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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
ROBERT BONDS, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001337

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

**RECORD ON APPEAL
VOLUME XII OF XVII**

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Certificate of Counsel

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	)	
	)	
HAMPTON BARRINGER LUZAK,	)	DEFENDANT’S REPLY IN SUPPORT OF HER MOTIONS FOR SUMMARY JUDGMENT ON PLAINTIFF’S SECOND AND THIRD CAUSES OF ACTION
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

Defendant Merrill Barringer (“Mrs. Barringer”) submits this Reply in support of her motions for summary judgment on Plaintiff’s second and third causes of action, and in reply to the memorandum in opposition filed by Plaintiff on August 6, 2021.¹

I. Introduction²

It is undisputed that, in his 1998 revocable trust, Mr. Barringer granted his wife of nearly 60 years, Mrs. Barringer, a power of appointment over any assets remaining from his estate upon Mrs. Barringer’s death. It is undisputed that the power of appointment expressly authorizes Mrs.

¹ Plaintiff asserts that there is no new evidence since the Defendant previously moved for summary judgment. That is false. The author of the 1998 estate planning document, Neil McBryde, Esq., has been deposed since that time, and Defendant relies upon his testimony in support of her motions for summary judgment. Moreover, John Jolley, Esq., and Plaintiff’s husband Kevin Luzak, have also been deposed, and their testimony likewise supports Mrs. Barringer’s motions and was not before the Court when Defendant previously moved for summary judgment.

² For purposes of this motion, Defendant assumes—without in any way conceding—that all the wills, trusts, and gifts Mr. Barringer made in between 2012 and 2016 are unwound, as Plaintiff contends they should be, and that his December 4, 1998 estate plans control.

Barringer complete discretion when deciding which child will receive assets from Mr. Barringer's estate, and which children will not receive any. It is also undisputed that powers of appointment such as the one granted by Mr. Barringer to his wife are commonly used in estate planning, and that Mr. Barringer was advised by legal counsel before executing each version of his estate planning documents that contain the power of appointment. Why, then, does Plaintiff ask this Court to forbid Mrs. Barringer from exercising the power of appointment that her husband granted to her in his 1998 estate planning documents? On what grounds does Plaintiff ask that this Court intervene in, and upset, the written estate plans of the Barringers, and strip away a valuable right granted to Mrs. Barringer by her husband of nearly 60 years?

In her Complaint, Plaintiff alleged, "upon information and belief," that Mr. and Mrs. Barringer entered into "a binding contract" that barred Mrs. Barringer from ever revoking her 1998 estate plan, i.e., from ever exercising the power of appointment that Mr. Barringer expressly granted to her. See Compl. ¶¶ 137-43. Plaintiff also alleged, again "upon information and belief," that proof of this contract could be found in Mrs. Barringer's estate planning documents, which had not yet been produced at the time that the Complaint was filed, id. ¶ 142, and that Mr. Barringer "relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her." Id. ¶ 138. But Mrs. Barringer subsequently produced her estate planning documents, and (unsurprisingly) they contain **absolutely no evidence** of a contract or a promise not to exercise the power of appointment that her husband expressly granted to her, nor do they contain any evidence of a contract or a promise not to revoke her 1998 will and trust.

In her memorandum filed on August 6, 2021, Plaintiff continues to argue that Mrs. Barringer contracted with Mr. Barringer, or promised Mr. Barringer, not to exercise her power of appointment, see Memo at 7, and that Mr. Barringer "relied on that contract." Memo at 11.

Plaintiff, however, does not identify any evidence of a contract or a promise relating to the power of appointment, much less a writing signed by Mr. Barringer as is required under South Carolina Code Section 62-2-701. Instead, Plaintiff makes the frivolous arguments that Mrs. Barringer somehow promised never to exercise her power of appointment (1) by declining to exercise it in prior versions of her estate planning documents that were executed at the same time that Mr. Barringer executed his estate planning documents, and (2) by never discussing the power of appointment at family meetings that were held when Mr. and Mrs. Barringer remained on good terms with both their daughters. Neither of these arguments is supported by the law or common sense, and neither argument comes close to creating a genuine issue of material fact for trial.

Notably, in her memorandum filed on August 6, 2021, Plaintiff makes a new argument, not alleged in her Complaint, and also not supported by any evidence, that “Paul Barringer never intended to give Defendant a power of appointment.” Memo at 6. This new argument raises an obvious question: how is it possible for Mr. Barringer to both grant Mrs. Barringer a power of appointment in reliance on Mrs. Barringer’s contract or promise never to exercise such power and never intend to grant Mrs. Barringer a power of appointment in the first place? Plaintiff will say anything to try to win her litigation campaign, regardless of whether she has facts to support it, and now apparently even when her arguments are logically inconsistent.

Of course, Plaintiff’s two scenarios are mutually exclusive. Indeed, if the record contained any evidence of a contract or a promise between Mr. and Mrs. Barringer relating to the power of appointment, it would necessarily follow that Mr. Barringer was aware that he had granted Mrs. Barringer a power of appointment, and Plaintiff would not resort to making this new argument. But there is no evidence of such a contract or promise, much less a writing signed by Mr. Barringer

as is required by South Carolina Code Section 62-2-701, and Plaintiff therefore makes this new Hail Mary argument that is wholly inconsistent with the theory that she alleged in her Complaint.

Mrs. Barringer is entitled to summary judgment on Plaintiff's second and third causes of action. Mr. Barringer granted Mrs. Barringer a power of appointment in estate planning documents that Plaintiff concedes were free from undue influence, incapacity, or mistake (the 1998 version). Plaintiff has identified no evidence whatsoever of a contract or a promise that would prevent Mrs. Barringer from exercising such power. And eliminating all doubt as to whether Mrs. Barringer is entitled to summary judgment is Section 62-2-701, which the South Carolina legislature passed to preclude claims precisely such as Plaintiff's second and third causes of action.

Finally, even if Section 62-2-701 does not preclude Plaintiff's second and third causes of action, Plaintiff has no evidence to support her claim, and certainly no evidence to meet the burden of proof applicable if Section 62-2-701 does not apply. Regardless, Defendant is entitled to summary judgment.

II. The law is well-settled that mutual or "symbiotic" wills do not create a contract not to revoke absent language clearly stating such an intention.

At bottom, Plaintiff's argument is that Mrs. Barringer should be legally barred from exercising her power of appointment because she and Mr. Barringer supposedly executed mutual or "symbiotic" wills during Mr. Barringer's lifetime in which they each chose (at the time the will was signed) not to exercise their respective powers of appointment. In arguing that Plaintiff can prove a contract not to revoke under each of the three subsections of Section 62-2-701, Plaintiff relies only on the mutual or "symbiotic" wills of Mr. and Mrs. Barringer and the provision in which Mrs. Barringer declines to exercise her power of appointment. See generally Memo at 10-12.

Section 62-2-701 forecloses Plaintiff's argument. See S.C. Code § 62-2-701 ("The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."). As explained in the Reporter's Comment to this statute,

[I]n a case in which the joint will failed to actually express an agreement of nonrevocability, Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract.

Id., Reporter's Comment (internal citation omitted). The language that Plaintiff relies on in support of her argument that Mrs. Barringer irrevocably promised never to exercise her power of appointment 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 Merrill U. Barringer Revocable Trust"

Mrs. Barringer Will dated December 4, 1998, attached hereto as Exhibit A (emphasis added). This language merely reflects Mrs. Barringer's choice not to exercise her power of appointment **in that will, in 1998**; it does not say or otherwise imply that Mrs. Barringer has entered into a contract or agreement never to exercise the power of appointment at any point in time in the future. This language certainly does not say that Mrs. Barringer has renounced her right to revoke her estate plans. Because the Barringers' wills do not "actually express an agreement of nonrevocability," and "the promise not to revoke . . . is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract," Plaintiff's claims fail as a matter of law, and Mrs. Barringer is entitled to summary judgment.

Moreover, even before the South Carolina legislature passed Section 62-2-701 and required a signed writing for claims such as those asserted by Plaintiff, the South Carolina Supreme Court

squarely rejected the argument that mutual wills create a contract or otherwise limit the right of the testators to amend their estate plans later.³ As the South Carolina Supreme Court held in Looper v. Whitaker:

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.

231 S.C. 219, 229, 98 S.E.2d 266, 271–72 (1957) (emphasis added) (internal citation omitted).

The Looper Court 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.”). The Supreme Court’s holding in Looper, like Section 62-2-701, is fatal to Plaintiff’s claims.

Likewise, in Dicks v. Cassels, 100 S.C. 341, 84 S.E. 878 (1915), the Plaintiff sought to enforce an alleged contract based on mutual wills, just as Plaintiff attempts to do here. The South

³ The Reporter’s Comment to Section 62-2-701 notes that, prior to the statute, “South Carolina case law was said to require that contracts concerning succession be proved by ‘clear, cogent, and convincing evidence.’” S.C. Code § 62-2-701, Reporter’s Comment. The Comment then explains: “While Section 2-701 fails to codify the stated higher standard of proof per se, the provision’s requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect.” Id.

Carolina Supreme Court explained why courts should carefully scrutinize these types of claims and should require “definite, certain, clear, and convincing” evidence of such a contract:

To establish an agreement such as is claimed by the plaintiff here, the proof must be definite, certain, clear, and convincing. A person has a right ordinarily to leave his property to whom he pleases. He has a right any time to make a will disposing of his property, and later on he can revoke this will in toto or change or modify the same by new will or codicil. It is a fixed principle of law that a will is revocable whenever the maker desires to change. . . . The maker of the will is dead, and the degree of proof establishing a contract whereby a will is made that cannot be revoked by the maker ought to be clear and convincing, certain and definite, and scrutinized and received with the greatest of care; for it practically deprives the owner of property of any interest in the property except to enjoy it for life. **It is a most serious thing for the court to decide that a person cannot dispose of what is his by deed or devise, and because at one time he intended a certain person to be the beneficiary under his will and after his death to have his property, that later he cannot change his mind and substitute another or others.** As persons advance in life they change their views as to a number of things, and it frequently happens that a wealth of affection and favors have been wasted on persons, and the recipient he favors proves weak, unresponsive, unworthy, or ungrateful.

Id., 84 S.E. at 879 (emphasis added). In Looper, the South Carolina Supreme Court likewise held:

But such a contract, especially when it is attempted to be established by parol, is regarded with suspicion, and not sustained, except upon the strongest evidence that it was founded upon a valuable consideration and deliberat[e]ly entered into by the decedent. The evidence to sustain it should be received and scrutinized with the greatest care. The terms of such an agreement should be definite and certain and established by evidence clear and convincing.

Looper, 231 S.C. at 227, 98 S.E.2d at 270 (internal citation omitted); see also Lamberg, 455 F.2d at 1218 (explaining that the reason for applying a higher standard of proof for claims to enforce an alleged contract not to revoke a will “lies in the serious and far-reaching consequences of such an agreement, which may have the effect of preventing the surviving spouse from altering his or her estate plan to suit intervening changes in circumstances”).

As explained by the Supreme Court of Nevada in a case seeking to enforce an alleged contract based on mutual wills:

Implicit in every testamentary expression is a reservation of right to change as circumstances involving status or responsibility may alter or as affection may from time to time direct. That the common testamentary wish of two people is jointly expressed does not in reason or common sense destroy its ambulatory character in this regard. **In the absence from the instrument of any expression of or reference to an agreement not to revoke, no promise to such effect, can be implied solely by reason of the reciprocal nature of the testamentary provisions.** We may not then convert this revocable testamentary expression into mutual irrevocable promises to devise.

First Nat. Bank of Nev. v. Friednash, 302 P.2d 281, 283 (Nev. 1956) (internal citations omitted) (emphasis added).

III. Plaintiff cannot circumvent Section 62-2-701 by repackaging her contract claim as a constructive trust claim.

Plaintiff argues that, even if she cannot enforce a contract between her parents pursuant to Section 62-2-701, she can achieve the same result through her claim for constructive trust. Plaintiff relies on two cases in support of this argument: Chapman v. Citizens & S. Nat. Bank of S.C., 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990), and Satcher v. Satcher, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002). See Memo at 12-14. Neither case helps Plaintiff.

A. Chapman applies the law that existed before Section 62-2-701 and, in any event, is easily distinguishable.

In her motion for summary judgment on Plaintiff's second cause of action, Mrs. Barringer explains why Chapman does not apply here. See Motion dated June 14, 2021, at 4-8. Mrs. Barringer will not rehash these arguments here, other than to note:

- Many states have passed a law comparable to Section 62-2-701 (which is derived from the Uniform Probate Code), and in every case identified by the undersigned that addresses the issue, the court has held that a plaintiff cannot circumvent the "signed writing" requirement in the statute by repackaging the claim as one for constructive

trust. Mrs. Barringer cites seven of these cases in her motion for summary judgment on Plaintiff's second cause of action, see Motion at 5-6, and Plaintiff simply ignores **all of them** in her response memorandum. These cases are all based on the principle that "equity follows the law," which is a principle recognized by the South Carolina Supreme Court. 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.").

- Chapman did not apply Section 62-2-701 because the wills at issue were executed before the effective date of the statute. In her response memorandum, Plaintiff does not dispute this.
- In Chapman, the Court found an enforceable promise based on letters written by a wife to her husband in which the wife expressly promised her husband that she would not exercise her power of appointment. 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 (emphasis added). By contrast, Plaintiff has 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 that promise before he gave Mrs. Barringer a power of appointment on December 4, 1998.

In her memorandum, Plaintiff argues that, under Chapman, she can prove that Mrs. Barringer irrevocably promised never to exercise her power of appointment through her "silence." Even if Plaintiff could rely on "silence," Plaintiff does not identify any specific conversation or conversations where Mrs. Barringer, through her silence, should be deemed to have promised Mr. Barringer that she would never exercise the power of appointment that he granted to her. See generally Memo. Rather, Plaintiff vaguely references "numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant." Memo at 11. But even if Mr. Barringer made comments about "his intent for equal control" or his desire and plan for "equal control" during a time when Mr. and Mrs. Barringer remained on good terms with Plaintiff, these conversations do not even remotely suggest that the Barringers had irrevocably promised each other never to change their estate plans, no matter how circumstances might change in the future with respect to their children. And the notion that, in these family meetings, Mrs. Barringer should have brought up the

revocable nature of their estate plans generally or her power of appointment specifically is both preposterous and unsupported by any case from any jurisdiction in America. Indeed, Plaintiff does not cite any case from any jurisdiction where a court found a contract not to revoke based on silence, much less silence during a family discussion about “plans” for the future. Even if Mr. and Mrs. Barringer both “planned” to treat their kids equally in the future, and discussed their plan with their children, that in no way amounts to an irrevocable and binding agreement never to change the plan in the future. Plaintiff has not come forward with any evidence that anything that was ever said by anyone could amount to such a radical and far reaching irrevocable agreement.

Even Plaintiff’s husband, Kevin Luzak, whom she lists as a witness who will testify in support of her contract and promise allegations, admitted he has no knowledge of an agreement between Mr. and Mrs. Barringer to treat their children equally in the future no matter what type of behavior they engage in:

Q. You don’t have any evidence that they entered into any type of contract like that, correct?

A. **I don’t.**

Q. Or that they entered into **any type of agreement** or anything of that nature?

A. The fuzzier we get, the more hesitant I am to answer the question. So for the purposes of this so we can move on, which I know you want to do, **I’ll say no.**

Q. Okay. Well, I don’t want to move on. I want to find out what evidence you have, if you have any. I do not want to move on.

Q: If you have -- if you have any evidence that Paul and Merrill Barringer entered into **a contract, agreement, pinky swear, anything you want to call it, that they were going to treat their children equally in the future no matter what type of**

behavior the children engaged in, I want you to tell me that.

MR. MACLOSKIE: Asked and answered.

BY MR. TWOMBLEY:

Q. Do you have any such evidence?

A. **I -- I do not.**

Kevin Luzak Depo. Tr., attached as Exhibit B, at 481:11 – 482:11 (emphasis added).

Moreover, Plaintiff's theory that she can prove a contract not to revoke based on nothing more than Mrs. Barringer's silence in unspecified family meetings discussing future "plans" is squarely at odds with both Section 62-2-701 and the earlier case law quoted above discussing the importance of requiring a plaintiff to provide "definite, certain, clear, and convincing" proof of a contract not to revoke. If Plaintiff were correct, then virtually every child in America—so long as their parents, when everyone remained on good terms, had discussed their plans to divide their assets evenly among their children—would be entitled to a jury trial on whether their parents had entered into a supposed contract never to revoke those plans. Such an outcome turns the policy of Section 62-2-701 on its head. See Unif. Probate Code § 2-701, Comment ("It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved.").

B. Satcher is inapposite.

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 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. The Court never mentioned, much less discussed, Section 62-2-701, presumably because the parties did not raise it.

Satcher has no relevance to this case. Plaintiff has not even asserted a claim for promissory estoppel, and in any event, Plaintiff has no proof that Mrs. Barringer made a promise to Mr. Barringer regarding her power of appointment, much less that Mr. Barringer relied on any such promise.

IV. Plaintiff’s new theory—that Mr. Barringer did not intend to grant Mrs. Barringer a power of appointment—is not alleged in the Complaint and, in any event, is baseless.

In her memorandum filed on August 6, 2021, Plaintiff argues that “Paul Barringer never intended to give Defendant a power of appointment.” Memo at 6. As noted above, this new argument is squarely at odds with the theory Plaintiff alleges in her Complaint—namely, that Mrs. Barringer promised Mr. Barringer that she would not exercise her power of appointment and that Mr. Barringer relied on that promise when he granted her the power of appointment. Plaintiff does not cite any law to support this new theory, and in fact, Plaintiff does not even mention this theory in the “Applicable law” section of her memorandum.

In her Complaint, Plaintiff does not challenge Mrs. Barringer’s power of appointment on this basis, see generally Compl., nor has Plaintiff sought leave to amend her Complaint to assert such a challenge. Thus, as a threshold matter, the Court should disregard this new theory.

Moreover, Plaintiff has no evidence that Mr. Barringer, a highly successful and intelligent businessman, did not intend to grant his wife a power of appointment by expressly granting her such a power in every version of his revocable trusts, including the version that Plaintiff concedes was executed at a time when Mr. Barringer was competent and not subject to undue influence or a mistake (the 1998 version). See, e.g., York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 81,

749 S.E.2d 139, 146 (Ct. App. 2013) (holding that “a party who signed a contract is deemed to have read and understood ‘the effect’ of the contract”). Further, Mr. Barringer’s attorney recently testified (after Defendant previously moved for summary judgment) that he discussed different options for powers of appointment with Paul Barringer, and that the language found in Mr. Barringer’s 1998 will and trust was selected by Paul Barringer and “was clearly where [Paul Barringer] came out at the time of the execution.” McBryde Depo, attached as Exhibit C, at p. 38. Mr. McBryde further explained:

Q. Okay. Well, let’s talk about that language, the -- the “to or among” and then “the manner in which she decides.” What does that mean?

A. It means that **she has sole** responsibility, **authority and discretion to decide if and when and how the children or descendants -- not limited to children -- will take the property** as -- and provide whatever provision she seems -- she deems appropriate in that process because it says “in trust or otherwise,” which means that it could be another trust of some consequence and duration. Maybe one of the children, grandchildren, great grandchildren or one child or whatever it could be.

Q. Okay. Is -- is -- is there anything in the language that requires the children to be treated equally?

A. The -- the whole purpose of this provision -- and this -- you know, this is such a standard estate planning technique in my -- I can -- I couldn’t tell you how many trusts I have had in that regard. **It doesn’t say at all, other than it has to go to descendant or descendants. There is no child designate, no child designated. So she has full authority to slice and dice and distribute and cause a trust to be created as long as she sets it forth as required in her will or codicil, making express reference to this document.**

Id., at 34:5 – 35:6 (emphasis added). Mr. McBryde concluded that he “would never allow a document like this to be executed if I had not discussed it and made clear to” Mr. Barringer. Id. at 37:20-22. Plaintiff has no evidence to the contrary.

V. Conclusion

For the foregoing reasons, and for the reasons set forth in Mrs. Barringer's motions, Mrs. Barringer respectfully submits that this Court should grant Mrs. Barringer summary judgment on Plaintiff's second and third causes of action.

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August 9, 2021

EXHIBIT A

Last Will & Testament of Merrill U. Barringer, dated December 4, 1998



Deposition of:
Kevin Luzak

July 14, 2021

In the Matter of:
Luzak, Hampton v. Light, Merrill

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1 Q. You don't know anything, correct?

2 A. This -- this particular exchange was
3 focussed on, I'm assuming, a filing that was made
4 in court that makes reference to a contract. So
5 my question relates -- or my query relates to the
6 nature of the contract. We're acknowledging that
7 there is a widespread of -- within the definition
8 of a contract. I'm not able to answer that
9 question because I don't know the nature of the
10 contract.

11 Q. You don't have any evidence that they
12 entered into any type of contract like that,
13 correct?

14 A. I don't.

15 Q. Or that they entered into any type of
16 agreement or anything of that nature?

17 A. The fuzzier we get, the more hesitant
18 I am to answer the question. So for the purposes
19 of this so we can move on, which I know you want
20 to do, I'll say no.

21 Q. Okay. Well, I don't want to move on.
22 I want to find out what evidence you have, if you
23 have any. I do not want to move on.

24 MR. MACLOSKIE: Asked and answered.

25 BY MR. TWOMBLEY:

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1 Q. If you have -- if you have any
2 evidence that Paul and Merrill Barringer entered
3 into a contract, agreement, pinky swear, anything
4 you want to call it, that they were going to treat
5 their children equally in the future no matter
6 what type of behavior the children engaged in, I
7 want you to tell me that.

8 MR. MACLOSIE: Asked and answered.
9 BY MR. TWOMBLEY:

10 Q. Do you have any such evidence?

11 A. I -- I do not.

12 Q. Okay. Will you turn to 19A of the
13 notebook?

14 A. Sure.

15 Q. Luzak 142.

16 A. Yes.

17 Q. I think you said this is a
18 presentation you made at one of the YPO things?

19 A. Oh, 19A. Sorry. Hang on.

20 Q. 19 --

21 A. I think -- I believe so, yes.

22 Q. Who authorized you to disclose all of
23 this financial information of CFRC to all these
24 people at the YPO?

25 MR. GILREATH: You got a page number?



Deposition of:
Neill McBryde

March 26, 2021

In the Matter of:
Luzak, Hampton v. Light, Merrill

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1 of the creditors of her estate.

2 So it's going to have to go to or among
3 whatever amount she provides the descendants.

4 Q. Okay. Well, let's talk about that
5 language, the -- the "to or among" and then "the
6 manner in which she decides." What does that mean?

7 A. It means that she has sole responsibility,
8 authority and discretion to decide if and when and how
9 the children or descendants -- not limited to
10 children -- will take the property as -- and provide
11 whatever provision she seems -- she deems appropriate
12 in that process because it says "in trust or
13 otherwise," which means that it could be another trust
14 of some consequence and duration. Maybe one of the
15 children, grandchildren, great grandchildren or one
16 child or whatever it could be.

17 Q. Okay. Is -- is -- is there anything in the
18 language that requires the children to be treated
19 equally?

20 A. The -- the whole purpose of this
21 provision -- and this -- you know, this is such a
22 standard estate planning technique in my -- I can -- I
23 couldn't tell you how many trusts I have had in that
24 regard. It doesn't say at all, other than it has to
25 go to descendant or descendants. There is no child

1 designate, no child designated.

2 So she has full authority to slice and dice
3 and distribute and cause a trust to be created as long
4 as she sets it forth as required in her will or
5 codicil, making express reference to this document.

6 Q. Now, let's talk for a minute about making
7 express reference in her will or codicil, thereto.

8 How would -- generally speaking, how would
9 someone exercise a power of appointment like we have
10 just reviewed in Mr. Barringer's trust?

11 A. It would be in her will that she would
12 exercise because it's power. It's a personal power.
13 And she would say, adding to the will, I'm given the
14 power, and she would recite that. And that's the way
15 it's commonly done. And I wish to distribute the
16 property in this manner and direct that it be done,
17 pursuant to the provisions of this trust.

18 I would right a title in that, but that's
19 the gist of it.

20 Q. I understand.

21 Now, does Mrs. Barringer have the ability
22 to -- to change her mind in the future as to how she
23 may or may not want to exercise the power of
24 appointment?

25 MR. MEDLIN: Object to the form.

1 THE WITNESS: Oh, yes. I mean,
2 basically, she can write a will every day.
3 I mean, amend a will any time she wants and
4 can change it back and forth and over time,
5 you know, it's not just -- it's not just a
6 provision that relates to the issues that
7 there are with -- in her view, and she has
8 sole authority to the children, her
9 grandchildren, her great grandchildren.

10 It also could be issues relating to
11 total change in the tax laws, or -- that
12 would cause a confiscation if she gave to
13 some -- or creditor problems or any kind of
14 issues that we all know can happen to any
15 generation of level individual who are
16 descendants.

17 BY MR. TWOMBLEY:

18 Q. What if she just gets upset at -- at one of
19 the descendants?

20 A. This is a -- this is the sole -- I mean,
21 that's one of the things you take -- take into
22 consideration when you draft these documents, and
23 it's -- it was discussed. I -- we will get into that
24 later. But I know it has been discussed here. It's
25 her primary -- it's her direct right in this case to

1 decide. And -- and she does have to appoint it to --
2 at least the way I read it, to a -- a descendant.

3 Q. Sure. I understand. Okay.

4 A. In trust or otherwise, which I'm reading in
5 the rest of the language.

6 Q. Sure. Now, you -- you did reference or
7 mention that this is a common provision. Is this type
8 of provision in every couples' trust, or do some of
9 the couples choose not to have this type of provision?

10 A. It -- normally in a process, you would have
11 to tell them -- and we did here, too, for sure -- is,
12 Here are the options. This is one option. Another
13 option would be per stirpes. Another option would be
14 at the start, rearrange to get to the maybe one spouse
15 -- one child is not or it just to a grandchild. Or
16 basically, not exercise the power, which means it then
17 goes in accordance to the term.

18 So -- but yes. You know, it's discussed,
19 and this was discussed in this case.

20 Again, I -- I professionally would never
21 allow a document like this be executed if I had not
22 discussed it and made clear to -- just to the issue
23 you're stating, and besides it's clear in its right
24 actually.

25 Q. So -- so you mentioned that there were

1 different options for including a power of appointment
2 or not including a power of appointment. How did you
3 decide which one to put in Paul Barringer's trust?

4 A. I don't -- I don't decide that. It's done
5 by consultation with, in this case Paul. And again,
6 this was in 1998, and I got a fairly good memory, and
7 I know what my process is. I have been through this
8 literally dozens of times.

9 And basically, you have to walk through the
10 very questions you've asked, does it apply here, does
11 it apply there, and they have to make a decision, and
12 you hope that it's the best decision. It's one that
13 they will be well informed with, and of course, these
14 documents can be amended and restated if necessary
15 over time.

16 But this was clearly where they came out
17 where Paul came out at the time of the execution.

18 Q. And so this -- this power of appointment
19 language would apply for the A Trust, the B Trust and
20 the residuary trust?

21 A. Correct.

22 MR. MEDLIN: Object to the form.

23 BY MR. TWOMBLEY:

24 Q. Now, Mr. McBryde, are you able to see my --
25 I guess you are able to see me on my screen. I'm

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

)

)

HAMPTON BARRINGER LUZAK,

)

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AS TO PLAINTIFF'S
SECOND AND THIRD CAUSES OF
ACTION**

Plaintiff,

)

)

v.

)

)

MERRILL U. BARRINGER,

)

)

Defendant

)

)

In response to Plaintiff's Motion for Summary Judgment as to Plaintiff's second and third causes of action, Defendant Merrill Barringer ("Mrs. Barringer" or "Defendant") submits this memorandum and incorporates Defendant's Motion for Summary Judgment on Plaintiff's Second Cause of Action and Defendant's Motion for Summary Judgment on Plaintiff's Third Cause of Action filed June 14, 2021, and all exhibits and memoranda filed in support, as well as any other relevant pleadings, depositions, answers to interrogatories and admissions on file.

Third Cause of Action

In her Complaint as her Third Cause of Action, Plaintiff alleges Mr. and Mrs. Barringer entered into "a binding contract" that barred Mrs. Barringer from ever revoking her will, i.e., from ever exercising the power of appointment that Mr. Barringer expressly granted to her. See Compl. ¶¶ 137-43. It is undisputed that Mr. and Mrs. Barringer executed wills and revocable trusts in 1998. Mr. Barringer's 1998 Revocable Trust gives his wife of nearly 60 years, Mrs. Barringer, a special power of appointment, permitting her, through her own will, to designate who among their

descendants will receive Mr. Barringer's assets remaining at the time of her death. Mrs. Barringer's 1998 revocable trust gave Mr. Barringer a special power of appointment, permitting him, if he survived her, to designate who among their descendants, would receive Mrs. Barringer's remaining assets at the time of her death. Mrs. Barringer does not exercise any power of appointment in her 1998 Will.

Plaintiff submits she has offered proof in compliance with South Carolina Code Section 62-2-701¹, which sets forth the only 3 methods for proving such a contract. The first method is by a decedent's will containing material provisions of the contract. For the first method, Plaintiff relies on the following provision in the residuary clause of Mrs. Barringer's will:

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 Merrill U. Barringer Revocable Trust"

Mrs. Barringer Will dated December 4, 1998, (emphasis added). This language merely shows that Mrs. Barringer did not intend to exercise any power of appointment through the residuary clause in her will. In any event, the language above in Mrs. Barringer's 1998 Will does not say or imply that Mrs. Barringer entered into a contract not to ever change her will or not to ever exercise the special power of appointment granted to her by Mr. Barringer's revocable trust at the time of his death. It is NOT a material provision of a contract between Mr. and Mrs. Barringer.

Plaintiff agrees she cannot offer proof in compliance with the second method.

The third method requires a signed writing by the decedent evidencing the contract and extrinsic evidence to prove its terms. For the third method's signed writing requirement, Plaintiff first points to Mr. Barringer's 1998 will and revocable trust and Mrs. Barringer's 1998 will and revocable trust and revisits the same arguments she makes for method one. However, the

¹ The statute and comments are attached as Exhibit 1.

referenced language is not evidence of a contract between Mr. and Mrs. Barringer. Plaintiff's argument is that Mrs. Barringer and Mr. Barringer executed mutual or "symbiotic" wills. The fact that Mr. and Mrs. Barringer executed these documents, which were drafted by the same lawyer, is not disputed. However, the wills and revocable trusts, do not contain contractual language and by their own language, contemplate that they may be amended. Further, section 62-2-701 clearly states: "The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."

The plaintiff has not submitted proof in compliance with S.C. Code § 62-2-701 and therefore cannot show she is entitled to judgment as a matter of law.

Second Cause of Action

Plaintiff argues that, even if she cannot enforce a contract between her parents pursuant to Section 62-2-701, she can achieve the same result through her claim for constructive trust. First, as Defendant has repeatedly argued in her briefing, Plaintiff cannot circumvent the "signed writing" requirement in the South Carolina Code with an equitable cause of action because "equity follows the law." Even if her constructive trust claim is allowed, Plaintiff has no evidence to support it and certainly cannot show she is entitled to judgment as a matter of law.

First, In Plaintiff's Memorandum Supporting Plaintiff's Motion for Summary Judgment filed August 6, 2021, she says that "Mrs. Barringer's 1998 Will makes an express promise by stating she would not exercise her power of appointment." This is inaccurate. Again, Plaintiff relies on the following provision in the residuary clause of Mrs. Barringer's will:

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 Merrill U. Barringer Revocable Trust"

Mrs. Barringer's Will dated December 4, 1998, (emphasis added). This language merely shows that Mrs. Barringer did not intend to exercise any power of appointment through the residuary clause in her will. It does not contain an express promise stating she would not ever exercise the power of appointment given to her in Mr. Barringer's revocable trust.

Second, Plaintiff argues that, under Chapman v. Citizens & S. Nat. Bank of S.C., 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990), she can prove that Mrs. Barringer irrevocably promised never to exercise her power of appointment. As Defendant has previously outlined, because of the enactment of S.C. Code § 62-2-701, Chapman is no longer good law. Further, unlike the Plaintiff in the Chapman case, Plaintiff Luzak argues her mother made this promise through her "silence." Even if Plaintiff could rely on "silence," Plaintiff does not identify any specific conversation or conversations where Mrs. Barringer, through her silence, should be deemed to have promised Mr. Barringer that she would never exercise the power of appointment that he granted to her. Rather, Plaintiff vaguely references "numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant." Plaintiff does not cite any case from any jurisdiction where a court found a contract not to revoke based on silence, much less silence during a family discussion about "plans" for the future. In addition, any testimony from Plaintiff about alleged communications with her deceased father (or testimony from Plaintiff's husband) is barred by the South Carolina Dead Man's Statute. S.C. Code Ann. § 19-11-20.

Plaintiff has no evidence that she is entitled to a constructive trust, which requires clear and convincing evidence, as a matter of law.

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August 9, 2021

Code of Laws of South Carolina 1976 Annotated
Title 62. South Carolina Probate Code (Refs & Annos)
Article 2. Intestate Succession and Wills (Refs & Annos)
Part 7. Contractual Arrangements Relating to Death

Code 1976 § 62-2-701

§ 62-2-701. Contracts concerning succession.

Effective: January 1, 2014

[Currentness](#)

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.

Credits

HISTORY: 1986 Act No. 539, § 1; 1990 Act No. 521, § 28; [2013 Act No. 100, § 1](#), eff January 1, 2014.

Editors' Notes

REPORTER'S COMMENT

Section 62-2-701 allows the proof of a contract binding a decedent and concerning the succession to his estate, testate or intestate, only by way of some signed writing, either (1) his written, signed will containing the material provisions of the contract; (2) his written, signed will containing an express reference to the contract (extrinsic evidence proving its terms); or (3) a writing other than a will but signed by the decedent and containing evidence of the contract (allowing extrinsic evidence to prove its terms). The section's requirement of a signed writing to prove such contracts is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively.

Noting that the only concern of Section 62-2-701 is with the proof of contracts concerning succession, it should be recognized that the prior South Carolina law, concerning the formation of such contracts and the effects of such contracts' formation and the breach thereof, remains intact. See S. Alan Medlin, *The Law of Wills and Trusts* (S.C. Bar 2002) Sections 341, 342; W. Brown, Note: *Specific Performance of Oral Contracts to Devise*, 17 S.C.L. Rev. 540 (1965); and T. Stubbs, *Oral Contracts to Make Wills*, IX Selden Soc. Y.B. Part III, 10 (1948).

The policies basing Section 62-2-701 and [Sections 62-2-502](#) (execution of wills), 62-2-506 (revocation of wills), and 62-2-509 (incorporation of other matter by reference in wills) are the same. All of these sections are aimed at protecting the integrity of the process of succession to the estates of decedents in accordance with their own true wills. Each of these sections requires that the decedent's will be expressed either in some writing or by way of a physical act done to some writing; the writings are required in the expectation of increasing the reliability of the proof of the decedent's true will. See K. Walsh, Note: *The Statute of Frauds' Lifetime and Testamentary Provisions: Safeguarding Decedents' Estates*, 50 Ford. L. Rev. 239 (1981) (hereinafter Walsh).

Section 32-3-10(4) of the 1976 Code does require contracts concerning land to be “in writing and signed by the party to be charged therewith.” Accordingly, contracts concerning the succession to land as an asset of a decedent's estate were, *Brown v. Golightly*, 106 S.C. 519, 91 S.E. 869 (1917), *White v. McKnight*, 146 S.C. 59, 143 S.E. 552 (1928), and will yet be required to be in writing and signed by the decedent, i.e., “by the party to be charged therewith (only in the sense that to charge the personal representative or other successor or assign of the decedent is to charge the decedent himself).”

In addition, prior South Carolina case law was said to require that contracts concerning succession be proved by “clear, cogent, and convincing evidence.” *Caulder v. Knox*, 251 S.C. 337, 346, 162 S.E.2d 262 (1968), *Brown v. Graham*, 242 S.C. 491, 131 S.E.2d 421 (1963). While Section 2-701 fails to codify the stated higher standard of proof per se, the provision's requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect.

Further, Section 62-2-701 provides that no presumption of the existence of a contract concerning succession arises from the mere execution of mutual wills or of a joint will. And while there is South Carolina authority, relying on the reciprocating nature of the terms of a joint will, together with surrounding family circumstances, for the satisfaction by implication of the clear, cogent, and convincing evidentiary standard as to the existence of a contract not to revoke the joint will, in a case in which the joint will failed to actually express an agreement of nonrevocability, *Pruitt v. Moss*, 271 S.C. 305, 247 S.E.2d 324 (1978), Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract.

Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract whose mere existence is proved by a signed writing. However, as a brake on the provision's liberality with respect to extrinsic evidence, Section 19-11-20 of the 1976 Code, the “Dead man's” statute, will continue to limit the admissibility of that extrinsic evidence which is subject to its application, this notwithstanding the enactment of Section 62-2-701. See *Brown v. Golightly*, supra.

Section 62-2-701 avoids the problems, both that of the possibly uneven application of the stated higher standard of proof of contracts concerning succession and that of the questionable breadth of application of the several pre-existing Statutes of Frauds provisions as to contracts concerning succession, quite simply by establishing a signed writing requirement specifically applicable to all such contracts. Presumably Section 62-2-701 will be construed as preempting the field, rendering all other such statutory and case law provisions inapplicable to such contracts in the future.

However, it may be questioned whether Section 62-2-701 should not be subject, in its operation, to the familiar legal and equitable exceptions to the operation of the other Statutes of Frauds provisions. See Section 62-1-103 and *Walsh*, supra, at 258-270. These include the remedies of restitution of monies advanced and the imposition of a constructive trust to force the restitution of other specific assets advanced by the promisee on an oral contract, and the effects of part performance of the oral contract by the promisee as well as equitable and promissory estoppel, either matter binding the promisor to the oral contract notwithstanding any applicable Statute of Frauds. One case has reached such a conclusion after the enactment of Section 62-2-701. See *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (S.C. App. 2002). See also *White v. McKnight*, supra, *Turnipseed v. Sirrine*, supra 57 S.C. at 578, *Riddle v. George*, 181 S.C. 360, 187 S.E. 524 (1936), *Bruce v. Moon*, 57 S.C. 60, 35 S.E. 415 (1900). See W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965).

For the enforcement of a contract concerning succession while the testator is still alive, see *Wright v. Trask*, 329 S.C. 170, 495 S.E. 2d 222 (S.C. App. 1997).

Notes of Decisions (8)

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Code 1976 § 62-2-701, SC ST § 62-2-701

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Subject: RE: Luzak v. Light; C/A #2016-CP-07-01919; 2019-CP-07-01253 & 01294

Ashley:

Per our conversation yesterday, we are in agreement with you having 60 days after the date of Judge Mullen's ruling on your expert report motion to disclose your experts to us with the understanding that we will be given sufficient time to conduct our discovery of your experts even if the 60 day disclosure period runs near or after the court's discovery deadline in the third Amended Scheduling Order of October 23, 2019. The date of Judge Mullen's ruling for the purpose of calculating the 60 day period should be the earlier of her oral, written or electronic notification of her decision.

--Bill Hogan

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From: Ashley Twombley [<mailto:twombley@twlawfirm.com>]
Sent: Monday, December 16, 2019 5:01 PM
To: Bill Hogan; amedlin@sc.rr.com; Andrea Smith

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Hampton B. Luzak v.	)	CASE NO. 2016-CP-07-1919
Merrill B. Light, et al.	)	
	)	
-and-	)	
	)	
Hampton B. Luzak v.	)	CASE NO. 2019-CP-07-1253
Merrill U. Barringer	)	CASE NO. 2019-CP-07-1294
	)	
	)	
	)	

January 31, 2020

Beaufort, South Carolina

B E F O R E:

The Honorable Carmen Mullen

A P P E A R A N C E S:

For the Plaintiffs:

James R. Gilreath, Esquire
S. Alan Medlin, Esquire
Charles B. Macloskie

For the Defense:

J. Ashley Twombly
Alice F. Paylor
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1 not resist the conservatorship. We every month thought
2 that Mr. Barringer was incapacitated at that time. The
3 question was, was my client going to be the guardian and
4 the conservative or was it some lawyer that they picked was
5 going to be.

6 THE COURT: Okay.

7 MR. TWOMBLEY: So I wanted to make sure Your Honor was
8 aware of that.

9 MR. MEDLIN: And, Your Honor, that use of the term
10 resist is -- was intentional. They were preferring not to
11 have a conservator and certainly preferring Mrs. Barringer
12 to be conservator if there was a need for a conservator.

13 My client thought that if Mrs. Barringer wasn't
14 already protecting him then why would she start so.

15 THE COURT: Okay. All right.

16 So what about the scheduling order?

17 MR. TWOMBLEY: Yes, I now get to argue that they
18 flaunted Your Honor's order.

19 Your Honor, this -- this issue of expert reports
20 previously came up. We talked about it. We argued about
21 it. Your Honor decided that -- I am not sure what your
22 thought process exactly was. But I think you probably
23 thought that because of the complexity of the issues, the
24 timeframe involved, the number of experts that were going
25 to be needed, the amount of money involved, that it was in

1 everyone's best interest to have, you know, full and
2 complete expert reports. They resisted it. You overruled
3 them. You said we needed to do expert reports.

4 You know, the reports that they have done do not
5 satisfy any of the criteria that would be needed for an
6 expert report in federal court.

7 THE COURT: Right.

8 MR. TWOMBLEY: But ---

9 THE COURT: I know I ordered -- but also too they are
10 going to argue that obviously they don't have her estate
11 planning documents. And that is going to change anything
12 that ---

13 MR. TWOMBLEY: Well, obvious- ---

14 THE COURT: And probably other things too. But among
15 them.

16 MR. TWOMBLEY: Well, I think they could argue -- I
17 mean if their expert wanted to reserve an opinion because
18 they didn't have that document, that's fine. But I mean
19 let's just talk about their medical doctor, for example. I
20 mean she has not said one opinion that she is going to
21 offer at trial about ---

22 THE COURT: Did I order that everyone give -- every
23 expert given a written opinion in this case?

24 MR. TWOMBLEY: Yes, you did. You ordered that all
25 experts had to be identified and that each expert had to do

1 an expert report.

2 And, you know, Your Honor, I understand that, you
3 know, Your Honor may not have wanted them to do exactly
4 what would be required in federal court; but we need and
5 want and we would argue we are entitled to know at a
6 minimum the opinions that they are going to offer at trial
7 and what their basis for those opinions are. Because we
8 have to identify our own experts.

9 THE COURT: I understand.

10 MR. TWOMBLEY: And so, you know, we would just ask
11 that Your Honor enforce the order that you have already
12 enforced. I think they should have to, minimum, do expert
13 reports. And each report should have a full and complete
14 list of the opinions that the expert is going to offer at
15 trial, and the basis for those opinions. And I mean we
16 just think we are entitled to that at a minimum.

17 If we don't have that, Your Honor -- I mean they have
18 identified like five or six experts. We are -- nobody is
19 going to know what any expert is going to say. It is going
20 to necessitate every expert is going to have to be deposed,
21 complete and fully, because you're not going to know what
22 they are going to say. You don't know what opinion they
23 are going to offer at trial.

24 And so we would ask that you, you know, require them
25 to comply with the ---

1 THE COURT: Just so I am clear, because I am looking
2 at -- are we talking about an order -- and I don't even
3 have the date on -- well, here it is. I want to make sure.
4 The order signed on -- well, it doesn't even ---

5 MR. TWOMBLEY: October ---

6 THE COURT: Yeah.

7 MR. TWOMBLEY: --- 23rd, 2019?

8 THE COURT: It is a consent order. It was a consent
9 order.

10 MR. TWOMBLEY: Well, what happened is we had had a
11 hearing or tell -- I can't remember exactly what it was.
12 But the issue came up and you said that you thought ---

13 THE COURT: I like expert reports. I can tell you I
14 just -- it makes me feel comfortable. We do them in
15 construction cases. It is everybody knows what they are
16 going to say.

17 It is also, I think -- and I -- maybe everyone
18 disagrees with me. It helps with the coming up with the
19 new opinion three weeks before trial. Because we can hard
20 and fast say this is what you said and now what you are
21 saying is different. That is why I like them, personally.

22 I know they are not required in state court. I am
23 going to be honest with you, I can tell you that if you all
24 sent me a scheduled consent order, the only thing I cared
25 about was when this case was set for trial and whatever

1 ya'll agreed to is fine by me.

2 I try so hard not to micromanage how you schedule.
3 But I do agree in this case that I want an end in sight.
4 And that is kind of where I am concerned about at some
5 point we have got to bring this to a head.

6 I will say this. I don't think that anyone can render
7 an opinion -- and, no, maybe the doctor about competency is
8 different. You know, maybe a few of these experts. But --
9 and I don't even know what all -- or what types of experts
10 you have. But I can tell you this, I don't think anyone
11 needs to be writing an opinion or opining on something that
12 has anything to do with those documents, until they are
13 received, until they get them. And that could be, like I
14 said, if she chooses to turn them over, fine. It could be
15 after the Supreme Court or, you know, the Court of Appeals
16 says I am right. Or it could be never.

17 But until that determination is made, I don't think we
18 can live by the scheduling order. I mean I don't. I mean
19 that is all -- I am just being practical. So and I respect
20 that and see that.

21 But I am, like I said, I am real concerned about this
22 case going on for forever. So that is kind of my answer to
23 you. I hear your argument. I just think -- I just think
24 right now until we get this resolved -- because I think to
25 you all this is very important.

1 To me it is just about everything else has been
2 shared. Am I correct on this, or discovered?

3 If that fair to say, Ashley, do you think?

4 MR. TWOMBLEY: Yes -- yes, ma'am.

5 THE COURT: Okay.

6 MR. TWOMBLEY: I think so. And I -- I mean maybe they
7 have a different opinion. But I mean the vast majority of
8 their experts I mean their opinions ---

9 THE COURT: So what are they besides the doctor with
10 the ---

11 MR. TWOMBLEY: There's accounting experts.

12 THE COURT: Okay.

13 MR. TWOMBLEY: There is a forensic accountant expert.

14 THE COURT: Okay.

15 MR. TWOMBLEY: There is a medical doctor ---

16 THE COURT: Okay, and that is as to competency; is
17 that the doctor?

18 MR. TWOMBLEY: That is as to competency and capacity.

19 THE COURT: Forensic accountant, okay.

20 MR. TWOMBLEY: There is a trust and estate -- or a
21 fiduciary officer. And I guess, arguably ---

22 THE COURT: Who is that -- who is your -- have you
23 disclosed that yet or not?

24 MR. TWOMBLEY: Julia Walters.

25 THE COURT: Okay.

1 MR. TWOMBLEY: So, arguable, I think, Your Honor ---

2 THE COURT: Any other than those though; one, two,
3 three -- that is four. Is there anyone else?

4 MR. GILREATH: I think they are all in the notebook,
5 Your Honor.

6 THE COURT: Okay. I know. But I am not reading it
7 right now. I am asking you all. I am not going hunting
8 for it.

9 MR. TWOMBLEY: I thought -- I thought that was -- I
10 thought there were -- there was one more.

11 THE COURT: There is one more? You said that.

12 MR. TWOMBLEY: But I can't -- I would have to look.

13 THE COURT: Okay.

14 MR. TWOMBLEY: But I don't -- I think ---

15 THE COURT: Do you think anything matters to that is
16 what you are telling me?

17 MR. TWOMBLEY: I don't think so. I don't see how it
18 would have any -- any application at all.

19 THE COURT: Okay. And I am -- okay.

20 MR. GILREATH: Your Honor, can I just address some of
21 that?

22 THE COURT: Sure.

23 MR. GILREATH: All right. I have got a couple of
24 letters here I want to hand up. To start off with, this
25 thing about the experts and all that got -- it kind of got

1 in the scheduling order, and they were drafting the
2 scheduling order ---

3 THE COURT: You agreed to it, so again ---

4 MR. GILREATH: And they kept -- they kept saying they
5 wanted written opinions. And we protected the record on
6 that the best way we could is we wrote Your Honor ---

7 THE COURT: You agreed to it. I am reading it, the
8 scheduling order. And you agreed to it.

9 But keep going.

10 MR. GILREATH: We wrote Your Honor on May the 23rd.
11 And I have handed that letter up. And we said, we further
12 disagree that expert reports should be required as stated
13 in Defendant's proposed scheduling order since the expert
14 reports are not required under the South Carolina rules;
15 production of formal expert report would add significant
16 cost to both parties.

17 And then they still put it in the motion. Of course
18 we had -- we were wanting to get a scheduling order, and
19 they kept putting this thing in there about expert report;
20 so we put a footnote. And that is in the second document
21 which was on this motion for entry of third mini-scheduling
22 order.

23 And Footnote 1 says, plaintiff by letter - referring
24 to the plaintiff's -- that letter of May 23rd - objected to
25 the requirement of written expert reports. Plaintiff

1 respectfully maintains her objection to written reports and
2 reserves all rights to continue her objection.

3 And we pointed out that while that is the law in the
4 federal court we ---

5 THE COURT: I know all that. Mr. Gilreath, I know all
6 of that. But what I am saying is you agreed to it. You
7 signed it and agreed to it.

8 MR. GILREATH: We didn't have any ---

9 THE COURT: So let's get past that. Now are you
10 trying to say -- are you -- what you are trying to say is
11 now ---

12 MR. GILREATH: Your Honor, let -- well, let -- let me
13 tell you what happened. Can I?

14 THE COURT: Okay.

15 MR. GILREATH: Let me go through what happened. They
16 got a written opinion. We didn't have any choice but to
17 object to it. We put a footnote. We were trying to -- you
18 know, we were kind with a Hobson's choice.

19 But we filed our expert reports on time. They
20 complained. Dr. Alford filed a supplemental report that
21 said everything I guess he would say in a federal court.
22 The -- a few days. And we have given them that. That is
23 all he can give them. So we got it.

24 THE COURT: I understand that.

25 MR. GILREATH: And then the -- there is nothing to

1 supplement on Dr. Sanders' report.

2 THE COURT: And which expert is he?

3 MR. GILREATH: She said all she can say. Gillian
4 Walker really doesn't have anything he can write other than
5 what he wrote.

6 And most interestingly, from the forensic accountant,
7 Ellie Thomas, he can't prepare his report because we still
8 can't get the documents we want from CFRC in Georgia.

9 I went down there to Georgia. Went down there, all of
10 us on a plane. Argued in front of this judge. And he gave
11 me everything I wanted except for two things. He said you
12 need to further clarify that. So we got with Mr. Thomas,
13 and he gave us a list of what he needed.

14 We supplemented that. Served it on them. They came
15 back. They objected to all of it. And we have had a
16 conference on it. We can't get anywhere with them. So I
17 am getting ready to go back to Tallahassee in front of this
18 judge again, and I can't get the documents down there.

19 Now, their client, Ms. Light, controls this
20 corporation. And, you know, at one time we tried to get
21 you, if you remember, ---

22 THE COURT: Yeah.

23 MR. GILREATH: --- to order them to give us the
24 documents.

25 THE COURT: Right.

1 MR. GILREATH: And you said, well, that is a
2 corporation, you have got to go to Georgia -- well, I
3 mean -- I mean you have got to go to Florida.

4 I like to go to Florida; but I don't like to go to
5 Tallahassee, Florida. I can tell you. And I mean we have
6 got a judge down there and I think he is going to order
7 them again.

8 But the only thing I can figure out is there is
9 something in those documents they don't want us to see.
10 And we have been asking for them.

11 And we got -- we filed another motion to compel last
12 week. And we are trying to get it scheduled. That is not
13 real easy in Florida. Not quite as easy as it is up here.

14 So they are holding us up on that. That is going to
15 start -- you know, if the trial date were sitting out here
16 two summers from now I wouldn't be real worried about it.
17 But right now we have got a trial date in I think it is
18 July.

19 THE COURT: July of 2020.

20 MR. GILREATH: July. And we don't even have the stuff
21 to get our experts to do it. And the defendants, whose
22 lawyers are sitting in this courtroom right now, will not
23 give us the documents for our forensic fellow to do that.

24 THE COURT: But my question to you is what do you
25 want. I mean this obviously ---

1 MR. GILREATH: But he filed -- Elliott filed a report.
2 But he can't file a complete report.

3 MR. TWOMBLEY: And, Your Honor, I want to make sure I
4 am clarifying so you have confidence. No one is trying to
5 prevent anybody's expert from receiving new information in
6 the future that they legitimately did not have, like Mrs.
7 Barringer's estate planning documents or like some
8 information that might be ordered to be turned over by the
9 Florida court, to prevent them from changing an opinion
10 based on that.

11 THE COURT: Right.

12 MR. TWOMBLEY: But that -- but we -- we have got about
13 50,000 other documents that have been produced and other --
14 you know, other records in the case and depositions that
15 have been taken. And all that stuff is out there.

16 And if you would look at Dr. Sanders' expert report as
17 them -- but she is their competency expert. She doesn't
18 say anything that she is going to testify to at trial. And
19 that is not based on some new record. But if there is some
20 new record then, yes, I mean she could say I didn't have
21 that record at the time.

22 So, you know, whenever they are required to identify
23 their experts we just need to know what opinions they are
24 going to offer at trial and what the basis of those
25 opinions are.

1 MR. GILREATH: Your Honor, they are going to -- they
2 can take these people's deposition; and they will tell them
3 everything they know.

4 I mean we are not in federal court. You don't -- they
5 are trying to put us under the strict rules they have got
6 in federal court on enrichment and all that kind of stuff.
7 And that is just not the rules in state court.

8 And they file -- they file reports and said what they
9 know now. And that is what they are going to testify to,
10 as I understand it.

11 MS. PAYLOR: Your Honor, we are just entitled to
12 opinions. And once the competency person said -- she just
13 started reading some stuff from doctor's notes. She never
14 gave ---

15 THE COURT: An opinion?

16 MS. PAYLOR: --- her opinion. She didn't do anything
17 other than repeat the medical records that she has been
18 provided.

19 They want to limit their experts to their current
20 reports? We are fine with that. Because most of them
21 didn't give an opinion at all.

22 MR. GILREATH: I think Dr. Alford has given you all of
23 his opinions now. He supplemented his report and has given
24 all of his opinions. That is my understanding.

25 MS. PAYLOR: Mr. Alford, his is the best. I will say.

1 MR. GILREATH: And Gillian is going to say the same
2 thing that is in his report. That is all he can say.

3 Bill Hogan has been dealing with Sanders. He has been
4 dealing exclusively with her. I haven't been -- so I am a
5 little bit ---

6 THE COURT: I am just reading her -- her ---

7 MR. GILREATH: So I am a little bit ---

8 THE COURT: --- affidavit right now.

9 MR. GILREATH: --- of a disadvantage on that. Let me
10 see if that -- isn't her ---

11 THE COURT: I see your argument that basically what
12 Dr. Sanders says is I reviewed all this, I see what all the
13 doctors say, and that is about it. There is no ultimate
14 opinion, obviously.

15 And I see the argument.

16 All right. This is what I am going to do. I am going
17 to look at the scheduling order and probably adjust it
18 myself. Let's see what happens with these documents.

19 I know I can tell you hearing this though, really
20 these expert reports have nothing to do with what is coming
21 out of that except -- they just don't. So I think I can
22 give a little more time for some clarity.

23 You know, my goal is never to arrest written reports
24 out of these experts. Like I said, sometimes it is just
25 nice to have and so you can kind of have something to sit

1 on, particularly before a deposition.

2 But let me just work on the scheduling order. Okay.
3 And sit tight though. It is not going to be tomorrow, this
4 portion. I am just not.

5 Because I want to know what is going to happen with
6 this. I want to see, once I get your order, I sign it,
7 where we go; you appeal or do whatever, I just want to know
8 where we are at then. And then we will kind of revisit
9 this. Okay?

10 MS. PAYLOR: We also have the order of protection from
11 Mr. Gilreath, which we are not arguing about; but that
12 needs to be factored in.

13 THE COURT: So when is that?

14 MR. GILREATH: I have got to have -- I have got a big
15 abdominal hernia. I have got to go to the Cleveland
16 Clinic. I am going to -- we have got an order of
17 protection. Everybody has agreed to it.

18 THE COURT: Okay.

19 MR. GILREATH: And the chief judge signed it. I think
20 it -- it starts on March the 8th. My surgery is on the
21 11th. And I think it runs down to --
22 (WHEREUPON, counselors confer)

23 MR. GILREATH: --- April 23.

24 THE COURT: Okay. We will get ---

25 MR. GILREATH: And then Alice has got -- once my

1 protection runs we have got about two days when mine
2 starts, and then she has got three days that week. Se we
3 have got another -- that is a lost week right here.

4 THE COURT: Okay.

5 MR. GILREATH: Which is a problem but.

6 THE COURT: I am going to factor it in, obviously. I
7 can also tell you too ---

8 MR. GILREATH: That protection order is on record,
9 Your Honor.

10 THE COURT: Okay. It is on the record?

11 MR. GILREATH: Yeah.

12 THE COURT: So ---

13 MR. GILREATH: It is signed by -- who is the judge ---

14 THE COURT: Was it Buckner before -- was it before
15 Christmas it was Buckner. It if is now it was ---

16 MS. PAYLOR: I think it was Judge Jefferson actually.

17 THE COURT: She -- yes.

18 MR. GILREATH: Judge Jefferson -- Judge Jefferson
19 presiding.

20 MS. PAYLOR: But what I -- what I wanted to say was,
21 he doesn't want any depositions taken ---

22 THE COURT: During the time ---

23 MS. PAYLOR: --- while he is not here. Which we
24 understand.

25 THE COURT: I would think not.

1 MS. PAYLOR: So that means we can't take discovery ---
2 THE COURT: I hear you.
3 MS. PAYLOR: --- while he is gone. Okay.
4 THE COURT: I hear you.
5 MS. PAYLOR: Okay. That is all I wanted to ---
6 THE COURT: It sounds like you are going to be out at
7 least a month then is what I hear.
8 MS. PAYLOR: Six weeks.
9 THE COURT: Six weeks.
10 MR. GILREATH: And I am going to be out until April
11 or ---
12 THE COURT: Okay. Okay. Well, I can also tell you
13 too for scheduling this case for trial -- we don't have any
14 of the terms starting July yet, do we -- so we don't even
15 have the terms starting in July. And I can tell you right
16 now we are not trying this in July. I mean I know that.
17 I promise you I won't yank anyone in who is not ready.
18 I know you guys want to get it over with. But that is just
19 kind of where we are at. So we are going to have to find a
20 term of court to do this anyway.
21 So let's just not -- I don't want you all -- I am not
22 holding you to a July 20th trial term. And I am not
23 holding you right now to your disclosures where we are at.
24 Although we are going to flush them out. Because I agree
25 they need to be done. And even at a minimum I am reading

1 Sanders. So let me have some time with that.

2 Can you give me a proposed order -- can the plaintiffs
3 give me a proposed order on the motion to dismiss for both
4 cases?

5 MR. MEDLIN: Yes, Your Honor.

6 THE COURT: Not killing it, you know, just -- okay.
7 And I think I have already told you what I need from
8 everything else. So I think we are -- we know where we are
9 all at. At least I think we do.

10 Is that everything?

11 MR. MEDLIN: May I say, yes, Your Honor, I will give
12 you a proposed order on the motion to dismiss; ---

13 THE COURT: You will. All right.

14 MR. MEDLIN: --- and I won't be like a child.

15 MR. GILREATH: Your Honor, we are taking -- we are ---

16 THE COURT: Good.

17 MR. GILREATH: I mean we have been taking a lot of
18 depositions.

19 THE COURT: Listen ---

20 MR. GILREATH: We are going to take some more. We are
21 trying ---

22 THE COURT: I know you are working ---

23 MR. GILREATH: --- to get in as many as we can in ---

24 THE COURT: Yeah.

25 MR. GILREATH: --- in March.

1 THE COURT: I can assure you that I know you all are
2 working. That is clear. There is no ---

3 MR. GILREATH: But part of our problem -- the problem
4 we have got now is this problem -- our forensic guy who
5 does the numbers, he can't get what he needs from CFRC ---

6 THE COURT: I know.

7 MR. GILREATH: --- and the judge has -- the judge has
8 order them to give it to us. You know. And they are
9 playing hardball. You know, we are not dealing -- it's --
10 I don't know who is calling the shots over there. But we
11 are dealing with Hunt and Williams out of Richmond ---

12 THE COURT: Okay.

13 MR. GILREATH: --- which represents CFRC.

14 MR. MACLOSKIE: Judge, would you clarify your ruling
15 on the sanctions part of this.

16 MR. TWOMBLEY: And I think I ---

17 MR. MACLOSKIE: What do you want us to do?

18 THE COURT: I don't think I need to clarify it. I
19 have asked Mr. Medlin for a proposed -- yes, go ahead.
20 What do you want to say?

21 MR. TWOMBLEY: Oh, I'm sorry. I apologize. I am
22 happy to wait.

23 THE COURT: No, my understanding was you were going to
24 give me a proposed order on it awarding -- or giving what
25 you said, but also allowing that it doesn't go into effect

1 until and unless they refuse once it is on appellate
2 review; correct? That is my understanding of what I said.
3 But I hate saying it so ---
4 MR. MEDLIN: Ashley and I agreed ---
5 THE COURT: I could do that.
6 MR. MEDLIN: --- during the break to make sure if her
7 appeal is dismissed ---
8 THE COURT: Right.
9 MR. MEDLIN: --- she will have a time to produce the
10 documents ---
11 THE COURT: Right.
12 MR. MEDLIN: --- or then the sanctions ---
13 THE COURT: Exactly.
14 MR. MEDLIN: --- will kick in.
15 THE COURT: And come up with a time period. You know,
16 and it has got to be pretty quick.
17 MR. MEDLIN: Sure.
18 THE COURT: I mean I guess ---
19 MR. MEDLIN: Or if they lose on appeal ---
20 THE COURT: That's right.
21 MR. MEDLIN: --- if the court takes the appeal, same
22 thing.
23 THE COURT: Right.
24 MR. MEDLIN: And of course if they win on appeal then
25 it is moot.

1 THE COURT: Right.

2 It gives you an opportunity to do what you need to do
3 to be able to decide.

4 MR. TWOMBLEY: Right, as long as ---

5 THE COURT: And that is what you need.

6 MR. TWOMBLEY: As long as the order holds her in
7 contempt and enters a sanction, that is -- I agree one
8 hundred percent.

9 MR. MEDLIN: I don't know that we agreed to the
10 contempt part. Did we? That gives them an automatic path
11 to appeal.

12 MR. TWOMBLEY: Well, that is ---

13 MR. MEDLIN: We think they have to appeal in their own
14 right on the issue of the sanctions. If it is dismissed as
15 interlocutory they have to turn over the documents. We
16 didn't understand and certainly wouldn't want to agree,
17 Your Honor, or subject to you adding contempt to it;
18 because that clearly makes it appealable and then that will
19 take two years.

20 MR. TWOMBLEY: Well, Your Honor, it was my
21 understanding -- you correct me if I am wrong though. But
22 that you wanted to give Mrs. Barringer this opportunity
23 to ---

24 THE COURT: To appeal it.

25 MR. TWOMBLEY: --- exercise her rights under Whetstone

1 and that if she did that and she lost the appeal, there was
2 a substantive decision on the merits as to whether Your
3 Honor was correct or not, and she did not comply with that
4 order within five days or ten days, that she would be
5 sanctioned and the sanction would be that these are the
6 facts of the case. Which those facts are not correct in
7 our opinion, but.

8 So if it is just a sanction and we appeal the sanction
9 then the court just could say that is interlocutory,
10 dismissed; and then she doesn't get to exercise her right
11 under Whetstone. It has got to be contempt and then a
12 sanction with it. And that is what triggers her right to
13 go to the court ---

14 THE COURT: I guess I need to go look at that then.
15 Because I have got to tell you, I mean I have been through
16 this. You know, I know you disagree, Ashley; but ---

17 MR. MEDLIN: Your Honor, again ---

18 THE COURT: I am just looking -- you know, I hate to
19 predict what our Supreme Court or Court of Appeals is going
20 to do; but I think I am right. I wouldn't be ruling that
21 way if I didn't.

22 MR. MEDLIN: She has a remedy -- if they will take an
23 appeal on your sanctions ---

24 THE COURT: They can do it afterward.

25 MR. MEDLIN: --- then -- then we have it covered. If

1 not, then they can appeal at the end of the case.
2 Otherwise, with contempt they have under Whetstone a clear
3 path to delaying this trial for two years. And that is not
4 what I think we agree to.

5 MR. TWOMBLEY: But, Your Honor, it is important that
6 there -- that there is a distinction between the sanction
7 and the contempt. If it is just a sanction, then I think
8 the law is pretty clear that if she appeals that, there is
9 a good chance the court would just say it's not time for an
10 appeal and they would just kick it right back down.

11 THE COURT: I need to go look at it. Because I don't
12 know how -- how am I sanctioning her without finding her in
13 contempt?

14 MR. TWOMBLEY: I agree.

15 MR. MEDLIN: Because Rule 37 says you can do just
16 that.

17 MR. GILREATH: You have got the power -- you have got
18 power -- clearly got the power on 37. I mean you have got
19 broad power ---

20 MR. TWOMBLEY: And let's assume ---

21 MR. GILREATH: --- to sanction her.

22 MR. TWOMBLEY: Let's assume you do have the power.
23 You -- let's assume you do have the power to do that. It
24 is my understanding ---

25 MR. GILREATH: The question is ---

1 MR. TWOMBLEY: --- that you wanted to give her the
2 right under Whetstone to go and seek appellate review.
3 That is the whole -- the whole point here is to give her
4 the opportunity, and then if she does it then you bring --
5 if she loses on the merits then you bring the hammer down
6 with the sanction. I thought that was -- that was
7 certainly my under- ---

8 THE COURT: That might be -- I may need to rethink
9 that then.

10 MR. MEDLIN: And, Your Honor ---

11 THE COURT: I may need to rethink that.

12 MR. MEDLIN: Your Honor, that is not what we
13 understood. And ---

14 THE COURT: Okay.

15 MR. MEDLIN: --- if that is what you are going to do,
16 when you are making that scheduling order I suggest you
17 just add two more years into it.

18 THE COURT: I understand that. And that is what I
19 figured as well. That is why I said I am going to wait
20 until seeing what happens, in as this getting appealed and
21 taken. That was my exact reasoning behind that.

22 MR. TWOMBLEY: Well, one thing I would like to
23 make ---

24 THE COURT: Hold on a second.

25 MR. TWOMBLEY: Okay.

1 THE COURT: Let me just ---

2 MR. TWOMBLEY: Sure.

3 THE COURT: Let me just --

4 (WHEREUPON, pause for the Court)

5 THE COURT: As of right now I just want you, Mr.
6 Medlin, to give me a proposed order as you are -- as you
7 understand it. And let me take a look at it. And I am not
8 saying I am signing it. I am just saying give me a
9 proposed order.

10 MR. MEDLIN: Thank you, Your Honor.

11 THE COURT: Okay. And we will go from there.

12 MR. MEDLIN: I will do that.

13 THE COURT: It will give me time between now and when
14 you give it to me to figure out what it is I in fact want
15 to do. Okay.

16 Okay. Okay. All right. Anything else?

17 MR. TWOMBLEY: Nothing more.

18 MR. GILREATH: I don't think, Your Honor. Thank you.

19 THE COURT: So it sounds to me like what I need to do
20 for y'all is we are going to do some kind of scheduling
21 order. I am going to change it. It is going to be based
22 on what happens with these documents and how long it is
23 going to take. I need to look at what your expert
24 disclosures or reports say. I have got to tell you I have
25 to read them. I read the motions. I didn't read their

1 reports; I didn't bother to. So I apologize. I should
2 have. Let me look at those. And give me this proposed
3 order. Because obviously this is what we have been arguing
4 about the whole day. And we will go from there. Okay.
5 (WHEREUPON, hearing concluded 1/31/20, 3:14 p.m.)

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,	)	
	)	
v.	)	ORDER
	)	
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	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-1253
	)	2019-CP-07-1294
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	ORDER
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

The captioned cases were before the Court on January 31, 2020 for a hearing on the following Motions:

- Defendant Merrill U. Barringer's Motion to Dismiss under Rule 12, SCRCPP (cases 1253 & 1294);
- Defendant Merrill U. Barringer's Motion to Reconsider Order filed October 28, 2019;
- Plaintiff's Motion for Sanctions Against Merrill U. Barringer;
- Merrill Barringer's Motion to Quash Subpoenas to Burr & Forman, Wells Fargo Bank and Ruff & Ruff;
- Ruff & Ruff's Motion to Quash Subpoena;
- Plaintiff's Motion to Compel Merrill Light seeking accounting records of Paul B. Barringer;

- Defendant Merrill Barringer's Motion to Compel Plaintiff's Responses to Third Set of Interrogatories; and
- Defendants' Motion to Compel Compliance with Scheduling Order, Motion to Modify Scheduling Order, and Limit Expert Testimony at Trial;

Present on behalf of the Plaintiff were James R. Gilreath, S. Alan Medlin, and Charles B. Macloskie. Present on behalf of Defendant Merrill Barringer was J. Ashley Twombly. Present for Merrill Light and Randy Light were Alice Paylor and Chip Molster. After considering the briefings and argument of counsel, the Court makes the following rulings:

MOTIONS TO DISMISS

In evaluating a motion to dismiss, the Court must base its decision solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Given the standard by which this Court is required to review motions to dismiss, I find that Defendant Merrill Barringer's Motion to Dismiss (filed in cases 1253 & 1294) are due to be denied on all grounds, with the following resolved by agreement: (1) the Plaintiff agrees by her Complaint she is not seeking temporary injunctive relief.

DEFENDANT'S MOTION TO RECONSIDER ORDER FILED OCTOBER 28, 2019

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

PLAINTIFF'S MOTION FOR SANCTIONS AGAINST MERRILL BARRINGER

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

MERRILL BARRINGER'S MOTION TO QUASH SUBPOENAS TO BURR & FORMAN, WELLS FARGO AND RUFF & RUFF

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

RUFF & RUFF'S MOTION TO QUASH SUBPOENA

This motion is moot as Defendant Merrill Barringer has now agreed to turn over the personal estate planning documents at issue, subject to an Attorneys' Eyes Only Protective Order.

**PLAINTIFF'S MOTION TO COMPEL MERRILL LIGHT SEEKING
ACCOUNTING RECORDS OF PAUL BARRINGER**

By Order dated August 28, 2018, the Court previously ordered production of the trust's banking statements from 2011 until the date of Mr. Barringer's death. Counsel for Ms. Light further reports the documents requested have been produced. The parties agreed to resolve any further issues related to the requested documents, and the motion was withdrawn.

**MERRILL BARRINGER'S MOTION TO COMPEL PLAINTIFF'S RESPONSES TO 3RD
SET OF INTERROGATORIES**

The motion to compel is denied. Defendant will clarify and resubmit the interrogatories to the Plaintiff.

**DEFENDANTS' MOTION TO COMPEL COMPLIANCE WITH SCHEDULING
ORDER, MOTION TO MODIFY SCHEDULING ORDER AND LIMIT EXPERT
TESTIMONY**

The Court will address these issues by separate order, which will modify the existing Scheduling Order.

AND IT IS SO ORDERED.



Beaufort Common Pleas

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

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-03-02 16:28:31 page 5 of 5

ELECTRONICALLY FILED - 2020 Mar 03 8:27 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Aug 09 5:51 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

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,	)	MOTION TO LIMIT EXPERT
	)	TESTIMONY
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	)	

TO: JAMES R. GILREATH, ESQUIRE, WILLIAM M. HOGAN, ESQUIRE, CHARLES B. MACLOSKIE, ESQUIRE, AND S. ALAN MEDLIN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, HAMPTON BARRINGER LUZAK:

Merrill U. Barringer, Individually and as Personal Representative of the Estate of Paul Brandon Barringer, II (“Defendant”), hereby moves the Court for an Order limiting the testimony of all expert witnesses identified by Plaintiff to the specific opinions disclosed in each expert’s report. Defendants are entitled to know each opinion each expert will offer at trial, and have time to conduct discovery on those opinions and identify rebuttal experts where appropriate.

WHEREFORE, Defendant respectfully prays that this Court enter an Order limiting the testimony of all expert witnesses identified by Plaintiff to the specific opinions disclosed in each expert's report.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. ASHLEY TWOMBLEY
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Attorneys for Defendant Merrill U. Barringer

Beaufort, South Carolina

July 24, 2020

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT) COURT OF COMMON PLEAS NONJURY

3

4

5 IN THE MATTER OF:)
6 ESTATE OF PAUL B. BARRINGER, II) TRANSCRIPT
7 HAMPTON BARRINGER LUZAK,) OF
8) RECORD
9)
10)
11)
12)
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25)

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.

2016-CP-07-1919
2019-CP-07-1253
2019-CP-07-1294

August 27th, 2020
Beaufort, South Carolina

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, Judge.

1 THE COURT: Okay.

2 MR. MACLOSKIE: ---of August, a Motion to Quash and
3 objections to the subpoena after we did our best to clarify.
4 So, so -- and, and Mr. -- I know I'm jumping the gun. But
5 this might go to the problem that all of us have, both sides
6 have, to, to set in place any kind of meaningful scheduling
7 order. Although I would like to have a meaningful
8 scheduling order, and I know you would too, but they're just
9 some problems that have come about that some of them, some
10 of them couldn't be helped, but most of them could be
11 helped. No question about it.

12 THE COURT: Okay. Okay. Well, Ashley, I can just tell
13 you also, at this point I am thinking that this motion is a
14 bit premature. I understand what you're saying. I
15 understand you want to know what's coming. But I feel
16 like -- I think everybody ultimately knows what they have to
17 prove or show to be able to prevail. And so I'm assuming
18 that someone's got to make that opinion and get us there.

19 So, at this point, I am happy to, you know, address
20 again a scheduling order if that's what you-all wish to do.
21 But I, I do think we need some depositions to start on some
22 expert witnesses and kind of get things moving along so we
23 all know what they're saying, and so you know how to answer
24 to it, Ashley. I, I do.

25 So, with that said, I think, again, I would rather

1 almost just, just mark this as premature at this point or I
2 can deny it either way. But, at this point, I think
3 eventually we'll be there. I just don't think, at this
4 point, we're ready to limit what these experts are saying,
5 okay, or at least force their hand.

6 okay?

7 MR. TWOMBLEY: Yes, ma'am.

8 THE COURT: Okay.

9 MR. TWOMBLEY: Yes, ma'am.

10 THE COURT: I appreciate it.

11 Okay. So, the next thing I have is the Plaintiff's
12 Motion to Compel Interrogatory Responses from Merrill
13 Barringer.

14 MS. PAYLOR: I think that was withdrawn.

15 MR. HOGAN: Yeah, one of those was withdrawn.

16 THE COURT: You think it was withdrawn?

17 MR. HOGAN: I think it's that one.

18 THE COURT: Okay.

19 MR. HOGAN: Yes.

20 THE COURT: Good. Okay. That's good. And then the
21 Motion for Sanctions against Merrill Barringer.

22 Is that the last one or is there one more motion after
23 that, Laura?

24 Is that it, y'all?

25 MR. HOGAN: Yeah, that's essentially the last one.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITCivil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294**ORDER**

This matter came before me on August 27, 2020 for a hearing on the following Motions:

- 1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);
- 2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

- 3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);
- 4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919); and
- 5) Luzak's Motion for Sanctions Against Merrill Barringer, filed 8-13-20 (1919).

1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);

In this motion, Defendant Merrill U. Barringer sought to obtain an order requiring the Plaintiff's husband, Kevin Luzak, to produce unredacted tax returns for the years 2010 to the present. Defendant Merrill U. Barringer asserted that Plaintiff had raised, as part of Plaintiff's damage claims, the issues of Kevin Luzak's lost compensation, the financial rates of return garnered by Kevin Luzak on various investments he had managed, and Luzak's investment advice. Defendant Barringer submitted supporting affidavits from a proposed expert, George Durant, CPA, arguing that Kevin Luzak's tax returns were a necessary starting point for analysis of Plaintiff's damage claims. Plaintiff countered that the redacted tax returns she produced were sufficient to allow the Defendant to analyze the lost wage claims related to Kevin Luzak's lost earnings. Plaintiff further countered that the investment return information could be found more fully in other financial documents besides the personal income tax returns filed jointly by Kevin Luzak and Plaintiff. Defendant Barringer replied that even if other financial documents may contain more detailed description of investments managed by Kevin Luzak, the Plaintiff's and Kevin Luzak's tax returns may show information on investments made by Plaintiff and her husband, and in any event, were necessary to properly defend against Plaintiff's alleged damages.

Given the claims raised by Plaintiff in this case and set forth in the damage reports of her proposed expert, Dr. Charles Alford, the Court rules that the jointly filed personal income tax returns

of Kevin Luzak and Plaintiff are relevant and shall be produced without redactions, except for personal identifying information under Rule 41.2, SCRCP. Understanding the personal and sensitive nature of individual income tax returns, I am ordering the parties to execute a protective order allowing only the attorneys and their experts in the case to review the Luzaks' tax returns.

2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

In this motion, Merrill Barringer seeks an order compelling Plaintiff to specify the specific page, paragraph and sentence of each document that Plaintiff alleges contains the "contract" or "promise" Merrill Barringer allegedly made never to change her 1998 will. Defendant argued that in her interrogatory responses, Plaintiff referenced over 1000 pages of documents, but failed to identify the page, paragraph and sentence of each document that contains the terms of the "contract" or "promise."

After hearing arguments, this Court denies the Defendant's request for further responses or clarification from Plaintiff.

3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);

Defendant Barringer moved to have the testimony of Plaintiff's experts confined to the opinions (if any) set forth in the expert reports submitted by Plaintiff's experts pursuant to this Court's prior scheduling orders. After hearing from the parties, Defendant's motion to limit expert testimony at this stage is premature and thus denied without prejudice.

4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919);

Plaintiff submitted to Defendant Merrill U. Barringer Plaintiff's Fifth Set of Interrogatories, which asked questions about the Defendant's procurement and distribution of a certain signed document titled "Physician's Certification of Competency" produced by Defendant Merrill

Barringer on February 12, 2020. After carefully considering the matter and hearing argument from counsel, the Court finds that Merrill Barringer should specifically respond to the interrogatories as to the unsigned and signed versions of the Physician's Certification of Competency.

5) Plaintiff's Motion for Sanctions against Merrill U. Barringer.

After reviewing this motion, the supporting materials, and arguments from counsel, this motion is taken under advisement. The Court will hold any decision on this motion in abeyance until such time as the Court deems appropriate.

IT IS SO ORDERED.



Beaufort Common Pleas

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

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

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ELECTRONICALLY FILED - 2021 Aug 09 5:51 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITCivil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294**ORDER**

This matter came before me on August 27, 2020 for a hearing on the following Motions:

- 1) Merrill Barringer's Motion to Compel Production of Subpoenaed Documents from Kevin Luzak, filed 2-25-20 (1919, 1253 & 1294);
- 2) Merrill Barringer's Motion to Compel, filed 5-19-20 (1253 & 1294);

- 3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);
- 4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919); and
- 5) Luzak's Motion for Sanctions Against Merrill Barringer, filed 8-13-20 (1919).

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Given the claims raised by Plaintiff in this case and set forth in the damage reports of her proposed expert, Dr. Charles Alford, the Court rules that the jointly filed personal income tax returns

of Kevin Luzak and Plaintiff are relevant and shall be produced without redactions, except for personal identifying information under Rule 41.2, SCRCP. Understanding the personal and sensitive nature of individual income tax returns, I am ordering the parties to execute a protective order allowing only the attorneys and their experts in the case to review the Luzaks' tax returns.

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After hearing arguments, this Court denies the Defendant's request for further responses or clarification from Plaintiff.

3) Merrill Barringer's Motion to Limit Expert Testimony, filed 7-24-20 (1919, 1253, 1294);

Defendant Barringer moved to have the testimony of Plaintiff's experts confined to the opinions (if any) set forth in the expert reports submitted by Plaintiff's experts pursuant to this Court's prior scheduling orders. After hearing from the parties, Defendant's motion to limit expert testimony at this stage is premature and thus denied without prejudice.

4) Hampton Luzak's Motion to Compel Interrogatory Response from Merrill Barringer, filed 8-13-20 (1919);

Plaintiff submitted to Defendant Merrill U. Barringer Plaintiff's Fifth Set of Interrogatories, which asked questions about the Defendant's procurement and distribution of a certain signed document titled "Physician's Certification of Competency" produced by Defendant Merrill

Barringer on February 12, 2020. After carefully considering the matter and hearing argument from counsel, the Court finds that Merrill Barringer should specifically respond to the interrogatories as to the unsigned and signed versions of the Physician's Certification of Competency.

5) Plaintiff's Motion for Sanctions against Merrill U. Barringer.

After reviewing this motion, the supporting materials, and arguments from counsel, this motion is taken under advisement. The Court will hold any decision on this motion in abeyance until such time as the Court deems appropriate.

IT IS SO ORDERED.



Beaufort Common Pleas

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

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

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ELECTRONICALLY FILED - 2020 Oct 12 8:29 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	
	)	
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.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2019-CP-07-01253
COUNTY OF BEAUFORT	)	2019-CP-07-1294
	)	
IN THE MATTER OF:	)	
Estate of Paul Brandon Barringer, II	)	
	)	
Hampton B. Luzak,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Merrill U. Barringer,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANTS' MOTION TO BIFURCATE

This Court has considered Defendants' Joint Motion to Bifurcate Trial filed October 23, 2020. Based on the legal memoranda submitted and oral argument presented, the Court grants the motion. In 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 Hampton Luzak v. Merrill Barringer, Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294, shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action alleged in Civ. Action Nos. 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253 and 2019-CP-07-01294.

IT IS SO ORDERED.

CARMEN T. MULLEN
Judge of the Fourteenth Judicial Circuit

_____, 2020



Beaufort Common Pleas

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

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-12-29 20:23:26 page 3 of 3

ELECTRONICALLY FILED - 2020 Dec 30 9:04 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Aug 09 5:51 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	
	)	
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.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2019-CP-07-01253
COUNTY OF BEAUFORT	)	2019-CP-07-1294
	)	
IN THE MATTER OF:	)	
Estate of Paul Brandon Barringer, II	)	
	)	
Hampton B. Luzak,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Merrill U. Barringer,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANTS' MOTION TO BIFURCATE

This Court has considered Defendants' Joint Motion to Bifurcate Trial filed October 23, 2020. Based on the legal memoranda submitted and oral argument presented, the Court grants the motion. In 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 Hampton Luzak v. Merrill Barringer, Civ. Action Nos. 2019-CP-07-01253 and 2019-CP-07-01294, shall proceed first and prior to any separate and subsequent trial(s) of the remaining causes of action alleged in Civ. Action Nos. 2016-CP-07-1919, 2016-CP-07-1961, 2019-CP-07-01253 and 2019-CP-07-01294.

IT IS SO ORDERED.

CARMEN T. MULLEN
Judge of the Fourteenth Judicial Circuit

_____, 2020



Beaufort Common Pleas

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

Case Number: 2016CP0701919

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-12-29 20:23:26 page 3 of 3

ELECTRONICALLY FILED - 2020 Dec 30 9:04 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Aug 09 5:51 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

FORM 4
ROA 005176

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP0701919

Hampton B Luzak
PLAINTIFF(S)

Merrill B Light et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Judge Mullen is hereby recused from this case.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/19/2021 .

Merrill Barringer Light Revocable Trust
Merrill B Light as Trustee
Merrill B Light As Putative Trustee
Paul B Barringer li Revocable Trust
Charles B Molster, III for Merrill B Light

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2021 Feb 19 1:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Aug 09 5:51 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253



Beaufort Common Pleas

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

Case Number: 2016CP0701919

Type: Order/Electronic Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2021-02-19 13:14:30 page 3 of 3

ELECTRONICALLY FILED - 2021 Feb 19 1:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Aug 09 5:51 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
<u>COUNTY OF BEAUFORT</u>	)	
	)	NO. 2016CP0701919
 HAMPTON B. LUZAK	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
MERRILL B. LIGHT, et al.	)	

Thursday, April 15, 2021

Courtroom No. 1
 Beaufort County
 Fourteenth Judicial Circuit
 102 Ribaut Road
 Beaufort, South Carolina

B E F O R E:

The Honorable Bentley D. Price

A P P E A R A N C E S:

Attorneys for the Plaintiffs:

S. Alan Medlin, Esquire
 Thomas W. Traxler, Esquire
 James R. Gilreath, Esquire
 William Mitchell Hogan, Esquire
 Charles B. Macloskie, Esquire

Attorneys for the Defendants:

James Ashley Twombly, Esquire
 Alice F. Paylor, Esquire
 Lee Anne Walters, Esquire
 Bijan Ghom, Esquire
 Charles B. Molster III, Esquire (via Webex)

Reported by: Cathy J. Provost, RPR/RMR

Official Circuit Court Reporter

1 this. I'm going allow the discovery to continue in this case,
2 and ultimately we will wait to see what the Court of Appeals
3 says.

4 If the Court of Appeals dismisses it and sends it back,
5 regardless, at any point in time if I have to make the decision,
6 I'm going to continue to honor Judge Mullen's order to bifurcate
7 the trial. So just to let you know that that is what I'm going
8 to decide if it becomes my decision.

9 Are y'all prepared to name your experts as to the defense?

10 MR. TWOMBLEY: Your Honor, that gets back to this issue that
11 I brought up with you the first time we were together, and it's
12 really an elephant in the room regarding the identification of
13 experts related to 2012 and 2016.

14 And it is this, just to briefly try to summarize a long
15 history for you. We originally entered into a consent scheduling
16 order that required the plaintiffs to identify experts and to
17 submit an expert report, okay. We all understood that there was
18 going to be, at a minimum in these reports, a list of the
19 opinions generally that each expert was going to give at trial,
20 and the basis for them.

21 As soon as they filed their expert reports, some of which
22 did not contain any opinions at all, any opinions at all -- even
23 Judge Mullen read one of those reports from their medical expert
24 and said, She doesn't say anything, what's she going to say at
25 trial -- I filed a motion and said to the Court -- and this was

1 my opinion then and this is my opinion now -- I'll do whatever
2 Your Honor wants to do regarding experts. If you don't want us
3 to do expert reports that list what opinions they're going to
4 offer at trial, that's fine, it will go both ways. They don't
5 have to do it, and we don't have to do it.

6 It's my strong opinion that whenever, if we have to try the
7 2012-to-2016 claims, that the Court would regret that decision.
8 But I'm obviously willing to live by it. The Court's got the
9 discretion. So either the Court can say, Y'all have to do expert
10 reports that list opinions. That's fine. Or, in the
11 alternative, I want the Court to say, Okay, plaintiffs, you are
12 bound by the opinions that are in your expert reports as of the
13 time that you identified your experts.

14 And the reason I'm so concerned about this issue, Your
15 Honor, is as follows. We deposed one of their experts, and we
16 started off the deposition and said, Can you tell us what your
17 opinions are going to be at trial? And the expert says, Well, I
18 don't know what opinions I'm going to offer at trial because I
19 don't know what questions I'm going to be asked.

20 Well, if that's the current lay of the land, I mean,
21 hopefully it should be no surprise to the plaintiffs that the
22 defendants' experts are going to say that, hat our experts are
23 going to say, Well, we can't possibly tell you what our opinions
24 are, specifically any rebuttal opinions to rebut their experts'
25 opinions, because we don't know what they're going to be asked at

1 trial and what opinions are going to be offered at trial. And
2 then we don't know what our rebuttal -- it's going to create a
3 sea of madness at trial.

4 THE COURT: What was the ruling on the motion? Did Judge
5 Mullen rule either way, that they had to produce their opinions
6 in their expert reports?

7 MR. TWOMBLEY: Well, on the initial motion that I filed, she
8 said she would issue an order on that issue in the future when
9 she entered a new scheduling order, okay. And she never issued a
10 new scheduling order, and she never addressed that issue. And I
11 have repeatedly been bringing it up, saying that it needs to be
12 resolved.

13 Now, the plaintiffs are going to tell you, and they are
14 correct, that subsequent to all that I did file another motion
15 regarding expert reports and asked Judge Mullen to exclude some
16 of their experts from testifying at trial for various reasons
17 related to their expert reports. And Judge Mullen said that was
18 premature. And so they will argue, Well, she's already ruled on
19 the issue. But that is not correct.

20 If you go back and trace the history, there's two motions.
21 They ask for different relief. And the one's simply asking, Can
22 you please tell us, either tell us we do have to do expert
23 reports and they have to list the opinions that the experts are
24 going to offer at trial, or not.

25 And I'm happy, and I think all the defendants are happy, to

1 live by whatever the Court's decision is on that.

2 But I just would -- this is going to be, on the 2012-to-'16
3 claims, it's going to be an incredibly expert-intensive,
4 witness-intensive, document-intensive trial. The idea that the
5 experts are just going to be able to say, Well, I'm not going to
6 tell you what I'm going to say until we get to trial is, in my
7 opinion, going to make for a lot more work, a lot lengthier
8 trial, confusion of the jurors, motions in limine, motions in
9 limine in the middle of the trial about new opinions that are
10 offered and whether or not they meet various standards to offer
11 them. And, at a minimum, we ought to know what they're going to
12 say.

13 And again, if what they've got in their reports is what they
14 want to stand on, that is perfectly fine with me. Give us a
15 little bit of time, we'll know the lay of the land, and we can
16 identify our experts in a couple of months. But we just need an
17 answer to that question.

18 MR. TRAXLER: May I respond to that briefly?

19 THE COURT: Sure.

20 MR. TRAXLER: We've identified four experts. And I'm going
21 to ask my co-counsel who has been in this case a lot longer than
22 I have to correct me if I'm wrong. We've identified four
23 experts. We produced expert reports on them. There is one
24 expert that we are still struggling to get financial information
25 to from the other side so he can finalize his opinion. So that

1 one, that's a problem.

2 The other three experts, they've been given reports, they
3 have been deposed, they have testified as to their opinions.
4 We've given them the reports, and they have deposed them.

5 The one that Mr. Twombly is referring to is, I believe
6 she's, a urologist, a doctor. And he said, What are your
7 opinions? She said, I don't know, I guess it depends on what
8 you're going to ask me. But then she went on, and he asked her
9 for her opinion, and she gave him her opinions.

10 We are here today to stand by the expert reports that we
11 have given to them and the opinions that they have gotten in
12 depositions of our experts, except for Dr. Charlie Alberts is the
13 one who's going to need to tweak his depending on some updated
14 financial information and, Mr. Thomas, once we get the corporate
15 financial information that we need. Otherwise, we stand by.

16 This is not a hard issue for any court. They don't get to
17 be ambushed but opinions at trial, we get it. We stand with the
18 opinions that they have gotten from our witnesses through reports
19 and depositions.

20 THE COURT: All right.

21 MS. PAYLOR: Your Honor, so they've agreed now to give us
22 reports, to tweak whatever ones they've had. So I guess that
23 scheduling order, we would like to get that first, and then have
24 two months for us to name our experts and get reports so that we
25 know exactly where we are.

1 THE COURT: All right. So if we give you the expert opinion
2 and reports today, how long will it take y'all to be ready for
3 trial?

4 MR. TWOMBLEY: On the contract claims or on the entire
5 trial?

6 THE COURT: If I bifurcate it.

7 MR. TWOMBLEY: Oh, on the contract claims, we can be ready
8 in, you know -- honestly, Your Honor, I could try that case in
9 about the next 10 minutes.

10 THE COURT: Gotcha.

11 MR. TWOMBLEY: I mean, I do probably have one expert I want
12 to identify in that case who's going to give a very simple,
13 narrow opinion. And they can depose, and we can make him or her
14 available at any time they need to. They are entitled to be able
15 to do that. But other than that, there's nothing else to be
16 done.

17 And just one point of clarification. It wasn't Mr. Twombley
18 that said it can be tried in two or three days, as Mr. Medlin
19 said. That was Judge Mullen that said it could be done.

20 THE COURT: All right. Here's what we're going to do. I'm
21 going to wait on the Court of Appeals. But again, as I ordered,
22 I want y'all to continue to participate in discovery. I'm not
23 going to issue a scheduling order just yet because I don't know
24 how long the Court of Appeals takes. Lord knows. There's no
25 telling with them. We could be sitting here for another two

1 months. The only thing I know about the Court of Appeals is
2 where it is.

3 So we're just going to have to, unfortunately, allow y'all
4 to continue to move forward. But once that comes down, then I'm
5 going to, at that point in time, I'll make all the decisions.
6 And then, as I've indicated, I'm probably going to, depending
7 upon what the Court of Appeals does, I will make the scheduling
8 order at that time.

9 And if they do come back and say it's not appealable and
10 Judge Mullen orders stands as being bifurcated, I'm going to set
11 the other one for trial. And it will be fairly quickly, probably
12 in December. All right.

13 MS. PAYLOR: Thank you, Your Honor.

14 THE COURT: For the record, Charles Molster participated in
15 the trial, as well. He just wasn't able to be here. But he
16 could hear everything we did the Webex. But he wanted to be
17 accounted for the record.

18 (WHEREUPON, proceedings terminated at 12:20 p.m.)

19 (End of Transcript of Record)
20
21
22
23
24
25

TWENGE + TWOMBLEY LAW FIRM LLC

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J. ASHLEY TWOMBLEY*
 KARL D. TWENGE+
 LEE ANNE WALTERS (Of Counsel)

*LICENSED IN SC + GA
 +SC CIRCUIT COURT MEDIATOR

June 21, 2021

Via Electronic and U.S. Mail

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RE: Luzak v. Light, et al.; Civil Action No.: 2016-CP-07-1919
Luzak v. Barringer; Civil Action Nos.: 2019-CP-07-01253 and 01294

Dear Counsel:

We have retained attorney Bruce Stone as an expert witness who we may call for trial on the contract not to revoke claims against Mrs. Barringer in Civil Action Nos.: 2019-CP-07-01253 and 01294. Enclosed is a supplemental disclosure including Mr. Stone's CV. We will make Mr. Stone available for deposition in July. If Plaintiff wants to depose Mr. Stone, please let us know dates/times at your earliest convenience so we can get that scheduled.

As you know from affidavits in this case, we have retained George W. DuRant, CPA. We expect George DuRant to testify as to any of Plaintiff's alleged damages that are allowed to be presented to the jury, including rebuttal of your experts Dr. Charles Alford and Ellie Thomas and the assumptions made by Kevin Luzak. If you want to take the deposition of George Durant, he is available for deposition during the week of July 19-23.

We also expect to call Dr. Beau Ances, who may rebut the testimony of your expert Dr. Sanders at trial. We will make Dr. Ances available for deposition if you want to take his deposition and will provide July dates to you this week. Disclosures and CVs for George DuRant and Dr. Ances are attached.

We do not believe the testimony of Mr. Durant or Dr. Ances will be relevant to the first phase trial set to begin on August 30, which is limited to Plaintiff's second and third causes of action in 2019-CP-07-01253 and 01294. However, we will make these witnesses available for

depositions in July (specifically Mr. Durant is available the week of July 19). In addition, if Plaintiff wants to ask the Court to allow depositions of these 2 potential experts to go forward after the August 30 trial date, Defendants agree to consent to that request and to make the experts available during the month after the August 30 trial concludes.

With kindest personal regards, I remain,

Cordially,



J. Ashley Twombly

cc: Alice F. Paylor, Esquire
Bijan Ghom, Esquire
Charles B. Molster, III, Esquire

ROSEN | HAGOOD

Alice F. Paylor
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July 6, 2021

VIA EMAIL

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**RE: Luzak v. Light, et al.; Civil Action No.: 2016-CP-07-1919
Luzak v. Barringer; Civil Action Nos.: 2019-CP-07-01253 and 01294**

Dear Counsel:

I am writing you to inform you that we have retained Perry Woodside and Barry Gumb as rebuttal experts. Mr. Woodside and Mr. Gumb are both located at the Charleston office of Dixon Hughes Goodman LLP. They are expected to testify as to any of Plaintiff's alleged damages that are allowed to be presented to the jury, including rebuttal of your experts Dr. Charles Alford and Ellie Thomas and the assumptions made by Kevin Luzak.

While neither expert is expected to testify at the first trial set to begin on August 30 because that trial is limited to Plaintiff's second and third causes of action in 2019-CP-07-01253 and 01294, we will make these experts available to you prior to July 30 if you would like to take their depositions. We are also agreeable to what Ashley proposed in his June 21 letter—if Plaintiff wants to ask the Court to allow depositions of these 2 potential experts to go forward after the August 30 trial date, we will make the experts available during the month after the August 30 trial concludes.

Sincerely yours,

s/ Alice F. Paylor

Alice F. Paylor

AFP/tnd

Enclosure

cc: Charles B. Molster, III, Esquire (via e-mail only)
J. Ashley Twombly, Esquire (via e-mail only)
Lee Walters, Esquire (via e-mail only)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITC. A. Nos.: 2019-CP-07-01253
2019-CP-07-01294**PLAINTIFF'S MOTION TO
RECONSIDER ORDER GRANTING
SUMMARY JUDGMENT AS TO
PLAINTIFF'S SECOND AND THIRD
CAUSES OF ACTION***Introduction*

Pursuant to Rule 59(e), Plaintiff moves to reconsider this Court's summary judgment order dated August 20, 2021. In that Order, this Court effectively reversed the prior denial of the very same summary judgment motion, and the very same arguments, by the Honorable Carmen T. Mullen, who had been presiding over this case, designated as complex, and who had been deeply involved in all aspects of this complex case, for approximately four years. This Court reversed Judge Mullen even though *Plaintiff had no less evidence*¹ for this repeat summary judgment motion than she had when Judge Mullen denied exactly the same (prior) summary judgment motion on November 4, 2020. Nor has the law changed since November 4, 2020. This is a summary judgment motion: all Plaintiff has to do is produce a sufficient amount of evidence — a minimal amount under the law² — to survive summary judgment. If Plaintiff had

¹ Plaintiff actually had more evidence in her favor for this repeat summary judgment motion than in the prior summary judgment action, as discussed below, especially related to the testimony of attorneys Neill McBryde and John Jolley.

² According to this Court, Plaintiff failed to demonstrate even a mere scintilla of evidence in support of the claims on which summary judgment was granted. Judge Mullen, on the other hand, specifically pointed out in her order dated November 4, 2020 that "there is evidence in support of Plaintiff's two causes of action at issue in the summary judgment motion, creating a genuine issue of material fact for jury determination." Plaintiff certainly had not

a sufficient amount of evidence to create a genuine issue of material fact in the prior summary judgment, she has a sufficient amount now, without the need to second-guess Judge Mullen.³

This Court's order expressly identifies evidence that does create a genuine issue of material fact that precludes summary judgment. On page 6 of the order granting summary judgment, this Court stated: "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 (sic) children equally with respect to certain assets in the future." (emphasis added).

Similarly, the Court's analysis of S.C. Code §62-2-701 suggests that the fact of the reciprocal wills is the only evidence of contractual intent, even while acknowledging a page earlier evidence that did create a genuine issue of material fact. Plaintiff has never argued, as implied in this Court's order, that the 1998 reciprocal wills constituted the sole evidence of a contract or promise. Plaintiff produced multiple examples of other indications of decedent's intent in addition to the reciprocal wills. The Court necessarily had to ignore all of this evidence

withdrawn any of her evidence, so the genuine issues of material fact on both causes of action that existed on November 4, 2020 still existed on August 20, 2021. This Court's order focused solely on "documents" as evidence, ignoring the testimony of witnesses on this very issue.

³ As in her prior memoranda, reserving all rights, Plaintiff, in the interests of economy and efficiency, hereby incorporates all of Plaintiff's responses, memoranda, arguments, affidavits, and exhibits from Defendant's prior summary judgment motion denied by Judge Mullen and from Defendant's present summary judgment motion on the second and third causes of action. This memorandum will address the relevant issues, but reference is made to the filings in the prior summary judgment motion and the present summary judgment motion, including Exhibit references. Included in Plaintiff's filed exhibits from the prior summary judgment motion and from this summary judgment motion, all incorporated herein, were 40 exhibits of estate planning related documents showing the constant, unchanging pattern of equal treatment with the frequent participation of and no resistance from Defendant Barringer, 26 medical-related documents showing Paul Barringer's mental problems and decline, affidavits from Hampton Luzak and Kevin Luzak showing Paul Barringer's unchanging intent for equal treatment and the lack of any resistance from Defendant Barringer, affidavits from estate planners Richard Allen and James Hardin (deposed by Defendant Barringer), debunking statements made by McBryde, communications from Defendant Randy Light and from those occupying positions as officer, director, and general counsel of the company, and excerpts from Defendant's deposition. Also included in Plaintiff's exhibits for this summary judgment motion were additional affidavits from Hampton Luzak and Kevin Luzak providing evidence of the lack of intent by Paul Barringer to give Defendant Barringer a power over voting stock, the existence of a contract not to exercise any such power of appointment, and a promise not to exercise any such power of appointment; in addition, Plaintiff included excerpts of the depositions of McBryde and Jolley that impeached their recollection and reliability. In opposition, Defendant Barringer *failed to provide any personal affidavit* to dispute any of the facts shown by Plaintiff's evidence.

in order to grant summary judgment based solely on what “the documents” showed. In short, the Court opted to *weigh* the evidence instead of simply looking to see if evidence existed (by inference or otherwise) to support the Plaintiff’s claims.

The Court cites two cases as authority for being able to consider again the exact same summary judgment motion denied by Judge Mullen. The first, *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (S.C. App. 1989), is clearly inapposite. In its order, this Court quoted a sentence from *Weil* that demonstrates that it is inapposite: “[A] judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment.” *Id.* In *Weil*, a family court judge issued an order after a merits hearing with testimony, despite an earlier ruling from another judge denying summary judgment. Unlike the present case, the party in *Weil* was not seeking two bites of the summary judgment apple. Although Plaintiff in this case is confident she would prevail if given the opportunity to have a trial, she understands that a jury may disagree with her arguments at trial; however, this Court’s summary judgment order, coming to the opposite conclusion of Judge Mullen, precludes Plaintiff from even having a trial, unlike *Weil*. Judge Mullen’s denial of the prior summary judgment motion would have allowed Plaintiff to have a trial — regardless of the outcome. The second cited case, *Smith v. Breedlove*, 377 S.C. 415, 662 S.E.2d 67 (2008), did allow a second summary judgment, two years after the first, when substantial discovery occurred after the first summary judgment. Importantly, in *Smith*, no depositions had been taken before the first summary judgment. Summary judgment prior to completion of discovery is inappropriate. *Gionan v. Tenet Healthsystems of Hilton Head Inc.*, 383 S.C. 48, 677 S.E.2d 32 (Ct.App. 2005). At the second summary judgment motion in *Smith*, discovery had been completed.

In contrast, Judge Mullen ordered that a material issue of fact existed. That material issue of fact did not disappear by the time of the second summary judgment, nor did the three depositions cited by this Court eliminate any issue of material fact or reduce the evidence in Plaintiff's favor to less than a scintilla. In fact, the depositions created additional genuine issues of fact and further evidence of the facts that were disputed at the time of Judge Mullen's order.

As discussed more fully below, the deposition of Neil McBryde, who drafted the 1998 documents, was devastating to Defendant Barringer. He had filed two sworn affidavits for the first summary judgment, and his deposition testimony contradicted his sworn affidavits as well as numerous other facts asserted by Defendant Barringer — not to mention calling into question his recollection and reliability. Thus, McBryde's testimony added nothing to Defendant Barringer's existing evidence from the prior summary judgment, but weakened the facts Defendant Barringer had relied on in the first summary judgment motion, therefore adding to the dispute over material facts at the time of the instant summary judgment.

As the Court noted, both parties submitted deposition testimony from John Jolley, who had nothing to do with the 1998 documents: that both parties submitted excerpts from his deposition further demonstrates that the "additional discovery" created more issues of fact, not fewer. The third deposition cited by the Court was that of Kevin Luzak, but the Court did not indicate how or why his deposition made a difference. Kevin Luzak had submitted affidavits⁴ for the prior summary judgment as well as this one, both of which provided evidence that would defeat a summary judgment motion.

⁴ This Court's order mistakenly states that neither Kevin Luzak's affidavit nor Hampton Luzak's affidavit "suggest that a promise was made during [family] meetings" Both of their affidavits do exactly that. Under *Chapman*, a promise can be inferred, even from silence. The affidavits, inter alia, aver that Defendant Barringer never indicated that she would do anything other than comply with Paul Barringer's intentions for equal control of his company. This alone satisfied the requirement of *Chapman*.

One other issue raised by the *Smith* case was the confirmation that, in a summary judgment, a “trial court, must view all ambiguities, conclusions, and all inferences arising in and from the evidence in a light most favorable to the non-moving party” This Court provided no indication in its order that it did so.⁵ This Court failed to even consider the rule that, even if the facts are undisputed (which Plaintiff does not acknowledge), summary judgment is inappropriate if the conclusions or inferences of fact to be drawn from those undisputed facts are disputed. *Hoard v. Roper Hospital*, 377 S.C. 503, 661 S.E.2d 113 (Ct.App. 2008).

The focus of Plaintiff’s second and third causes of action is whether Defendant Barringer has the power to appoint by will the controlling voting stock in Paul B. Barringer’s legacy company, Coastal Forest Resources Company (“CFRC”). Plaintiff has contended throughout this litigation that Paul Barringer never intended to give Defendant Barringer the power to appoint such voting stock and, even if his valid estate planning documents conveyed such a power, then Defendant Barringer cannot exercise any such power because she entered into a valid contract agreeing not to exercise any such power of appointment, as to the voting stock, and/or she made an enforceable promise in a fiduciary or confidential relationship not to exercise any such power of appointment.⁶

⁵ In its order, the Court referred to a post-hearing email submitting four documents previously submitted. Plaintiff notes that these documents were submitted because Plaintiff understood that the Court had requested them.

⁶ Despite the Court’s questioning the ability of Plaintiff to assert alternative theories about the existence of the power of appointment and, if so, about a promise not to exercise it, Plaintiff is certainly entitled to pursue alternate theories, all stemming reasonably from the same set of facts. See Rule 8(a), SCRCP (“Relief in the alternative or of several different types may be demanded.”)

No Intent for Power of Appointment over Stock

This Court's Order failed to consider the evidence showing that Paul Barringer never intended to give Defendant Barringer a power to appoint voting stock. Because the Order focuses on a discussion of the 1998 documents,⁷ Plaintiff will do so as well for purposes of this motion to reconsider.⁸

Paul Barringer never allowed Defendant Barringer to have anything to do with the company, either CFRC or its predecessor. She is not and was not ever an officer, not a director, not an employee, and not a stockholder. Until his dementia subjected him to Defendants' improper influence, she had no say and no involvement in the company whatsoever. Paul Barringer never made Defendant Barringer a trustee of any of his trusts, although he variously named his three children as trustees or substitute trustees. There is no evidence whatsoever that Paul Barringer intended his wife, with no knowledge of, involvement in or power ever with the company, to decide after he died who might control the company. The facts regarding decedent's treatment of Defendant Barringer as to the company supports the opposite conclusion —i.e., Paul Barringer never intended to give Defendant Barringer a power to effect the

⁷ The Court refers to Plaintiff's response to interrogatories indicating that any promise would have been made no later than 1998. Plaintiff's position is based on the contract and separate non-contractual promise that arose at the time of the 1998 document executions, as discussed below. But Plaintiff's responses to interrogatories clearly do not limit the evidence to the time of execution of the 1998 documents; subsequent evidence is valid as well, as also discussed below.

⁸ Nevertheless, Plaintiff's argument prevails as to any subsequent valid document. This Court's Order failed to address the issue of the summary judgment by Judge Price, dated July 6, 2021, granting Defendant Light's motion for summary judgment as to the February 28, 2012 will and trust, finding that those documents were valid. Although that order is under appeal, if it is upheld, that means the 1998 will and trust documents are revoked and thus cannot grant a power of appointment to Defendant Barringer. As discussed below, even if the February 28, 2012 will and trust are the operative documents, Plaintiff's contention that Paul Barringer did not intend to give Defendant Barringer a power to appoint voting stock still prevails. And if the February 28, 2012 documents are valid, as determined by Judge Price's order, then any subsequent documents are invalid: if a subsequent document were valid, then the February 28, 2012 documents are not valid because they are revoked; the only way the February 28, 2012 documents can be valid is that the subsequent documents were never valid.

distribution of voting stock. This is all evidence, in this record, that creates a genuine issue of material fact precluding summary judgment.

The deposition of Neill McBryde, was devastating to Defendant Barringer in that it exponentially increased the genuine issues of material fact as to the 1998 documents — the only documents McBryde was involved with. Despite contrary affirmations in sworn affidavits, when deposed, he admitted that he had no specific recollection of discussing a power of appointment with the Barringers.⁹ He testified that he never discussed voting control or stock with Paul Barringer, meaning that he never explained to Paul Barringer that any voting stock would be subject to any power of appointment. The grant of a power of appointment, as with any grant, requires intent. Paul Barringer could not have had any such intent, given that McBryde never discussed voting stock with him. McBryde's voluminous notes showed only one reference of a few words that even mentioned a power of appointment, and it could have referred to any number of powers of appointment found in the McBryde documents, most likely those given to the Barringer children, and not to Defendant Barringer.¹⁰ McBryde admitted that his notes did not necessarily mean that he discussed that issue with a client, but were often simply reminders to him to do something.¹¹

⁹ McBryde met only with Paul Barringer until the execution of the documents. Mrs. Barringer was never present, nor was any communication directed to her until McBryde mailed drafts (according to an unsigned copy of a letter in his file) for review two days before the Barringers apparently traveled from Hilton Head to Charlotte to execute the documents, ostensibly having had to drink from a firehose of complex documents between the time the drafts arrived and their travel to Charlotte without benefit of legal consultation, assuming they ever received the drafts in time. McBryde could recall very little, if any, specifics about his estate planning with Paul Barringer and Defendant Barringer. See McBryde deposition, pp. 114-117, 123-133, 135-137, 140 147-152, 155-162, 183, 187, 190, 194-195, 206, 209-211, 216-218, 220-223, 231-232, 238-241, 245, 247, 258. The McBryde deposition was attached as Exhibit 8 to Plaintiff's memorandum opposing this summary judgment, with excerpts at Exhibit 3.

¹⁰ McBryde admitted that the 1998 documents he created gave the children testamentary powers of appointment as well. His one shorthand note referring to powers of appointment indicated that property would be in trust as long as possible, which anticipates that the children would have testamentary powers of appointment. This again indicates that Paul Barringer did not intend to give Defendant Barringer any power of appointment over any voting stock.

¹¹ Similar facts apply to Jolley and the February 28, 2012 documents. *Nowhere* in his notes or communications did he discuss or demonstrate a power of appointment. *Nowhere* in his notes or communications did he discuss voting

Importantly, *McBryde testified that he did not tell Paul Barringer or Defendant Barringer that the powers of appointment could affect control of the company.*¹²

Also importantly, Paul Barringer could not have intended to give Defendant Barringer a power of appointment over controlling voting stock in the 1998 documents because he did not have enough stock at that time to affect control. He had already given voting stock control to his children, who could act without him, and he did not keep enough stock to team with one child for control.¹³ A testator and/or settlor's intent must be construed in accordance with the facts and circumstances that exist at the time the relevant documents are executed,¹⁴ so Paul Barringer could not have intended to give such a power of appointment in 1998 because he knew he did not himself have enough stock to affect control.

The language of the powers of appointment in all the documents¹⁵ state that Defendant Barringer can appoint to any child or descendant. Paul Barringer would not have given someone the power to appoint controlling stock to any descendant, which could be a grandchild, great-grandchild, etc., that he may have never known before he died. He always maintained equal control among his children and intended that it continue.¹⁶ Again, there is simply no evidence that Paul Barringer understood and intended for Defendant Barringer to change his long-held plans for equal control of the company.

stock or control. Even though he testified at one point in his deposition that he explained the power of appointment, when pressed he could not specifically recall what he said or how he said it. John Jolley deposition of 4-21-21, pp. 56, lns. 20-25, p.57, lns. 1-20.

¹² McBryde deposition p. 258, lns. 18-25.

¹³ See voting agreement, Exhibit A, Attachment 7, to the prior summary judgment motion, incorporated herein.

¹⁴ See, e.g., *Estate of Fabian*, 362 S.C. 349, 483 S.E.2d 474 (Ct.App. 1997).

¹⁵ Again, because of the grant of summary judgment, Plaintiff was deprived of the opportunity to show the voluminous evidence as to why all of the post-1998 documents are invalid.

¹⁶ When his son Victor took a spin-off company, Paul Barringer allocated the remaining stock to treat his two daughters equally as to CFRC, confirming his long-stated intentions.

Another reason Paul Barringer did not understand and intend that his voting stock would be controlled by someone else is because his trustee in all of his trusts had the power to distribute principal — to Defendant Barringer and the children — and/or to sell the trust property. Again, he never named Defendant Barringer as trustee, and the trustees and successors of his 1998 trust were his son, a friend, and a bank, all of whom possessed the business acumen and knowledge that Defendant Barringer lacks. Paul Barringer would never have allowed a trustee to distribute or sell voting stock, yet the language of the trust documents appear to do exactly that, clearly demonstrating a genuine issue of material fact as to whether he had any intention for his voting stock to be controlled as part of any power of appointment or trustee power.

Defendant Barringer argued that there is no evidence that Paul Barringer wanted to maintain equal control of the company regardless of how a child might have behaved subsequently, but that argument is without merit and contradicted by the facts: *Paul Barringer had already given away control of his company to his children by 1998; regardless of their subsequent behavior, they still had control that he had no power to take back.*¹⁷ His very actions prove that he did not care about future behavior because he had already irrevocably given away control.

Promise Not to Exercise

Even if the language of the documents successfully gave Defendant Barringer a power of appointment over voting stock, she promised not to exercise it. The Court has erred in failing to adequately distinguish the difference between a contract not to exercise, which of course requires a contract, and a unilateral fiduciary or confidential promise, which is enforceable under South Carolina law specifically because it is not a contract. Plaintiff recognizes that South Carolina

¹⁷ So, for example, if one of the children robbed a bank after 1998, there was nothing Paul Barringer could do as to the voting stock because he had already given it away.

Code section 62-2-701 provides the sole means for proving a contract, as discussed below, but section 62-2-701 does not and cannot govern the common law, unilateral fiduciary or confidential relationship enforceable promise issue because the unilateral fiduciary or confidential relationship enforceable promise issue *does not involve a contract*. It is a separate issue not addressed by the statute. Section 62-2-701 is the sole source of law governing contracts not to revoke, superseding any prior common law as to contracts not to revoke, but it does not and cannot supersede the common law dealing with enforceable promises that *are not contracts*. See S.C. Code §62-1-103 (probate common law survives unless supplanted by statute). To focus exclusively on a contract diverts attention away from the common law and *Chapman*.

Thus, the common law, and not Section 62-2-701, applies to the enforceable promise cause of action — Plaintiff's second cause of action. The *Chapman* case therefore remains valid law and is unaffected by the statute.¹⁸

Plaintiff recognizes that the facts in *Chapman* differ from the facts in this case, but the statement of law in *Chapman* is nevertheless valid, controlling, and apropos: a spouse is bound by a promise not to exercise, if that promise is made while the spouse is in a fiduciary or confidential relationship; a contract is not necessary. Importantly, the *Chapman* court, citing the leading national authority on trust law, stated that the promise did not even have to be express. *Chapman, supra*, at 479, 395 S.E.2d at 452. Rather, the promise could be implied, even by silence. This Court's order granting summary judgment to Defendant Barringer is in direct contravention to the rule announced by the Court of Appeals in *Chapman*. Plaintiff clearly has demonstrated sufficient evidence to show that Defendant Barringer made such a fiduciary or

¹⁸ *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (S.C. App. 1990). Moreover, *Chapman* was decided in 1990, while section 62-2-701 became effective in 1987.

confidential promise, even if only by silence or acquiescence. Indeed, Defendant Barringer maintains her silence even today by failing to produce an affidavit contesting Plaintiff's evidence in support of her position. Defendant Barringer's silence in connection with this summary judgment motion is compelling evidence that in itself precludes summary judgment.

In Plaintiff's second cause of action, for constructive trust and injunction, Plaintiff alleges that Defendant Barringer made an express or implied promise not to exercise any testamentary power of appointment she may have in a manner that would redirect the subject property in a manner other than as set forth in the default provisions of the estate plan of Paul Barringer. If, in fact, Paul Barringer intended to give Defendant Barringer a testamentary power of appointment over such voting stock, which Plaintiff disputes, Paul Barringer relied on Defendant Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous estate planning and succession documents of Paul Barringer,¹⁹ Paul Barringer intended to treat his daughters — Plaintiff and Defendant Merrill Light — equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Defendant Barringer and assertions made by her counsel in court, she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner that would not treat the daughters equally with respect to the CFRC voting stock

Defendant Barringer's 1998 will made an express promise to her now deceased husband by stating that she would not exercise her power of appointment. Nor did she attempt to exercise the power for the rest of Paul Barringer's life. Paul Barringer went to his grave believing that his

¹⁹ Those documents that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Plaintiff alleges that any of Mr. Barringer's estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons.

wife would keep her promise. The *Chapman* court specifically and expressly adopted the rule in Bogert, Trusts, §89 (6th ed. 1987), noting that the promise by the fiduciary may be express or implied, even by silence. A fact-finder could infer that Paul Barringer understood that Defendant Barringer made such a promise because of her specific and express declination to exercise any power in her 1998 will, which is a genuine issue of material fact; Paul Barringer's failure to exercise any power for the rest of his competent life, and even for the rest of his life once Paul Barringer was incompetent; and from the numerous other situations where Defendant Barringer engaged in acts supporting Paul Barringer's intent that the children be treated equally, and always acquiesced and never expressed any disagreement about his intention of equal treatment.²⁰

Yet, according to this Court, none of this evidence creates even a scintilla of evidence to support the existence of a non-contractual promise based on a fiduciary and/or confidential relationship, even though Defendant Barringer's silence in itself speaks loudly.

Defendant Barringer argued that it would make no sense for Paul Barringer to give Defendant Barringer a power of appointment and then rely on her promise not to use it, but that is exactly what happened in *Chapman* and exactly what section 62-2-701 regarding contracts not to exercise, discussed more fully below, governs.

Equitable Estoppel

Plaintiff's second cause of action is also supported by the doctrine of equitable estoppel, which enforces a promise that is not contractual.²¹ Just as section 62-2-701, dealing exclusively

²⁰ For example, the estate planning related documents discussed at footnote 3, *supra*.

²¹ This Court's order states that Plaintiff has not asserted a claim for promissory estoppel. That is incorrect. Plaintiff's complaint alleges that, separate and apart from any promise pursuant to a contract, Defendant Barringer promised not to exercise any power of appointment. Promissory estoppel involves a promise, as does the fiduciary/confidential relationship argument involve a promise, neither of which need be part of a contract.

with contracts, consequently does not and cannot supersede common law enforcement of non-contractual promises based on fiduciary or confidential relationships, section 62-2-701 likewise cannot supersede the common law of equitable estoppel, which by definition is non-contractual. In South Carolina, equitable estoppel can apply based on silence.²² As with the fiduciary/confidential promise issue, the Court failed to distinguish the difference between equitable estoppel, which does not require a contract, and a contract not to revoke, which is governed by section 62-2-701.

The Court misconstrues *Satcher*,²³ a classic equitable estoppel case in which the party relying on a non-contractual promise was entitled to enforce it. *Satcher* allowed purely oral, or non-written proof, to establish estoppel and hence the enforcement of the promise, proving that section 62-2-701, which requires some written proof of a contract not to revoke, does not apply to estoppel.²⁴ In this case, Paul Barringer relied on the promise of Defendant Barringer, and the doctrine of equitable estoppel clearly applies. There is evidence he relied on his wife's promise, whether express or implied, by declining to exercise the power of appointment she gave him and by his knowledge that she had promised to honor his intent to treat their children equally by declining to exercise any power in her 1998 will or in any will she executed thereafter while he was alive, by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and by participating in or acquiescing in other

²² See, e.g., *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012); *State v. Hinojos*, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011); *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998).

²³ *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002).

²⁴ *Satcher* was decided some 15 years after the effective date of section 62-2-701.

acts evidencing the intent to treat the children equally. That constitutes classic promissory estoppel.

Yet, *according to this Court, not a scintilla of evidence exists* to support the existence of a non-contractual promise based on equitable estoppel, even though silence in itself would suffice.

Contract Not to Revoke Will (Not to Exercise Any Power of Appointment)

Separate and apart from the fiduciary/confidential relationship and equitable estoppel arguments, either of which is supported by sufficient facts for Plaintiff to avoid summary judgment, is Plaintiff's argument that a contract not to exercise existed, which in itself is supported by sufficient facts for Plaintiff to avoid summary judgment. Any of these arguments — fiduciary/confidential relationship and/or equitable estoppel and/or contract not to revoke — suffices to avoid summary judgment. With respect to contracts not to revoke, Plaintiff recognizes that section 62-2-701 governs. Nevertheless, Plaintiff satisfied the requirements of section 62-2-701, and certainly sufficient evidence suffices to avoid summary judgment.

The Court's misapprehension about section 62-2-701 is further demonstrated by its inability to determine whether the "decedent" in the statute is Paul Barringer or Defendant Barringer. The will that is subject to the contract is Defendant Barringer's, and it is her will against which the contract is enforced. Paul Barringer died first, and it is not his will that breaches the contract. Defendant Barringer's will would breach the contract, which is why Plaintiff sought an injunction against her breaching that contract.²⁵

In Plaintiff's third cause of action, for enforcement of contract not to revoke and injunction, Plaintiff alleges that Paul Barringer and Mrs. Barringer entered into a binding

²⁵ South Carolina allows the enforcement of a contract concerning succession — section 62-2-701 — before the decedent dies. See *Wright v. Trask*, 329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997).

contract not to revoke their estate plans, especially with respect to Defendant Barringer's will(s) that did not exercise any power of appointment related to voting stock before Paul Barringer's death. This contract not to revoke applied to the estate plans in place that were not the result of, *inter alia*, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, fraud, and/or lack of capacity because any estate plan of Paul Barringer resulting from those actions would be invalid.

In 1998, Paul Barringer executed, *inter alia*, a will and revocable trust that included language purportedly giving Defendant a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him.²⁶ Even if Defendant and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Defendant in 1998, Defendant's 1998 will, prepared by the same drafting attorney, and executed at the same time and in conjunction with Paul Barringer's 1998 will and revocable trust, expressly declined to exercise that testamentary power of appointment.

Moreover, Defendant Barringer's 1998 revocable trust apparently gave Paul Barringer an identical special testamentary power of appointment over the property in her revocable trust if he survived her — establishing the mutuality of their planning — which he similarly expressly and specifically declined to exercise in his will. Thus, continuing to assume *arguendo* that Paul Barringer and Defendant understood what a testamentary power of appointment was and that Paul Barringer's 1998 documents contained such a special testamentary power of appointment, their symbiotic estate planning documents prepared by the same attorney and executed simultaneously included both a grant of such a testamentary power of appointment by Paul

²⁶ As discussed above, Plaintiff asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Defendant, Plaintiff, and Plaintiff's husband Kevin Luzak, and others, there is no evidence that either Paul Barringer or Defendant knew about or really understood that these documents gave Defendant a testamentary power of appointment over voting stock.

Barringer and a concomitant express declination to exercise that testamentary power of appointment by Defendant Barringer, and vice-versa.

Thus, if Paul Barringer knew he was giving Defendant Barringer a testamentary power of appointment in his 1998 documents, he also knew that Defendant Barringer expressly declined to exercise that testamentary power of appointment in her will executed simultaneously, just as she knew that he declined to exercise the power she gave him. Because Plaintiff has produced significant proof that Paul Barringer never made another will or trust when he was competent and/or free from improper influence,²⁷ he thus spent the rest of his cogent un-influenced life²⁸ understanding that Defendant Barringer had agreed not to exercise that testamentary power of appointment. That understanding between Paul Barringer and Defendant Barringer, evidenced by the 1998 documents, including her specific and express declination to exercise the special testamentary power of appointment, if there was one, serves as evidence in support of all of Plaintiff's assertions in addition to there being no intent for Paul Barringer to give Defendant Barringer a power of appointment over voting stock.

The pattern of other planning related acts²⁹ by Paul Barringer, while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally, thereby denying any one child the ability to control the company. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant Barringer a special testamentary power of

²⁷ The voluminous and detailed evidence of the invalidity of any post-1998 estate planning documents purportedly executed by Paul Barringer is found in the filings in the prior summary judgment motion incorporated herein.

²⁸ Meaning that any document he executed after 2011 was invalid because he lacked capacity and was unduly influenced, etc, as to any documents he executed after 2011.

²⁹ The voluminous and detailed evidence of these other estate planning related acts is found in the filings in the prior summary judgment motion incorporated herein.

appointment while Defendant Barringer concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that *his* plan for *his* company — shared control after his death — would remain intact.

Although this was the foundation, it is certainly not all of the evidence Plaintiff asserts that proves that Defendant Barringer agreed contractually not to exercise any power of appointment; plenty of other evidence exists to prove the existence of an agreement.

Attorney John Jolley prepared the documents and Defendant executed reciprocal documents multiple times between 2012 and Paul Barringer's death. Importantly, none of the documents prepared by Jolley and executed by Defendant Barringer exercised any testamentary power of appointment. Defendant Barringer did not purport to execute the power of appointment until after Paul Barringer died *and* the commencement of this action in 2016, when a different attorney began representing her.

Even assuming *arguendo* that the estate planning documents executed by Paul Barringer after 2011 might be valid, Defendant and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Not once during Paul Barringer's lifetime did Defendant Barringer attempt to exercise any testamentary power of appointment.

The pattern of other planning related acts by Paul Barringer while competent and free from undue influence, is consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally among the three children, thereby denying any one child the ability to control the company. That is indisputably the way the company operated when Paul Barringer was alive and competent, and serves as evidence of his intent going forward. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he

purportedly gave Defendant a special testamentary power of appointment while Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that his plan for his company — shared control after his death — would remain intact.

South Carolina Code § 62-2-701 provides several methods of establishing a contract not to revoke a will or devise: “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.”

Assuming *arguendo* that Plaintiff relies solely on the existence of a contract not to revoke a will or devise — which she does not — any of these three methods listed in the statute may be used to establish the existence of a contract not to revoke a will or devise. The first option provides for the decedent’s will stating material provisions of the contract. That option does not require that the entire contract be contained in the decedent’s will, but rather only that the will state material provisions of the contract. Paul Barringer’s 1998 revocable trust executed in conjunction with his 1998 will stated material provisions as to the existence of a power of appointment and the intent to treat their children equally. Defendant Barringer’s 1998 will, executed simultaneously and symbiotically with Paul Barringer’s 1998 will and revocable trust, stated material provisions as to the existence of a power of appointment and the intent to treat their children equally, as well as, importantly, expressly and specifically declining to exercise the power of appointment set forth in Paul Barringer’s estate plan.

Paul Barringer similarly expressly and specifically declined to exercise the power of appointment set forth in Defendant’s estate plan. Although these Barringer 1998 estate planning

documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Defendant Barringer's will that should not be revoked as to the express and specific declination to exercise any power of appointment: her will states the material provisions of the contract in itself, and is corroborated by the material provisions stated in Paul Barringer's will. The mutuality of the contract is confirmed by Paul Barringer's will, which declines to exercise the special testamentary power of appointment that Defendant gave him in her 1998 revocable trust.

If Paul Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Defendant Barringer, then he also understood that Defendant Barringer had agreed at the same time, in documents prepared by the same lawyer representing them both and executed at the same time, not to exercise that power of appointment, just as he declined to exercise the power of appointment she apparently gave him. He relied on that contract. These documents each treat the children equally.

The material provisions of the contract stated in the Barringers' 1998 estate plans, and particularly in Defendant Barringer's 1998 will, are sufficient to satisfy the requirements of SCPC section 62-2-701(1), but are also augmented and corroborated by the following:

- The pattern of the reciprocal wills and trusts executed by Paul Barringer and Defendant beginning in 2012 (although Plaintiff contends Paul Barringer's wills and trusts are invalid), none of which exercised any power of appointment, until Defendant Barringer breached the contract by executing wills after Paul Barringer died which purport to exercise a power of appointment;
- Family agreements demonstrating Paul Barringer's intent to keep voting control equal;
- Gift tax returns joined in by Defendant;
- Corporate documents demonstrating Paul Barringer's intent to keep voting control equal;
- Communications among the family and with advisors; and

- Numerous meetings involving family and business planning, at which Paul Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant. These documents and events form a consistent and continuing pattern of evidence.³⁰

SCPC section 62-2-701(3) provides different requirements: “a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract.” Under subsection (3), a contract can be established by the signature of the decedent on a writing evidencing a contract as augmented by extrinsic evidence. Thus, subsection (3) broadly and effectively allows the terms of the contract to be established by extrinsic evidence. Just as with subsection (1), there is no requirement that the will (subsection (1)) or the signed writing (subsection (3)) expressly and specifically include the term “contract.” This is consistent with contract law, which of course does not require the word “contract” in a writing to create a contract.

The simultaneous and symbiotic 1998 estate planning documents of Paul Barringer and Defendant are obviously signed writings. As discussed above regarding subsection (1), Paul Barringer and Defendant’s 1998 documents create special testamentary powers of appointment and Defendant Barringer’s will specifically and expressly declines to exercise any power of appointment. This alone “evidences” a contract. Numerous other documents and evidence also serve as signed writings evidencing a contract and as extrinsic evidence establishing the contract, especially as to equal treatment.³¹

³⁰ The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

³¹ The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

Presumably in the context of section 62-2-701(1), this Court held that Plaintiff has identified no provision stating the material provisions of a contract. As discussed above, the 1998 estate planning documents clearly set forth the material provisions of the contract: in short, the mutual declaration of the powers of appointment that each granted to the other and the mutual and mirror provisions otherwise in their 1998 documents — treating the children equally. Although not necessary because these documents themselves provide basis for the “material provisions of the contract,” section 62-2-701(1) does not preclude additional evidence. As discussed above, there is substantial additional evidence to show the continuing agreement between Paul Barringer and Defendant Barringer.

Presumably in the context of section 62-2-701(3), this Court held that Plaintiff had failed to identify *any writing* signed by Paul Barringer and Defendant Barringer evidencing an alleged contract. Again, as discussed above, Plaintiff alleges numerous writings, including but not limited to the 1998 documents, but in addition to writings, other evidence as well. Moreover, section 62-2-701(3) does not limit the use of extrinsic evidence to prove the contract. In addition to documentary evidence, Plaintiff has produced testimony, including affidavits, showing their intent. This Court generally focuses on “Mr. and Mrs. Barringer’s estate planning documents,” overlooking that section 62-2-701(3) allows extrinsic evidence, not limited to estate planning documents, and not even limited to documents.³²

Yet, *according to this Court, not a scintilla of evidence exists* to support the existence of a contract not to revoke/not to exercise any power of appointment over voting stock.

³² With respect to the contract claim, this Court also focuses on the 1998 documents as never promising not to exercise any power of appointment but, again, section 62-2-701(3) does not limit evidence to wills, even though the 1998 documents themselves contain sufficient evidence to show a contract under subsections (1) or (3). In addition, the Court cites the provision in section 62-2-701 that mutual wills do not create a presumption of a contract, but that provision does not preclude mutual wills from creating a contract, especially when supported by other evidence.

Inability to Obtain Testimony from Defendant Barringer

Much has been made by Defendant Barringer's counsel about her age. While Plaintiff (and her counsel) wish her nothing but the best physical and mental health for a long time, Defendant Barringer has chosen never to testify about the power of appointment issue. Defendant's counsel cut short her deposition in March 2019, after Plaintiff had just short of three hours to depose her.³³ Defendant Barringer resisted a court order until finally obeying the order to produce her estate planning documents, which she did not produce, despite the court order, until March 6, 2020, some 17 months after the discovery request and approximately one year after her deposition. Her estate planning documents provided crucial information about the power of appointment issue. Because of the refusal to produce these documents, Plaintiff did not have access to them at Defendant Barringer's deposition, which was noticed by Defendants and conducted in 2019 before Plaintiff received these documents. Defendant Barringer, whom you would think would have something to say about the power of appointment issue, has failed to provide any affidavit, including for this summary judgment.³⁴ If the motion to reconsider is denied, and an appeal is Plaintiff's sole recourse at that point, the opportunity to hear from Defendant Barringer as to this issue is lessened.³⁵ Moreover, the Court issued its order without determining which estate planning document, if any, was valid and whether that valid document effectively created a power of appointment. Plaintiff has been deprived of her opportunity to

³³ The substantive amount of time was considerably less, given the constant and lengthy objections interposed by defense counsel.

³⁴ See *Davis v. Sparks*, 235 S.C. 326, 333, 111 S.E.2d 545, 549 (1959) ("In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him.") (quoting 31 C.J.S. Evidence § 156a, p. 847); see also *Matthews v. Porter*, 239 S.C. 620, 633, 124 S.E.2d 321, 328 (1962) ("It is well settled in this State that if a party fails to produce the testimony of an available witness on a material issue in the cause, it may be inferred that such testimony, if presented, would be adverse to the party who fails to call the witness.")

³⁵ Although Plaintiff did not want to have two lengthy repetitive trials, which is why she opposed bifurcation, she does want her day in court, which because of the summary judgment orders will be delayed even more.

present evidence about the validity of any estate planning documents, which is crucial to the case.

Conclusion

Substantial and sufficient evidence exists, through the pleadings, depositions, affidavits, and discovery on file, such that Plaintiff must prevail. Plaintiff demonstrates substantial and sufficient evidence of a contract not to revoke, an express promise not to revoke arising from a fiduciary and confidential relationship, an implied promise not to revoke arising from a fiduciary and confidential relationship, and equitable estoppel.

Reserving all rights as set forth above, Plaintiff respectfully prays that this Court grant Plaintiff's motion to reconsider.

Respectfully submitted,

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Attorneys for Plaintiff Hampton Barringer Luzak

August 30, 2021
Greenville, South Carolina.

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION TO RECONSIDER AND/OR
VACATE**

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION TO RECONSIDER AND/OR
VACATE**

ROA 005215

Motion to Vacate should be denied because South Carolina Rule of Civil Procedure 59(e) does not preclude the Court from modifying interlocutory orders like the one at issue here after 10 days have expired from entry. Moreover, even if the 10-day limitation does apply to interlocutory orders, Judge Price nevertheless retained jurisdiction to enter his order on August 24, 2021, by informing the parties on August 4, 2021 of his intention to enter the more detailed written order. Furthermore, the Court should also deny the Motion to Vacate on the merits because it amounts to nothing more than a rehash of arguments the Court considered and rejected in the August 24, 2021 order.

RELEVANT PROCEDURAL BACKGROUND

After the Court entered an order denying Plaintiff's Motion for Disqualification and/or Recusal on July 13, 2021, Plaintiff filed a motion for reconsideration of the order on July 23, 2021 ("Motion for Reconsideration"). On August 2, 2021, Plaintiff's counsel wrote to Judge Price's law clerk and counsel (without copying the Clerk of Court) stating Plaintiff intended to withdraw the Motion for Reconsideration. Judge Price's law clerk responded the next day with an email informing the parties that the Court had already ruled on the Motion for Reconsideration.

Subsequently, on August 4, 2021, counsel for Defendant Merrill Light sent an email to the Court, which informed the Court that no order on the Motion for Reconsideration had been filed with the Clerk of Court, and in addition, informed the Court that Defendants had prepared a proposed order denying the Motion for Reconsideration based upon a review of the transcript of the hearing on the original motion to recuse. Attached to the email was a copy of Defendant's filed memorandum opposing the Motion for Reconsideration, which included the proposed order. (8/4/2021 11:23 AM Email to Judge Price, Ex. A.) In response, Judge Price's law clerk explained that Judge Price had signed an order denying the Motion for Reconsideration on July 26 and

forwarded the order to the Clerk of Court for filing, but the order apparently was misplaced by the Clerk's office. Judge Price's law clerk's email also informed the parties that 1) the Court intended to re-file the order from July 26 and 2) requested that Merrill Light's counsel e-file a copy of Defendants' proposed order in Word format stating Judge Price "will sign it as well." (8/4/2021 12:01 PM Email, Ex. B.)

Accordingly, on August 4, 2021, before any order on the motion to reconsider had been filed, the Court informed the parties that it intended to enter two orders on Plaintiff's motion to reconsider—one of which the Court prepared and forwarded to the clerk's office for filing, and two, Defendant's proposed order, which had been filed as part of its memorandum and emailed to the Court.

Later that day (on August 4, 2021) the Court entered an initial "brief" order denying the motion to reconsider. (Order filed August 4, 2021, Ex. C.) On August 24, 2021, the Court entered its second order denying the motion to reconsider, which was Defendants' proposed order, just as the Court previously informed the parties it intended to do. (August 24, 2021 Order, Ex. D.) This Motion to Vacate followed.

ARGUMENT

I. The Court should deny the Motion to Vacate because Plaintiff failed to effectively withdraw the Motion to Reconsider.

Although Plaintiff indicated that she intended to withdraw her Motion for Reconsideration, she never did so. Plaintiff's letter to Judge Price on August 2, 2021 stated, "We are notifying the clerk that we are withdrawing the motion without prejudice at this time." (Pltf. Mt. Ex. 1.) But Plaintiff did not file the letter or otherwise direct the Clerk of Court to withdraw the motion from the docket. Plaintiff's mere statement of her intention to withdraw the Motion for Reconsideration

was insufficient because she never followed through with it, and the Court therefore properly ruled on the motion. Accordingly, the Court should deny Plaintiff's Motion to Vacate.

II. The Court should deny the Motion to Vacate because the Court retained jurisdiction to enter the August 24, 2021 Order.

Plaintiff's argument that the Court lacked jurisdiction to enter the August 24, 2021 order fails because it was an interlocutory ruling and was not a ruling on the merits of the case, and therefore, the 10-day limit imposed by Rule 59(e) does not apply. Both of the decisions on which Plaintiff relies in her Motion to Vacate apply Rule 59(e) to final orders. See Leviner v. Sonoco Products Company, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) (final order of the workers' compensation commission); and Heins v. Heins, 344 S.C. 146, 157, 543 S.E.2d 224, 229 (Ct. App. 2001) (final order of a contempt action brought in family court). Those cases correctly hold that a motion to reconsider or a *sua sponte* reconsideration of a final judgment must be filed within 10 days of entry of the judgment. Numerous other cases pertaining to final judgments also support this proposition. See, e.g., Ackerman v. 3-V Chem., Inc., 349 S.C. 212, 213, 562 S.E.2d 613, 614 (2002) (circuit court affirmed workers' compensation commission ruling); Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) (orders granting summary judgment). Plaintiff, however, provides no authority—and Defendants located none—holding that the 10-day jurisdictional deadline under Rule 59(e) applies to interlocutory orders.

The South Carolina Supreme Court, however, has held that “[t]he purpose of Rule 59(e), SCRCp, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). The United States Supreme Court reached the same conclusion in White v. New Hampshire Dep't of Emp. Sec., 455 U.S. 445, 451 (1982) (“[T]he federal courts generally have

invoked Rule 59(e) only to support reconsideration of matters properly encompassed in a decision on the merits.”); Cf. White v. New Hampshire Dep't of Emp. Sec., 455 U.S. 445, 451 (1982) (recognizing that the federal courts generally have invoked Rule 59(e) only to support reconsideration of matters properly encompassed in a decision on the merits). “A denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits” Townsend v. Townsend, 323 S.C. 309, 311, 474 S.E.2d 424, 427 (1996). Accordingly, the 10-day deadline, which applies to orders affecting the merits, does not apply to the August 4, 2021 order, both because the order is interlocutory and because the order does not affect the merits of the case.

Further, unlike final orders, interlocutory orders are governed by Rule 54(b), which permits the Court to alter or amend the order any time before final judgment:

Under Rule 54(b), “a district court retains the power to reconsider and modify its interlocutory judgments ... at any time prior to final judgment when such is warranted.” *American Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003). “Compared to motions to reconsider *final* judgments pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Rule 54(b)'s approach involves broader flexibility to revise *interlocutory* orders before final judgment as the litigation develops and new facts or arguments come to light.” *Carlson*, 856 F.3d at 325.

U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Virginia, LLC, 899 F.3d 236, 256 (4th Cir. 2018) (emphasis in original).¹ Thus, the 10-day limitation does not apply to interlocutory rulings like the one at issue here.

Further, even if the Rule 59(e) 10-day deadline does apply, the Court expressly retained jurisdiction to enter the August 24, 2021 order when it entered the initial order on August 4. The

¹ Rules 54(b) and 59(e) of the South Carolina Rules of Civil Procedure are nearly identical to Rules 54(b) and 59(e) of the Federal Rules of Civil Procedure. Ashenfelder v. City of Georgetown, 389 S.C. 568, 577, 698 S.E.2d 856, 861 (Ct. App. 2010) (“Federal Rule 54(b) is substantially similar to the South Carolina rule.”); Rule 59, SCRCP, cmt. (“This Rule 59 is substantially the Federal Rule.”).

Court of Appeals addressed this precise issue in Rutland v. Holler, