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Nov 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Appellate Case No.
2021-000837

Hampton B. Luzak Appellant

-vs.-

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II, Merrill B. Light as 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, and Merrill Barringer individually Respondents

and

Hampton B. Luzak Appellant

-vs.-

Merrill U. Barringer Respondent

**RESPONDENTS' RETURN TO MOTION FOR
PERMISSION TO EXCEED PAGE LIMITS**

Respondents submit this return to Appellant Hampton B. Luzak's motion to allow her to exceed the Court's fifty-page limit and file up to seventy-five pages for her initial brief.

This matter is a dispute between family members over the estate of Paul Barringer. This appeal arises from two substantive and appealable orders issued prior to trial in what are essentially

two consolidated lawsuits.¹ The two orders properly before the Court in this appeal are 1) a July 6, 2021 order granting summary judgment in favor of Respondent on Appellant’s claims that Paul Barringer’s February 28, 2012 Will and Amendment to his Revocable Trust were invalid on the grounds of lack of capacity, undue influence and mistake (the “Summary Judgment Order,” Exhibit C to Notice of Appeal); and 2) a June 7, 2021 order granting Coastal Forest Resources Company’s (CFRC) motion to intervene for the limited purpose of precluding Appellant from litigating shareholder derivative claims that belong to CFRC and striking her alleged damages based on derivative claims (the “Damages Order,” Exhibit A to Notice of Appeal).²

The Summary Judgment Order and the Damages Order present discrete issues, which were briefed extensively by the parties in the circuit court. In the Summary Judgment Order, the circuit court concluded that Luzak failed to establish a genuine issue of material fact as to her claims that Paul Barringer lacked testamentary capacity when he executed his February 28, 2012, testamentary documents or that these documents are the product of undue influence or mistake. In the Damages Order, entered on June 7, 2021, the circuit court determined that Luzak’s claim for civil conspiracy, and four of her six categories of alleged damages articulated in her expert’s report, actually concern alleged injuries to CFRC, and therefore, Luzak could have been injured only indirectly in her

¹ One of Paul Barringer’s daughters, Appellant Hampton Luzak, filed two lawsuits in Beaufort County in 2016 and two lawsuits in 2019. In 2016 and again in 2019, Luzak filed one complaint in probate court and removed it to circuit court (the Removed Action) and at around the same time filed another lawsuit asserting the same claims directly in the Court of Common Pleas (the Common Pleas Action). As her Motion for Consolidation makes clear, Luzak filed the same claims from the Removed Action again in the Common Pleas Action solely because it “protects and insures this Court’s subject matter jurisdiction over the cause of action.” *See* Motion for Consolidation, attached as Exhibit 1. Both 2016 actions name Luzak’s sister Merrill Light as the principal defendant on the same causes of action and Luzak’s mother, Merrill Barringer, is named only as the personal representative of Mr. Barringer’s estate. Both 2019 actions assert the exact same causes of action and name Luzak’s mother, Merrill Barringer, individually, as the sole defendant. Additional background is included in Respondents’ Return to Emergency Petition.

² Appellant also appeals from the orders denying her motions for reconsideration of these two orders, which are included as Exhibit B and Exhibit D to Appellant’s Notice of Appeal.

capacity as a CFRC shareholder. CFRC argued that these allegations constituted shareholder derivative claims that would belong solely to CFRC and not to Luzak or to any individual shareholder of CFRC. The circuit court agreed and dismissed the claims on the grounds that Luzak lacks standing to pursue such claims and the court lacks jurisdiction to hear them.³

Two other orders included in Appellant's notice of appeal are related to bifurcation of other claims for trial and should not be considered in this appeal. First, this Court has already dismissed Luzak's prior appeal of the December 30, 2020 order granting bifurcation (the "Bifurcation Order")⁴ because it was not immediately appealable, and Luzak filed a Petition for Writ of Certiorari, which is pending. Second, Luzak only appeals the portion of the Order on Motions entered June 7, 2021, (Exhibit E to Notice of Appeal) that sets an August 30, 2021 trial date for the bifurcated claims and an August 30, 2021 trial did not occur. Respondents intend to file a motion requesting dismissal of these two orders from this appeal on the grounds that the bifurcation order is interlocutory and has previously been dismissed, and Luzak should not be allowed to bootstrap a second interlocutory appeal of the Bifurcation Order to her appeal of the Damages Order and the Summary Judgment Order. Respondents respectfully submit that the Court should not permit Luzak to end run the rules on appealability, particularly after the Court has already concluded that any review of the Bifurcation Order must await final judgment.⁵

The current appeal involves the court's granting of two motions dismissing a fraction of Luzak's claims prior to trial on issues extensively briefed in the trial court, and fifty pages is

³ Notably, Plaintiff's brief in opposition to the Damages motion was 14 pages and her brief opposing Summary Judgment was 38 pages, so the total number of pages Plaintiff needed to brief these exact issues below was 52 – and the signature lines on each of those briefs consumed 2 full pages.

