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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,

APPELLANT'S PETITION FOR REHEARING

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The Appellant (“Ms. Luzak”) petitions this Court for rehearing (and reconsideration and amendment) with respect to selected portions of its Opinion (Op. No. 6156 (S.C. Ct. App. Filed July 29, 2026)) in this matter (“Opinion”)) in the particulars set forth below.

Ms. Luzak certainly concurs with the Court’s ruling: “We hold there is a genuine issue of material fact as to Luzak's theory that Mrs. Barringer promised not to use the power of appointment in a manner that would disturb Mr. Barringer's plans for his share of the voting stock” (Opinion, p. 12) for the reasons cited, including her ability to pursue her claim based on a noncontractual promise based on a confidential relationship, and certainly does not challenge that holding or the reasons stated for it, but Ms. Luzak is compelled for preservation purposes to assert that parts of the Court’s Opinion erroneously interpret and apply the law. She, therefore, moves for rehearing only on those issues set forth below and reconsideration and amendment of this Court’s Opinion only to that extent.¹

This Court erred in its Opinion in affirming summary judgment in Ms. Barringer’s favor in the following respects since there are indeed genuine issues of material fact in dispute on each of these issues, which preclude summary judgment:

1. Read in the light most favorable to Ms. Luzak,² there is evidence of record to show that Mr. and Ms. Barringer entered into a contract in which Ms. Barringer promised not to exercise any power of appointment she might have over the voting stock owned by Mr.

¹ As an inconsequential aside, the Court erred in stating: “Ms. Barringer has not since updated her will to change this clause to exercise the power of appointment.” (Opinion, p. 3). That is incorrect but is immaterial to this Court’s holding, but Ms. Luzak needs for everyone to be very clear that Ms. Barringer has indeed changed her Will since Mr. Barringer died, by exercising any power of appointment contrary to their agreement and long-term pattern. This appeal is not a cage fight with no meaning.

The Court also erred when it stated that Judge Mullen had bifurcated the trial: “one for the claims from the 2019 action [against Ms. Barringer] and the other for claims from the 2016 action [against Merrill Light and others].” Actually, Judge Mullen ordered that the Second and Third causes of action (equitable causes of action) in the 2019 action against Ms. Barringer be tried first before the remaining causes of action in the 2019 action and all of the 2016 action, effectively ordering equitable claims to be tried before legal claims. That error does not affect the Court’s ruling in this appeal.

² The Court was required to determine the existence of the evidence in the light most favorable to Ms. Luzak.

Barringer or his revocable trust, which meant that she would not revoke her Will in which she expressly declined to exercise her power of appointment. The Court misapplied South Carolina Probate Code subsection 62-2-701(1) in failing to recognize that the evidence satisfies the requirements of that subsection. Thus, the Court erred in its Opinion when it affirmed summary judgment against Ms. Luzak. [Argument 1]

2. Read in the light most favorable to Ms. Luzak,³ there is a clear factual dispute that Mr. and Ms. Barringer entered into a contract not to exercise any power of appointment she might have over the voting stock owned by Mr. Barringer or his revocable trust. The Court misapplied South Carolina Probate Code subsection 62-2-701(3) in failing to recognize that the evidence satisfies the requirements of that subsection. Thus, the Court erred in its Opinion when it affirmed summary judgment against Ms. Luzak. [Argument 2]

3. Ms. Luzak did affirmatively plead promissory estoppel and equitable estoppel in her Complaint against Ms. Barringer, contrary to the finding in the Opinion (see fn. 11 therein). [Argument 3]

4. Ms. Luzak did show that she was prejudiced because Ms. Luzak's ability to question Ms. Barringer at the deposition noticed by Defendant Merrill Light was terminated by the Trial Court before Ms. Barringer could even be examined on the very issue of any power of appointment or agreement with Mr. Barringer or any promise to him or contract with him. [Argument 4]

5. This Court erred in not ruling that the Trial Court should have first determined which testamentary instruments of Mr. Barringer were operative, since the intent of Mr. Barringer about any power of appointment must be determined as of the time of the execution or operation of such documents. [Argument 5]

6. This Court erred by creating a dangerous precedent in allowing Ms. Barringer to "judge-shop" by obtaining the grant of her summary judgment motion from Judge Bonds after Judge Mullen had previously denied the very same summary judgment motion. Judge Mullen found that there was a genuine issue of material fact, and those facts did not disappear when Judge Bonds ruled. [Argument 6]

³ The Court was required to determine the existence of the evidence in the light most favorable to Ms. Luzak.

