisions inapplicable.

7 All right. So, let's look at what evidence the
8 Plaintiff has.

9 Number one, they say Merrill Barringer irrevocably
10 agreed never to change her 1998 will and Trust in her 1998
11 will, and they point to one sentence, Your Honor, one
12 sentence, and I want you to read it. All the rest, residue,
13 remainder of my property of every kind and description
14 wherever located lapsed or void, but not including any
15 property over which I have a Power of Appointment, I devise
16 to the acting trustee of my Trust.

17 No where does this say she's never gonna change her
18 will. No where does this say she's irrevocably agreeing to
19 do anything. It has absolutely none of the language that is
20 needed to prove a contract not to revoke, and this clause in
21 here about not over any power which I have a Power of
22 Appointment, as you can see, that's just Merrill Barringer
23 saying, by virtue of my residuary clause, I'm not exercising
24 the Power of Appointment that I have.

25 Nothing suggests an irrevocable agreement. Nothing

1 suggests she'd agreed or agreed to do anything. And that
2 can not be and is not a signed writing. Certainly not
3 signed by Mrs. Barringer.

4 So, what's the Plaintiff's fall back argument,
5 argument?

6 The Plaintiff's fall, fall back argument is well, I'm
7 just gonna call it a promise instead of a contract. Well,
8 she just simply says well oh, oh, oh, well, it wasn't a
9 contract. I, I call it a promise.

10 well, it's not that's easy and I'll show you why. But,
11 fortunately, she has no evidence of a promise. But let's
12 talk about why you can't just change the word contract to
13 promise, why that is not gonna work.

14 First of all, let's look at her affidavits. She
15 submitted two affidavits, Your Honor. One of Kevin Luzak
16 and one of Hampton Luzak. Hampton Luzak clearly can not
17 testify about -- at trial about these transactions. Her
18 testimony's excluded by the Dead Man's Statute, and we
19 believe her husband's testimony is also excluded by the --
20 this Dead Man's Statute. But it doesn't matter.

21 There's nothing in those affidavits about a promise or
22 a contract at all. They don't use the word promise.
23 There's no evidence of a promise, and there's no other
24 witnesses.

25 We asked Kevin Luzak just two weeks ago, if you have

1 any evidence that Paul and Merrill Barringer entered into a
2 contract, an agreement, pinky swear, anything you want to
3 call it, that they're gonna treat their children equally in
4 the future, no matter what type of behavior they engaged in,
5 I want you to tell me that. Objection. Asked and answered.
6 I do not.

7 Your Honor, even if a promise was made, even if a
8 promise was made, that's not good enough. 62-2-701 says you
9 can't rely on it.

10 Now, what does Plaintiff rely on?

11 The Plaintiff relies on this comment in the statute --
12 in the statute that says it may be questioned. It may be
13 questioned whether or not you can still proceed with
14 equitable claims like constructive trust and promissory
15 estoppel after the passage of 62-2-701, and the Code -- and
16 the comments mention out that there's one case, Sature case,
17 that has reached a conclusion after the enactment of the
18 statute.

19 So, let's talk about Sature a minute. Obviously, if
20 Sature says that, then we have to -- you have to apply it.
21 But here, here's the problem with Sature.

22 No one ever raised 62-2-701 as a defense in the Sature
23 case. You won't find it in the entire opinion. The Court
24 never mentions 62-2-701. The fact that Sature was decided
25 after the act -- enactment of the statute is irrelevant.

1 The Court simply did not address it. They'll have to admit
2 that. It's not in there.

3 They also rely on this Chapman case, Chapman v.
4 Chapman. Chapman was decided. The facts took place before
5 1998 -- 1987. 62-2-701 was not in effect then. It was in
6 effect when the ultimate decision was handed down. But it
7 was not in effect at the time that the facts took place.

8 Now, Your Honor, the comments say it might be
9 questioned but let's go look and see what other states have
10 said because, remember, this Code Section comes from the
11 Uniform Probate Code. This Code's all over the United
12 States of America.

13 Now, I pointed out here in their -- in the Plaintiff's
14 brief that they, they didn't tell you that these were the
15 only ways to prove them. But, in any event, let's look at
16 what some other states say.

17 Pennsylvania. Exact same statute we have.

18 what did the Pennsylvania Court say?

19 As a matter of law, any unjust enrichment claim raised
20 in the alternative to a breach of contract claim must fail
21 as legally insufficient when the breach of contract claim
22 requires compliance with 62 -- with Section 2-70. To hold
23 otherwise renders the statute meaningless.

24 Think about it. If all the Plaintiff's got to do is
25 say well, I'm not calling it a contract, I'll just call it a

1 promise, well then the statute means nothing. It's not the
2 only way you can do it. In fact, there's a much easier way
3 to do it and prove a signed writing. You just -- alleged
4 promise.

5 New Jersey. Exact same statute. The Legislature has
6 seen fit to prescribe the only way a contract may be legally
7 established.

8 THE COURT: And, Mr. Twombly, you got, got 10 minutes.
9 Can you wrap this up in five more minutes?

10 MR. TWOMBLY: Yes, sir, we'll do that.

11 THE COURT: I like, I like to hear that. Thank you.

12 MR. TWOMBLY: All right. Michigan. Same thing. Same
13 decision.

14 Alaska. Same statute. Same decision.

15 Texas. Same statute. Same decision.

16 South Dakota. It just goes on and on.

17 The -- all these states have an exact statute that we
18 have and they have said you can not bring these promise
19 constructive trust equitable type theories. The statute
20 says this is the only way you can do it and that's it.

21 No -- I know you're a common sense logical type judge.
22 Think, think about this, Judge.

23 why would the statute require a contract to be proved
24 in writing but allow a promise to be proved just orally?

25 That makes no sense.

1 why would you need less evidence for a promise than you
2 would for an actual contract?

3 So, question number one, the Court decides what law
4 applies. We think the Probate Code applies. Any altered --
5 alternative result is nonsensical.

6 Question two, can the Plaintiff satisfy the Probate
7 Code's proof requirements?

8 No, there's no provision in anybody's will that says
9 the other person can't revoke their will or change it in the
10 future. No. Nothing says that. Even if you disagree to
11 the Probate Court about -- the, the Probate Code applies, an
12 alternative stating -- sustaining ground, there's just no
13 evidence of a promise.

14 You asked what they said in their discovery responses.
15 Simple question. Identify the date the promise was
16 made.

17 Now, despite the fact they've come in here to Court and
18 said well, with -- the earliest it was made, and oh, it
19 continued, and there were all these family meetings, the
20 promise (S) would have been made no later than December 4th,
21 1998.

22 To accept the Plaintiff's therapy you have to ignore
23 the terms of the will and Trust, ignore the statute, allow
24 an oral promise but not require any evidence of it.

25 They're gonna argue silence. Allow Plaintiff to

1 proceed with no evidence. This would be an absurd result.

2 So, the Court has two independent grounds to grant
3 summary judgment. The Probate Code applies only means only,
4 and even if it doesn't, Plaintiff has no evidence of a
5 promise.

6 Very briefly. Two minutes. I want to head off just a
7 few what I call -- they're not red herrings.

8 THE COURT: One minute.

9 Go.

10 MR. TWOMBLEY: They're gonna try to confuse you, Your
11 Honor.

12 Number one, they're gonna say Merrill Barringer had a
13 fiduciary duty not to exercise the Power of Appointment. If
14 there's no promise that she's agreeing she's never gonna
15 exercise it, then there can be and is no fiduciary duty.
16 Otherwise she'd have a fiduciary duty to do the exact thing
17 the document says that she can do. Of course, this textbook
18 says that. They know it.

19 They're gonna argue that Plaintiff didn't intend to
20 give Mrs. Barringer a Power of Appointment. Well, gosh,
21 that's interesting because they have been alleging for the
22 past two years that there was an expressed or implied
23 promise not to exercise the Power of Appointment.

24 Your Honor, how can you enter into a contract or a
25 promise not to exercise something you don't even know you

1 have it?

2 It's logically self-defeating.

3 This is a whopper here. Mr. Barringer didn't own
4 certain assets in 1998. So, therefore, his will and Trust
5 from 1998 couldn't have intended to give those assets away.

6 They know that's not the law. There's a statute on
7 after acquired property. It applies to everything
8 afterwards.

9 Finally, Your Honor, they say that this argument's been
10 done before. That is true. We did have summary judgment.
11 But Judge Mullen said repeatedly that she was interested in
12 hearing from Mr. McBride who drafted these documents. We've
13 since taken his deposition, and, of course, Mr. McBride said
14 he's got absolutely no evidence of any contract or promise,
15 and that's directly at odds with what the Supreme Court
16 says.

17 THE COURT: All right.

18 MR. TWOMBLEY: That's, that's all, Your Honor. Thank
19 you.

20 THE COURT: All right. We're gonna be at ease for five
21 minutes.

22 (WHEREUPON, a short recess was taken at this time.)

23 THE COURT: Counsel, I'm happy to hear from you or
24 whoever wants to speak.

25 MR. MEDLIN: May I make, I make a proposal?

1 THE COURT: Yes, sir.

2 MR. MEDLIN: Defense has a summary judgment motion, and
3 normally I would give my response, and then he would give
4 his reply. We have a summary judgment motion. It's all the
5 same evidence, all the same arguments.

6 what I would propose is, once I'm through with my part,
7 Mr. Twombly gets reply and then I get a reply, and that way
8 we sort of meld together.

9 THE COURT: Each of you will have a brief reply.

10 MR. MEDLIN: That's fair.

11 THE COURT: I think that's fair.

12 MR. MEDLIN: Okay. Oh, and would you take that picture
13 down please?

14 MR. TWOMBLEY: Sure.

15 MR. MEDLIN: Okay, Your Honor. Thank you.

16 You asked a question during Mr. Twombly's presentation
17 which is when was the promise made. That's exactly my
18 problem. It depends on which will it is, when was the
19 promise made.

20 we're talking about the '98 will, I'm gonna deal with
21 that. We're talking about other wills. I'll deal with that
22 too.

23 I do want to give our version of facts just real
24 briefly.

25 First of all, we disagree that there was no

1 communication between Mrs. Barringer and our client,
2 Hampton. They communicated frequently. And to the extent
3 there wasn't a lot of communication with Mr. Barringer --
4 oh, they, they wrote back and forth after 2012 and before he
5 died.

6 My client says that Mrs. Barringer told her to call
7 Mrs. Barringer's cell phone. Never call the landline again.
8 So, we think Mrs. Barringer got in the way of communicating
9 between Mr. Barringer and our client.

10 Yes, our client's wealthy. So are they. The
11 difference is my client didn't feel like she needed to go
12 get more and take her sister's stock to get control of the
13 company.

14 She didn't bring this lawsuit to begin with for any
15 reason other than one. She found out that her father was
16 seriously incapacitated in a federal lawsuit. She asked for
17 a conservatorship. The other side objected and fought it,
18 and finally agreed, after he scored a one on a mini mental
19 test. It's a pretty easy test, 30 points. Like can you
20 pick up this piece of paper from the floor, that sort of
21 thing. Didn't bother to tell us he was in an adult memory
22 center wondering around unshaven and unkempt even though he
23 was a very prideful man.

24 She wanted to protect his legacy. As we will see in a
25 trial, this is not about Mrs. Luzak. This is about trying

1 to protect her father's legacy, and she thought things were
2 being done to his company, that's his legacy, that she
3 didn't agree. That's why she filed a lawsuit.

4 It's -- we, we disagree with the argument that, if we
5 go back and unwind everything from 2012 forward, which is
6 when we think all the bad things happened, lack of capacity,
7 undue influence, et cetera, that she's not a beneficiary,
8 that she wasn't getting equal treatment.

9 They're two ways to describe what happens when there's
10 a Power of Appointment, and it is a common estate planning
11 device. We all use it. It's boilerplate, in fact.

