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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Appeal from Beaufort County
Robert Bonds, Circuit Court Judge

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Appellate Case No. 2025-000076

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In the Matter of the Estate of Paul Brandon Barringer, II

Hampton Barringer 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 the Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak.................................................................................... Appellant,

v.

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

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**PETITION FOR REHEARING, AND REHEARING EN BANC**

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Rehearing is warranted where an opinion overlooks or misapprehends material questions of law or fact. Rule 221(a), SCACR. The Court's reversal of summary judgment on Luzak's constructive-trust claim does both. It rests on a host of misapprehensions of settled law and record facts—each independently outcome-determinative—that, left uncorrected, would dramatically alter the pleading and proof requirements under South Carolina law for children seeking to rewrite their parents' executed estate plans. Respectfully, the Court should take this opportunity to measure twice, and cut once.

*First*, the Court overlooked dispositive distinctions between this case and *Chapman v. Citizens & Southern National Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990). The Court stated that Mr. Barringer giving Mrs. Barringer a power of appointment while relying on a promise that she never exercise it, while apparently "paradoxical," "was exactly what transpired in *Chapman*." [1] But, critically, the arrangement in *Chapman*—in which Mr. Chapman gave Mrs. Chapman a written power of appointment while relying on her oral promise never to exercise it—was not paradoxical at all because the estate tax laws in place at that time required one spouse to give the other spouse a power of appointment to take advantage of the marital deduction, which this Court found was "no doubt" at play in *Chapman* based upon "then existing" estate tax laws. Those laws, however, changed long before the Barringers engaged sophisticated estate planning counsel and created their 1998 estate plan, in which each gave the other a power of appointment. As the Barringers estate planner testified, by 1998 there was no reason whatsoever—tax or otherwise—for Mr. Barringer to grant Mrs. Barringer a power of appointment unless he wanted her to have one. Only a madman would enter into a *Chapman*-like arrangement after the estate tax laws were changed, without even mentioning such an arrangement to their tax planning attorney.[2] And it is undisputed that, in 1998, Mr. Barringer was not a madman but, to the contrary, was a successful and sophisticated businessman being advised by sophisticated tax and estate planning counsel.

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[1] Respondent recognizes the authority supporting cases where estate plans are alleged to have been left in place in *reliance* on a *promise* made after the estate plan's original execution. Luzak neither pleaded that theory nor disclosed it in her discovery responses.

[2] It is worth stating Luzak's theory in plain English, because once stripped of legal labels, its implausibility is truly breathtaking. Luzak asserts that in 1998, nearly twenty-eight years ago, her father demanded, and her mother irrevocably promised, to permanently surrender control over testamentary decision making, agreed to never modify or revoke her 1998 estate plan, guaranteeing each of the three children an equal inheritance for life by not exercising her power of appointment and allowing its default terms to apply. Of course, Luzak necessarily alleges that the irrevocable promise controls no matter what happens afterward, no matter how the children behave, no matter how relationships might change, and no matter what joys, betrayals, estrangements, sacrifices, loyalties, hardships, marriages, divorces, windfalls, or other circumstances the ensuing decades might bring. Under Luzak's theory, from the moment the 1998 documents were signed, nothing she, Victor, or Merrill could ever do would matter in the eyes of their mother, who at that time became a powerless spectator, legally forbidden to respond to the vicissitudes of life, despite Mr. Barringer's written estate plan authorizing her to do so.

*Second*, the Court disregarded Luzak's own factual allegation and binding discovery response fixing any promise and reliance "no later than December 4, 1998." Accepting Luzak's allegations as true, the only evidence relevant to the formation of a constructive trust must have existed by that date—yet the Court relied on evidence from many years later.

*Third*, the Court applied the wrong standard applicable to the constructive trust claim. It ignored that a constructive trust must be proven by "clear, definite, and unequivocal" evidence and instead treated five absences of evidence as affirmative proof of a promise. South Carolina law requires more.

*Fourth*, the Court read Section 62-2-701 to permit the very oral-agreement theory the General Assembly foreclosed, allowing a barred agreement theory to proceed simply because Luzak relabeled the alleged agreement a "promise." The error is compounded because the only "wrongdoing" alleged by Luzak is a breach of the same promise. Nothing more.