Argument 1: Each of Mr. and Ms. Barringer's Wills "[states] material provisions of the contract" between them as set forth in §62-2-701(1), and the Court erred in its Opinion when it affirmed summary judgment against Ms. Luzak.

Ms. Luzak clearly submitted evidence to meet the requirements of subsections (1) and (3) of S.C. Code Ann. §62-2-701 regarding contracts not to revoke. This Argument addresses subsection (1). Subsection (3) is discussed in the next Argument.

Mr. Barringer and Ms. Barringer's contract was that the children would be treated equally in their respective Wills and testamentary instruments, not knowing which of them would pass away first. Also, they each had their own set of other testamentary instruments, namely their Revocable Trusts, that were part of their agreement. Their 1998 Wills and Revocable Trusts provided that the residuary estates of each would pour over into his or her respective Revocable Trust, which, in turn, provided lifetime benefits for the survivor of them and granted the surviving spouse a limited testamentary power of appointment over the remainder to their descendants. The key was that the residue of the Revocable Trust would pass equally to their children by default in the event there was not an effective exercise of the power of appointment. Both Mr. and Ms. Barringer then expressly declined in their Wills to exercise their power of appointment, allowing the residue of the Revocable Trust of the other spouse to pass equally to their children by default. This worked only if the last-to-die abided by the agreement after the death of the first. Consistent with their agreement, Mr. and Ms. Barringer each agreed that neither party would revoke his or her Will that declined to exercise the power of appointment. These testamentary instruments were mirror images of each other. It was the combination of their Wills and Revocable Trusts that accomplished their complete agreement and not the Wills alone. The material provisions required by subsection (1) are clearly provided for in their Wills: each gives the residue of his or her estate to a revocable trust subject to a testamentary power of appointment in the survivor, and each in his or her Will agrees not to exercise that power of appointment so that the children will take equally

on the survivor's death. Moreover, Ms. Barringer's Will, standing alone, recognizes that she has a testamentary power of appointment from Mr. Barringer and she refuses to exercise it. By themselves, those basic terms in those Wills satisfy the requirement of stating "material provisions of the contract" as required by subsection (1).⁴

South Carolina Code Ann. §62-2-701(1) does not require that the *entire contract* be contained in either's Will, or even that the Will state "***the*** material provisions of the contract."⁵

It simply requires that "material provisions" be stated—not "***all*** the material provisions" or even "***the*** material provisions." Therefore, the proper inquiry is whether Ms. Barringer's Will reflects material provisions of the contract, however incomplete, and the simple answer is "yes," unless the inquiry is contorted into having to find that the *entire* contract must be found in the Will or that *all* of the material provisions must be stated, which was not possible since it took the integration of reciprocal Wills *and* Revocable Trusts to implement the agreement/contract. Stated succinctly: does Ms. Barringer's Will state provisions that are material to the agreement? The answer is yes.⁶

⁴ Nothing in subsection (1) precludes the use of additional evidence to explain or elucidate the terms of the contract if the "material provisions of the contract" requirement is met. Although unnecessary to satisfy subsection (1), Ms. Luzak has produced volumes of other documents showing the Barringers' consistent intent to treat the children equally as to voting stock. See Ms. Luzak's brief at pages 39-40 and footnote 4. This Court recognized in its opinion that "all of Mr. Barringer's estate planning documents contained specific plans relating to the CFRC shares and reflected a desire to treat his children equally with regard to the company." (Opinion p. 11)

