Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE PROBATE COURT

In re: Estate of John Dale Williamson

Case Number: 2023-ES-46-00002

Doug Williamson,

Petitioner,

v.

Errick L. Williamson, individually; Errick L. Williamson, as personal representative of the Estate of John Dale Williamson; Derrick Williamson; Robin Beckler,

Respondents.

ORDER GRANTING PETITIONER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING RESPONDENT ERRICK WILLIAMSON'S MOTION TO WITHDRAW OR AMEND ADMISSIONS OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME TO SERVE DISCOVERY RESPONSES

This matter came before the Court pursuant to the Motion of Petitioner Doug Williamson (hereinafter referred to as Doug) for Partial Summary Judgment, and the Motion of Respondent Errick Williamson (hereinafter referred to as Errick) to Withdraw or Amend Admissions or, in the alternative, for Extension of Time to Serve Discovery Responses. The Court held a hearing on the above-referenced motions on December 7, 2023. Present were counsel for Petitioner, J. Nathanial Pierce; counsel for Respondent, Rebecca McNerney; Doug; and Doug's wife, Crystal Williamson. Having reviewed all matters of record and having considered the testimonial and documentary evidence presented and the arguments of counsel, the Court finds as follows:

FINDINGS OF FACT

1. On August 30, 2023, Doug served Errick with Interrogatories and Requests for Production (hereinafter referred to as the RFPs) pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure (hereinafter referred to as the SCRCP). Errick's responses to the Interrogatories and RFPs were due October 4, 2023.

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2. On August 31, 2023, Doug served Errick with Requests for Admission (hereinafter referred to as the RFAs) pursuant to SCRCP Rule 36. Errick's response to the Requests for Admission were due October 5, 2023.

3. Doug served Errick with the Interrogatories, RFPs, and RFAs via regular United States mail.

4. Doug's RFAs were comprised of nine individual Requests.

5. Doug's ninth RFA (hereinafter referred to as RFA 9) requests admission or denial of a single fact: that "John Dale Williamson did not sign [the Will]." Attached to the RFAs as an exhibit was the Last Will and Testament (hereinafter referred to as the Will) of John Dale Williamson (hereinafter referred to as the Decedent), which was filed with this Court on January 3, 2023.

6. Errick failed to timely answer, object, or otherwise respond to the Interrogatories, RFPs, or RFAs.

7. Errick responded to RFA 9, but after the expiration of the time for answering.

8. Errick did not request an extension of time to respond or move for a protective order prior to the expiration of the time for answering.

9. Doug mailed for filing a Motion for Partial Summary Judgment predicated on Errick's failure to timely respond to RFAs, on November 1, 2023. The Court stamped Doug's motion on November 6, 2023. Doug's counsel served a copy of the Motion for Partial Summary Judgment on Errick's counsel on November 1, 2023.

10. Errick filed a Motion to Withdraw/Amend Admissions or, in the alternative, for Additional Time to Serve Discovery Responses, on November 27, 2023.

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11. Errick's Motion to Withdraw/Amend Admissions or, in the alternative, for Additional Time to Serve Discovery Responses was filed after responses to the RFAs were due.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 520, 511 S.E.2d 69, 74 (1999); SCRCP Rule 56(c).

2. The proper standard for a party opposing a motion for summary judgment is the "genuine issue of material fact" standard. *Kitchen Planners, LLC v. Friedman*, 2023 S.C. LEXIS 164, at *8 (August 23, 2023).

3. The non-moving party must do more than simply show there is some metaphysical doubt as to the material facts, and they must come forward with *specific facts* showing there is a genuine issue of material fact for trial. *See Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991) (emphasis added).

4. Rule 56(e) specifically prohibits the non-moving party from resting upon the mere allegations or denials of its pleadings. *Id*; SCRCP Rule 56(e).

5. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases. S.C. Code Ann. § 62-3-407 (2013, as amended).