Finally, the Court made numerous factual errors throughout the opinion resulting in the misapprehension of undisputed facts, and compounded that error by making objectively unreasonable inferences from other disputed facts.

Left uncorrected, this opinion invites disappointed children to challenge the textbook estate plans of their parents – where one spouse gives the other final decision-making authority at the death of the surviving spouse – by merely arguing that it is inequitable because it was different from historical discussions among the family, even though that is the very nature of a power of appointment. That result eviscerates Section 62-2-701 and is contrary to South Carolina's longstanding rule that oral claims seeking to defeat a written will/trust require proof that is clear, definite, and unequivocal. It greatly expands the holding in *Chapman*, which was expressly confined to "the limited situation of [that] case," *Chapman*, 302 S.C. at 478, 395 S.E.2d at 452, and which was not even subject to Section 62-2-701 because the estate planning at issue occurred long before the statute's effective date. Regardless of whether Section 62-2-701 applies, the result here allowing Luzak's constructive trust claim to proceed on this record is contrary to well-settled South Carolina law.

Therefore, pursuant to Rules 219, 221(a), and 240, SCACR, Respondent Merrill U. Barringer petitions for rehearing and rehearing **en banc** of the portions of *Est. of Barringer v. Light*, Op. No. 6156 (S.C. Ct. App. filed July 29, 2026) (Howard Adv. Sh. No. 28 at 28) ("Opinion") that reverse summary judgment on Luzak's constructive-trust theory and that overlook or misstate the facts established in the record.[3]

## ARGUMENT

### I. THE COURT MISAPPREHENDS *CHAPMAN*'S CONTEXT AND ITS FACTS AS SUPPORTING A PROMISE AND CAUSATIVE RELIANCE.

Causative reliance is the linchpin of Luzak's constructive trust claim—Luzak must prove that Mr. Barringer granted Mrs. Barringer the right to decide the ultimate disposition of his estate amongst their children *because* of Mrs. Barringer's promise never to make any such disposition—irrespective of changing circumstances in the future. Unlike in *Chapman,* proof of such an arrangement here is missing. Applying the incorrect summary judgment standard (as addressed below), this Court found that reasonable minds could differ over whether Mrs. Barringer made an open-ended promise that could have arisen from her conduct at any point "over the years," and that Mr. Barringer relied on that promise by a specific date: December 4, 1998. In relying on *Chapman* to reach this conclusion, however, the Court failed to acknowledge applicable law that lays the groundwork for the *Chapman* decision, and the stark differences between this case and *Chapman* in terms of the proof of both a promise and causative reliance. Proof of betrayed reliance on an express promise was undisputed and dispositive in *Chapman*. Mrs. Chapman "specifically

[3] Rehearing en banc is warranted because the opinion presents a question of exceptional foundational estate planning importance—whether evidence of historically equal treatment among children, coupled with ostensible evidence of an oral promise, creates guaranteed rights entitling the children to future equal treatment, overriding a written estate plan, notwithstanding the General Assembly's prescribed methods for proving contracts concerning succession—which threatens uncertainty in the law governing estate planning throughout South Carolina. *See* Rule 219(a), SCACR.

admit[ed] that she agreed to this at the time Mr. Chapman made his will and until his death." *Id*. n.3. Mrs. Barringer has always denied making any such promise. (R. pp. 667-698.) And while it was logical for Mr. Chapman—based on then-existing tax laws and family dynamics—to grant his wife the right to make final dispositive decision regarding his estate, coupled with default dispositions to *his* children if she did not do so, and require her to promise not to do precisely what his estate plan authorized her to (exercise the power), no such reasons exist here because of "watershed" tax law changes and the absence of any blended family concerns.