⁴ After requesting and receiving briefing on whether the Bifurcation Order was immediately appealable, the Court of Appeals dismissed the appeal on May 4, 2021, on the ground that the order was not immediately appealable. See Appellate Case No. 2021-000159. Appellant filed a Petition for Writ of Certiorari. Respondents filed a Motion to Dismiss Petition for Writ of Certiorari and Return.

⁵ For the same reasons, the Court should deny Luzak's request in the Notice of Appeal to consolidate this appeal with her prior appeal of the Bifurcation Order. (Appellate Case No. 2021-000159).

adequate space to allow Luzak to fully explain her position. An extension of the page limits is unnecessary, and Respondents request that the motion be denied.

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Barringer, II Revocable Trust dated December 4, 1998,
and as trustee of the Merrill Barringer Light Revocable
Trust**

Beaufort, South Carolina

November 15, 2021

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Hampton B. Luzak,

2016-CP-07- 1919

Plaintiff,

vs.

Merrill B. Light and Merrill U. Barringer,
As Personal Representative of the Estate of
Paul Brandon Barringer, II,

**MOTION FOR
CONSOLIDATION
OF ACTIONS
UNDER RULE 42(a)**

Defendants.

In the Matter of:

Estate of Paul Brandon Barringer, II

2016 SEP - 8 PM 1:50
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA

**TO: DEFENDANTS MERRILL B. LIGHT AND MERRILL U. BARRINGER AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL BRANDON
BARRINGER, II AND THEIR ATTORNEYS AS THEY MAY APPEAR OF
RECORD**

The Plaintiff, Hampton B. Luzak, moves the Court, pursuant to Rule 42(a) of the South Carolina Rules of Civil Procedure to order the consolidation of this case and the case styled as Hampton B. Luzak v. Merrill B. Light, bearing Civil Action No. 2016-CP-07- 1961 filed in Beaufort County, South Carolina (“Common Pleas Action”). In support of this motion, the Plaintiff shows the following to the Court:

1. The Plaintiff initially filed this action as a Complaint in the Beaufort County Probate Court in the Estate of Paul Brandon Barringer, II on August 26, 2016 (**Exhibit A** – Complaint). On September 15th, 2016, the Plaintiff’s Complaint was removed to this Court upon motion of the Plaintiff and is now pending before this Court in this Civil Action No. 2016-CP-07- 1919 (hereafter “Removed Complaint” or “Removed Action”).

2. The Removed Complaint asserted claims to set-aside the purported last will and testament of Paul B. Barringer, II (“Decedent”) filed with the Beaufort County Probate Court. The Removed Complaint also asserted claims against Defendant Merrill Light to set aside amendments of February 28 and July 20, 2012 to the revocable *inter vivos* trust of Decedent on the grounds of lack of mental capacity, undue influence and mistake. The Removed Complaint also contained causes of action for setting aside transfers to trust, fraud, conversion, quantum meruit, constructive and resulting trusts, breach of fiduciary duty, intentional interference with inheritance and gifts, and conspiracy.

3. The Removed Complaint arose out of events in which Defendant Merrill Light in 2012 and 2015 altered and disrupted the estate plan of her father Paul B. Barringer, II. Prior to 2012 the Decedent set up his estate plan so that the Plaintiff and Defendant were equal beneficiaries. Through undue influence and decedent’s incompetency, Defendant Merrill Light was able to alter and disrupt the Decedent’s estate plan to make herself the sole beneficiary of Decedent’s assets related to the corporation he built up and managed, Coastal Forest Resources Company, Inc. (“CFRC”), by use of Decedent’s revocable trust, will and purported gifts.

4. The Plaintiff filed a Complaint in the Common Pleas Action, a copy of which is attached as **Exhibit B**, asserting the same claims of setting aside the trust amendments of February 28 and July 20, 2012, setting aside transfers to trust, fraud, conversion, quantum meruit, constructive and resulting trusts, breach of fiduciary duty, intentional interference with inheritance and gifts, and conspiracy against Defendant Merrill Light as in the original Complaint.

5. The two cases involve common questions of law and fact and commonality in parties.

6. The common questions of law are the causes of action for setting aside the amendments to Decedent's revocable trust, setting aside transfers to trust, fraud, conversion, quantum meruit, constructive trust, resulting trust, breach of fiduciary duty, intentional interference with inheritance and gifts, and conspiracy. The Complaint in the Common Pleas Action protects and insures this Court's subject matter jurisdiction over the causes of action for setting aside transfers to trust, fraud, conversion, quantum meruit, constructive and resulting trusts, breach of fiduciary duty, intentional interference with inheritance and gifts, and conspiracy. This Court therefore has subject matter jurisdiction over these causes of action through its original jurisdiction under S.C. Const. art. V, § 11 and through S.C. Code Ann. §§ 62-1-302(d), 62-7-201(c) and 62-7-202.