12 One way to say is well, the beneficiaries, the three
13 kids in this case, we're talking about the '98 will, don't
14 get anything unless Mrs. Barringer, if she has a power and
15 can exercise it, chooses not to exercise it. The other
16 argument is, and this is how we estate planners describe it,
17 the three kids are gonna get it unless mom exercises it.
18 So, it's six of one, half dozen of the other how you're
19 arguing that. But here's the point.

20 In 1998 -- and, again, this is all about the voting
21 stock. In 1998 -- and you have to look at the facts and
22 circumstances at the time of the execution of the document
23 to determine the testator's intent.

24 In 1998, he didn't have voting control. In 1998, and
25 I'm gonna get into this more deeply into the argument, but

1 I'm just addressing some of the facts here, he'd already
2 given away the vast majority of his stock in his company in
3 equal shares to his three children.

4 So, in 1998, and this is why I hope we get back to the
5 1998 document as the operative document, he couldn't have
6 intended to give his wife the ability to control the voting
7 stock that would affect the control of the company cause he
8 didn't have it. He'd already given it away.

9 Now, the company got recapitalized in 2004 and he
10 changed what happened. They all agreed. My client got 31
11 percent. Mrs. Light got 31 percent. The son spun off
12 another company, which didn't do well, and he retained
13 20 percent and hoped the kids got along. And, if they did,
14 he was fine. If not, he kept enough voting control.

15 But, in 1998, he didn't have voting control. He could
16 not have intended, in 1998, to give Mrs. Barringer voting
17 control. Again, we'll talk more about that.

18 THE COURT: And he didn't have it, professor, in 1998
19 because --?

20 MR. MEDLIN: He'd already given it away. Already given
21 it away.

22 We're just not trying to unwind either. We've brought
23 a claim for tortuous interference. That comes with damages.
24 We have lifetime damages. We think a previous judge
25 mistakenly got rid of them under a misunderstanding about

1 what a derivative action is and we're appealing that. But
2 she has lifetime damages. It's just not about unwinding it.
3 So, it doesn't end the case at all if they prevail on
4 summary judgment.

5 So, it's, it's far more than about the Power of
6 Appointment. So, marrying Jeff Bezos doesn't matter because
7 Mrs. Barringer didn't have the right, at 1998, to deal with
8 voting control.

9 We're gonna talk a little bit more about the law with
10 your indulgence, Your Honor, later. But when we're looking
11 at the Probate Code Section that deals with contracts, not
12 gratuitous, not gratuitous, I'm sorry, fiduciary promises
13 unsupported by consideration but accounts --.

14 THE COURT: No. Well, let me, let me ask you a
15 question.

16 MR. MEDLIN: Sure.

17 THE COURT: And just let me know where this example is
18 wrong.

19 I own a car and I give my car to my law clerk and I
20 then go and have a will. And I go and then have the --
21 basically have what I call standard language that says I
22 give everything to X.

23 MR. MEDLIN: Uh-huh. (Affirmative).

24 THE COURT: And if I then get my car back from my law
25 clerk, and what's the -- I'm, I'm trying to understand with

1 the company.

2 Once you got it back, why -- I understand he didn't
3 have the intent or you say he didn't have the intent cause
4 he gave it away, right?

5 MR. MEDLIN: The question is -- in, in yours, again,
6 sort of mirrors what he's arguing about on the other side.
7 Sure. If you own an asset at death, the operative will will
8 control that. We're focusing on the issue of a Power of
9 Appointment, which is a different issue.

10 THE COURT: Okay.

11 MR. MEDLIN: And when determining the intent to give a
12 Power of Appointment and what that controls, again, we're
13 gonna have a lot more evidence he would not have intended to
14 do it.

15 THE COURT: Okay. Where?

16 MR. MEDLIN: That's, that a different situation.

17 THE COURT: All right.

18 MR. MEDLIN: If I may, Your Honor?

19 THE COURT: Go ahead.

20 MR. MEDLIN: All right. So, Mrs. Barringer, in terms
21 of the Probate Code, Section 62-2-701, is actually the
22 decedent. If, if she had passed away, and we hope it's a
23 very long time before that happened, it would be her will
24 that we would try to be binding to a contract. We're asking
25 for an injunction and South Carolina actually allows the

1 enforcement of a contract not to revoke before the decedent
2 dies.

3 So, we're actually, when you're looking at the words
4 decedent in the statute, it's, it's Mrs. Barringer's will
5 that, that matters and we're trying to bind to a contract.

6 I'm gonna deal with these other things, Your Honor,
7 once we get into the argument. But I'll circle back around
8 to disagreeing with several of the things that were said in
9 the presentation.

10 Your Honor, again, as we did in our brief, we're
11 reserving all rights. We have filed documents with
12 thousands of pages of exhibits, wills, gifts, doctor's
13 reports. I'm gonna refer to some of those generally. For
14 the sake of the Court, we didn't repeat all of that in our
15 memoranda for the day. We just incorporated all that just
16 because there's so much to it, and I'd like to make that
17 clear, and, of course, we're reserving all rights, as you
18 would imagine, to the issue of -- well, the appeal and
19 everything else we're talking about.

20 As I mentioned earlier, Your Honor, we've already had
21 this argument. We've had the very same argument.
22 Everything that the Defendant says they've already argued in
23 front of Judge Mullen and they lost, and now they say well,
24 we, we have something new. We have the deposition of
25 Mr. McBride. Mr. McBride had already filed an affidavit in

1 the previous summary judgment motion.

2 So, not only are they the same arguments, not only do
3 they not have any real new evidence, which means we
4 shouldn't even be having this argument today, Your Honor,
5 but assuming we're gonna go forward with it, nevertheless,
6 this is a summary judgment where they're asking for one
7 against us. We don't have any less evidence than we had to
8 prevail on the first time around with Judge Mullen, and it
9 was a very lengthy argument at that point.

10 Now, I'm sure you are thinking I've said ad nauseam, ad
11 nauseam we've got to find out what the operative will is,
12 figure out whether it gave a Power of Appointment, the facts
13 and circumstances surrounding it, and whether there was an
14 agreement or a promise dealing with any such Power of
15 Appointment, and Mr. Twombly showed you on his PowerPoint
16 what the sequence of documents is. We think everyone after
17 2011 is not valid for reasons we'll discuss.

18 We think we understand why they don't want to get into
19 an argument about all those in front of a jury cause guess
20 what?

21 We get to show all the bad acts that the Defendants
22 committed. We get to show why all those post 1998 documents
23 are invalid. But we have to be entitled to do that because
24 only then, once we determine what the operative document is,
25 and we can discern -- determine if Mr. Barringer intended a

1 Power of Appointment. If so, does it cover stock. We have
2 to look at the facts and circumstances at execution to do
3 that.

4 THE COURT: But, again, it's your position that the
5 1998 document is the ought -- is the operative document?

6 MR. MEDLIN: Ultimate document, yes, sir.

7 THE COURT: Correct?

8 MR. MEDLIN: Yes, sir. One more problem. We have a
9 summary judgment now that we are appealing that says---

10 THE COURT: I under -- I understand that completely.

11 MR. MEDLIN: Yeah.

12 So, we actually think, as we'll argue, there's no
13 evidence that Mr. Barringer intended a Power of Appointment
14 over the stock.

15 They had no evidence refuting the contract language.
16 They have a couple of lawyers who say, in one case an
17 affidavit, another in a deposition, nobody told us about a
18 contract.

19 well, one reason that probably didn't come up is
20 neither one of them really talked about a Power of
21 Appointment over stock, and we'll talk about that later too.
22 And what really bothers us, Your Honor, when we're talking
23 about the evidence that there isn't a contract or isn't a
24 promise, we hadn't heard from Mrs. Barringer.

25 There's no affidavit from Mr. Barringer --

1 Mrs. Barringer. There's no testimony from Mrs. Barringer.
2 And then, Your Honor, a fiduciary relationship exists
3 because of a husband and wife relationship. That's basic
4 law. There's a confidential fiduciary relationship between
5 a husband and a wife. It's not contingent on the existence
6 of a contract or any such promise. It just exists. That's
7 what triggers what we're gonna argue about later.

8 So, our arguments are Mr. Barringer never intended to
9 give a Power of Appointment over the stock. Again, this is
10 about the stock.

11 Mr. Barringer never involved his wife in the company
12 business. He never gave her any stock. He never gave her
13 any control over the stock other than they argue subject to
14 a Power of Appointment. He never named her as a trustee as
15 a Trust. He never had a job for her at her company -- at
16 his company.

17 why in the world would somebody who wouldn't let his
18 wife be involved in his legacy company all of her life be
19 allowed to change how his legacy company was controlled
20 after he died?

21 More than that, the Power of Appointment language they
22 refer to talks about giving the assets subject to the Power
23 of Appointment. Again, we argue it can't be any voting
24 stock not just to children but to descendants under this
25 very stock boilerplate language that you find in all these

1 documents. We all use them.

2 Mrs. Barringer supposedly can give voting control to a
3 grandkid or a great grandkid, somebody who might not even
4 have been born by the time Mr. Barringer died.

5 Now, we're gonna see later in this discussion, Your
6 Honor, that Mr. Barringer was very controlling about his
7 company. John Wayne is the word -- the term that was used
8 to describe him because he was so powerful. He had to have
9 his way, and he couldn't have intended to let his wife, who
10 had nothing to do with the business ever, no control, never
11 even trusted her to be the trustee of a Trust, to give it to
12 a grandchild or great grandchild.

13 Corollary to that is if Mrs. Barringer could give the
14 stock to somebody, once that's given, then that person could
15 give it to someone else. For example, if she gives it to
16 Merrill Light, and although he's passed away now, if he were
17 still alive, she could then turn around and give it to her
18 husband, Randy Light, who, in 2012, was faced with at least
19 seven million-dollars worth of personal guarantees, in the
20 throws of two companies of his with two partners going
21 bankruptcy with some developments in Texas, multiple
22 millions of dollars.

23 They're very easy ways to put that in a Trust if you're
24 thinking about that. These are lawyers that talked to him
25 about it before in their deposition.

1 But, Your Honor, if I were doing it, I would say do you
2 want this company that you want to be controlled by your
3 family to remain in your family. If so, we're gonna put it
4 in a Trust. We're gonna make sure it can't be given to
5 somebody else who could then have it go to a creditor or to
6 a new wife, for example. Again, we think he would not have
7 intended to do that.

8 And, Your Honor, this is alternative. Of course we're
9 making alternative arguments. We don't think there was a
10 Power of Appointment that he intended to give over the
11 voting control. But if there is, we think we have evidence
12 of a contract not to exercise it, and we also think we have
13 evidence of a promise, which is different under South
14 Carolina Law.

15 South Carolina ain't Pennsylvania. It ain't New
16 Jersey. It has its own common law that deals with the
17 promise.

18 That can be an expressed promise. We think we have
19 proof of an expressed promise.

20 It can be an implied promise. We think we have proof
21 of an implied promise, and, under South Carolina Law, that
22 promise can be inferred from mere silence. Oh, yeah, it can
23 be from silence. South Carolina Law allows that, and we
24 think equitable estoppel can also apply because equitable
25 estoppel can also apply when there's silence.

1 THE COURT: So, what's -- and what's the silence,
2 professor?

3 what silence that you're referring to?

4 what is that?

5 MR. MEDLIN: Get that in -- again, Your Honor, if, if I
6 may, I'm gonna rephrase that just a little bit for a moment.
7 I'm gonna---

8 THE COURT: Okay. Go ahead.

9 MR. MEDLIN: ---put more to it. Just briefly.

10 Mr. Barringer had many, many, many family meetings
11 where he discussed how his succession plan was going to
12 happen. Mrs. Barringer sat there and never said oh, I have
13 a Power of Appointment and I might change what you want to
14 do.

15 He had every right, based on a -- '98 documents and
16 everything that they had done including she participated in
17 split gifts, she never had any stock to give. By the way,
18 the wealth of the girls didn't come from Mrs. Barringer. It
19 came from Mr. Barringer.