In *Chapman*, it was "undisputed" that Mrs. Chapman promised not to exercise the power of appointment and that Mr. Chapman granted her that power in reliance on that promise, which she repeatedly confirmed in handwritten letters. 302 S.C. at 475, 478, 395 S.E.2d at 450, 452. However, the Court explained why it was logical to engage in such an illogical arrangement. There, the Court found there "is *no doubt* that the *objective* of Mr. and Mrs. Chapman in entering into the [promise not to exercise] agreement was to obtain the *marital tax deduction* while still carrying out Mr. Chapman's wishes that *his* property would go to *his children*" from a prior marriage. *Id.* at 481–82, 395 S.E.2d at 454 (emphasis added) (internal quotations omitted). That arrangement was "*set up* in order to comply with the *then existing* state and inheritance tax laws" that conditioned the marital deduction on granting the surviving spouse an unrestricted power of appointment. *Id.* at 474 n.2, 395 S.E.2d at 450 n.2 (emphasis added). In sum, if Mr. Chapman sought to take advantage of the marital deduction, but also to direct his assets to his children after Mr. Chapman passed away, he was required to give Mrs. Chapman a power of appointment and ask her to promise never to exercise it.

McBryde—the only testifying witness who advised Mr. Barringer when he executed his 1998 estate plan—confirmed the only explanation why Mr. Barringer would give his wife a power of appointment in 1998:

> When Mr. Barringer's 1998 Revocable Trust was drafted and executed, granting a power of appointment to the spouse was no longer required to obtain a marital

> deduction. If Mr. Barringer did not want to give Mrs. Barringer the power to exercise a power of appointment, he could have directed that the documents not grant her a power of appointment. Moreover, if Mr. Barringer wanted to be certain his assets would be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Mrs. Barringer's death and then pass to his children equally without giving Mrs. Barringer a power to change that disposition. There is no reason (tax or otherwise) for Mr. Barringer to give Mrs. Barringer a power of appointment over his estate unless that is precisely what he wanted to do.
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> . . . .
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> Here, Mr. Barringer conferred authority upon Mrs. Barringer to decide who should benefit from the remaining assets of Mr. Barringer's estate at the time of her death. This would include the opportunity to observe her children, their behavior, their life choices, and any other factors she deemed relevant - in her sole discretion - to decide who *"among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . should benefit from the assets . . . . Should Mrs. Barringer be prevented from exercising the powers of appointment given to her by Paul Barringer in his 1998 estate plan, such a result would be antithetical to the expressed instructions given to me by Paul Barringer regarding his 1998 estate plan.

(R. pp. 2241–46.) Therefore, the facts that compelled the holding in *Chapman* do not exist here.[4] Notably, Luzak has offered no explanation for *why*, in light of the changes in the tax laws, Mr. Barringer would have granted Mrs. Barringer a power of appointment in reliance on a promise that she never exercise it.

*Chapman* also requires "clear, definite, and unequal" proof of a promise, and *causative reliance*: as of December 4, 1998, Mr. Barringer's intent that Mrs. Barringer not exercise the power of appointment had to be communicated to Mrs. Barringer, accepted by her, and relied upon as an inducement for granting the power. *Id.* at 479, 395 S.E.2d at 452 (quoting Bogert, *Trusts* § 89 (6th ed. 1987) ("Proof of reliance by A on the promise of B is needed.")). Luzak admitted that the

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[4] Additionally, Mr. and Mrs. Chapman each had children from prior marriages when they prepared their estate plans. After Mr. Chapman died, she had a "change of heart" and attempted to divert the property to *her* own children from a *previous* marriage—conduct that this Court characterized as bad faith. *Id.* at 480–82, 395 S.E.2d at 453–54. The constructive trust in *Chapman* responded to a clearly established promise, unquestionable and proven reliance, an attempted inconsistent and unfair disposition, and resulting wrongful retention. Absent equitable relief, Mr. Chapman's children would have been entirely disinherited—contrary to his clearly evidenced last wishes. Here, by contrast, Mr. and Mrs. Barringer had both only been married once, had three children of that marriage, and by 1998 had been married for over forty years.

"promise(s) would have been made" by "no later than December 4, 1998," when the instruments in questions were executed. (R. p. 4250.) No witness identified a communication, assent, or change of position by that date. Therefore, even if a factual dispute existed concerning a promise, that dispute would not be material because Luzak produced no evidence of the reliance necessary for a constructive trust to arise, under even her own theory.