⁵ This Court's Opinion erroneously states: "[Ms. Luzak] first argues that Mrs. Barringer's own 1998 will, wherein she declined to exercise the power of appointment, constitutes a writing containing ***the*** material provisions of a contract not to revoke." Opinion, p. 8 (emphasis added). The statute simply requires that the Will "state[] material provisions," not ***the*** material provisions, meaning that the Will's provisions reflect material provisions consistent with the contract while not necessarily all of them. That makes sense because, if the Will has some material provisions that reflect terms of a purported contract, then extrinsic evidence is allowed to prove the terms of that contract and lead to its enforcement. It also makes sense since contracts, as between Mr. and Ms. Barringer, may be implemented across multiple testamentary instruments, like their Revocable Trusts, and not be confined to a Will.

⁶ As noted above, either of their Wills satisfies this requirement.

Here are the material terms of the contract stated in each of their Wills:

1. Each bequeathed his or her residuary estate to his or her pour-over Revocable Trust (which provides for its residue to be divided equally among the children if the survivor does not exercise his or her power of appointment).
2. Each affirmatively elects NOT to exercise any power of appointment, which will include the Revocable Trust of the first to die.
3. Each Will, by expressly declining to exercise the power of appointment from the other, allowed for the children to be treated equally by the intended default.

Those are terms in each of their Wills. They are undeniably material to his or her testamentary plan and his or her agreement with the other. The requirements of §62-2-701(1) have been met, and the Court failed to apply §62-2-701(1) in this fashion.

Their Wills and Revocable Trusts contain mirror-image terms, reflective of the contract. That is why this Court was incorrect when it stated:

We decline to give license to Luzak's argument that declining to exercise a power of appointment is sufficient evidence to survive summary judgment on a claim to enforce a purported contract not to revoke. Mrs. Barringer's will contains a standard, general residuary clause⁷ declining to exercise her power of appointment. This can hardly be called a "material provision" of a contract for her to surrender the power of appointment forever. Rather, Mrs. Barringer—like anyone—retained the right to modify or change her will going forward to exercise the power of appointment, including in the event that Mr. Barringer ultimately did predecease her.

Opinion at 8.

⁷ Ms. Luzak does not agree that this is a “standard, general residuary clause.” That it expressly declines the exercise of any power of appointment makes it different from a standard, general residuary clause. As noted by the Court, § 62-2-608 provides that a residuary clause not specifically exercising a power of appointment thus fails to do so. Therefore, a general residuary clause does not need to specifically decline to exercise a power because silence alone would accomplish that goal, per § 62-2-608.

Yes, Ms. Barringer—like anyone—has the right to modify or change her Will...unless she contracted away that right, which she did. The Court recognizes this in holding: “A testator may enter into an enforceable contract to never revoke his will.” (Opinion, p.7, citing S.C. Code Ann. §62-2-701(2022)). But the holding by the Court is predicated on the incorrect premise that subsection (1) requires that the Will must contain the contract itself or state *all* of the material terms of the contract.⁸ Even in the latter case, Ms. Luzak has met her burden.

The Barringers’ 1998 estate plan remained in place until Paul Barringer’s dementia consumed his mind, when things changed, which is the crux of this lawsuit.

More succinctly stated, the Trial Court and this Court erred in this regard when they each erroneously construed the level of proof required under S.C. Code Ann. §62-2-701(1). That Code section requires only that some material terms of the alleged contract be evidenced in the Will...certainly not the existence of the contract itself or “all” or even “the” material provisions of the contract itself. It requires that the Will contain terms consistent with the contract, when that threshold of enforceability is met, and the inquiry shifts to proof of the contract consistent with the Will’s provisions.

This Court should amend its Opinion in this regard and reverse the summary judgment granted by the Trial Court on Ms. Luzak’s claim against Ms. Barringer for a contract not to revoke (Issue II in Opinion).