6. The South Carolina Probate Code (hereinafter referred to as the Code) requires every will to be (1) in writing; (2) signed by the testator or signed in the testator's name by some other individual in the testator's presence and by the testator's direction; and (3) signed by at least two individuals, each of whom witnessed either the signing or the testator's acknowledgment of the signature of the will. S.C. Code Ann. § 62-2-502 (Supp. 2020).

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7. Doug properly served the RFAs on Errick's counsel pursuant to the SCRCP, and counsel for Errick received the RFAs.

8. Errick's response to the RFAs were due on or before October 5, 2023.

9. Errick failed to timely respond to the RFAs.

10. RFA #9 was unambiguous.

11. Errick provided no explanation for the failure to timely respond to the RFA's.

12. Based on the facts of this case and its review of relevant case law, the Court concludes that RFA 9 is deemed admitted and its admission is the legal basis on which summary judgment may be granted as to execution of the Will.

13. The Court reviewed the following cases: *Scott v. Greenville Housing Authority*, 579 S.E.2d 151 (Ct. App. 2003); *Baughman, et al. v. American Telephone & Telegraph Co.*, 410 S.E.2d 537 (1991); *Commerce Center of Greenville v. McElveen*, 556 S.E.2d 718 (Ct. App. 2001); *Nexstar Media Group v. Davis*, 848 S.E.2d 597 (Ct. App. 2020); *Barber v. Hobbs*, 437 S.E.2d 409 (Ct. App. 1993); *Collins Entertainment v. White*, 611 S.E.2d 262 (Ct. App. 2005); *Adams v. Orr*, 194 S.E.2d 232 (1973); and the unpublished opinion in *Phillips v. Bayless* (No. 2006-UP-379).

14. The *Scott* case is on point and controls the outcome in this case.

15. The Court concludes that the case at bar is distinguishable from cases where withdrawal of admissions was permitted. *See Baughman* (allowing withdrawal of admissions when a motion for protective order was made prior to the expiration of the time for answering); *Commerce Center* (allowing modification of admissions where the responding party timely responded and reserved the right to supplement responses); *Adams* (allowing withdrawal of admission where the subject request, as worded, was subject to more than one reasonable interpretation); and *Collins Entertainment* (allowing withdrawal of admission where the first set

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of requests for admission was sent to an incorrect address and failure to respond to the second requests for admission was not raised until trial).

16. In *Scott*, the trial court allowed an admission to be withdrawn because of its view that the failure to respond was not binding if it would conflict with answers in a pleading. It stated that the admission was "superfluous" to the pleadings and therefore could not be determinative of an ultimate issue. The Court of Appeals reversed, stating that even if an admission goes to the heart of the case: "if the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from the party's failure to respond may override the pleadings."

17. In its ruling, the Court of Appeals also found the trial court failed to consider whether or not the trial court's allowance of a withdrawal was prejudicial to the party who obtained the admission. It noted that the Greenville Housing Authority, the non-responding party, had sole control of the evidence needed by the party who obtained the admission and had failed to engage in discovery in good faith, and remanded the matter for further proceedings consistent with its opinion.

18. In the *Nexstar Media* case, the South Carolina Court of Appeals quotes *Scott*:

> This court has affirmed the seriousness of the ramifications for a failure to respond to requests in a timely manner. In *Scott v. Greenville Housing Authority*, this Court stated: "South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial." 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003). The *Scott* court further noted: "[O]ur courts have repeatedly found that failure to respond to requests for admissions deems matters contained therein admitted for trial, regardless of whether the admission concerns a matter responded to in a party's pleadings." *Id* at 646, 579 S.E.2d at 154-55.