It would also be unreasonable for Mr. Barringer to request or rely on any such promise. Before Mr. Barringer executed his December 4, 1998 estate plan, McBryde drafted or proposed over sixty-five (65) separate corporate, asset transfer, and/or estate planning documents for Mr. Barringer's review. (R. at 4389-91). These documents dealt with sophisticated wealth transfer efforts, including company stock, restrictions on company stock, transferability of company stock, the right to vote the stock, how various family trusts would hold stock and other assets, and how, when and by whom assets would be transferred at death. It is patently unreasonable to infer that Mr. Barringer would engage in such a thoughtful, comprehensive, and extensive exercise but leave the disposition of assets remaining at his death subject to an unwritten promise that directly contradicted his written estate plan.

Therefore, even if the record revealed proof that Mrs. Barringer made the alleged promise when the couple executed their estate plans (and it does not), the absence of proof of Mr. Barringer's reliance on that promise defeats Luzak's equitable claim.

## II. THE COURT MISAPPREHENDED LUZAK'S PLEADED 1998 PROMISE AND MISTOOK THE ABSENCE OF EVIDENCE AS AFFIRMATIVE PROOF.

The Court identified five circumstances that a reasonable fact-finder supposedly could rely upon to find that Mrs. Barringer impliedly promised not to exercise the power of appointment Mr. Barringer gave her. But none of these five circumstances provides any evidence, much less the required "clear, definite, and unequivocal" evidence, of either a promise or reliance.

*First*, Mrs. Barringer's lack of involvement with CFRC says nothing about whether, by December 4, 1998, she promised not to exercise the testamentary authority that Mr. Barringer granted her.[5] The power of appointment is not specifically related to company ownership, but rather runs generically to include all property he owned at death, not just the CRFC voting shares. Indeed, when Mr. Barringer granted Mrs. Barringer the power of appointment in 1998, the CFRC voting stock at issue did not even exist; in 1998 a different business operated as Coastal Lumber Company, and the Barringers' son Victor shared control of that company at that time.[6] (R. pp. 2982–84; R. p. 140.) Mrs. Barringer's non-involvement in company business is fully consistent with what some might call an ordinary division of marital and business responsibilities, and does not suggest—much less clearly, definitively, and unequivocally establish—a promise, reliance, fraud, or unjust enrichment.

*Second*, the Court cites to Mrs. Barringer not exercising the power of appointment in her 1998 will, but ruled this was not a promise never to exercise it. Indeed, in rejecting Luzak's contract claim, this Court recognized that the standard residuary clause "can hardly be called" a permanent surrender, and this Court recognized that Mrs. Barringer retained the right to change her will. Opinion at 34–35. That same language cannot be insufficient to establish a permanent surrender for one theory, yet also constitute "clear, definite, and unequivocal" evidence of that very surrender for purposes of another theory. More importantly, the clause does not show that Mrs. Barringer communicated **any assurance** to Mr. Barringer before he executed his "textbook" 1998 estate plan, or that he relied upon such an assurance.

*Third*, Luzak's and her husband's affidavits establish, at most, that the Barringers expressed a general plan to treat their children equally in the future. As the circuit court recognized, this only shows what Mr. Barringer might have stated about his general plan in the past, as discussed with his children. (R. pp. 125-27.) Such discussions occur among families every day,

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[5] Granting a spouse a power of appointment is "textbook" estate planning and is the most common estate plan utilized by spouses. (*See* Resp't's Br. p. 21 (citing Robert H. Sitkoff & Jesse Dukeminier, Wills, Trusts, and Estates 807 (10th ed.2017)).)