7. The common questions of fact are:

- The mental competency of Decedent at the time of the purported transfer of CFRC voting stock to Decedent's revocable trust and/or to Defendant and the validity of the purported execution by Decedent of amendments to his revocable trust in February and July of 2012.
- The mental competency of Decedent at the time of the purported execution of the last will and testament of February 5, 2015 filed with the Beaufort County Probate Court.
- The undue influence exerted upon Decedent by Defendant Merrill Light.
- The validity of the purported transfers of Decedent's voting stock in CFRC to Decedent's revocable trust in May 2012 and the subsequent purported transfer from the revocable trust to Defendant Merrill Light in September 2012.

- The actions of the Defendant Merrill Light and her co-conspirators in carrying out the plan to radically alter and disrupt the Decedent's estate plan that existed prior to 2012.

8. The Removed Action names Defendant Merrill Light as the principal defendant on the same causes of action contained in the Complaint in the Common Pleas Action. Merrill U. Barringer, the Personal Representative of the Estate of Paul Brandon Barringer, II, is named in the Removed Action solely in her capacity as personal representative of Decedent's estate, and no relief is sought against her individually. As such both actions involve the same principal defendant Merrill Light and the same plaintiff Hampton B. Luzak.

9. The proposed consolidation will avoid unnecessary costs and will further judicial economy. Consolidation will therefore save the Defendants and the Court from having to hear from the same parties and witnesses twice regarding the events surrounding the alteration of decedent's estate plan starting in 2012. It would also prevent the possibility of inconsistent verdicts.

10. The undersigned counsel would show that consultation with all parties would not be possible with this motion since no attorneys have yet made formal appearances on the record as representing any of the defendants in the Common Pleas Action or the Removed Action.

WHEREFORE, the Plaintiff moves that the Court consolidate this case with the case styled as Hampton B. Luzak v. Merrill B. Light, bearing Civil Action No. 2016-CP-07- 1961 in Beaufort County, South Carolina, and provide such further relief in favor of the Plaintiff as the Court deems just and proper.

Respectfully submitted,

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**ATTORNEYS FOR PETITIONER
HAMPTON B. LUZAK**

Dated: September 8th, 2016.
Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
Hampton B. Luzak)
 Plaintiff,)
 vs.)
)
Merrill B. Light and Merrill U. Barringer,
as Personal Representative of the
Estate of Paul Brandon Barringer, II,
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-07- 1919

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: James R. Gilreath Bar No. <u>2133</u> Address: P.O. Box 2147, Greenville, SC 29602 Phone: (864) 242-4727 Fax: (864) 232-4395 E-mail: <u>jim@gilreathlaw.com</u> Other: _____ See attached attorney information sheet for additional attorneys of record	Defendant's Attorney: No attorneys of record as of this date. Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Plaintiff's Motion to Consolidate under SCRPC Rule 42(a) Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
Date submitted <u>September 8th</u> , 2016	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ 25.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____

2016 SEP -8 P11:50
 CLERK OF COURT
 JUDICIAL CIRCUIT
 BEAUFORT COUNTY, SC

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

ATTORNEY INFORMATION SHEET
Hampton B. Luzak v. Merrill B. Light, et al.
Case No.: 2016-CP-07-_____

PLAINTIFF'S COUNSEL OF RECORD:

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Hampton B. Luzak Appellant

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and

Hampton B. Luzak Appellant

-vs.-

Merrill U. Barringer Respondent

CERTIFICATE OF SERVICE

The undersigned, J. Ashley Twombly, of TWENGE + TWOMBLY LAW FIRM, Attorneys for Respondents, hereby avers that on the 15th day of November 2021, a true and

accurate copy of the attached **RESPONDENTS' RETURN TO MOTION FOR PERMISSION**

TO EXCEED PAGE LIMITS was served via electronic mail to the following:

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November 15, 2021

Via Electronic Mail

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
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RECEIVED
Nov 15 2021
SC Court of Appeals

**RE: In the Matter of the Estate of Paul Brandon Barringer, II
Appellate Case No. 2021-000837**

Dear Ms. Kitchings:

Pursuant to paragraph (c)(4) of the Supreme Court's amended administrative order dated May 29, 2020 "Operation of the Appellate Courts During the Coronavirus Emergency," enclosed for filing please find Respondents' Return to Hampton B. Luzak's Motion for Permission to Exceed page Limits in the referenced matter.

By copy of this letter and as evidenced by the Certificate of Service, these filings have been served upon counsel.

Thank you for your assistance in this matter. If you have any questions related to the enclosed documents, please do not hesitate to contact me.

With kindest personal regards, I remain,

Cordially,


J. Ashley Twombley

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