The Court of Appeals also recognizes, however, that the rule is not hard and fast:

> However, South Carolina jurisprudence also establishes a trial court may use its discretion in finding requests to admit are not deemed admitted when the circumstances indicate otherwise. For example, the Supreme Court affirmed the decision of a trial court to not deem requests admitted when counsel for one party

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represented to the trial court "he had no memory of the delivery and service of the requests," and another denied having received a letter following up on the status of the requests. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 219, 493 S.E.2d 826, 836 (1997). "The master in equity did not abuse his discretion by refusing to deem admitted the requests for admission, particularly in light of the lack of hard proof that [the party] actually received the requests." *Id.*

19. Pursuant to SCRCP Rule 36(b), an admission is conclusively established unless the Court permits its withdrawal.

20. When a party moves to withdraw or amend the admissions after the time for responding expires, the Court may engage in the analysis outlined in Rule 36(b) to determine whether the presentation on the merits would be subserved by the withdrawal of the admission and whether the party who obtained the admissions will be prejudiced if the Court allows the withdrawal of the admission.

21. To reiterate, in *Scott* the trial court allowed the withdrawal of the admissions because the party who was deemed to have admitted liability claimed its admission went to the crux of the case and presentation on the merits would be served if the admissions were withdrawn. Weighing that argument against the prejudice to the party who obtained the admissions, the Court of Appeals found that the trial court misapplied the law in regard to a conflict between an admission and a pleading, and emphasized, because of the importance of an opportunity for full and fair discovery, the necessity of taking prejudice into consideration even where the admission goes to the merits.

22. The *Scott* court also noted Federal Rule of Civil Procedure ("FRCP") 26 is similar to South Carolina's Rule and that "[s]ome federal courts have held that requests for admission are not objectionable merely because they go to the ultimate facts or other issues that must be proven by the plaintiff. *See, e.g., Cereghino v. Boeing Co.*, 873 F. Supp. 398, 403 (D. Or. 1994) (holding a request for admission under Rule 36, and a resultant admission, are not

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improper merely because they . . . relate to an "ultimate fact," or prove dispositive of the entire case). Although the *Scott* court noted that "when discovery rights are trampled, prejudice must be presumed . . . [u]nless the party who has failed to submit to discovery can show a lack of prejudice, reversal is mandated," other courts have focused on the language of SCRCP 36(b) and whether the party who has obtained the admission is prejudiced if it is withdrawn.

23. Based on the facts at bar and the reasoning of the cases the Court has reviewed, and based in particular on *Scott*, the arguments of counsel, the Court's review of the discovery exchanges in the record, and weighing the furtherance of a presentation on the merits against prejudice as a result of failure to engage in discovery in good faith, the Court concludes that (a) the allowance of the withdrawal or amendment of Errick's RFA #9 should not be granted on the ground that it goes to the heart of the case, whether or not the Will is valid – this is one of the reasons that the Court of Appeals reversed the trial court in *Scott*, and (b) the Respondent has failed to respond to discovery requests in a timely manner and in good faith, and if the Respondent is allowed to withdraw his admissions, the Petitioner's opportunity for full and fair trial preparation is further prejudiced.

24. Because Errick's failure to respond to RFA 9 results in an admission that the Will was not signed by the Decedent, the Will was not properly executed. As the proponent of the Will, Errick has not carried his burden of establishing *prima facie* proof of due execution. *See* S. C. Code Ann. §62-3-407. There is therefore no question of fact, partial summary judgment is appropriate on the issue of due execution, and the failure of execution invalidates the Will.

IT IS ORDERED:

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1. Respondent Errick Williamson's Motion to Withdraw or Amend Admissions is denied.

2. Respondent Errick Williamson's Motion, in the alternative, for Additional Time to Serve Discovery Responses is denied.

3. Petitioner Doug Williamson's Motion for Partial Summary Judgment as to his fifth cause of action for invalidation of the Will for failure of due execution is granted.

4. Pursuant to the Court's verbal order at the hearing, no party is to delete any digital or telephone communications pending further order of the Court.

January 5, 2024

Carolyn Woodruff
Judge of Probate
York County, South Carolina

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