

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

Nov 18 2021

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Bentley Price, Circuit Court Judge

Appellate Case No.  
2021-000837

*In Re:* IN THE MATTER OF: Estate of Paul Brandon Barringer II

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 ..... Respondents

--and--

Coastal Forest Resources Company (“CFRC”) .....Intervenor/Respondent

--and--

Hampton B. Luzak .....Appellant

vs.

Merrill U. Barringer .....Respondent

**MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, Respondents Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II and individually, Merrill B. Light, individually and 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 (collectively,

“Respondents”), move to dismiss the portion of Appellant’s appeal which attempts to challenge, a second time, the circuit court’s interlocutory ruling related to bifurcation.

On August 5, 2021, Appellant Hampton B. Luzak (“Luzak”) served a Notice of Appeal in which she — for the second time — seeks immediate review of an interlocutory bifurcation order (“Second Appeal”). Luzak initiated her original appeal of this exact same bifurcation order in a Notice of Appeal dated February 12, 2021 (“First Appeal”). In her First Appeal, Luzak sought immediate review of an Order Granting Defendants’ Motion to Bifurcate entered on December 30, 2020 and the order denying Luzak’s January 13, 2021 motion to reconsider (jointly, the “Bifurcation Order”). Luzak claimed the Bifurcation Order was immediately appealable under S.C. Code Ann. § 14-3-330(2) because it “may” deprive her of a mode of trial to which she is entitled.<sup>1</sup> After requesting and receiving briefing on whether the Bifurcation Order was immediately appealable, the Court of Appeals dismissed the appeal on May 4, 2021. The Court of Appeals denied Luzak’s Petition for Rehearing as to the dismissal order on August 19, 2021. On September 20, 2021, Luzak filed a Petition for Writ of Certiorari, which has been fully briefed and remains pending before the Supreme Court.

Luzak’s Second Appeal again seeks reversal of the Bifurcation Order, as well as reversal of an order dated June 7, 2021, entitled “Order on Motions” which in part sets the bifurcated claims for trial on “August 30, 2021.” (“Order Setting Bifurcated Trial Date” and jointly with the

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<sup>1</sup> S.C. Code Ann. § 14-3-330(2) provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(2) an order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

Bifurcation Order, “Bifurcation Orders”). Luzak’s motion to reconsider the Order Setting Bifurcated Trial Date was subsequently denied on July 13, 2021.

In addition to the Bifurcation Orders, the Second Appeal also seeks review of two orders: (1) a June 7, 2021 order granting a motion to intervene by Coastal Forest Resources Company (CFRC) and dismissing Luzak’s claims for derivative damages, as well as Luzak’s civil conspiracy claim (“Derivative Damages Order”); and (2) a July 6, 2021 order granting summary judgment to the defendants as to Appellant’s claims relating to a will and trust amendment that Paul B. Barringer executed on February 28, 2012 (“Summary Judgment Order”).

### **FACTUAL & PROCEDURAL BACKGROUND**

This is a dispute between family members over an estate. Paul Brandon Barringer, II died more than five years ago, on May 30, 2016. In August 2016, Hampton Luzak, one of Paul Barringer’s daughters, filed the first of four<sup>2</sup> civil lawsuits in Beaufort. The two 2016 actions name as defendants Luzak’s mother, who was Paul Barringer’s wife, Merrill Barringer, as personal representative of his estate, and Luzak’s sister, Merrill Light,<sup>3</sup> individually and as trustee of Paul Barringer’s Revocable Trust. These cases have civil action numbers 2016-CP-07-1919 and 2016-CP-07-1961 and are referred to here as “Barringer I.” The two 2019 actions, which name Luzak’s mother, Mrs. Merrill Barringer, individually as the sole defendant, have civil action numbers 2019-CP-07-01253 and 2019-CP-07-01294 and are referred to here as “Barringer II.”

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<sup>2</sup>Luzak technically filed “four” lawsuits. Practically, however, there are only two actions. In 2016 and again in 2019, Luzak filed one complaint in probate court and removed it to circuit court (the Removed Actions) and at around the same time filed another lawsuit asserting the same claims directly in the Court of Common Pleas (the Common Pleas Actions). As her Motion for Consolidation makes clear, Luzak filed the same claims from the Removed Actions again in the Common Pleas Actions solely because it “protects and insures this Court’s subject matter jurisdiction over the cause of action.”

<sup>3</sup> Luzak initially named Merrill Light’s husband, J. Randolph Light, Jr., as a defendant as well, but he passed away during the litigation and his estate was never substituted as a party defendant.