[6] Under Luzak's theory that the default provision applies, Victor Barringer would receive 1/3 of the stock she argues should somehow be split equally between her and her sister.

and nothing about such discussions can ripen into guaranteed inheritance rights in favor of children in the future. More specifically, the affidavits do not show that Mr. Barringer told Mrs. Barringer, by no later than December 4, 1998, that she could never exercise the power of appointment he intended to give her, that she assented to such a restriction, or that Mr. Barringer granted the power because of that assent. Including in his plan a default provision treating his *three* children equally ***if*** the power is not exercised is entirely compatible with a deliberate decision to give the mother of those children the flexibility to deal with changing circumstances. Again, this was textbook estate planning in 1998, and it still is today.[7]

*Fourth*, Mrs. Barringer's alleged silence at unidentified family meetings "over the years" cannot establish the promise that Luzak admits had to exist by December 4, 1998. *Chapman* only gives silence significance where the intended restriction is communicated to the promisee under circumstances calling for assent, and the donor thereafter acts in reliance on that silent assent. 302 S.C. at 479, 395 S.E.2d at 452. No witness or evidence identifies any such communication or any silent assent "by no later than December 4, 1998." Mrs. Barringer's silence at unidentified family meetings held after December 4, 1998, obviously does not prove that Mr. Barringer relied on her silent assent previously when he executed his estate plan on December 4, 1998.

*Fifth*, the Court's finding that McBryde "did not recall discussing any power of appointment with Mr. Barringer" is wrong. McBryde testified (and as quoted above), "[S]hould Mrs. Barringer be prevented from exercising the powers of appointment given to her by Paul Barringer in his 1998 estate plan, such a result would be antithetical to the expressed instructions

[7] The Court's reliance on Mr. Barringer's historical equal treatment of his daughters overlooks the most probative fact concerning that historical treatment and these shares: **he did not give them away equally.** When CFRC was created in 2004, Mr. Barringer gave Luzak and Light equal 31% voting interests but retained approximately 20% for himself through years of sophisticated planning. His decision to retain those shares—notwithstanding equal gifts of other voting shares and most of his wealth—undercuts any inference of an irrevocable commitment to divide them equally. If retained at death, those shares passed under the 1998 plan subject to Mrs. Barringer's express power of appointment. Equal treatment of property Mr. Barringer chose to give away therefore cannot support an inference that he surrendered his—and his wife's—discretion over property he deliberately retained.

given to me by Paul Barringer regarding his 1998 estate plan." When asked if it was McBryde who decided to include the power of appointment in Mr. Barringer's 1998 estate plan, McBryde testified: "I don't decide that. It's done by consultation with, in this case Paul [Barringer] . . . you have to walk through the very questions you've asked, does it apply here, does it apply there, and they have to make a decision . . . But this was clearly where they came out, where Paul came out at the time of the execution." (R. pp. 4547-4548). The record reveals that Mr. Barringer himself selected the specific language of the power of appointment.[8]

The Court's error runs deeper than misapprehending the undisputed evidence and drawing an unreasonable inference from disputed evidence. It effectively amended Luzak's pleaded theory and allowed the new unpled theory to proceed on facts that Luzak herself did not identify as supporting the claim she did plead. In any event, the issue is not whether the Barringers generally discussed equality over the ensuing years, whether Mrs. Barringer remained uninvolved with a company, or whether later estate planning departed from prior family discussion or the expectations of the children following those discussions. The issue is whether, by "no later than December 4, 1998," Mrs. Barringer promised not to exercise the power, whether Mr. Barringer relied on that promise, and whether under these circumstances it is unfair for Mrs. Barringer to retain the "textbook" power her husband specifically gave her in his written estate plan. The five circumstances establish none of these things—nor the fraud, bad faith, abuse of confidence, or other restitutionary wrongdoing necessary for Luzak's claim of constructive trust to survive summary judgment. Under any standard – much less the clear, definite, and unequivocal standard – that failure is fatal.

[8] Moreover, even if it were true that a drafting attorney was unable to recall—decades later—a specific conversation about a power of appointment or which assets were addressed in a general residuary clause, that does not prove anything.

## III. THE COURT MISAPPREHENDS THE GOVERNING SUMMARY JUDGMENT STANDARD.

Even if Luzak's theory were cognizable, the Court was required to evaluate the record against the proper and substantive evidentiary burden governing constructive trusts. That burden is exacting: "to establish a constructive trust, the evidence must be clear, definite, and unequivocal." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8–9, 732 S.E.2d 876, 879–80 (2012); *see also Lollis*, 291 S.C. at 530, 354 S.E.2d at 561. "Unequivocal" means "leaving no doubt: clear, unambiguous" and "unquestionable." Unequivocal, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/unequivocal (last visited Aug. 4, 2026).