20 So, she just never said oh, I'm not going to do what
21 you want, John Wayne. Under South Carolina Law, he could
22 have inferred her agreement from that. And if she had
23 spoken up, he could of changed his will, taken away the
24 Power of Appointment.

25 THE COURT: So, what evidence though -- what evidence

1 cause I'm hearing a lot of what could of and could have. I
2 mean she could be the dutiful wife, the homemaker, and
3 certainly could claim a lot of interest in, in, in that and
4 that she was instrumental in that, and maybe she was
5 standing there supporting her husband by keeping her mouth
6 shut about that. They may of had a conversation about that.
7 And so I'm -- I'll just use that as an example.

8 Are, are you just -- because she's -- you're just
9 taking these -- where's the evidence of that?

10 MR. MEDLIN: The evidence is exactly that, Your Honor.
11 She never spoke up and said I'm going to exercise the Power
12 of Appointment. For that matter, he never said, in any of
13 these meetings, anything about a Power of Appointment.

14 THE COURT: Did she have a duty to do that?

15 MR. MEDLIN: Does she have a duty to do it?

16 THE COURT: Yeah.

17 what if they had an agreement that she was just gonna
18 stay over here to side?

19 Don't tell them that cause, God, they'll be all over
20 you.

21 what if -- what if that was the agreement?

22 That's what I'm asking.

23 MR. MEDLIN: If he thought that she was not going to
24 change his plan, which is clear from these family meetings,
25 then she needed to speak up and say I'm not gonna do that

1 and she didn't. So, he relied on her silence, her
2 acquiescence and, under South Carolina Law, citing Bogart,
3 the nationally renowned expert on Trusts, that's sufficient.

4 Again, there's a difference between a contract theory,
5 consideration for consideration, which could be a promise
6 for a promise or just a naked promise. Either is
7 enforceable under South Carolina Law --

8 THE COURT: All right.

9 MR. MEDLIN: -- unlike Pennsylvania, New Jersey, et
10 cetera.

11 THE COURT: Okay.

12 MR. MEDLIN: Now, let's focus on those '98 documents,
13 Your Honor---

14 THE COURT: Yes, sir.

15 MR. MEDLIN: ---and, and start with that as to the
16 central issue of whether he intended to give her any Power
17 of Appointment at all.

18 I've explained that he didn't have voting control in
19 1998 but I would argue, am arguing---

20 THE COURT: Whoa. That's because he gave away 31---

21 MR. MEDLIN: No, that---

22 THE COURT: The -- what, what -- where was the voting
23 control?

24 MR. MEDLIN: He had given away 28 percent to one child,
25 28 percent to another child, 28 percent to a third child.

1 He kept 11 percent and then there were six more percent in a
2 Trust his mother created.

3 THE COURT: Okay. Thank you.

4 Go ahead.

5 MR. MEDLIN: Thank you.

6 So, in 1998, his document, for the first time, talked
7 about Power of Appointment. He'd not had a Power of
8 Appointment between 1998 -- before 1998.

9 THE COURT: Okay.

10 MR. MEDLIN: So, there is language in the document. We
11 understand that. We, we get that.

12 But the lawyers -- and let's again focus on the lawyer
13 for the '98 document for the moment. He files an affidavit,
14 actually two affidavits, for the last very same summary
15 judgment argument we've had, and he artfully uses language
16 in that affidavit, and he says such as the language chosen
17 by Paul, the language selected by Paul.

18 He never says any where in his file, except one
19 arguable place, without it matters, that, that, that --
20 well, he never said anything to Paul Barringer that we can
21 show about having a Power of Appointment over the voting
22 control. He admitted it in his deposition. He didn't talk
23 about voting stock to Mr. Barringer. In fact, he said he
24 talked about the company very little as he was preparing the
25 estate plan.

1 He never met with Mrs. Barringer until they went to
2 execute the documents. He met with Paul Barringer. He sent
3 two letters to Paul Barringer. Neither one of which talked
4 about a Power of Appointment. He -- when he faxes or
5 FedExes letters, he keeps the receipts in his file like any
6 good estate planner would do.

7 Finally, on December 2nd, he's got the documents
8 ready, and he mails them from Charlotte to Hilton Head
9 although he wasn't sure if a letter mailed on
10 December 2nd would arrive in Hilton Head the very same
11 day. Let's assume it did not. He didn't have any document
12 in the file that says it's mailed. Supposedly they got a
13 five page single spaced letter with some diagrams with some
14 fine print in it, reviewed all that, got to Charlotte, and
15 then signed these documents and understood what was in it.

16 Now, I'll admit, Your Honor, that in that letter, which
17 I would call an executive summary letter, most estate
18 planners do that -- I do somebody's estate plan, I will send
19 them a letter saying -- and a lot of boilerplate stuff in
20 here. But there's some stuff you need to know about. And
21 this, of course, was a complicated estate plan. It's a
22 complicated estate.

23 He says in this letter for the first time you have a
24 Power of Appointment. Didn't talk about being over stock.
25 He doesn't really explain what a Power of Appointment does,

1 and, again, he's got a couple diagrams that, if you looked
2 at the fine print, which talks about the Power of
3 Appointment. So---

4 THE COURT: That was in the letter, sir?

5 MR. MEDLIN: That was in the letter mailed
6 December 2nd and they signed the documents two days later
7 and here's the problem.

8 There is no evidence in his notes that he ever
9 discussed the Power of Appointment with Mr. Barringer. He
10 never talked with Mrs. Barringer. Never met with her until
11 she showed up to execute the documents, and that got me
12 suspicious about his affidavit, why he was being coy, I
13 thought, with the language.

14 well, here comes the deposition. It's clear and
15 understandable that, in 2021, even the most brilliant of
16 lawyers, and, by the way, Mr. McBride, excellent estate
17 planner, he has no specific recollection of discussing a
18 Power of Appointment with the Barringer's. Sort of
19 undercuts his affidavit. But, upon examination, he says he
20 assumes, because of the way he does things, that they talked
21 about it.

22 He doesn't recall specifically discussing the Power of
23 Appointment at the execution too. He has not remembered a
24 whole lot. He's not licensed to practice in South Carolina,
25 and he's with a very nice firm, North Carolina based firm,

1 but we've got South Carolina lawyers. And he couldn't even
2 remember who the South Carolina lawyer was who was suppose
3 to rubber stamp the documents.

4 He says his notes aren't reflective of what a client
5 tells him. It's just his sort of running note to himself
6 about things he wants to do in the documents. Sort of
7 reminders.

8 There's only one note in his entire file that deals
9 with a Power of Appointment. I don't think it deals with
10 the Power of Appointment that they're arguing Mrs. Barringer
11 has. Over here, one little corner in his handwritten notes,
12 it says GST arrow, Generation Skipping Transfer, fax trust,
13 as long as possible. LPA, I think that's Limited Power of
14 Appointment, in favor of descendants only.

15 Now, he doesn't say he discussed that with Mr.
16 Barringer, and when I asked him those questions, he had to
17 admit that there are other Generation Skipping Transfer
18 Trusts in the documents -- all the documents he created for
19 them in 1998, and that the children are the ones who have
20 the testamentary limited Power of Appointment in those other
21 Trusts.

22 So, he can't even point to this one note and say oh,
23 yeah, this applies to that Power of Appointment only, and
24 not to others, and, in fact, it really doesn't make sense
25 because if it gave Mrs. Barringer the power to appoint at

1 her death, there wouldn't be a Generation Skipping Trust
2 created, and he says as long as possible. That's one of the
3 things you try to do is avoid tax by moving it down a
4 generation to the Generation Skipping Trust. It would be
5 totally antithetical to what he has in his own note if we
6 were talking about that same Trust.

7 They're other problems with his memory and his
8 affidavit. He says there was absolutely, in his affidavit,
9 there's no tax reason for having a Testamentary Power of
10 Appointment. Seventy-eight times in the Irrevocable Trust
11 that Mr. Barringer signed were tax submissions. He admitted
12 in his deposition they're fact reasons for using Powers of
13 Appointments.

14 So, I don't have a whole lot confidence in his
15 affidavit. Let's put it that way. But, again, most
16 importantly, he admitted I never discussed voting control of
17 the company. Mr. Barringer would want to know if he were
18 giving anybody the right to decide and change his plan for
19 his company, which were for his kids to run it, son spun
20 off, and then, after that, for his daughters to run it.

21 Now, even if he intended to give a Power of
22 Appointment, he was strong willed as I noted, he would not
23 have meant to include that in there. And let's assume for a
24 minute that he did. He got the full explanation of what
25 this Trust did. And, Your Honor, you've seen these

1 documents. You saw how many pages there were.

2 They're often difficult to decipher unless you're an
3 expert. There's a trustee in these documents and it's not
4 Mrs. Barringer, and the trustee has trustee powers to
5 distribute assets either to Mrs. Barringer while she's
6 alive, to the kids, or to sell assets.

7 we don't believe there's any way that Mr. Barringer
8 knowingly thought that his Trust was going to withhold
9 voting control stock and that his trustee, who at the time
10 was his son, and, alternately, was a friend, and,
11 alternately was a bank, again, never Mrs. Barringer, he
12 could of decided to sell it to somebody else. This was not
13 the legacy that our client says his father -- her, her
14 father wanted.

15 So, when you look at all the language in the Trust, it
16 doesn't make a whole lot of sense. The documents aren't
17 unambiguous. We're allowed to look at intent. The cases we
18 cite, Fabian, Hyman, Bob Jones, all say that we can do that.

19 Mr. McBride also mentioned -- fails to mention in his
20 affidavit that Mrs. Barringer gave Mr. Barringer a Power of
21 Appointment, and just like we saw on the screen, he
22 expressly declined to exercise the Power of Appointment in
23 those documents.

24 So, we have to believe that---

25 THE COURT: Now run that by me again about him not

1 exercising -- run that by me.

2 MR. MEDLIN: It, it shows a mutuality of the contract.

3 THE COURT: Back up before that. He didn't ex --
4 what -- they were mutual?

5 MR. MEDLIN: Yeah.

6 THE COURT: And he didn't exercised---

7 MR. MEDLIN: He, in his Trust, gave her a power in her
8 will. She signed a will of that same execution day and said
9 I'm not exercising it. She, in her Trust, gave him a Power
10 of Appointment, and he, in his will, signed on that same
11 execution, the same execution ceremony.

12 THE COURT: Okay.

13 MR. MEDLIN: Declined to exercise.

14 Now, you got similar issues with future wills
15 between---

16 THE COURT: Okay. So, they signed something that said
17 they're refusing to exercise?

18 MR. MEDLIN: Yes.

19 THE COURT: Oh, wait. Wait. Let me see that.

20 MR. MEDLIN: Your Honor, I can give you the document
21 but it's---

22 THE COURT: Well, just send it to me.

23 MR. MEDLIN: '98 wills and Trusts and I'll cite you---

24 MS. BALLARD: Did you say email it to you?

25 THE COURT: Yeah. Send it.

1 MR. MEDLIN: Sure.

2 THE COURT: When you get a chance. Not now. Not now.

3 MS. BALLARD: Okay.

4 THE COURT: Not now.

5 MS. BALLARD: Thank you.

6 THE COURT: But just send it straight---

7 MS. BALLARD: You got it.

8 THE COURT: ---to my law clerk.

9 MR. MEDLIN: Yeah.

10 THE COURT: Okay. Go ahead.

11 MR. MEDLIN: That's---

12 MS. BALLARD: We'll do it.

13 MR. MEDLIN: Thank you, Ms. Ballard.

14 We got a similar issue with Mr. Jolley who did the
15 wills starting in 2012 up until Mr. Barringer died. He said
16 oh, yeah, I -- in his depo -- oh, yeah, I talked about the
17 Power of Appointment but he can't specifically recall what
18 he said about it.

