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**Dec 06 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the 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

**REPLY IN SUPPORT OF RESPONDENTS’ MOTION TO DISMISS**

Merrill U. Barringer and Merrill B. Light (“Respondents”) submit this reply to Luzak’s return to their motion to dismiss.

This Court has already ruled that the Bifurcation Order, standing alone, is not immediately appealable and dismissed Luzak's prior appeal of that order. (5/4/2021 Order, Case No. 2021-000159.) The sole issue presented by this motion is therefore whether Luzak can bootstrap an appeal of the Bifurcation Order to the instant appeal of the CFRC Order and the Summary Judgment Order. Luzak appears to argue that an interlocutory order, which otherwise would not be immediately appealable standing alone, is always reviewable on appeal with a subsequent order that is properly on appeal. In other words, Luzak apparently contends that she is entitled to bootstrap her appeal of the Bifurcation Order to the instant appeal as a matter of right. But that is not the law.

Although the appellate courts have discretion to review an order that is not immediately appealable in conjunction with a closely related order that is properly on appeal, the Supreme Court has held that the appellate courts should exercise that discretion only where the former order is sufficiently related to the latter. *Brown v. County of Berkeley*, 366 S.C. 354, 362, 622 S.E.2d 533, 538 n.5 (2005) (refusing to accept appeal of interlocutory order denying motion to dismiss on the ground that it lacked sufficient nexus to or companionship with immediately appealable order denying plaintiff's request for preliminary injunction); *Smith v. Tiffany*, 419 S.C. 548, 552, 799 S.E.2d 479, 481 n.1 (2017) (declining to review interlocutory discovery order on appeal of properly appealable order because former order lacked sufficient nexus to issue properly on appeal).

The cases cited by Luzak do not hold otherwise. In *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001), for example, this Court reviewed the trial court's denial of the defendants' motion to dismiss under Rule 12(b)(8), SCRCF, which ordinarily would not be immediately appealable, along with an order denying defendants' motion to compel arbitration, which was immediately appealable. The basis for the Rule 12(b)(8) motion was that

another action allegedly was pending between the same parties in Alabama. The issue in the Rule 12(b)(8) order—the proper forum for the dispute—was therefore the same as for the order denying defendants’ motion to compel arbitration. The Court reviewed the otherwise unappealable order denying the defendant’s motion to dismiss only because it was closely related to the arbitration order, which was properly on interlocutory appeal, and review of both orders would most efficiently resolve the issue of the proper forum. The opinion does not stand for the proposition that a litigant is entitled to bootstrap review of *any* interlocutory order to a subsequent appeal of an order that is immediately appealable.

Here, the Bifurcation Order is not reviewable with the appeal of the CFRC Order and the Summary Judgment Order because the Bifurcation Order is not closely related to those orders. The Bifurcation Order merely severed the discrete Contract-Based Claims for a separate trial, while the latter orders dismissed unrelated claims that would not even come into play until the second trial. Luzak’s Contract-Based Claims present a discrete, threshold issue of whether Merrill Barringer made an enforceable contract/promise, in or around 1998, never to change her Will and Revocable Trust. The evidence and legal issues related to these claims are distinct from those related to Luzak’s remaining claims, which relate to Mr. Barringer’s alleged lack of mental capacity due to Alzheimer’s disease between 2012 and Mr. Barringer’s death in 2016. Although Luzak makes the conclusory statement that the issues related to the Contract-Based Claims “almost completely overlap” with the claims at issue in the CFRC Order and the Summary Judgment Order, she never even attempts to demonstrate how this is so.<sup>1</sup> Because Luzak fails to demonstrate a

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<sup>1</sup> In fact, this Court implicitly found that Luzak failed to demonstrate the claims overlap by denying Luzak’s emergency petition for a declaration of an automatic stay. (8/19/2021 Order.) Luzak asked this Court to declare that this appeal triggered an automatic stay, which should prevent the trial court from proceeding with a bifurcated trial on the Contract-Based Claims. Respondents argued that no stay prevented the trial from going forward because the Court had already determined the Bifurcation Order was not immediately appealable and a trial of the Contract-Based Claim was not “affected by the appeal” of the CFRC Order and Summary Judgment Order for purposes of Rule 205, SCACR. The Court denied Luzak’s petition presumably because it agreed with Respondents that the Contract-Based Claims were sufficiently distinct

sufficient nexus between the Bifurcation Order and the orders properly on appeal, the Court should not review the Bifurcation Order at this time.<sup>2</sup> *Brown*, 366 S.C. 354, 362, 622 S.E.2d 533, 538 n.5; *Smith*, 419 S.C. 548, 552, 799 S.E.2d 479, 481 n.1.

Moreover, review of the Bifurcation Order as part of the instant appeal would not avoid unnecessary litigation or more efficiently resolve this dispute. Because the trial court granted Merrill Barringer summary judgment on the Contract-Based Claims, and denied Luzak's motion to alter or amend, no bifurcated trial on the Contract-Based Claims is scheduled. Indeed, the trial court's subsequent rulings rendered Luzak's appeal of the Bifurcation Order moot. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.") Accordingly, this Court should not address the issue. *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.").

Finally, Luzak's argument that the Bifurcation Order affects the mode and sequencing of trial has no bearing upon the issue currently before the Court, and the Court already rejected that argument in dismissing the prior appeal.

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from the matters decided in the CFRC Order and Summary Judgment Order that appeal of those orders should not prevent the trial on the Contract-Based Claims from going forward.

<sup>2</sup> Luzak also argues that Respondents' prior consent to consolidation of the various lawsuits filed by Luzak somehow constitutes an admission that the facts related to every cause of action in every suit overlap. Respondents merely consented to consolidation of the actions for convenience and efficient discovery. Respondents' consent does not mean they agree that all 22 causes of action share common factual issues necessary for their resolution or that there can be no severance of issues for trial. See 12/3/2019 Consent Order on Plaintiff's Motion for Consolidation of Actions pg. 1 attached as Exhibit A.

## CONCLUSION

For the reasons stated above, and in Respondent's motion to dismiss, the Court should dismiss the appeal to the extent it requests review of the Bifurcation Order.

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December 6, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2016-CP-07-1919
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	<b>CONSENT ORDER ON PLAINTIFF'S</b>
	)	<b>MOTION FOR CONSOLIDATION OF</b>
v.	)	<b>ACTIONS</b>
	)	
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	)	

This matter is before the Court on Plaintiff's Motion for Consolidation of Actions Under Rule 42(a) filed on September 13, 2019. Plaintiff seeks to consolidate the captioned case with 2019-CP-07-01253 and 2019-CP-07-01294. With the consent and agreement of the parties, the Court enters the following order related to Plaintiff's motion:

1. The captioned case and cases 2019-CP-07-01253 and 2019-CP-07-01294 will be heard together for convenience purposes for discovery and trial. However, cases 2019-CP-07-01253 and 2019-CP-07-01294 shall retain their own separate identities and are not merged together with the captioned case;

2. Consolidation shall not delay the deadlines set forth in the Court's Third Amended Scheduling Order in the captioned case, and the parties in 2019-CP-07-01253 and 2019-CP-07-01294 shall be bound by the deadlines set forth in that Order; unless amended by the consent of the parties or by order of the court.
3. The parties in 2019-CP-07-01253 and 2019-CP-07-01294 preserve all arguments related to any and all claims, defenses (including but not limited to any positions regarding the inapplicability of the relation back doctrine), motion or other right each may have under law or equity related to 2019-CP-07-01253 and 2019-CP-07-01294, and no parties' position shall be enhanced or diminished in any way by the entering of this order; and
4. The parties may conduct additional discovery on the new matters and issues raised in 2019-CP-07-01253 and 2019-CP-07-01294, but only as to those new matters and issues. This provision shall have no effect on the preservation of the parties' rights to conduct deposition discovery of witnesses already deposed in the captioned case to the extent that such discovery might be allowed under Judge Mullen's prior orders or future orders or by the consent of the parties. Other discovery in the captioned case will continue in accordance with the Third Amended Scheduling Order in that captioned case.

The Court hereby adopts the agreement of the parties as an Order of the Court.

IT IS SO ORDERED!

We so consent:

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Date: November 12, 2019

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Date: November 12, 2019

**Attorneys for Defendant Merrill U. Barringer,  
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Paul Brandon Barringer, II**



Beaufort Common Pleas

**Case Caption:** Hampton B Luzak VS Merrill B Light , defendant, et al

**Case Number:** 2016CP0701919

**Type:** Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

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vs.

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--and--

Coastal Forest Resources Company ("CFRC") .....Intervenor/Respondent

--and--

Hampton B. Luzak .....Appellant

vs.

Merrill U. Barringer .....Respondent

**CERTIFICATE OF SERVICE**

The undersigned, J. Ashley Twombly, of TWENGE + TWOMBLEY LAW FIRM, Attorneys for Respondent, Merrill U. Barringer, hereby avers that on the 6<sup>th</sup> day of December 2021, a true and accurate copy of the attached **REPLY IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS** was served via electronic mail to the following:

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December 6, 2021

**Via Electronic Mail**

The Honorable Jenny Abbott Kitchings  
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**SC Court of Appeals**

**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 a Reply in Support of Respondents' Motion to Dismiss 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 Twombly

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