Under Rule 56(c), SCRCP, a nonmoving party cannot survive summary judgment "by creat[ing] an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023). The dispositive question is therefore whether a reasonable factfinder could find each claim element with the certainty that the substantive law demands—not merely whether a competing inference can be imagined. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003) ("A heightened standard for summary judgment is required where the inquiry . . . necessarily implicates the substantive evidentiary standard of proof that would apply at a trial on the merits." (citation omitted)); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254–55 (1986) (holding that the clear and convincing evidence standard must be considered by the trial court when ruling on a summary judgment motion).

South Carolina has long demanded exacting proof before a formally executed testamentary plan may be disregarded. A contract to dispose of property by will, "especially when it is attempted to be established by parol, is regarded with suspicion," and must be "established by evidence clear and convincing." *Looper v. Whitaker*, 231 S.C. 219, 98 S.E.2d 226 (1957). Such proof must be "so clear, cogent and convincing, that ***no reasonable doubt*** can be entertained of its truth." *Samuel v.*

*Young*, 214 S.C. 91, 98, 51 S.E.2d 367, 370 (1949) (emphasis added). That heightened standard reflects the extraordinary nature of the relief sought. And while equity is often "less demanding . . . this liberality is counterbalanced by the rigid standard of proof which equity decrees as a prerequisite to the establishment of a constructive trust." *See Whitmire v. Adams*, 273 S.C. 453, 458, 257 S.E.2d 160, 163 (1979).

This Court declined to apply the proper, heightened standard "because the circuit court stated in its order that it considered only whether Luzak raised a genuine issue of material fact." Opinion at 33-34 n.4. The Order actually says the opposite, and Judge Bonds held that summary judgment was proper "irrespective of whether a heightened burden applies." (R. pp. 117–18 n.3.)[9] This Court's failure to apply the heightened standard was critical: an inference that "a reasonable factfinder [could] conclude Mrs. Barringer impliedly promised not to use her power of appointment," Opinion at 40, is neither a reasonable nor a genuine inference, and when measured against the clear, definite, and unequivocal standard, cannot support a constructive trust in this case.[10]

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[9] Both parties briefed whether the heightened standard was correctly applied, not whether it was ignored. The Court's conclusion that it should only address the wrong standard because the trial court only addressed the wrong standard was incorrect and improper.

[10] The Court implicitly suggests that the constructive trust claim overlaps the remaining legal claims and therefore implicates the sequencing rule in *Johnson v. South Carolina National Bank. Est. of Barringer*, Howard Adv. Sh. No. 28 at 40-41. In this case, no appellate court has yet determined the *merits* of bifurcation (only that it was not immediately appealable) and those merits arguments are not before this Court. The Supreme Court directed the circuit court to *reconsider* bifurcation on remand, not for this Court to prejudge that reconsideration in the first instance on the record before it, which does not address the merits of the bifurcation arguments. *Est. of Barringer v. Light*, Op. No. 2024-MO-003 (S.C. Sup. Ct. filed Jan. 17, 2024). Nevertheless, this Court's suggested inference conflates overlapping evidence with common issues for decision. *Johnson* applies only "when issues common to both legal and equitable claims are to be tried in a single proceeding." 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). Here, whether Mrs. Barringer's conduct in 1998 created an equitable obligation supporting a constructive trust is exclusively for the circuit court sitting in equity. A jury deciding the distinct 2012–2016 capacity and undue-influence claims need not decide—or even consider—that issue, which rests on events Luzak admits occurred "by not later than December 4, 1998." Any incidental relevance of the 2012 stock transfer does not make those claims factually common or require the legal claims to be tried first. Moreover, in her Motion to Consolidate, Luzak did not argue common questions of law or fact overlapping the promise-based claims (the Second and Third causes of action) with the legal claims. (R. pp. 624-25.) In any event, even if this Petition is denied, the Court should withdraw this *dicta* and leave the circuit court to conduct its own reconsideration of bifurcation on a proper record, as the Supreme Court previously directed.