19 There's nothing in his notes. We've got his notes.
20 There's nothing in his diagram and you got the same problem
21 with the trustee having the discretion in those documents to
22 either distribute those assets or sell them to somebody
23 else. He couldn't have intended and didn't know that he was
24 given that power.

25 Robert Slain is an insurance agent that is not licensed

1 to practice law. Let's just put it that way.

2 MS. BALLARD: Sorry.

3 MR. MEDLIN: Well, I won't say any more about that,
4 Your Honor.

5 But, anyway, he's an adviser. He worked with
6 Mr. Jolley. He worked with Mr. McBride. He puts all these
7 diagrams together. I'm sure you've seen these in insurance
8 sales diagrams and here's how your estate's gonna pass. He
9 gave those to the Barringer family.

10 None of those diagrams showed the exercise of a Power
11 of Appointment. Everything that's in the notes, other than
12 that one little minor exception I mentioned in Mr. McBride's
13 document, all show the property going to the kids and none
14 of it mentions voting control.

15 THE COURT: Kids meaning all three or just the two?

16 MR. MEDLIN: I'm sorry, Your Honor?

17 I---

18 THE COURT: Kids.

19 MS. BALLARD: Three or two.

20 THE COURT: Well, three or two?

21 MR. MEDLIN: Well, it depends on which documents we're
22 talking about. The---

23 THE COURT: What documents are you talking about?

24 MR. MEDLIN: Well, let's say '98, all three kids
25 were -- would of taken equally.

1 THE COURT: All right. Go ahead.

2 MR. MEDLIN: All three kids would of taken equally
3 through the John Jolley documents until after Mr. Barringer
4 died when -- oh well, excuse me. I misspoke and I
5 apologize.

6 Starting in 2012, Mr. Barringer dedicated the voting
7 stock himself not through a Power of Appointment to Merrill
8 Light. We think that's the result of lack of capacity,
9 undue influence, et cetera. In 2014, he disinherited
10 Hampton. In 2015, he disinherited Hampton's only child, his
11 grandchild.

12 So, beginning in 2012, that equal treatment started to
13 change. Although in the February 28, 2012, will and Trust
14 which was found valid by the summary judgment we talked
15 about earlier, all three are treated equally. The one
16 difference is that Merrill Light is made a cotrustee with
17 totally independent powers to do whatever she wants
18 including, by the way, selling of stock, distributing it,
19 and that sort of thing.

20 Now -- so, we don't think there is a Power of
21 Appointment but it's not mutually exclusive to say he didn't
22 mean to do it. But, if he did, then we have evidence of a
23 contract. We have evidence of a promise.

24 Now, let's talk more specifically again about the '98
25 documents. These are all done at the same time.

1 Let's, let's assume, at this point, we don't think this
2 is the case, but let's assume he knew he was giving a Power
3 of Appointment to Mrs. Barringer. She signs, as we said, a
4 will that declines to exercise a Power of Appointment. He
5 signs a will that declines to exercise a Power of
6 Appointment. And also in that document is a common estate
7 plan. It was mirror images. And other than those Powers of
8 Appointment, which they've now declined to exercise in those
9 documents, everything goes equally to the kids.

10 THE COURT: Is the -- when she refuses to exercise the
11 Power of Appointment, is that, is that what he was talking
12 about earlier about the will where it said basically -- hold
13 on. I don't want to, I don't want to look at your -- it's
14 his floor right now, Mr. Twombly.

15 MR. TWOMBLY: Yes, sir.

16 THE COURT: All right. And I didn't, I didn't look at
17 that.

18 MR. MEDLIN: That's, that's fine, Your Honor.

19 THE COURT: But what I want to know is when she put in
20 there the language that she was gonna let somebody else be
21 the Trustee, what, what -- is that, is that the -- is that
22 what's going on?

23 MR. MEDLIN: Yes. Again, they're essentially mirror
24 images.

25 THE COURT: But she didn't make the -- she didn't --

1 her, her decision could be---

2 MR. MEDLIN: But see she didn't have any stock. So---

3 THE COURT: I understand.

4 MR. MEDLIN: Right.

5 THE COURT: Okay. But there's no language that says I
6 hereby promise not to use this Power of Appointment, signed
7 Mrs. Barringer?

8 MR. MEDLIN: That's exactly right in that one clause.
9 But that's the point of the contract. And as I'll talk
10 about more, under the contract statute, you can use
11 extrinsic evidence to show the terms of the contract.

12 THE COURT: Yeah, but I'm talking about the writing.
13 The writing says that.

14 MR. MEDLIN: Yeah. And we'll have some writings that
15 show that too.

16 THE COURT: Okay. But I -- all right. So you're
17 sending it out.

18 MR. MEDLIN: We'll have writings that show a plan to
19 treat the kids equally and letters sent. I'll, I'll get all
20 to that, Your Honor, and, and, if you don't want me to, I
21 mean it's in our earlier brief. But in other gifts made in
22 voting agreements that they enter into so that it's clear
23 that they have to all work together and share power.

24 All of those are permissible in determining what
25 evidence constitutes a contract. But the core of the

1 '98 document is that they have each executed documents
2 refusing to exercise the other -- exercise the other's Power
3 of Appointment.

4 Mr. Barringer, I guess, would of known that she could
5 of changed her will. But she -- he relied on her not to
6 change her will. Never said she would. She never did while
7 he was alive.

8 And so, under South Carolina Law, as, again, I'll get
9 to in just a little bit more, un -- under that rubric
10 itself, we're allowed to prove a contract.

11 Now, Your Honor, I don't know how much detail cause
12 this is a lot of detail.

13 THE COURT: You got 15 more minutes of detail.

14 Okay. It's five -- by that clock -- I'm going by that
15 clock. So you got -- actually you got till 20 till --

16 MR. MEDLIN: Thank you, Your Honor.

17 THE COURT: -- which is a 40 plus minute argument.

18 MR. MEDLIN: Right.

19 THE COURT: All right.

20 MR. MEDLIN: Again---

21 THE COURT: And I, I know that you've got a lot of
22 attachments and that's all incorporated everything you said.

23 MR. MEDLIN: Right.

24 THE COURT: Go ahead.

25 MR. MEDLIN: Let me just say this, Your Honor, if I can

1 refer to this, and I'll make some general statements.

2 THE COURT: All right.

3 MR. MEDLIN: Mr. Barringer was suffering from mental
4 issues maybe as early as 2012, 2010 certainly, into 2011.
5 And we have, in the briefs, lots of documented incidents,
6 particularly beginning in November or December of 2011,
7 where he's having some issues with his mind. And, in fact,
8 he's prescribed Aricept, and beginning in early 2012, it
9 gets far worse, and there's plenty of evidence.

10 At one point in May, he could not easily, upon command,
11 touch his ear with his fingers or show two fingers. That's
12 not somebody in command. And I want to make clear everybody
13 on the other side hears exactly what I said before.

14 After that, in the ensuing months, he continues to
15 devolve. His tests get worse over time as is always the
16 case with dementia.

17 So, we've got lots of medical testimony, records
18 showing he's got issues.

19 Now, that's just not an issue for lack of capacity.
20 But when you are lacking in mental acuity, you're more
21 susceptible, as a rule, to undue influence, tortuous
22 interference, thought, mistake, et cetera.

23 Just recently they deposed the former governor, former
24 congressman, Mark Sanford, who was at two board meetings in
25 February and April and he said oh, he wasn't right. He was

1 an adviser. We've got emails from Ms. Light's husband as
2 early as 2011 saying he's not right and again in 2012. We
3 have emails from other members of the company saying he's
4 not right.

5 The critical time is April, May, June of 2012, and I'll
6 explain that more in just a minute, Your Honor, if you'll
7 indulge me. But, at that point, he is really not himself,
8 and, in fact, I mean the best witness in this case is the
9 great lawyer, Mike Hagler, who started the Fulcher Hagler in
10 Augusta who passed away unfortunately, he was an independent
11 director on the board.

12 He sent letters to Ms. Paylor's client and said your
13 daddy's not right. Your daddy's not himself. He doesn't
14 know what he's doing in these meetings. But what's
15 important about this is the beginning in Aprilish of that
16 year, Mr. Barringer completely changed his mind about Kevin
17 Luzak, Hampton's husband.

18 He had invited him, a very successful wall street
19 person, brilliant, to help him run the company and
20 eventually run his company, and they were getting along
21 famously until he started to have some mental issues. And
22 Merrill Light gave him some documents that he had before.
23 He couldn't remember. He thought Kevin was trying to steal
24 the company. They keep trying to show he was. They can't
25 find any proof. Everybody they depose said no. No, he, he

1 didn't do anything like that.

2 But Mr. Barringer thought that there was something
3 going on, and that fanned and flamed -- inflamed and he
4 finally fired Kevin in June of 2012. And that's what upset
5 Hampton who thought it was, number one, not good for her
6 husband to have been accused of this when he did nothing
7 wrong.

8 Number two, she's worried about her daddy. She's
9 getting these letters. She's seen these doctor's report.
10 She went to Doctor Botnam in Charleston with her mother
11 where he was diagnosed with Alzheimer's in May or before
12 then. So we've got an undue influence path as well to show
13 all these documents in March about -- we got medical
14 evidence. We got testimony from people in the company.
15 Even the Defendant, Mr. Randy Light, saying that these are
16 problems.

17 We got affidavits from Kevin. Dead Man's Statute
18 doesn't prevent that. We got affidavits from Hampton. Dead
19 Man's Statute doesn't prevent that with respect to the
20 second and third causes of action. In fact, Mr. Twombly
21 produced her statement as an exhibit. They've opened the
22 door in many ways including Mr. McBride's affidavit where
23 he's talking about the Power of Appointment.

24 So, for a number of reasons that I don't have time
25 today, Your Honor, to talk about the Dead Man's Statute not

1 applying.

2 So, we have a list of documents, the Trusts up through
3 2012 -- February of 2012. The Barringer Family Voting
4 Agreement, the Agreement to Purchase Shares, gift tax
5 returns that were split gifts, voting stock into an
6 Irrevocable Trust, 2004 stock gifts, and all the diagrams
7 that we talked about before, all of that constitutes the
8 evidence that the Probate Code let's us use, and they're two
9 different paragraphs.

10 Number one, provisions of a will stating the material
11 provisions of the contract. We're not limited to what's in
12 the will. That just shows the existence of a contract, and,
13 as I mentioned before, that mutuality and the agreement that
14 is apparent from that not to exercise those powers at that
15 point, that shows the existence of a contract. Then we get
16 to look forward and see all these other times where gifts
17 were made, voting agreements were entered into. Mrs.
18 Barringer never tried to do anything about any of those
19 things. But it shows the consistency of his plan.

20 We'll skip over the second paragraph cause I admit that
21 those wills don't use the word contract.

22 Number three, a writing signed by the decedent.
23 Doesn't even have to be a will. Just a writing. Well, the
24 will certainly satisfies that, and, again, extrinsic
25 evidence is allowed to prove the terms of the contract.

1 But South Carolina, particularly with the Chapman case,
2 allows a promise, not a contract, and it's based on a
3 fiduciary responsibility.

4 Now, in Chapman, the Court said that the wife was in a
5 fiduciary relationship as wives and husbands are, and she
6 had a fiduciary obligation to honor her promise. And
7 although we admit there was written evidence in Chapman, the
8 court didn't stop at Chapman and at the written evidence,
9 those facts. They went on and said that promise could be
10 express or implied even from silence. And, as I said, so
11 do -- cited the leading authority in the country on Trusts,
12 Bogart, for exactly that proposition.

13 THE COURT: And, and, professor, you're saying that
14 silence and there's an expressed writing that she's not
15 gonna exercise it, right?

