Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	**ORDER**
HAMPTON BARRINGER LUZAK,	)	
Plaintiff,	)	
v.	)	
MERRILL U. BARRINGER,	)	
Defendant	)	

This matter comes before the Court on motions for summary judgment filed by Defendant Merrill Barringer ("Mrs. Barringer") in which she seeks summary judgment on the second and third causes of action asserted in the Complaint of Plaintiff Hampton Barringer Luzak ("Plaintiff"). Plaintiff's second cause of action is styled as a claim for "Constructive Trust and Injunction," and Plaintiff's third cause of action is styled as a claim for "Enforcement of Contract Not to Revoke and Injunction." See Compl., ¶¶ 134-43.

Mrs. Barringer filed her motions for summary judgment on June 14, 2021, Plaintiff filed a response in opposition to both motions on August 6, 2021, and Mrs. Barringer filed a reply in support of her motions on August 9, 2021. The Court held a hearing on Mrs. Barringer's motions on August 10, 2021. On August 12, 2021, Plaintiff sent the Court an email highlighting four documents previously submitted opposing summary judgment. After considering the briefing submitted by the parties, the arguments of counsel, the record, and the applicable law, the Court

grants Mrs. Barringer's motions for summary judgment on Plaintiff's second and third causes of action.

I. Relevant factual and procedural background

This is a dispute over the estate of Paul Brandon Barringer, II ("Mr. Barringer"), who died on May 30, 2016. Mr. and Mrs. Barringer were married for nearly sixty years and remained married at Mr. Barringer's death. This was the first and only marriage for Mr. and Mrs. Barringer. Plaintiff is the adult daughter of Mr. and Mrs. Barringer. Shortly after her father's death, Plaintiff filed two lawsuits against her sister in various capacities, against her sister's husband (who passed away during the pendency of this litigation), and against her mother, Mrs. Barringer, in her capacity as personal representative of her father's estate. The Court consolidated these two lawsuits and they are referred to herein as "Barringer I." In Barringer I, Luzak claims that, beginning in 2012, Paul Barringer lacked the mental capacity to execute various wills, trust amendments and transfers. Am. Compl., Case No. 2016-CP-07-1919.[1]

Before Mr. Barringer executed estate planning documents between 2012-2015, Mr. Barringer executed a will and revocable trust on December 4, 1998. Plaintiff contends that the December 4, 1998 estate planning documents were the last valid documents executed by Mr. Barringer. Plaintiff seeks to invalidate the transactions that occurred between 2012-2015, and to have her father's December 4, 1998 will and revocable trust control distribution of his estate as the last valid estate planning documents signed by her father.

Each version of Mr. Barringer's estate planning documents—the 1998 version that Plaintiff contends is valid, and the later versions that Plaintiff challenges on capacity grounds—provides that any assets in Mr. Barringer's estate at the time of his death "pour over" to his revocable trust,

[1] Plaintiff also asserts various tort claims and equitable claims in Barringer I and seeks an award of money damages.

and grants Mrs. Barringer a power of appointment permitting her, through her own will or codicil thereto, to decide how any remaining portion of Mr. Barringer's assets will be distributed upon her death.[2] Each version of Mr. Barringer's revocable trust also includes a default provision that states how Mr. Barringer's remaining assets will be distributed at Mrs. Barringer's death if she chooses not to exercise her power of appointment.

In 2019, while Barringer I was pending, Plaintiff filed another lawsuit ("Barringer II"), naming only her mother in her individual capacity as a defendant. In Barringer II, Plaintiff alleges, among other things, that Mr. and Mrs. Barringer "entered into a binding contract not to revoke their estate plans." Compl. ¶ 142. In her discovery responses, Plaintiff states that the alleged promises which underpin the contract "would have been made [by] no later than December 4, 1998." Plaintiff's third cause of action in Barringer II asks the Court to direct Mrs. Barringer "to comply with the contract not to revoke her will." Id. ¶ 143.