## IV. THE COURT MISAPPREHENDED THE GENERAL ASSEMBLY'S INTENT IN ENACTING SECTION 62-2-701.

Finally, while Mrs. Barringer believes that Section 62-2-701 forecloses all equitable claims, it is clear that it forecloses Luzak's constructive trust claim. The Court misapprehended Mrs. Barringer's position concluding "Mrs. Barringer asserts the *Chapman* court simply overlooked Section 62-2-701, Opinion at 38, but Mrs. Barringer asserted no such thing. Rather, in *Chapman*, this Court had no reason to mention Section 62-2-701 because it did not apply—the estate plan there was executed in 1958, and the statute applies only prospectively from 1987. *See* 302 S.C. at 474, 395 S.E.2d at 449 ("Mr. Chapman's last will was executed on December 19, 1958."); S.C. Code Ann. § 62-2-701 (applicable to succession agreements entered into "after the effective date of this act"); *see also* Reporter's Cmt. ("The section's requirement of a signed writing to prove such contracts is meant to apply only prospectively."). Accordingly, the fact that *Chapman* was decided after the passage of Section 62-2-701 is not relevant and provides no authority for permitting Luzak's oral "promise" claim.

The Court correctly held that Luzak cannot enforce an agreement barring Mrs. Barringer from exercising the power because no signed writing satisfies Section 62-2-701. Despite having no such contract or writing, the Court permitted the same result through a less reliable means: an alleged oral promise – or silence – sought to be enforced by a constructive trust. The two theories rest on the same alleged 1998 assurance, the same supposed reliance, the same asserted nonperformance, and the same requested relief: preventing Mrs. Barringer from exercising the testamentary authority that her husband's written estate plan clearly grants to her.

Section 62-2-701 provides that a contract not to revoke a will or devise "can be established only" by one of three designated signed-writing methods. S.C. Code Ann. § 62-2-701 (2022). Section 62-1-103 permits equity to supplement the Probate Code only where it has not been "displaced by the particular provisions" of the Code. The Reporter's Comment enacted with the 2013 Probate Code revisions confirms that the designated writing requirement protects "the integrity of the process of succession," and that Section 62-2-701 presumptively "preempt[s] the field," rendering other proof rules inapplicable to future oral succession arrangements. S.C. Code Ann. § 62-2-701 Reporter's Cmt. Allowing the same obligation to be proved orally whenever a claimant adds an allegation of "abuse of confidence" between a husband and a wife drains the statute's words of "only" and "displaced" of any practical force.

The Court answered that a claimant cannot "simply rebrand" a barred contract claim because a constructive trust requires independent wrongdoing. Opinion at 37–38. That premise should have resolved this case in Mrs. Barringer's favor—as shown above, Luzak identifies no wronging independent of Mrs. Barringer allegedly not living up to the alleged promise.[11] Numerous courts in other jurisdictions construing materially similar "only by a writing" provisions have rejected attempts to circumvent those provisions through equitable relabeling. (Resp't's Br. pp. 25–27.) The Court overlooked that reasoning, and neither considered nor refuted that authority.[12, 13]

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[11] The pre-Code cases do not change this result. *Searson v. Webb*, 208 S.C. 453, 38 S.E.2d 654 (1946), and *All v. Prillaman*, 200 S.C. 279, 20 S.E.2d 741 (1942), held only that the general statute of frauds could not shield proven fraud; they did not construe a later, succession-specific statute declaring the exclusive means of establishing these contracts.

[12] Additionally, the Court overlooked Mrs. Barringer's legal argument about *Carmichael v. Heggie*, 332 S.C. 624, 506 S.E.2d 308 (Ct. App. 1998) (cited in *Est. of Barringer*, Howard Adv. Sh. No. 28 at 34). (*See* Resp't's Br. pp. 34-36.) As an alternative sustaining ground under Rule 220(c), SCACR, any alleged pre-death promise was unenforceable because Mrs. Barringer's testamentary power was not presently exercisable. The Court, however, limited that decision to agreements with a party "other than the donor" without addressing its rationale or these authorities. Equity cannot enforce alienation through constructive trust that which the law of powers of appointment makes inalienable.