16 So, she -- you got both?

17 MR. MEDLIN: Got them both.

18 THE COURT: Is that right?

19 MR. MEDLIN: Exactly, Your Honor. We got them both.

20 THE COURT: Okay.

21 MR. MEDLIN: We, we think we have all of them, and we
22 don't need them all. Just need one. But we got them all.

23 THE COURT: Okay.

24 MR. MEDLIN: By the way, in one of their responses,
25 they quote a Law Review article, a very low rate academic,

1 who talks about the inability to enter into a contract to
2 exercise a testamentary Power of Appointment, and there's a
3 South Carolina case that says the same thing, Carmichael v.
4 Higgins that, that---

5 THE COURT: Who was, who was, who was the low rent?
6 You?

7 My gosh. I hope not.

8 MR. MEDLIN: Thank you, Your Honor. I---

9 MS. BALLARD: He was much younger then.

10 MR. MEDLIN: Still.

11 Anyway, they're missing their point. It's always been
12 the law that if I give you a testamentary Power of
13 Appointment, you can't give Monica -- you can't give --
14 enter into a contract with Monica to exercise it in her
15 favor and have that bond because, if I gave you a
16 testamentary power, I wanted you to have it up until the
17 time of your death to do it. That's not what's going on
18 here.

19 This is a contract between you and me, Mr. and
20 Mrs. Barringer. He's the creator of the Power. He gets to
21 make the rules. So, they're quibbling about that is totally
22 off base and has nothing to do with it.

23 Again, equitable estoppel also applies and can be
24 implied. Hampton has standing to assert. That's really
25 part of their other motions but I just want to make that

1 clear for this as well.

2 The most recent example of that under South Carolina
3 Law is the James Brown case. She clearly had standing to
4 assert her rights. She couldn't assert her rights we'll
5 argue some day down the road on Statute of Limitations.
6 Again, we've won those issues before because, under the
7 Crest (phonetic) Code, you don't have the right to make a
8 claim about what's going on in a Trust until the settlor of
9 a Irrevocable Trust dies. But he had the right to invoke.
10 So, we don't have any Statute of Limitations problems.

11 THE COURT: Okay.

12 MR. MEDLIN: Subtle reminder, Your Honor, for me to
13 hush. So, we're going to hush. We would like just a few
14 minutes to be able to reply.

15 THE COURT: All right. Mr. Twombly.

16 MR. TWOMBLEY: You ready, Your Honor?

17 THE COURT: Yes, sir.

18 MR. TWOMBLEY: Okay. This motion for summary judgment
19 is about two causes of action.

20 Number one, they allege there's a contract between
21 Mr. and Mrs. Barringer. They allege there's a promise
22 between Mr. and Mrs. Barringer. Those are the two issues in
23 this motion.

24 They have not alleged or brought and this motion is not
25 about any cause of action about whether or not Mr. Barringer

1 understood the will, about whether or not the Power of
2 Appointment was properly explained to them, about what
3 assets he owned at the time that he executed, and what he
4 may have gotten later and what he may have sold and given
5 away later.

6 They have alleged that the '98 documents are the
7 winners, what they told you last week, they're the winners,
8 and that there is a contract in place and a promise in place
9 that prevents them from being followed.

10 Ninety percent of what you heard from Mr. Medlin is
11 about a hypothetical case that is not before Your Honor.
12 This is about their allegations that there was a contract
13 and a promise in place, an expressed promise in place, that
14 she would not do what the document said.

15 All of this noise about well, he didn't understand it,
16 and what did she tell him in 1998 or did he own that at the
17 time, and did -- well, they recapitalized the company, none
18 of that's at issue. They allege there's a contract in
19 place.

20 It also happens to be that what they're saying makes no
21 logical sense, right?

22 How can you expressly promise and agree that you're not
23 gonna exercise this Power of Appointment?

24 well, I mean they didn't -- he didn't even know about
25 it. It wasn't explained to him. No one ever told him about

1 what he was doing.

2 Nobody ever explained the control of the company but
3 yet he enters into an expressed promise and agreement never
4 to exercise it?

5 It makes no sense.

6 Your Honor, we -- if they had an expressed promise in a
7 document, they would have it blown up the size of the
8 billboards you're gonna see when you drive home and they'd
9 be showing it to you. I mean this is a motion for summary
10 judgment hearing. This things been pending. They know what
11 the argument is. They haven't pointed you to squat.
12 Nothing.

13 They say that there were these family meetings and
14 Mrs. Barringer never spoke up. Well, first of all, they
15 can't say about what happened at these family meetings.
16 It's excluded by the Dead Man's Statute. But think about
17 what they're alleging, Your Honor. Just think about it.

18 Mr. and Mrs. Barringer are having a meeting with their
19 kids and they're talking about the future, and, at that
20 point in time, they're all on good terms. They're all in
21 the same room and the thing.

22 well, one day, one day you'll get this beach house or
23 one day you'll get this company and you'll all be able to
24 enjoy it, and all of a sudden Mrs. Barringer stands up and
25 says um huh, excuse me, excuse me. Y'all can sit around

1 here and talk about what's gonna happen in the future
2 because I'm gonna have the ultimate right.

3 Nobody's wife would ever say that. Nobody's wife would
4 ever say that and, and it's not admissible, and even if it
5 was, it doesn't mean anything. The statute forecloses the
6 oral promise route and you heard a lot from Mr. Medlin. You
7 did not hear anything about a promise being made.

8 You didn't even hear anything about him saying well, at
9 this family meeting Mrs. -- Mr. Barringer said this, that,
10 or the other. They just say there's family meetings of
11 discussions about the future when they were all on good
12 terms.

13 Judge, if that can amount to a promise and a contract
14 under South Carolina Law, then you and Jerry better get
15 real -- you better get ready because every child in America,
16 every child in America could take these standard textbook
17 estate planning documents and say well, mom never stood up.
18 She never said she had this right, and they treated us
19 equally in the past, and that's evidence of an irrevocable
20 agreement to treat them equally in the future no matter what
21 type of behavior they engage in.

22 There are two grounds for the Court to grant summary
23 judgment. Number one, the statute applies only says only.
24 That's what every other Court in the country that's got the
25 exact same statute that I'm aware of has said.

1 Number one. Even if only doesn't mean only, and even
2 if they can come forward with evidence of a promise, they
3 have no evidence of a promise. Your Honor, if they had
4 evidence of a promise, they wouldn't be relying on silence.

5 why would you even talk about silence if you had
6 evidence of a promise?

7 why would you talk about a promise if you had a
8 contract?

9 I'd be coming here saying here's the contract. Number
10 one, I got it. But here's this witness right here. I got
11 an affidavit from them. They're gonna say that I heard him
12 promise.

13 They don't have anything, and if the Court grants
14 summary judgment, then they can take it on up to Columbia
15 with all of their other stuff, and the Court of Appeals can
16 look at it. But we need to get this issue resolved, in my
17 opinion, as soon as we can and get clarity on August the
18 30th.

19 Thank you.

20 THE COURT: Yes, sir.

21 MR. MEDLIN: Your Honor, just briefly in response to
22 that and then a couple of other points that I wanted to
23 circle back around to.

24 You can't exercise a Power of Appointment if you don't
25 have one of nobody intended to give you one. So, certainly

1 that's part of and a fair part of our argument.

2 If it makes no sense to be able to say that you can put
3 a Power of Appointment in a document, and then agree not to
4 exercise it, then the Chapman case is meaningless cause
5 that's exactly what the Chapman case says, and the Chapman
6 case says you can promise not to exercise that Power of
7 Appointment either expressly or implicitly even through
8 silence.

9 So, if we want to take something up to the Court of
10 Appeals, I know Ashley's fond of the Court of Appeals,
11 Mr. Twombly, go yell at them about the Chapman decision,
12 which is still good law, and it was decided after the
13 Probate Code. But even if it weren't -- well, let me not
14 say it that way.

15 Chapman doesn't deal with 62-2-701, the contract
16 statute, because it's not a contract case. well, I don't
17 care what Pennsylvania and New Jersey and every other state
18 says. This is South Carolina Law. And though Mr. McBride
19 wasn't sure where the Barringer's were from, we do know that
20 this is a South Carolina case and South Carolina Law
21 applies.

22 If I had been -- if I'd had more time I would of gotten
23 into more detail, detail about these family discussions.
24 They're in affidavits from the Luzak's. Again, they're not
25 barred by the Dead Man's Statute at all for many reasons we

1 won't get into.

2 Every Christmas, many Thanksgivings, Mrs. Barringer was
3 there. Mrs. Light was there. Victor Barringer wasn't there
4 most of the time. Mr. Barringer liked to keep everybody
5 straight and say this is what's going to happen, and he
6 would explain how the company was gonna be run, and he would
7 often say you two girls are gonna have to get along.

8 So, we don't think there's a Power. If there is, we
9 think there's plenty of evidence under either Section 1 or
10 section 3 of the applicable statute in South Carolina
11 dealing with contracts. And even if there weren't, the
12 Chapman case, which is still good law in South Carolina,
13 says a promise does not have to be part of a contract. It
14 does not have to be supported by a consideration. It could
15 be based on a fiduciary duty which every husband and wife
16 have between them, and one can even prove it by silence.
17 Equitable estoppel's the same.

18 So, again, I can't help that's the law. It's the law.
19 So, that's what we have to follow.

20 THE COURT: All right.

21 MR. MEDLIN: Again, I'd just point out, Your Honor,
22 sorry, one, one more sentence.

23 THE COURT: I'm, I'm listening.

24 MR. MEDLIN: South Carolina just didn't -- the Court of
25 Appeals just didn't pull that statement out of the blue.

1 They cited the leading Trust authority in the country for
2 that proposition.

3 Thank you for your indulgence, Your Honor.

4 THE COURT: All right. Thank y'all.

5 All right. What we're gonna do is this. I think --
6 does that resolve all of the -- I tell you. I'm not keeping
7 these folks any longer tonight. I'm gonna have y'all submit
8 Proposed Orders. I'll have Monica send you when we need to
9 get those by.

10 Mr. Twombly, you knew -- need what you need to get to
11 Mr. Traxler and make those witnesses available. We've
12 already talked about that.

13 So, that's all we're gonna take up tonight. I'm gonna
14 let these good people go and I want to apologize to them for
15 keeping them so late. But it really was important that we
16 go ahead and knock this out and I don't mean that we're in a
17 rush. It's just a good time and we needed to do that and
18 thank y'all so much---

19 MS. BALLARD: And, Your Honor---

20 THE COURT: ---Madam Clerk and to the court reporter.

21 MS. BALLARD: ---we'll send you that email that you
22 asked for.

23 THE COURT: All right. Thank y'all.

24 MS. BALLARD: You said you wanted those documents and
25 we'll send you those.

1 THE COURT: All right.

2 MS. BALLARD: Thank you very much, Your Honor.

3 THE COURT: Thank y'all.

4 MS. PAYLOR: Thank you, Your Honor.

5 THE COURT: Thank you.

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7 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina, on the 10th day of August, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 19th, 2021



PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT

4 IN THE MATTER OF:
5 Estate of Paul Barringer, II.

6 Hampton Barringer Luzak,
7 Plaintiff,

8 vs. Transcript of Record
2019-CP-07-1253
2019-CP-07-1294

9 Merrill U. Barringer.

10 Defendants.

11
12
13 October 7, 2021
14 Beaufort, South Carolina

15 B E F O R E:

16 The HONORABLE ROBERT BONDS
17

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

19 S. Alan Medlin, Representing the Plaintiff
20 Charles B. Macloskie, Representing the Plaintiff
21
22
23
24
25

1 Appearances Continued:

2 James Ashley Twombly, Representing the Defendant
3 Alice Paylor, Representing the Defendant

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SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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1 THE COURT: All right. Good afternoon,
2 folks.

3 MR. MEDLIN: Good afternoon.

4 THE COURT: I think this is the
5 plaintiff's motion to reconsider; is that correct?

6 MR. MEDLIN: Yes, Your Honor.

7 THE COURT: All right. Mr. Twombly,
8 good afternoon.

9 I'm happy to hear from you.

10 MR. MEDLIN: Thank you, Your Honor.
11 Alan Medlin and Charles Macloskie for the
12 plaintiff. Reserving all rights, as we indicated
13 previously to the Court, we will rely on all of
14 our filings or our initial statement. We would
15 like to reserve the right to reply to whatever the
16 defendants might have to say.

17 And, of course, Your Honor, will answer
18 any questions or make any arguments that the Court
19 would like us to make.

20 THE COURT: All right. Certainly that's
21 fine.

22 Mr. Twombly.

23 MR. TWOMBLEY: Thank you, Your Honor.
24 Ashley is with me for the defendant, Merrill
25 Barringer. The plaintiff has obviously filed a

1 motion to reconsider your order granting summary
2 of causes of action 2 and 3.

3 THE COURT: Yes, sir.

4 MR. TWOMBLEY: The matter has been fully
5 briefed by both parties. The plaintiffs filed,
6 not only a motion and memo in support, but now
7 filed a reply memo.

8 We would just note that it's our position
9 the plaintiff has still not identified any
10 evidence whatsoever that creates an issue of fact
11 with respect to causes of action 2 and 3. There
12 are general statements about the evidence existing
13 all over the place, in affidavits, in depositions,
14 in various documents, but there's not -- there is
15 no specific pointing to this evidence that
16 allegedly exist.

17 We believe the Court was fully correct in
18 granting the motion, and we think that the motion
19 to reconsider and the briefing that followed
20 further illustrates that.

21 We believe that the plaintiff is just
22 choosing not to make any argument because they
23 don't have any additional argument. They don't
24 have any evidence to point to; otherwise, we
25 believe they would bring it to Your Honor's

1 attention. There certainly would be no reason not
2 to.

3 So, as well, we'll answer any questions;
4 otherwise, we'll stand on our briefing as well.

5 Thank you.

6 THE COURT: All right. Well, gentlemen,
7 and I'll give you a chance to reply, but I have
8 two briefs and a reply, and I want you to know, I
9 didn't want to bring anybody down here for no
10 reason at all. I've reviewed both the briefs, I
11 reviewed the reply and my policy basically is
12 that, if neither party wants to come and argue
13 orally, then I would decide on the briefs. But I
14 understood that -- I think Mr. Twombly had
15 suggested coming down and having this. And so, if
16 one says yes, then I'm going to do it. If both
17 agree not to, then I wouldn't want to force
18 anybody to drive down from Columbia and from
19 Beaufort.

20 But I've reviewed everything, but in --
21 and I want to let you know that, so I didn't mean
22 to inconvenience anyone today as it relates to
23 coming to here to Walterboro. But I know you all
24 are anxious to get this moving however it ends up
25 moving.

1 But I'm happy to hear from you,
2 Professor Medlin, if you want to simply in any
3 way, sir.

4 MR. TWOMBLEY: Your Honor, I do have --
5 if I may approach.

6 THE COURT: Yes, sir.

7 MR. TWOMBLEY: -- just another copy of,
8 no only the plaintiff's briefing, but also the
9 defendants' as well, should you need those. I
10 provided plaintiff's counsel an identical copy.

11 THE COURT: All right. The only thing
12 that's not in here would be their reply?

13 MR. TWOMBLEY: The reply is in there as
14 well.

15 THE COURT: The reply as well. Okay,
16 fine.

17 Yes, sir.

18 MR. MEDLIN: Your Honor, just briefly, we
19 could not disagree more that we've shown no
20 evidence. I think we have shown in all of our
21 filings, both in the original summary judgment
22 that Judge Mullen denied back in December 2020 and
23 in our original defense of the repeated summary
24 judgment motion in front of you, which you
25 granted, and then, again, in our filings for this

1 motion to reconsider, again, there's just lots and
2 lots of evidence that would certainly clear the
3 summary judgment standard, we think, until the day
4 of trial. So we certainly cleared the summary
5 judgment standard.

6 So we disagree with that statement. But
7 rather than repeat what Your Honor has already
8 read, I'm not going to do that.

9 I appreciate my friend, Mr. Twombly,
10 suggesting why we chose not to make any arguments,
11 but that's not why we chose not to make any
12 arguments. I just want to make that clear.

13 Otherwise, unless you have questions,
14 Your Honor, we're done.

15 MR. TWOMBLY: I have nothing further,
16 Your Honor.

17 THE COURT: All right. Professor Medlin,
18 let me ask you this: I noticed in -- can you
19 briefly outline for me the other signed writings
20 along with extrinsic evidence that you make
21 reference to on page 2 of your reply at the very
22 bottom? I think that was some of what you were
23 talking about. I read that, I want to say
24 yesterday afternoon or this morning, and, for some
25 reason, I underlined that. Can you highlight some

1 of those points for me, sir?

2 MR. MEDLIN: Your Honor, would you point
3 me to the sentence that you're asking about?

4 THE COURT: The wills alone would satisfy
5 the alternate method of proof, but plaintiff has
6 produced other -- substantial other signed
7 writings along with extrinsic evidence satisfying
8 the requirements of 62.

9 And just -- like I said, I had underlined
10 that for some reason and put a question mark. And
11 I can't remember if I read that this morning or
12 last night. Can you just highlight for me what --
13 those other writings and the extrinsic evidence?
14 You don't have to go into great detail. I got a
15 lot of it, but it would me as I go back again and
16 look through this.

17 MR. MEDLIN: Your Honor, if you don't
18 mind -- again, I can get into as much detail as
19 you want, but just by way of background -- and
20 only on the contractual issues, we disagree that
21 Section 62-2-701 is the only law that applies
22 here.

23 THE COURT: I understand.

24 MR. MEDLIN: We think that you can have a
25 non-contractual promise. We believe that the

1 Chapman case and the equitable estoppel arguments
2 still survive.

3 But on the contract issue alone, 2-701
4 allows you several ways to prove a contract. We
5 focused on two. The wills containing the material
6 provisions of the agreement, we think that those
7 1998 wills would seem to be the focus of what
8 defendants argue about, which seems to be the
9 focus of order, Your Honor, if we're reading it
10 correctly. They contain material provisions.
11 They show equal treatment of the children. They
12 show that each has given the other a power of
13 appointment and that each has expressly declined
14 to exercise the power of appointment. So -- and
15 when they walk away from that execution table,
16 they both understood that there was an
17 understanding there was going to be no exercise of
18 any power of appointment.

19 Again, Your Honor, the point of our
20 argument is, we clearly think that Mr. Barringer
21 had no idea that, number one, there was a power of
22 appointment and what it did in this document at
23 that, but, more importantly, that it could affect
24 the voting control. That's a critical issue.
25 It's the real issue we're talking about.

1 THE COURT: Yes, sir.

2 MR. MEDLIN: So that subparagraph of
3 2-701, 62-2-701, doesn't limit the evidence to
4 what's in the will. It just talks about the
5 material provisions.

6 THE COURT: Let me ask you one other
7 thing: Could not anticipate the voting, and
8 that's because, at that time, he didn't have the
9 -- he didn't have the stock to vote, or I'm trying
10 to recall -- or that the wife had never been
11 involved. I'm trying to remember that. I'm
12 sorry.

13 MR. MEDLIN: Well, Your Honor, there are
14 several reasons there. Number 1, he didn't have
15 the voting control stock at that point in 1998.

16 THE COURT: Okay.

17 MR. MEDLIN: He had already given that
18 away to his children.

19 Number 2, Mr. McBryde, the drafting
20 attorney's deposition shows that not only did
21 Mr. McBryde not specifically remember discussing
22 the power of appointment at all --

23 THE COURT: Right.

24 MR. MEDLIN: -- he based it on his
25 practice. He did testify that he never talked

1 about voting control. He never said that the
2 power of appointment would affect the voting
3 control. So Mr. Barringer wasn't advised by his
4 counsel that that would happen. And it was the
5 first time, according to a letter from Mr.
6 McBryde, that there was a power of appointment in
7 any of the documents that the Barringers had had
8 before, so this was a new concept to them.

9 THE COURT: I'm with you. Yes, sir.

10 MR. MEDLIN: Your Honor, back to your
11 first question, so we have produced a long list of
12 documents showing over a period of years where
13 Mr. and Mr. Barringer together continued to treat
14 the children equally, whether it be corporate
15 documents, or tax documents, or probate court
16 documents, or estate planning documents, and those
17 are set out in our filings.

18 So those we would argue would supplement
19 the material provisions found in those 98
20 documents.

21 Now, paragraph three of 62-2-701 simply
22 requires assigned writing and allows extrinsic
23 evidence. Now, the signed writings could be those
24 wills, or it could be any of other documents that
25 are signed. There's no requirement under

1 paragraph 3 that there be a will, that there's no
2 prohibition that the wills can't serve as a signed
3 writing.

4 THE COURT: Okay.

5 MR. MEDLIN: And again, Your Honor,
6 without wasting the Court's time, all of those
7 document that we filed with our pleadings would
8 show the fleshing out of that agreement over time.
9 So that's what we meant by that.

10 THE COURT: Yes, sir.

11 Mr. Twombley.

12 Anything else?

13 MR. MEDLIN: Not unless you have
14 questions.

15 THE COURT: No, sir. That helps me
16 tremendously.

17 Anything in response?

18 MR. TWOMBLEY: Just very briefly,
19 Your Honor, these arguments are so difficult
20 because they just are against each other. On one
21 side they say Mr. Barringer did not intend, he did
22 not intend and did not even understand that he was
23 giving his wife a power of appointment. That's
24 what they say on one breath.

25 Out of the very next breath they say, but

1 he entered into a contractual agreement, expressly
2 agreeing and she expressly agreed that she would
3 never exercise the power of appointment.

4 Well, how do you -- how do you not even
5 know you have something? You don't even know
6 you've got it. But, yet, you enter into a
7 contract expressly agreeing not to exercise it.
8 It just makes no sense, Your Honor.

9 The same logic applies with Mr. McBryde.
10 They scold Mr. McBryde for not explaining --
11 allegedly not explaining to Mr. Barringer that the
12 power of appointment could affect voting control
13 of the company. Yet, out of the very next breath,
14 they say Mr. Barringer didn't have voting control
15 of the company. So these arguments are just
16 logically inconsistent. It's logically
17 inconsistent with their own theory of the case.

18 In the final point, I mean, with all due
19 respect to Mr. Medlin, I mean, essentially, what
20 they're arguing is because Mr. and Mr. Barringer
21 treated these kids equally in the past, that,
22 therefore, they're contractually and legally
23 obligated to treat them equal in the future.
24 That's just the law. There's no law that simply
25 because they treated these kids equally in the

1 past and they gave them the same thing at their
2 birthdays, and they gave them the same thing at
3 Christmas, and they tried to treat them equally
4 like all parents do, as a matter of law, that does
5 not equate to any type of legal obligation to
6 treat these children equally in the future.

7 Final point, Mr. Medlin knows it's a well
8 settled concept in probate law, there's a statute
9 on point as far as I know in every state in the
10 United States about after acquired evidence.
11 Obviously, after Mr. Barringer executes his will
12 in 1998, he's going to acquire different assets in
13 the future.

14 THE COURT: After acquired property?

15 MR. TWOMBLEY: After acquired property,
16 yes, Your Honor.

17 THE COURT: Okay. Yes, sir.

18 MR. TWOMBLEY: He's going to acquire
19 different property in the future. He's going to
20 sell different property in the future. People do
21 not have to go back to their lawyer and say, well,
22 I bought this piece of property last week, do I
23 need to change my will? Because, you know,
24 Mr. Medlin, under his theory, you couldn't have
25 possibly have expected your will to transfer to

1 this property that you bought after you exercised
2 the will because you didn't own it. That is just
3 nonsense, Your Honor.

4 There was no obligation from
5 Mr. Barringer to do that. If there is an
6 obligation, then everybody who's ever got a will
7 and they buy something or sell something is going
8 to have to go to their lawyer and have it changed.
9 There's no cases to support that and there's no
10 law to support it. And Your Honor correctly
11 rejected it.

12 Thank you.

13 THE COURT: Anything else?

14 MR. MEDLIN: Briefly, Your Honor.

15 THE COURT: Yes, I'm happy to hear from
16 you guys.

17 MR. MEDLIN: Thank you. I always have to
18 respond when my argument has been labeled as
19 nonsense, so I just want to do that quickly. I
20 note the court reporter is smiling.

21 We've addressed the issue of whether our
22 arguments are allowed. They are. They are
23 alternatives arguments and that's certainly
24 allowed under the law. Let me address that last
25 point.

1 THE COURT: Yes, sir.

2 MR. MEDLIN: This is not a question of
3 what property Mr. Barringer owned and when he
4 acquired it being subject to this will, and,
5 actually, the subject of his trust. This is a
6 question what he meant, if anything, by having the
7 power of appointment. And I'm certainly not going
8 to argue the point that a will would include after
9 acquired property, so that whatever somebody owned
10 by the time that they're dead is going to be
11 covered by that will.

12 THE COURT: Right.

13 MR. MEDLIN: That's not what we're
14 arguing. I just want to make that clear.

15 We're arguing the power of appointment
16 was not meant to cover any voting stock, because
17 he didn't own any at the time. It's not a
18 question of whether the voting stock passed under
19 his will and to a trust -- or actually, he moved
20 it to his trust later in 2012. The question is,
21 what did he intend by the power of appointment.
22 When we're looking at intent, it's boilerplate
23 law, that you look at the facts and circumstances
24 at the time of execution. That's a different
25 point than Mr. Twombly says we make.

1 That's it, Your Honor, unless you have
2 questions.

3 THE COURT: No, sir. I think I've got
4 all I need. What I plan on doing is, I'll have a
5 decision made by close of business tomorrow. I'm
6 going to get that done because I'm going to be in
7 Georgetown all next week in a trial. And so I'll
8 have something done by close of business tomorrow
9 as it relates to that. If I can't or don't, I'll
10 have my law clerk email you and let you know that.

11 Okay, great. Thank you, gentlemen.

12 MR. MEDLIN: Thank you, Your Honor.

13 MR. TWOMBLEY: Thank you.

14 (The hearing was concluded.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas, Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

October 17, 2021



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

1 IN THE STATE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
2 STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT

**6 vs. CIVIL ACTION NUMBER
2016-CP-07-1919**

12

14 vs.

CIVIL ACTION NUMBER
2019-CP-07-01253

18

VS.

CIVIL ACTION NUMBER

2019-CP-07-01294

23 _____/

CCR

ROA 005888

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18 The hearing, in the above-entitled
19 cause, taken before the Honorable Judge Robert
20 Bonds, before Naomi McCracken, Stenographic Court
21 Reporter and Notary Public, at the Colleton
22 County Courthouse is 101 Hampton Street,
23 Walterboro, South Carolina 29488, on Friday,
24 December 13th, 2024, commencing at or about the
25 hour of 10:04 a.m.



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ROA 005889

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OPENING REMARKS AND STIPULATIONS ----- 7

CERTIFICATE ----- 31

(NO EXHIBITS MARKED.)



1 THE COURT: All right. My
2 understanding is that some time ago, I
3 granted the Defendant Barringer's
4 motion for summary judgment as to the
5 Plaintiff's second and third causes of
6 action. I understand then that the
7 appellate court found -- and I think
8 that's back in August of '21.

9 And then the appellate court, I
10 think, found that my ruling perhaps was
11 premature based upon what was going on.
12 This matter has now come back up from
13 upstairs and we're in a position now to
14 address this issue.

15 And I understand the issue is that
16 the plaintiff has requested that
17 basically I reconsider the motion based
18 upon, I guess, some passed time and
19 other matters that have transpired, and
20 as a result, they're saying it would be
21 appropriate for me to rehear the
22 matter.

23 Is that where we are? Hello.

24 MR. TREXLER: Your Honor, I'm Tom
25 Trexler --



1 THE COURT: Yes, Mr. Trexler.

2 MR. TREXLER: -- arguing for the
3 plaintiff. I'll get to that. We also
4 have before you, a bifurcation order.
5 When the Supreme Court issued its
6 opinion in January of this year, it
7 directed the trial court to address
8 matters affecting the other trial,
9 including a bifurcation order.

10 MS. BALLARD: Your Honor, I'm
11 handing up a copy of the Supreme
12 Court's order.

13 THE COURT: All right.

14 MR. TREXLER: That is also before
15 the Court.

16 THE COURT: Right. There's two
17 matters?

18 MR. TREXLER: Yes, sir.

19 THE COURT: Yes, sir.

20 MR. TREXLER: That's been
21 bifurcated.

22 Are we ready to argue the
23 bifurcation? We want to do it here?

24 THE COURT: Well, yes, sir. So
25 what I want to understand, though, is



1 that you are asking -- there's two
2 matters that I was going look at,
3 potentially entertain today.

4 One matter is that you have
5 requested basically that I rehear the
6 motion for summary judgment; is that
7 correct.

8 MR. TREXLER: I believe that
9 addition to this, from the attorneys
10 for Ms. Barringer, who has requested
11 that you revisit that motion.

12 I don't believe that Ms. Luzak has
13 asked the Court to go back on --

14 THE COURT: Okay.

15 MR. TREXLER: -- the order for
16 reconsideration.

17 THE COURT: So let me make sure.

18 Mr. Twombly, you're asking what.

19 MR. TWOMBLEY: Your Honor, we're
20 asking the Court to just re-enter the
21 order that it's already entered. It's
22 our position --

23 THE COURT: Okay.

24 MR. TWOMBLEY: -- that Your Honor
25 articulated it exactly correct. The



1 Supreme Court simply stated that at the
2 time Your Honor entered the motion for
3 summary judgment on the causes of
4 action two and three for Ms. Barringer,
5 that that was premature. Those
6 impediments have now dissipated and
7 there is no reason why the Court can't
8 revisit that.

9 We personally do not think we need
10 to reargue the motion, but we're happy
11 to proceed in any way Your Honor would
12 like.

13 THE COURT: All right. So do you
14 take the position -- he's asking I just
15 go ahead. I've already ruled on this.
16 He's asking that I go ahead and
17 basically, I guess, re-enter my order.

18 Do you want to be heard on that,
19 or what about that?

20 MR. TREXLER: Mr. Medlin will be
21 handling that part of that for us, Your
22 Honor.

23 THE COURT: Right.

24 MR. TREXLER: And I will let him
25 address that. I will be addressing the



1 bifurcation.

2 THE COURT: Okay. And I'll get to
3 that in one second.

4 So, Professor Medlin, what I want
5 to ask you is this: Do you want to --
6 are you wanting to object -- to object
7 to that? Do you want me to hear new
8 evidence? Go to new matters, arguments
9 concerning that? What is it that you
10 want to do concerning Mr. Twombly's
11 request at this point?

12 MR. MEDLIN: Well, we oppose the
13 motion for summary judgment.

14 THE COURT: Yes, sir.

15 MR. MEDLIN: Certainly defer to
16 Mr. Twombly and however he wants to
17 handle it on his end, and we would
18 respond accordingly.

19 But just to make sure I'm
20 understanding what's going on, when you
21 granted motion for summary judgment in
22 August of '21 and denied our motion to
23 reconsider in October of '21 --

24 THE COURT: Yes, sir.

25 MR. MEDLIN: We, as Ashley gently



1 described it, we took a little trip to
2 Columbia for a while. And the Supreme
3 Court, as I understand it,
4 determined -- or the appellate courts
5 determined that you did not have what I
6 would describe as subject matter
7 jurisdiction --

8 THE COURT: All right.

9 MR. MEDLIN: -- to issue either of
10 those orders because the bifurcation
11 order was also on appeal, as Ashley has
12 pointed out. And we agree, all those
13 matters that were up on appeal are back
14 at the trial court level.

15 THE COURT: Okay.

16 MR. MEDLIN: The way I would
17 understand it is that Ms. Barringer
18 would ask the Court to grant summary
19 judgment on her second -- on the second
20 and third causes of action --

21 THE COURT: Okay.

22 MR. MEDLIN: -- which I think
23 would be a new issuance of an order as
24 supposed to simply ratifying the two
25 orders that I don't think the appellate



1 courts believed you had subject matter
2 jurisdiction. That might be a
3 technical distinction. But the bottom
4 line is, we understand that
5 Ms. Barringer would ask you to enter an
6 order of summary judgment.

7 THE COURT: Right.

8 MR. MEDLIN: And then we would
9 respond to whatever he has to say this
10 morning. He certainly doesn't have to
11 argue the whole thing if he doesn't
12 want to. And we probably will stand on
13 the record, depending on what he says.

14 THE COURT: That's fine.

15 And then we have a bifurcation
16 issue. Okay.

17 I'm going to hear both of these
18 matters today and I'll take both these
19 matters under advisement. I want to go
20 ahead and start with the summary
21 judgment matter.

22 So let me hear from you,
23 Mr. Twombly, as it relates to what you
24 want me to do as it relates to the
25 summary judgment matter.



1 And then I'll give Professor
2 Medlin an opportunity to respond.
3 Okay?

4 MR. MEDLIN: Thank you.

5 MR. TWOMBLEY: Your Honor, thank
6 you.

7 Ashley Twombley for Merrill
8 Barringer. We've taken up, in my
9 opinion, enough of the Court's time
10 when we spent significant amount of
11 time going through all these arguments.
12 We've made the exact same arguments
13 that we made before. It's the exact
14 same evidence, or lack thereof.

15 The arguments opposing summary
16 judgment are exactly the same. There's
17 been no new discovery. There's been no
18 new offense that would affect summary
19 judgment on the second and third cause
20 of action.

21 I am prepared to stand on briefing
22 and the existing argument that we've
23 already made before Your Honor. And if
24 Your Honor has any questions or if
25 there is any issue you would like me to



1 address, I'm happy to do that. But
2 otherwise, we'll stand on the filings
3 and the argument previously made, which
4 we incorporate here as if we state it
5 verbatim.

6 THE COURT: All right.
7 Mr. Medlin --

8 MR. MEDLIN: Yes, sir.

9 THE COURT: -- I'm happy to hear
10 you, sir.

11 MR. MEDLIN: Thank you, Your
12 Honor. We have a brief response.

13 First of all, as we did before,
14 we, of course, don't waive any right to
15 claims, et cetera. We would have and
16 know what we're going to be doing,
17 incorporate as we do in the memo that
18 we submitted to you this time around,
19 all the previous filings, including the
20 appellate court filings, as part of our
21 argument.

22 The one quibble that we would make
23 with the statement in the letter from
24 Ashley to the Court is that the Supreme
25 Court did not even consider the



1 substance of the argument. So it's not
2 that they didn't reject it, they just
3 didn't consider it.

4 THE COURT: Right.

5 MR. MEDLIN: But other than that,
6 Your Honor, we would be pleased to
7 stand on the record as well and leave
8 it to the Judge to make the decision.

9 THE COURT: All right. So let me
10 ask you this, Professor Medlin, I just
11 want to make sure.

12 So is there anything that's --
13 when we had the status conference --
14 and I'm sorry, my recollection was that
15 maybe there -- something had changed,
16 maybe. Is there anything else? I
17 don't think any new depositions,
18 there's nothing new that's happened
19 that would affect anything that I need
20 to hear as it relates to the decision
21 concerning this motion; is that
22 correct?

23 That's all I want to make sure.
24 That's what I want to make sure of.

25 MR. TWOMBLEY: Yeah.



1 MR. MEDLIN: Actually, I think
2 that's true other than the appellate
3 court record, which we incorporated,
4 Your Honor.