In her second cause of action in Barringer II, Plaintiff alleges that "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." Id. ¶ 137. Plaintiff also alleges that Mr. Barringer "relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her" and that 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." Plaintiff asks the Court to "direct[] Defendant Merrill U. Barringer to comply with her promise and the trust

[2] Mr. Barringer's December 4, 1998 trust also provides that Mrs. Barringer will receive income from the assets in his revocable trust for her lifetime and principal distributions if needed.

reposed in her not to exercise the testamentary power of appointment given her" and to impose a constructive trust. Id. ¶¶ 138-40. Thus, in her second and third causes of action, Plaintiff alleges that Mrs. Barringer entered into a contract or made a promise that prevents her from revoking her will and, specifically, prevents Mrs. Barringer from executing a new will that exercises the power of appointment granted to her in each version of Mr. Barringer's estate planning documents.

II. Summary judgment standard

"[S]ummary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). For claims with a higher burden of proof, such as claims for constructive trust, "the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v. Mis-South Mgmt. Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009); see also 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 involved in a ruling on a motion for summary judgment . . . necessarily implicates the substantive evidentiary standard of proof that would apply at a trial on the merits."); Lollis v. Lollis, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal.").[3]

[3] Plaintiff argues that the Court should not apply a heightened burden in deciding whether Mrs. Barringer is entitled to summary judgment on her claim for constructive trust. The Court, however,

III. Mrs. Barringer is entitled to summary judgment on Plaintiff's third cause of action.

In her third cause of action, Plaintiff seeks to enforce an alleged contract not to revoke a will. A valid contract to revoke a will must satisfy South Carolina Code Section 62-2-701, which provides:

> A contract to make a will or devise, or to revoke a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

S.C. Code Ann. § 62-2-701 (emphasis added).

Plaintiff has identified no provision in Mr. or Mrs. Barringer's wills[4] stating material provisions of the alleged contract. Nor has Plaintiff identified an express reference to the alleged contract in Mr. or Mrs. Barringer's wills. Finally, Plaintiff has not identified any writing signed by Mr. or Mrs. Barringer that evidences the alleged contract. Plaintiff therefore has failed to meet her burden under § 62-2-701.

Plaintiff argues that Mr. Barringer's estate planning documents, when read in conjunction with Mrs. Barringer's estate planning documents, satisfy one or more of the subsections of Section 62-2-701. Plaintiff also argues that a long history of equal gifting by her parents to their children, particularly gifts of Mr. Barringer's ownership interest in a forest products company, satisfy one

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finds that Mrs. Barringer is entitled to summary judgment on Plaintiff's second and third causes of action irrespective of whether a heightened burden applies.

[4] There is a dispute between the parties whether the "decedent" referenced in the statute is Mr. Barringer or Mrs. Barringer. The Court need not resolve this question because there is no evidence that could satisfy the statute regardless of whether "decedent" refers to Mr. or Mrs. Barringer.

or more of the subsections of Section 62-2-701. The Court has considered Plaintiff's arguments and finds them unavailing because none of the documents identified by Plaintiff satisfy the subsections of Section 62-2-701.[5] At most, these documents suggest that, during a certain time period, Mr. and Mrs. Barringer treated their children equally in the past and intended or planned to treat them children equally with respect to certain assets in the future. None of these documents indicate that Mr. or Mrs. Barringer intended to irrevocably renounce their right to change their estate planning documents in the future, irrespective of changed circumstances.

Plaintiff also argues that Mrs. Barringer's failure to exercise her power of appointment when executing mutual or "symbiotic" estate planning documents with her husband supports her claim that the Barringers entered into a contract not to revoke their estate plans or that Mrs. Barringer contracted or promised never to exercise her power of appointment. But Plaintiff fails to identify language in the documents that evidences an irrevocable agreement never to change their estate plans in the future. The mutual nature of Mr. and Mrs. Barringer's estate planning documents does not satisfy Section 62-2-701. Indeed, the statute specifically states: "The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke

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[5] The primary language in Mr. and Mrs. Barringer's 1998 wills that Plaintiff relies on is the following:

> All of the rest, residue, and remainder of my property of every kind and description, and wherever located, including any lapsed or void devise (**but not including any property over which I may have a power of appointment**), I devise to the then acting Trustee or Trustees of The . . . Revocable Trust . . . ."

(Mr. and Mrs. Barringer's Wills dated December 4, 1998) (emphasis added). But this language does not contain the material provisions of a contract and does not say or imply that Mr. and Mrs. Barringer have entered into a contract or made a promise never to exercise the powers of appointment given to each other at any point in time in the future.

the will or wills." S.C. Code § 62-2-701. Moreover, as the South Carolina Supreme Court held in an opinion issued prior to the passage of Section 62-2-701:

> The wills of husband and wife executed at the same time, before the same witnesses, and strictly reciprocal in their terms, are not, **in the absence of a recital that they are made pursuant to a contract**, in themselves sufficient evidence of an enforceable contract between the testators for the execution of the wills . . . .
>
> It may be said in agreement that it is within common knowledge that many married couples make reciprocal wills; but it does not follow from that alone, or from the agreement to do so, that each spouse is thereby bound against revocation or subsequent alteration of his or her will, without notice to the other.

Looper v. Whitaker, 231 S.C. 219, 229-30, 98 S.E.2d 266, 271–72 (1957) (emphasis added) (internal citation omitted). The Looper Court also held: "An agreement to make 'mutual' or reciprocal wills, such as those here, is far short of a contract to keep them in force." Id., 231 S.C. at 221, 98 S.E.2d at 266; see also Lamberg v. Callahan, 455 F.2d 1213, 1218 (2d Cir. 1972) ("But if plaintiffs are to succeed, mere proof of an agreement to execute mutual wills is not enough. The crucial issue is whether, in addition, the Woods agreed that the mutual wills would not be revoked.").

Because Section 62-2-701 provides the "only" way for Plaintiff to establish a contract not to revoke a will, and because Plaintiff has not identified any document that satisfies Section 62-2-701, Mrs. Barringer is entitled to summary judgment on Plaintiff's third "Contract Not to Revoke" cause of action.

IV. Mrs. Barringer is entitled to summary judgment on Plaintiff's second cause of action.

In her second cause of action, Plaintiff alleges that Mrs. Barringer made an express or implied promise never to exercise the testamentary power of appointment granted to her by Mr.

Barringer, alleges that Mr. Barringer relied on this express or implied promise,[6] and asks the Court to require Mrs. Barringer to comply with this alleged promise and to impose a constructive trust. Plaintiff argues that, because her second cause of action seeks to enforce an alleged *promise* and not an alleged *contract*, the claim is not subject to Section 62-2-701. The Court disagrees.

In passing Section 62-2-701, the South Carolina legislature prescribed the "only" way to establish a valid contract concerning succession, including a contract not to revoke a will. This statute is derived from a section of the Uniform Probate Code, see Unif. Probate Code § 2-701, and is similar to statutes that many other states have passed. The Official Comment to UPC § 2-701 explains the rationale for statutes such as Section 62-2-701:

> It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

See id., Comment. If plaintiffs could circumvent Section 62-2-701 simply by alleging a "promise" instead of a contract, and by pleading a constructive trust claim or another equitable claim instead of a claim to enforce a contract, the statute proscribing the "only" claims can be proven would be rendered toothless. Moreover, permitting Plaintiff to circumvent the statute in this way would violate the maxim of "equity follows the law." See Quail Hill, LLC v. Cty. Of Richland, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) ("Simply stated, equity follows the law.").

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[6] In her memorandum in opposition to Mrs. Barringer's motions for summary judgment, Plaintiff argues that Mr. Barringer "never intended to give [Mrs. Barringer] a power of appointment." But Plaintiff's Complaint does not challenge the power of appointment on the basis that Mr. Barringer did not intend to grant such a power to Mrs. Barringer. See generally Compl. Moreover, Plaintiff does not explain how Mr. Barringer could have relied on Mrs. Barringer's promise never to exercise the power of appointment he granted to her, as Plaintiff alleges in her Complaint, without intending to grant her a power of appointment in the first place.

Courts from several states that have passed statutes similar to Section 62-2-701 have rejected attempts by plaintiffs to circumvent the statute by pleading equitable claims or by characterizing the claim as one based on a promise instead of a contract. See, e.g., Pool v. Diana, No. 03-08-00363-CV, 2010 WL 1170234, at *8 (Tex. App. Mar. 24, 2010) ("Although Leslie attempts to avoid summary judgment by specifically describing her claim as one for constructive/resulting trust, her argument is—in substance—that there was an oral agreement to devise the property. However she may describe the claim, Leslie's pleadings show that her claim is simply this: Donn made an oral promise to devise the 15–acres to her and to Danae. As a matter of law, an oral agreement to devise property otherwise disposed of in a will is unenforceable."); Est. of Gilbert, 513 S.W.3d 767, 772 (Tex. App. 2017) ("Having reviewed the statute and the relevant case law, we conclude the legislature intended to foreclose a claim relating to a promise to make a will or devise or not to revoke a will or devise if that promise is not in writing . . . .We hold that section 254.004 bars a claim for promissory estoppel on an oral promise to devise property that is disposed of in a will."); Matter of Estate of Cosman, 475 A.2d 659, 661–62 (N.J. App. Div. 1984) ("The Legislature has seen fit to prescribe the 'only' way such a contract may be legally established. The statute's clear language leaves no room for judicial construction. This oral agreement is not enforceable. The principles of equitable fraud and promissory estoppel urged by respondents are unavailing in the face of the unequivocal legislative declaration. Were we to enforce such principles we would nullify the clear purpose of the statute."); Stanley v. Hendershot, No. 1089 MDA 2017, 2018 WL 2275789, at *12-13 (Pa. Super. Ct. May 18, 2018) ("Thus, as a matter of law, any unjust enrichment claim, raised in the alternative to a breach of contract claim, must fail as legally insufficient when the breach of contract claim requires compliance with Section 2701. To hold otherwise simply renders Section 2701 meaningless."); In re Est. of Shain, No. 1

CA-CV 09-0252, 2010 WL 569843, at *1–2 (Ariz. Ct. App. Feb. 18, 2010) ("As a matter of law, Wauneita's alleged oral promise to include Appellant in her will was a promise to make a testamentary disposition. Section 14-2514(A) and public policy preclude such oral promises and therefore the trial court did not err in dismissing Appellant's claim."); In re McKim Est., 238 Mich. App. 453, 459, 606 N.W.2d 30, 33 (1999) ("The clear language of the statute . . . evidences the Legislature's intent to bar agreements to make a will or devise absent a writing . . . . Accordingly, the trial court correctly rejected petitioner's claim for recovery under a contract implied in fact theory.*")*; Matter of Est. of Hatten, 440 P.3d 256, 258 (Alaska 2019) (In a case involving a man who died intestate following 20 year cohabitation, the court applied the statute substantially similar to South Carolina's and held: "And to the extent Toland argues Hatten orally promised or assured her after January 1, 1997 that he would give her the house or other property upon his death, we note AS 13.12.514(a) renders such oral agreements unenforceable."). The Court agrees with the rationale of these decisions.

In arguing that she is not required to comply with Section 62-2-701 to prevail on her second cause of action, Plaintiff relies on Chapman v. Citizens & S. Nat. Bank of S.C., 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990). But Chapman does not allow Plaintiff's claim. First, the relevant events in Chapman occurred prior to the effective date of Section 62-2-701, and the statute therefore did not apply and was not mentioned by the Court in resolving Chapman. Second, the facts of Chapman are distinguishable from the facts of this case.

In Chapman, the Court found an enforceable promise based on "undisputed evidence that Mrs. Chapman agreed to either give the subject property to Mr. Chapman's children during her lifetime or, in the alternative, not exercise the power of appointment." Id. 302 S.C. at 478, 395 S.E.2d at 446, 452 (Ct. App. 1990). The Court also noted that it was "undisputed" that Mr.

Chapman "expected her to do so." Id. Based on this evidence, the Court found the wife expressly promised her husband that she would not exercise her power of appointment. See id., 302 S.C. at 474, 395 S.E.2d at 450 (finding that there were "numerous letters of record" signed by Mrs. Chapman wherein Mrs. Chapman "promised Mr. Chapman that, upon Mr. Chapman's death and the probate of his will, Mrs. Chapman would either during her lifetime make gifts of the subject property to Mr. Chapman's children or die without exercising the power of appointment contained in Mr. Chapman's will"). After Mr. Chapman's death, Mrs. Chapman further admitted in letters that she began "struggling with her conscience" about whether she should leave the subject property to her own children instead of Mr. Chapman's children. Id., 302 S.C. at 475, 395 S.E.2d at 450. The Court found that the husband executed his last will "in reliance on Mrs. Chapman's promise that she would not exercise the power of appointment." Chapman, 302 S.C. at 477-78, 395 S.E.2d at 451-52. By contrast, Plaintiff has identified no evidence that Mrs. Barringer made any promise to Mr. Barringer regarding her power of appointment, much less a promise made in writing, or that Mr. Barringer relied on any promise before he gave Mrs. Barringer a power of appointment on December 4, 1998.[7]

Plaintiff also relies on Satcher v. Satcher, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002). But Plaintiff's reliance on Satcher is also misplaced. In Satcher, a grandson brought an action against his grandfather's estate seeking title to a house and farm, which the grandfather had left to

[7] Plaintiff argues that she can prove Mrs. Barringer made an enforceable promise to Mr. Barringer not to exercise her power of appointment through her "silence." Plaintiff relies on an excerpt from a treatise on trusts that is referenced in Chapman. For the reasons discussed above, the Court finds that permitting a plaintiff to prove a promise not to revoke a will or, specifically, not to exercise a power of appointment based on silence, is inconsistent with the language and intent of Section 62-2-701. In any event, the Court finds that Plaintiff has not identified any instances in which Mrs. Barringer's alleged silence could constitute an implied promise that Mrs. Barringer would never revoke her will or that she would never exercise her power of appointment.

the grandson's uncle. The Court found that the grandson was entitled to the house under a promissory estoppel theory. Specifically, the Court found that the grandfather had promised the grandson that, if the grandson quit his job and moved in with his grandfather, the grandfather would leave the house to him upon the grandfather's death. The Court found that, "[i]n reasonable reliance on that promise, Chip moved to the house and provided Grandfather with companionship and other services for more than twenty years." Satcher, 351 S.C. at 486, 570 S.E.2d at 539. Section 62-2-701 was not cited or discussed in the Court's Opinion. Here, Merrill Barringer has always raised Section 62-2-701 as a defense to Plaintiff's claims. See Merrill Barringer's Answer p. 27. In addition, Plaintiff has not asserted a claim for promissory estoppel, and in any event, has not identified any evidence that Mrs. Barringer made a promise to Mr. Barringer regarding her power of appointment, much less a promise on which Mr. Barringer relied. Plaintiff's reliance on cases that never addressed Section 62-2-701 are unavailing, and even if these cases did apply, they are distinguishable from the facts of the case at bar.

Finally, Plaintiff submitted her own affidavit, along with one from her husband, regarding discussions at family meetings with Mr. Barringer about his estate plan and his family company. However, the affidavits do not suggest that a promise was made during these meetings or that any other binding agreements were reached between Mr. and Mrs. Barringer. Accordingly, even if these affidavits were admissible and accurate, they do not help Plaintiff.

VI. Plaintiff's Email to the Court Following the Hearing

Following the hearing on Mrs. Barringer's motions for summary judgment, Plaintiff's counsel emailed the Court attaching four (4) documents, which were represented to be a) documents showing that Mr. Barringer agreed in 1998 "not to exercise his power of appointment," and b) examples of writings from Mr. Barringer stating he "intended to treat his children equally

in his estate plan." The Court has carefully reviewed these documents and finds that they do not support Plaintiff's claims.

The first two documents are Mr. and Mrs. Barringer's December 4, 1998 wills. The language highlighted by Plaintiff's counsel was addressed during the hearing and is further addressed in footnote 5 of this order. Again, the language on which Plaintiff relies simply states that the Barringers are not exercising any powers of appointment by virtue of the residuary clauses in their December 4, 1998 wills. The language does not suggest that Mr. and Mrs. Barringer are entering into a legally binding and irrevocable agreement never to exercise the power of appointment they granted to each other in their December 4, 1998 estate plans. Indeed, if a child could rely on this language to prove that their parents entered into an irrevocable agreement never to exercise their powers of appointment, or otherwise change their wills in the future, every person who has this clause in their will would be subject to challenges like the one brought by Plaintiff. Moreover, Section 62-2-701 requires that provisions of a will state "material provisions of the contract," include an express reference in a will "to a contract," or evidence "the contract." This residuary clause language does not even arguably suggest a legally binding and irrevocable contract preventing the Barringer's from taking certain acts in the future, and therefore, does not satisfy any of the subsections of Section 62-2-701.

Plaintiff also submitted a December 6, 2011 letter from attorney John Jolley, which attaches some estate planning diagrams sent to Mr. and Mrs. Barringer in December of 2011. Plaintiff contends these show Mr. Barringer "intended to treat his children equally in his estate plan." As discussed above, these documents merely suggest that, during a certain time period in the past, Mr. and Mrs. Barringer intended or planned to treat their children equally with respect to their estate plans. But this document does not evidence an irrevocable agreement between the

Barringers to treat the children equally in the future. Again, if plaintiffs can rely on estate planning diagrams sent to their parents illustrating an intent to treat children equally in the future, every person who receives diagrams similar to these would be subject to challenges like the one brought by Plaintiff.

The final document Plaintiff submitted to the Court was an October 16, 2006 consent amendment to the Paul B. Barringer, II Family Trust, dated December 22, 1998. This is a separate trust from the December 4, 1998 trust which grants Mrs. Barringer a power of appointment. This trust, which was irrevocable when created, and the October 16, 2006 consent amendment to that trust, is unrelated to the power of appointment granted to Mrs. Barringer in the separate, revocable trust dated December 4, 1998. This document does not have any language that suggests Mr. and Mrs. Barringer entered into a contractual agreement where Mrs. Barringer agreed she would never exercise her power of appointment and does not constitute proof of a contract under Section 62-2-701.

In sum, Plaintiff has not identified any evidence to support her claim that Mrs. Barringer made an expressed or implied promise never to change her will and never to exercise the power of appointment granted to her by Mr. Barringer.

VII. Mrs. Barringer's motions are not barred by a prior order.

Plaintiff argues that, pursuant to Rule 43(l) and 59(e), the Court should deny Mrs. Barringer's motions for summary judgment because, earlier in this litigation, Judge Mullen denied a motion for summary judgment on Plaintiff's second and third causes of action. The Court disagrees.

Judge Mullen's prior order denying summary judgment as to these causes of action does not preclude consideration of the current motions. See Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d

471, 473 (Ct. App. 1989) ("[A] judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment."); Smith v. Breedlove, 377 S.C. 415, 662 S.E.2d 67 (2008) ("The fact that a different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion once new evidence is gathered."). After the prior order, the parties took multiple depositions that are relevant to the motions for summary judgment, and both parties submitted deposition testimony from these depositions. For example, both parties submitted deposition testimony from attorney Neill McBryde, who represented Mr. and Mrs. Barringer in the preparation and execution of their 1998 Wills and Trusts, and attorney John Jolley, who represented Mr. and Mrs. Barringer in the preparation and execution of subsequent wills and trust amendments. Mrs. Barringer also submitted deposition testimony from Plaintiff's husband, Kevin Luzak's, whom Plaintiff identified as a witness who has evidence of the alleged promise made by Mrs. Barringer to Mr. Barringer. None of these witnesses had been deposed at the time Judge Mullen entered the order denying the prior motion.

VIII. Conclusion

Plaintiff has not created a genuine issue of material fact as to whether she is entitled to recover under her second or third causes of action. Thus, the Court hereby **GRANTS** Mrs. Barringer's motions for summary judgment on Plaintiff's second and third causes of action. The trial previously scheduled for August 30, 2021 on these two causes of action will not go forward.

AND IT IS SO ORDERED.

_____
The Honorable Robert Bonds
Circuit Court Judge

Date:_____

Beaufort Common Pleas

Case Caption: Hampton Barringer Luzak VS Merrill U Barringer

Case Number: 2019CP0701253

Type: Order/Summary Judgment

So Ordered

s/ Robert Bonds, 2770