⁸ Such a finding may also have a prejudicial effect on Ms. Luzak’s right to a jury trial on her legal issues. As the Court noted: “We agree with Luzak that these overlapping legal and factual issues make it difficult to foresee the impacts that affirming summary judgment on all of her claims would have on her still-pending actions pertaining to testamentary capacity and undue influence. Because summary judgment is a drastic remedy, and because we conclude there is a genuine issue of material fact as to whether Mrs. Barringer impliedly promised not to disturb Mr. Barringer’s plans for the CFRC voting shares, we reverse as to this issue and remand for a trial.” The Court’s statement is limited to whether Ms. Barringer “impliedly” promised not to interfere with Mr. Barringer’s plans, but such a statement can potentially have a prejudicial effect of Ms. Luzak’s other legal causes of actions, including those predicated upon a contract with Mr. Barringer.

Argument 2: Each of Mr. and Ms. Barringer’s Wills “[state] material provisions of the contract” as set forth in §62-2-701(3) and extrinsic evidence proves the existence of a contract; moreover, Ms. Barringer satisfied the requirements of this subsection by signing numerous writings evidencing the contract, with extrinsic evidence proving the terms of the contract.

The pertinent part of S.C. Code Ann. §62-2-701(3) states: “*A contract ... not to revoke a will or devise... can be established ... by ... (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract.*” Again, if this Code section is even implicated, there are material facts in dispute on whether this subsection is met.

South Carolina Code Ann. §62-2-701(1) looks to the *internal* terms of a will.

South Carolina Code Ann. §62-2-701(3) looks to any *external* writing signed by the decedent “evidencing” the existence of a contract, and then extrinsic evidence of the terms of that contract, none of which has to be in a will.

That all assumes that S.C. Code Ann. §62-2-701 is implicated to enforce Ms. Barringer’s promise under the contract with Mr. Barringer, revisiting briefly the foregoing Argument.

Like the garden-variety Statute of Frauds (S.C. Code Ann. §32-3-10, as developed by case law), this Code section does not require that there be a written contract. It only requires a writing signed by the person being charged with the contract (here, Ms. Barringer) “evidencing” the contract.

The signed writing is only evidentiary of a contract that can exist independently of the writing (will). That is black-letter law and consistent with the provisions of subsection (3).

Lawyers and courts speak in shorthand saying that the Statute of Frauds requires the contract to be in writing. That shorthand expression is convenient because the full statement of the law is too much of a mouthful, but then we tend to analyze in that same shorthand and talk about “the contract” having to be in writing. The Statute of Frauds and this Code section simply look for

a writing “signed” by the person being charged with the contract that *evidences* the existence of a contract (not the contract itself).

There are two (2) simple requirements in S.C. Code Ann. §62-2-701(3) here:

(1) Is there a writing signed by the decedent (Ms. Barringer) that evidences a contract (even independently of the writing), and

(2) Is there extrinsic evidence proving the terms of that contract?

That is the straightforward analysis under §62-2-701(3).

Here are some of the writings signed by Ms. Barringer evidencing the first requirement of the existence of the contract: the 40 exhibits of estate planning related documents executed by both Ms. Barringer and Mr. Barringer, including but not limited to Ms. Barringer’s 1998 Will and Revocable Trust. See Ms. Luzak’s Appellant’s Brief at footnote 4. As to the second requirement, some of the extrinsic evidence proving the terms of the contract include the 40 exhibits of estate planning related documents executed by both Ms. Barringer and Mr. Barringer; a letter from Robert Slane (the Barringers’ financial advisor) e-mailed by Mr. Barringer to Kevin Luzak; and testimony and affidavits from Hampon Luzak and Kevin Luzak. *Id.*

The foregoing clearly shows that both Mr. and Ms. Barringer signed writings evidencing the existence of a contract consistent with Ms. Luzak’s allegations, and the foregoing extrinsic evidence proves the existence of the contract and its terms. Because of this as well, summary judgment was not appropriate on Ms. Luzak’s claim against Ms. Barringer alleging a contract not to revoke.

Argument 3: Ms. Luzak did affirmatively plead promissory estoppel and equitable estoppel in her Complaint against Ms. Barringer, contrary to the finding in the Opinion (see fn. 11).