## **A. Barringer I**

In Barringer I, Luzak alleges 19 causes of action against her sister Merrill Light.<sup>4</sup> Luzak claims in Barringer I that, beginning in 2012, Paul Barringer lacked the mental capacity to execute various wills, trust amendments and transfers, and that his family members and others took advantage of his impaired mental capacity and unduly influenced him for their own personal financial gain. Luzak challenges Mr. Barringer's 2012, 2014, and 2015 estate planning documents, as well as a 2012 transfer of stock to Merrill Light, and seeks to set all of these transactions aside on incapacity, undue influence, and mistake grounds (the "Incapacity/Undue Influence Claims"). Luzak also asserts tort claims against Merrill Light, including intentional interference with inheritance, civil conspiracy, breach of fiduciary duty, fraud, and conversion, as well as equitable claims for unjust enrichment, including requests for equitable remedies (the "Tort-Based Claims"). These claims also seek to invalidate Mr. Barringer's 2012-2016 estate planning documents, as well as the 2012 transfer of stock to Merrill Light, and to recover over \$100,000,000 in actual damages.

## **B. Barringer II**

In Barringer II, Luzak sued only her mother, Merrill Barringer. Barringer II's first cause of action ("Intentional Interference with Inheritance") and fourth cause of action ("Civil Conspiracy") add Mrs. Barringer as an individual defendant and co-conspirator to the Barringer I Tort-Based Claims. These claims involve the same factual allegations and legal claims as Barringer I.

The other two causes of action in Barringer II, Luzak's third cause of action ("Enforcement of Contract Not To Revoke and Injunction") and second cause of action ("Constructive Trust and Injunction") (collectively the "Contract-Based Claims"), are different and factually distinct from all other causes of action in the consolidated cases. Luzak's Contract-Based Claims are not based

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<sup>4</sup> Luzak's mother, Merrill Barringer, is named in Barringer I only in her capacity as Personal Representative of the Estate, and no direct relief is sought against Merrill Barringer in Barringer I.

on any alleged incapacity of, or any alleged undue influence exerted on, Paul Barringer. Rather, Luzak's Contract-Based Claims are based on the theory that—in 1998, long before Mr. Barringer allegedly became mentally incompetent and subject to undue influence—he entered into a contract with Mrs. Barringer in which Mrs. Barringer promised never to change her will and revocable trust.<sup>5</sup> The relief Luzak requests in the Contract-Based Claims is an injunction prohibiting Mrs. Barringer from executing a new will and to have certain assets held in trust in accordance with the terms of the alleged contract.

After filing Barringer II in May of 2019, Luzak moved to consolidate Barringer I and Barringer II. To save time and resources, and without any determination being made by the Court, all parties consented to consolidation at that time, and on December 3, 2019, the Court entered a Consent Order on Plaintiff's Motion for Consolidation of Actions.

### **C. The Bifurcation Order**

On October 23, 2020, Respondents filed a Joint Motion to Bifurcate Trial, pursuant to Rule 42, SCRPC, in which they requested that the Court first conduct a narrow trial on Luzak's factually and legally distinct Contract-Based Claims, and subsequently try the remaining causes of action in the consolidated actions. Respondents argued that Luzak's Contract-Based Claims present a discrete, threshold issue as to whether Merrill Barringer made an enforceable contract with her husband not to change her Will and Revocable Trust. Respondents argued that the evidence and legal issues to be decided in this initial trial would be distinct from the remaining claims related to the transactions between 2012 and Mr. Barringer's death in 2016. Respondents further argued that the proof required to determine the Contract-Based Claims would be relatively simple when compared to the evidence that would be required to try all claims, and that the evidence in the two

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<sup>5</sup> Luzak alleges that the contract was made by "at least by December 4, 1998." (See Plaintiff's Responses to Mrs. Barringer's First Set of Interrogatories, attached to Respondent's Return to Emergency Petition for Declaration of Automatic Stay as Exhibit D at p. 18.)

trials would not overlap. Respondents also argued that trying the Contract-Based Claims first promoted efficiency and judicial economy and avoided prejudice.

The circuit court agreed with Respondents and entered the Bifurcation Order on December 29, 2020. The Bifurcation Order states, “[i]n accordance with SCRCP Rule 42(b), this Court has determined that a separate trial of the Second and Third Causes of Action set forth in [Barringer II], shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action alleged in [Barringer I and Barringer II].” (*See* Bifurcation Order, attached to Respondents’ Return to Emergency Petition for Declaration of Automatic Stay as Exhibit F). The circuit court subsequently indicated that the first phase of the bifurcated trial, as well as the second phase, would be a jury trial. After the circuit court denied Luzak’s motion for reconsideration of the order, the First Appeal followed.