[13] Finally, the Court made several inaccurate factual statements throughout the opinion that are not supported by the record, the parties' arguments, the order on appeal, or the facts of this case. *Contrast Opinion* at 39 (stating "***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" (emphasis added)) *with* (R. pp. 1-5922 (prior to 2012, Mr. Barringer always held "the shares" at issue in his individual name, and never subjected them to any specific estate plan, other than the power of appointment he gave Mrs. Barringer in 1998)); *contrast id.* at 29 (stating Mr. Barringer "is survived by two daughters") *with* (Resp't's Br. p. 6 n.7 (the default provision in Mr. Barringer's 1998 estate planning documents divide the estate in thirds among Merrill Light, Hampton Luzak, and son ***Victor Barringer*** – under Luzak's theory, the share will never be split between the daughters equally)); *contrast id.* at 30 (stating Mrs. Barringer "has not since updated her will to change this clause to exercise the power of appointment") *with* (R. p. 3099-3275); *contrast id.* at 31 (stating that in December 2020 Judge Mullen

## CONCLUSION

The Court's errors compound on one another: the opinion extends *Chapman* beyond its highly unique facts based on "then existing" tax laws, treats evidentiary failures from after 1998 as proof of a 1998 promise, disregards the clear-definite-and-unequivocal standard, permits a barred oral-agreement theory to proceed simply because Luzak relabeled it a "promise," and misapprehends other factual and legal issues as outlined above. Left uncorrected, the Opinion undermines the certainty in succession that prior case law establishes and Section 62-2-701 was enacted to strengthen, and invites disappointed children to challenge their parents formally executed estate plans through allegations of unwritten and perhaps even unspoken promises unsupported by evidence of any wrongdoing other than the ostensible failure to adhere to the alleged promise. Respondent respectfully requests that the Court grant rehearing, and or rehearing en banc, withdraw the portions of the Opinion reversing summary judgment on Luzak's constructive trust claim, and affirm the circuit court's December 31, 2024 order in full.

Respectfully submitted,

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August 13, 2026

ordered bifurcation "into two trials: one for the claims from the 2019 action and the other for the claims of the 2016 action") *with* (R. p. 28 (order directing that the Second and Third Causes of Action (involving the pre-1998 contract/promise claims) be tried first)); and *contrast id*. at 31 (stating Judge Price granted summary judgment "on the testamentary capacity claims from the 2016 action") *with* (R. p. 53 (granting summary judgment on the Eighth Cause of Action for undue influence as to the February 28, 2012 documents)).

**CERTIFICATE OF COUNSEL**

The undersigned, J. Ashley Twombley, certifies that Respondent's Petition for Rehearing complies with Rule 240, SCACR and the Supreme Court Order of August 13, 2007.

Respectfully submitted,



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August 13, 2026

RECEIVED
Aug 13 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Robert Bonds, Circuit Court Judge

Appellate Case No. 2025-000076

In the Matter of the Estate of Paul Brandon Barringer, II

Hampton Barringer 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 the Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak........................................................................................ Appellant,

v.

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

**PROOF OF SERVICE**

The undersigned, J. Ashley Twombley, of TWENGE + TWOMBLEY LAW FIRM, Attorneys for Respondents, hereby avers that on the 13th day of August 2026, a true and accurate copy of the attached **PETITION FOR REHEARING** was served via electronic mail to the following:

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August 13, 2026

**Via Electronic Mail**

The Honorable Jenny Abbott Kitchings
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RECEIVED
Aug 13 2026
SC Court of Appeals

**RE: Luzak v. Barringer; Appellate Case No. 2025-000076**

Dear Ms. Kitchings:

Please find attached for filing a 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 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 evidenced by the Proof of Service, the Petition for Rehearing has been served upon all counsel of record.

If you have any questions related to the attached, please do not hesitate to contact me.

With kindest personal regards, I remain,

Cordially,

J. Ashley Twombley

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