5 THE COURT: Yes, sir.

6 MR. MEDLIN: It would be the same
7 as before.

8 THE COURT: All right.

9 MR. MEDLIN: We have a new memo,
10 it's --

11 THE COURT: Yes, sir. I
12 understand that.

13 MR. MEDLIN: -- a little more
14 thorough than the last one just to give
15 me something do.

16 But, in any event, Your Honor,
17 Ashley, we agree, no facts, no
18 evidence, nothing has changed since we
19 began the appellate process.

20 THE COURT: All right. All right.
21 That's fine. Thank you, sir.

22 All right. Now, as it relates to
23 the bifurcation matter, Mr. Trexler.

24 MR. TREXLER: Yes, sir. Your
25 Honor, I'm not going to relate all of



1 the tortured history of the issue
2 before you, but Judge Mullin, on
3 December 2020, four years ago, issued
4 an order bifurcating the trial in this
5 matter.

6 The first phase of the trial she
7 said would be on the second and third
8 causes of action, and the remainder
9 would be tried at a later time. The
10 first phase is on those two causes of
11 action. The balance of the trial would
12 be later.

13 We opposed bifurcation for any
14 number reasons, essentially because it
15 would result in repetitive trials each
16 lasting several weeks. And also on the
17 grounds that bifurcation had the court
18 trying equitable causes of action
19 before legal causes of action would be
20 tried, effectively depriving us the
21 right to a jury trial on those issues.

22 Citing the law that in South
23 Carolina, the sequencing, if you're
24 going to bifurcate, is the legal causes
25 of action first, followed by equitable



1 causes of action.

2 In South Carolina, orders
3 affecting the mode of trial are
4 immediately appealable. If you don't
5 appeal them, then you lose the right.
6 And so now that we're retained now, we
7 filed a motion to -- we filed a notice
8 of appeal and summary. And then there
9 were several orders that came out in
10 the trial court, summary judgment
11 orders and the like.

12 And none of the appellate
13 procedure, you can append and have an
14 interlocutory order of appeal to a main
15 appeal on the substance, if you would.
16 So that was done.

17 The Court of Appeals, and
18 ultimately the Supreme Court said no,
19 bifurcation orders are interlocutory
20 and they're not going to hear them at
21 this time and the like.

22 Interestingly, it was because of
23 the appeal of the bifurcation order
24 that created the stay that prompted the
25 Supreme Court to vacate orders that had



1 been issued while the bifurcation
2 appeal was going on, albeit the -- at
3 one point, them saying it's
4 interlocutory. So okay.

5 So when they issued their
6 memorandum opinion at this time last
7 year in the earlier in -- that came out
8 in January of this year. They had --
9 and they told us before oral arguments,
10 the only thing we're going to be
11 arguing is this and this, whether there
12 are damages and something else, but not
13 bifurcation.

14 And so that issue wasn't before
15 the Court when we argued. But when
16 they issued their opinion, they threw
17 in something at the end that says, in
18 light of everything that has elapsed in
19 this case, particularly the
20 clarification that Ms. Luzak would not
21 pursue any derivative claims, we direct
22 that all matters regarding mode of
23 trial, including the order of
24 bifurcation cause, shall be
25 reconsidered by the Circuit Court. And



1 that is why we are here.

2 And we have filed our motion.

3 Technically, call to reconsider and to
4 vacate the bifurcation order, and by
5 the way, directed from the Supreme
6 Court. And we believe it is
7 appropriate for this Court to, yes, to
8 vacate the bifurcation order.

9 Now, I don't know exactly what
10 prompted the Supreme Court to put this
11 in there. There are a couple of things
12 in there that they -- that are
13 interesting. First of all, they, of
14 their initiative without this issue
15 being in front of them, issued that
16 directive.

17 And, secondly, they did classify
18 the bifurcation order as affecting mode
19 of trial, making it immediately
20 appealable.

21 So we're back here before you with
22 the Supreme Court saying reconsider the
23 bifurcation orders. The absolutely
24 clear implication of that to me is, we
25 don't agree with it and we think it is



1 a signal for the Supreme Court to
2 vacate it. That issue was not before
3 them, they cannot vacate it, but they
4 have asked the Court to reconsider that
5 as affecting the mode of trial.

6 So we are here before you to have
7 that bifurcation order vacated. And
8 regardless of what your decision is
9 with regard to summary judgment, that
10 bifurcation order still needs to be
11 vacated. There's no reason not to go
12 ahead and vacate it, regardless of your
13 decision with regard to summary
14 judgment.

15 And that's why we're here. The
16 Supreme Court says reconsider it. I
17 can't imagine why they would issue that
18 without -- it needs to be vacated.

19 THE COURT: All right. Thank you,
20 Mr. Trexler.

21 Mr. Twombly?

22 MR. TWOMBLEY: Yes, Your Honor.

23 The Supreme Court doesn't say why
24 the Court might want to take another
25 look at bifurcation. In light of



1 everything that has elapsed in this
2 case, particularly the clarification
3 that Luzak will not pursue any
4 derivative damages claims, then the
5 Court should take another look at
6 bifurcation.

7 First of all, Your Honor, if the
8 Court grants summary judgment on causes
9 of action two and three, than the
10 bifurcation issue, at least at this
11 stage, is moot. There's just -- there
12 would simply be no claims in the case
13 to bifurcate under the existing
14 bifurcation order because those
15 claims -- because summary judgment
16 would be granted on those claims.

17 What I believe that is in line
18 with what the Supreme Court is saying,
19 if Luzak come up with nearly
20 \$100 million of financial damages that
21 she's seeking in the Barringer one
22 case. And the Supreme Court looked at
23 those damages.

24 Summary judgment was granted on a
25 couple of categories. There were a



1 couple that the Supreme Court, I
2 believe, thought were clearly
3 derivative and that's why they have
4 directed the plaintiff to narrow her
5 claims, narrow her damages claims, take
6 out the derivative ones.

7 And what the Supreme Court then
8 expected is that the Court, after she
9 narrows those claims and we figure out
10 what the damages are actually going to
11 be, then the Court may, in fact, want
12 to take another look at bifurcation in
13 general, in general. Even if claims
14 two and three have been thrown out on
15 summary judgment grounds.

16 And that makes a lot of sense,
17 Your Honor. This -- even without
18 claims two and three, it's still a big
19 case. It's a complicated case. It
20 involves numerous sets of estate
21 planning documents over a long period
22 of time, corporate actions that
23 Ms. Luzak contents generated all these
24 different damages. So the Court may
25 want to take another look at



1 bifurcation in the future.

2 And, you know, I'd like the Court
3 to know, and this is in summary of our
4 prior briefing, it was actually Judge
5 Mullen's idea to bifurcate. Judge
6 Mullen saw this case like a balloon
7 being blown up, just getting bigger and
8 bigger and bigger, there were more
9 lawyers, there were more witnesses,
10 there more damages. And she just
11 said -- and I think rightfully so --
12 this is going to take months to try.

13 There's going to be, you know, 50
14 witnesses called at trial. There's
15 going to be, you know, a dozen experts.
16 There's no way y'all can do this in one
17 swoop. So that's why she bifurcated.

18 But first and foremost, Your
19 Honor, for purposes of today, we filed
20 the motion to bifurcate claims two and
21 three. That was only motion I have
22 pending before the Court. If the Court
23 grants summary judgment on claims two
24 and three, then the only prior request
25 related to bifurcation would be moot.



1 And if the Court wants -- if the
2 parties want to address bifurcation in
3 the future, the plaintiff can file a
4 motion to bifurcate. We can. Some of
5 the other defendants can, and the Court
6 can address those. And I think also
7 the Court can address bifurcation, I
8 believe (indiscernible) if the Court
9 thinks that that's appropriate.

10 But the only pending bifurcation
11 request before the Court was to
12 bifurcate claims two and three. And
13 summary judgment are granted on those.
14 We respectfully submit that the issue
15 would be moot.

16 MR. TREXLER: May I respond to
17 that?

18 THE COURT: Yes, sir. Hold on one
19 second.

20 All right. Mr. Trexler, you know
21 I'm not a multitasker, so I was doing
22 some writing. I wanted to finish that.
23 I was still writing.

24 MR. TREXLER: As long as the
25 writings were favorable to me, yes,



1 sir.

2 THE COURT: All right.

3 MR. TREXLER: No issue is rendered
4 moot by anything until such an order
5 becomes final and all appeals have run
6 their course and the like.

7 So I understand Mr. Twombly's
8 argument, but nothing is mooted until
9 any -- if you grant summary judgment,
10 nothing is moot until that becomes
11 final, and that doesn't become final
12 until all appeals have run their
13 course.

14 All I know is it raises -- with
15 the appellate courts, they, on their
16 own, said reconsider it. To me, that
17 is a very clear signal. And I don't
18 believe the Court today would be ruling
19 appropriately if it says, well, we'll
20 get back to it in the future if we need
21 to.

22 There's no reason not to go ahead
23 and vacate it. Even despite what
24 Mr. Twombly says, there's no reason
25 not to go ahead and vacate it and



1 there's no reason why that issue could
2 not be revisited in the future by the
3 Court if it wanted to.

4 All I know is the Court has told
5 this Court and us to go back and
6 reconsider it, and I think we ought to
7 listen to them.

8 THE COURT: All right. All right.
9 So are there any other matters we need
10 to take up this morning?

11 MR. TREXLER: Not from the
12 plaintiff, Your Honor.

13 THE COURT: Mr. Twombley?

14 MR. TWOMBLEY: No, sir.

15 THE COURT: And I was planning for
16 an all-day Battle Royale.

17 MR. TREXLER: Don't get him
18 started, please.

19 THE COURT: All right. I'll take
20 a look at everything. I've already
21 glanced over. I'll take a look again
22 at everything that's been presented,
23 and I'll have a ruling within the next
24 ten days.

25 MR. TREXLER: Yes, sir.



1 THE COURT: And I've told many
2 lawyers this and I'm going to tell
3 y'all right now, every one of you, if
4 you do not get a ruling from me in ten
5 days, not on this case but on any case
6 you have with me, please reach out
7 immediately to my law clerk because
8 that means something's falling through
9 the cracks.

10 Because the Chief Justice has got
11 a new emphasis on getting orders out,
12 motions under advisement, and it really
13 hasn't been a problem. But every now
14 and then, something falls through the
15 cracks and people are -- they don't
16 want to call the judge.

17 You call. You call her. Please,
18 immediately if you don't hear from me
19 in ten days, reach out to my clerk
20 because there is problem we need to
21 fix. It's fallen through the cracks
22 because I don't let things sit around.

23 MS. BALLARD: Well, the word is,
24 Your Honor, that the first person who
25 calls the judge to find out where their



1 order is gets ruled against.

2 THE COURT: Well, see, I don't
3 want you to feel that way. That's why
4 I'm just telling you, if you don't hear
5 from my office in ten days, it's
6 because I dropped the ball. All right?

7 MS. BALLARD: That is wonderful to
8 know. Thank you.

9 THE COURT: Everybody have a great
10 Christmas. Okay?

11 MR. HOGAN: Copy.

12 MR. TWOMBLEY: Copy.

13 (Whereupon, the hearing
14 was concluded at
15 approximately 10:26 a.m.)

16

17

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1 H E A R I N G
2 C E R T I F I C A T E
3

4 STATE OF SOUTH CAROLINA:
5 BEAUFORT COUNTY:
6

7 I, Naomi McCracken, Court Reporter and Notary
8 Public in and for the above county and state, do
9 hereby certify that the foregoing testimony was
10 taken before me at the time and place
11 herein-before set forth; that thereupon the
12 foregoing testimony was later reduced by
13 computer transcription; and I certify that this
14 is a true and correct transcript of my
15 stenographic notes so taken.

16 I further certify that I am not of counsel to
17 either party, nor interested in the event of
18 this cause.
19
20

21 *Naomi McCracken*

22 Naomi McCracken

23 Court Reporter

24 Notary Public

25 Beaufort, South Carolina



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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,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

[signature block next page]

Respectfully submitted,

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