#### **D. The Derivative Damages Order**

On May 14, 2021, CFRC moved to intervene solely to seek dismissal of claims and damages that belong exclusively to CFRC. On June 7, 2021, the circuit court granted the motion to intervene and dismissed Luzak’s claim for civil conspiracy because it was a derivative claim that Luzak did not have standing to pursue. The Court further found the civil conspiracy claim arose from the internal affairs of a foreign corporation, and hence the Court lacked subject matter jurisdiction to adjudicate it. Further, the court struck several categories of damages deemed to be derivative in nature, finding these damages could be pursued, if at all, only on behalf of CFRC, that Luzak lacked standing to seek those damages, and that the Court lacked subject matter jurisdiction as to those derivative claims. The Court also found that a claim specifically for damages arising from the sale of CFRC stock to J. Travis Bryant was barred by *res judicata* because the United States District Court for the Eastern District of Virginia granted summary judgment on that exact claim. The circuit court denied reconsideration of the Derivative Damages

Order on July 13, 2021. Luzak seeks reversal of the Derivative Damages Order in her Second Appeal.

**E. The Summary Judgment Order as to February 28, 2012 Documents**

Respondent Merrill Light also moved for summary judgment as to all claims arising from her father Paul B. Barringer's execution of a new will and an amended trust on February 28, 2012. In a separate order dated July 6, 2021, the circuit court granted Merrill Light's Motion for Summary Judgment as to the validity of Paul Barringer's February 28, 2012, testamentary documents (the "Summary Judgment Order"). The circuit court granted the motion on July 6, 2021, finding 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. The court denied reconsideration of the Summary Judgment Order on August 4, 2021. Luzak seeks reversal of the Summary Judgment Order in her Second Appeal.

**ARGUMENT**

**I. The Bifurcation Order is not immediately appealable.**

This Court has already dismissed an attempted appeal of the Bifurcation Order because it is not immediately appealable. The Court also denied rehearing on that issue, and its determination that bifurcation is not immediately appealable remains the law of the case unless and until the Supreme Court grants certiorari. But Luzak's attempt to shoe-horn a new appeal of the Bifurcation Orders into her Second Appeal (along with two other issues being challenged) should also be denied because the issues properly on appeal are not sufficiently connected to the Bifurcation Order, and moreover, consideration of the Bifurcation Order would likely require the Court to examine more than just the two discrete issues that are properly included in the Second Appeal.

In her Motion to Exceed Page Limits, Luzak recognizes that her attempted appeal of the Bifurcation Order has already been dismissed, but she also states “[t]he orders from that appeal . . . are included in this appeal since [the appeal of the First Bifurcation Order] was not permitted to proceed.” Motion to Exceed p. 2. Presumably, Luzak will seek to have this Court review the Bifurcation Order along with the Summary Judgment Order and Derivative Damages Order, which are immediately appealable, even after this Court has dismissed a first attempted appeal of the Bifurcation Order. The Court may, in its discretion, allow review of an interlocutory order along with an appealable order in a single appeal if the Court finds a “sufficient nexus or companionship to justify [the] Court’s exercise of immediate appellate review.” Brown v. Cty. of Berkeley, 366 S.C. 354, 362, 622 S.E.2d 533, 538 n.5 (2005). However, “[t]he supreme court has noted ‘if the question involved will be inherent in the final judgment and can be presented in an appeal from that judgment, it will be treated as an interlocutory order, review of which *can only* be had upon the general appeal.’” Watson v. Underwood, 407 S.C. 443, 459, 756 S.E.2d 155, 164 (Ct. App. 2014) (citation omitted) (emphasis added). Here, in dismissing the First Appeal, the Court of Appeals specifically noted, “[a]ny abuse of discretion on the part of the trial court in severing issues for trial may be appealed after the trial, and after full development of the evidence.” 5/4/2021 Order of Dismissal (quoting Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 73, 533 S.E.2d 331, 333-34 (2000)). Because this Court has already determined that the propriety of the exact Bifurcation Order can be best reviewed, if at all, after trial, then Respondents respectfully submit that the Court should again conclude the Bifurcation Order does not fit within the narrow category of unappealable orders that may be considered along with an appealable ruling.

Further, the Bifurcation Orders and the two other orders at issue in this appeal lack a sufficient nexus to justify review of the Bifurcation Orders in this appeal. The Derivative Damages Order dismisses only the civil conspiracy claim and strikes certain categories of Luzak’s damages



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November 18, 2021

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--and--

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vs.

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**CERTIFICATE OF SERVICE**

The undersigned, J. Ashley Twombly, of TWENGE + TWOMBLY LAW FIRM, Attorneys for Respondents, hereby avers that on the 18<sup>th</sup> day of November 2021, a true and accurate copy of the attached **RESPONDENTS' MOTION TO DISMISS APPEAL** was served via electronic mail to the following:

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November 18, 2021

**Via Electronic Mail**

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

Dear Ms. Kitchings:

Please find attached for filing Respondents' Motion to Dismiss Appeal in the referenced matter, Pursuant to paragraph (c) of the Supreme Court's Administrative Order dated August 25, 2021, ("Methods of Electronic filing and Service Under Rule 262 of the South Carolina Appellate Court Rules") a check in the amount of \$50.00 for the filing fee is being forwarded via U.S. Mail.

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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