The Court of Appeals erroneously ruled that “these [issues] were not properly pled in the complaint. (Footnote 11). Ms. Luzak did, in fact, plead these elements in her Second Cause of

Action in Paragraphs 134-140 of her Complaint.⁹ This was raised by Ms. Luzak in her Appellant's Brief before this Court on page 33, fn. 39. Ms. Luzak has been making these arguments from the outset of the litigation. She seeks a constructive trust, an equitable remedy, as one of her causes of action, based in part on those doctrines.

It is not necessary for a plaintiff to actually use the specific term or label for the remedy or the cause of action sought. It is sufficient for a plaintiff to merely plead the facts and elements without having to brand it with a hornbook label.

A classic statement of this rule is: "Where a pleading is attacked for an alleged failure to state a cause of action, the pleading must be liberally construed in favor of the pleader and sustained if the facts and reasonable inferences to be drawn therefrom entitle the pleader to relief on any theory of the case."¹⁰

⁹ The allegations in Luzak's Second Cause of Action include (emphasis added):

136. Decedent Paul Barringer reposed trust and confidence in his wife, Mrs. Barringer.

137. Upon information and belief, *Mrs. Barringer made an express or implied promise* not to exercise her testamentary power of appointment in a manner that would direct the subject property in a manner other than set forth in the default provisions of Decedent Paul Barringer's estate plan. Upon information and belief, other proof, in addition to that described in paragraph 136 above, could be discerned from a review of Mrs. Barringer's estate planning documents, which she has refused to produce in the case of Hampton B. Luzak v. Merrill B. Light, et al, Case No. 2016-CP-07-1919 (S.C. Com.Pl.).

138. Upon information and belief, Decedent *Paul Barringer relied* on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her.

139. Upon information and belief, *Mrs. Barringer has failed to abide by her promise.* and/or the trust reposed in her by executing or intending to execute a will that would exercise the testamentary power of appointment given to her in a manner that would not treat the daughters equally.

140. Consequently, Plaintiff Hampton Luzak is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise the testamentary power of appointment given her and to impose a constructive trust for the benefit of Plaintiff Hampton Luzak in the subject property with respect to the intended equal treatment of Plaintiff Hampton Luzak.

¹⁰ *Burns v. Wannamaker*, 286 S.C. 336, 333 S.E.2d 358 (Ct. App. 1985) (citing *Pilkington v. McBain*, 274 S.C. 312, 262 S.E.2d 916 (1980); see also, e.g., *Turner v. ABC Jalousie Co. of N.C.*, 251 S.C. 92, 160 S.E.2d 528 (1968); *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956). See Rule 8, SCRCP.

Courts must be liberal in applying this rule. This is particularly true when the remedy sought—in this case a constructive trust—is equitable.¹¹ Ms. Luzak’s pleadings clearly asserted these legal doctrines in her pleading, and sufficiently raised the issues of promissory and equitable estoppel.

The failure of this Court to follow this rule critically impacts Ms. Luzak. As noted in her Appellant’s Brief at pages 32-34, this Court has recognized that promissory estoppel can serve as a remedy to enforce a promise to make and not revoke a will without the need for a written contract. As her Appellant’s Brief notes (pp. 32-34), other cases recognize that equitable estoppel can be proved by silence or acquiescence. Although Ms. Luzak has sufficient evidence to prove the existence of a contract not to revoke, she also has evidence that would prove that Ms. Barringer is bound by her promise as a fiduciary and/or through a confidential relationship, à la *Chapman v. Citizens & Southern National Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990). Much of that same evidence would also prove that Ms. Barringer is bound by promissory or equitable estoppel. In *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002), this Court, based on promissory estoppel, enforced an oral promise to make and not to revoke a will. A number of other South Carolina courts have recognized that equitable estoppel can be based on silence and/or acquiescence.¹² This Court’s opinion in *Chapman*, enforced a noncontractual promise based on a confidential relationship and expressly adopted the rule from Bogert, *Trusts* §89 (6th ed. 1987), which recognizes that an enforceable promise can be oral or implied or can even arise from silence. The Bogert rule is consistent with the equitable history set forth in this Court’s opinion. Although some written evidence existed in *Chapman*, there was no written

Moreover, as stated in *Broadway v. Jeffers*, 185 S.C. 523, 194 S.E. 642 (1938), a defendant who does not seek clarification at the trial level cannot challenge the theory on appeal.

¹¹ See, e.g., *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964).

¹² See Ms. Luzak’s Appellant’s Brief at footnote 40.

evidence in *Satcher*. Thus, Ms. Luzak should be allowed to prove—by writing, by oral statement, by implication, or even by silence—the existence of a binding promise by Ms. Barringer based, not only on a confidential relationship as already recognized by this Court in its Opinion, but also by promissory or equitable estoppel. This Court should not deprive Ms. Luzak of her opportunity to fairly try her case.¹³

This Court should amend its Opinion in this regard and reverse the summary judgment granted by the Trial Court on this issue as well.

Argument 4: Ms. Luzak did suffer prejudice when the Motion for Summary Judgment was heard because Ms. Luzak’s opportunity to question Ms. Barringer at her deposition noticed by Defendant Light was prematurely terminated by the Trial Court before Ms. Barringer could even be examined on the very issue of any power of appointment and her agreement with and promises to Mr. Barringer or agreement with Mr. Barringer or any promise to him or contract with him.

The Court erred in holding: “Luzak argues summary judgment was inappropriate because she did not have a full and complete opportunity to acquire evidence critical to her claims. ... Luzak’s argument on this point is without merit because she has not identified how additional time deposing Mrs. Barringer would amount to anything material other than claiming Mrs. Barringer is someone ‘whom you would think would have something to say,’ leaving Luzak’s desire for additional discovery indistinguishable from a ‘fishing expedition.’” (Opinion pp. 14-15.). This is erroneous. Ms. Luzak stated in her Appellant’s Brief:

Ms. Barringer has chosen never to testify about the power of appointment issue. Ms. Barringer’s counsel cut short her deposition in March 2019, over objection, after Ms. Luzak had just short of three hours to depose her. (ROA Vol. XI, p. 5299, line 23 – p. 5300, line 2). *Ms. Barringer resisted a court order until finally obeying the order to produce her estate planning documents, which she did not produce, despite the court order, until March 6, 2020, some 17 months after the discovery request and approximately one year after her deposition.* (ROA Vol. X, p. 4813). *Her estate planning documents provided crucial information about the*

¹³ A “writing” versus “oral” goes to the quality or weight of the proof, absent a statute of frauds issue. But otherwise, proof is proof.

power of appointment issue. Because of the refusal to produce these documents, Ms. Luzak did not have access to them at Ms. Barringer's deposition, which was noticed by Defendants and conducted in 2019 before Ms. Luzak received these documents. Ms. Barringer, whom presumably would have something to say about the power of appointment issue, failed to provide any affidavit,¹⁴ including for this summary judgment. Because an appeal is now Ms. Luzak's sole recourse on this issue, the opportunity to hear from Ms. Barringer is lessened. (Appellant's Brief, p. 42, footnotes omitted). (emphasis added)

This Court should be mindful that Ms. Barringer has never submitted an affidavit in this case, and she has never testified in any fashion about the issues on this appeal, whether the issue be about her power or appointment, her agreement with Ms. Barringer to treat their children equally, and her promise not to exercise her power of appointment

The clear error of the Trial Court was to grant summary judgment in favor of Ms. Barringer when Ms. Luzak was prematurely cut off by the Trial Court after less than three (3) hours of examination by Ms. Luzak's attorney and before she was examined by anyone pertaining to an agreement or promise or contract with Mr. Barringer or before she could be examined on any power of appointment, the very issues that are on appeal. That is the very definition of prejudice and rises well beyond a mere "fishing expedition."

The error of this Court was to make such a finding and not to reverse the summary judgment on this basis.

Argument 5: This Court erred in not ruling that the Trial Court should have first determined which testamentary instruments of Mr. Barringer were operative since the intent of Mr. Barringer must be determined as of the time of the execution or operation of such documents.

The Court declined in footnote 9 of its Opinion to determine which of Mr. Barringer's instruments were operative. To preserve that issue and for the sake of the 15-page limit on Petitions for Rehearing, Ms. Luzak simply incorporates by reference that Argument in her Appellant's Brief

¹⁴ This Court failed to address the consequence of Ms. Barringer's failure to submit an affidavit and the inferences that court be drawn therefrom. See Ms. Luzak's Appellant's Brief at p. 29.

found at pages 17-27. This Court should have reversed the Order for Summary Judgment for the failure of the Trial Court to find which testamentary instruments of Mr. Barringer were the valid and operative documents and then determining the intent of Mr. Barringer with regard to any power of appointment in Ms. Barringer over his CFRC voting stock.¹⁵

Argument 6: This Court erred by allowing Ms. Barringer to “judge-shop” by seeking and obtaining a summary judgment from Judge Bonds after being denied by Judge Mullen, effectively finding that Judge Mullen’s order was not the law of the case.

After much discovery and argument at hearing, Judge Mullen denied the very same summary judgment granted later by Judge Bonds. In her Order, Judge Mullen stated “there is evidence in support of Ms. Luzak’s two causes of action at issue in the summary judgment motion, creating a genuine issue of material fact for jury determination.” Granted, some discovery did occur after Judge Mullen’s order and before Judge Bonds’ order to the contrary, but the evidence from that discovery created even more, not fewer, genuine issues of material fact for jury determination than that before Judge Mullen. The evidence from the intervening discovery in no way erased or diminished the evidence existing before Judge Mullen.

The Trial Court and this Court erred by resting their decisions merely on the basis that additional evidence had been obtained through discovery. The answer is not that simple. What both courts failed to address is that the additional discovery evidence did not erase the genuine issue of material fact that existed before Judge Mullen that justified her denial of Ms. Barringer’s summary judgment motion. The issue is not whether there is new evidence before Judge Bonds,

¹⁵ Once the operative documents, if any, are determined, then an examination of his intent at the time of execution would involve typical construction procedures, including but not limited to dealing with possible latent ambiguities. It was impossible for Ms. Luzak to engage in construction of Mr. Barringer’s operative documents before they have been determined by a court. For example, in his 1998 documents, Mr. Barringer could not have intended his power of appointment to cover any voting control stock because he did not have that at that time. See Ms. Luzak’s Appellant’s Brief, pp. 19-20.

but whether that new evidence eliminated the genuine issue of material fact existing before Judge Mullen, which it did not.

By failing to consider that critical point, this Court has set a precedent for judge shopping. All that defendants in the future will need to do, after being denied a summary judgment, is to produce more evidence in discovery and find a different judge, who can then overturn the previous judge even though the new evidence does not eliminate the genuine issue of material fact existing at the time of the prior denial. This critical failure in this court's opinion will encourage continued judge shopping, after the simple addition of new evidence, until the defendant lands with a judge who agrees.¹⁶ This is contrary to the basic rule in Rule 43(l), SCRC.

CONCLUSION

The core issue is the enforcement of Ms. Barringer's promise not to exercise her testamentary power of appointment in a manner that would direct the subject property in a manner other than set forth in the default provisions of Mr. Barringer's estate plan. (Complaint, ¶137) and not to revoke their estate plans. (*Id.* at ¶142).

Ms. Barringer's promise is enforceable as (1) a matter of contract, (2) a promise made expressly or impliedly in a confidential and fiduciary relationship (*Chapman*), (3) promissory estoppel, and (4) equitable estoppel, all for the reasons stated above.

The Trial Court erred in granting summary judgment to Ms. Barringer on the issues stated above and failing to apply the relevant law set forth in this Petition. Similarly, except for the enforcement of a promise made in a confidential and fiduciary relationship, as in *Chapman* --- *Ms. Luzak obviously agrees with this Court on that issue and hence does not seek a petition for rehearing and amendment therefor* --- so, too, has there been a misapplication and interpretation

¹⁶ The affidavits of Hampton and Kevin Luzak alone are sufficient to raise a genuine issue of material fact.

of the law by this Court, and Ms. Luzak petitions for rehearing and amendment of the Opinion only on those issues that affirmed summary judgment to Ms. Barringer for the reasons cited herein.

Respectfully submitted,

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**Attorneys for Appellant Hampton
Barringer Luzak**

August 13, 2026

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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,

PROOF OF SERVICE

I, William M. Hogan, do hereby certify that on August 13, 2026, I served a copy of the **Petition
for Rehearing**, in the above-captioned case, on the following individuals by electronic mail using

their email address listed in the Attorney Information System, addressed as follows:

**Bijan Khaladj-Ghom, Esquire
Saxton & Stump, LLC
bkg@saxtonstump.com**

**Alice Paylor, Esquire
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The Law Offices of Charles B. Molster, III, PLLC
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**J. Ashley Twombly, Esquire
Twenge & Twombly, LLC
twombly@twlawfirm.com**

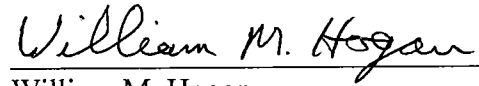
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William M. Hogan

August 13, 2026

Kathie Kohlmayer

From: Kathie Kohlmayer <kathie@gilreathlaw.com>
Sent: Thursday, August 13, 2026 2:55 PM
To: Alice F. Paylor (AFP@saxtonstump.com); Bijan A. Ghom (BKG@saxtonstump.com); Molster, Charles B. (cmolster@molsterlaw.com); Ashley Twombly (twombly@twlawfirm.com); 'Thomas Iandoli'; 'hruff@ruffllc.com'; 'erindean@tgdcpa.com'; 'efuhr@huntonAK.com'; 'jschronce@huntonAK.com'
Cc: Alan Medlin (amedlin@sc.rr.com); Bill Hogan (bhogan@gilreathlaw.com); Macloskie Law Firm (macloskielaw@outlook.com); Jim Gilreath (jim@gilreathlaw.com); 'tom.traxler@carterlawpa.com'; 'desab@desaballard.com'; Beth Cogan (Beth@desaballard.com)
Subject: In the Matter of the Estate of Paul Brandon Barringer, II (2025-000076)
Attachments: 2026 08 12 Hampton Luzak Petition for Rhrq FINAL.pdf; 2026.08.13 Ltr to COA sending App Pet for Rehearing.pdf; POS - Petition for Rehearing.pdf

Please see the attached Petition for Rehearing, cover letter to Court of Appeals, and Proof of Service for the above case being filed today with the Court of Appeals.

Sincerely,

Kathie Kohlmayer
Legal Secretary/Paralegal
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SC Court of Appeals

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August 13, 2026

VIA EMAIL (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

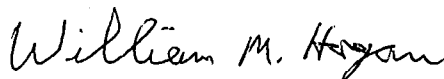
RE: In The Matter of the Estate of Paul Brandon Barringer, II
Appellate Case No.: 2025-000076

Dear Ms. Kitchings:

Please find enclosed for filing the Petition for Rehearing in the above-referenced matter. Pursuant to paragraph (3)(c) of the Supreme Court's amended administrative order dated May 6, 2022 (Method of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules, originally dated August 25, 2021), a check for the filing fee is being forwarded separately via U.S. Mail.

By copy of this letter and as evidenced by the Proof of Service, these filings have been served upon counsel for the Respondent. If you have any questions, please do not hesitate to contact my office. With warm personal regards, I am,

Sincerely yours,



William M. Hogan

WMH/kmk

cc (w/attachments - via electronic mail):

J. Ashley Twombly, Esquire
Thomas Iandoli, Esquire
Harley D. Ruff, Esquire
Thomas W. Traxler, Esquire
S. Alan Medlin, Esquire
Charles B. Macloskie, Esquire
James R. Gilreath, Esquire
Desa Ballard, Esquire
Hampton Luzak

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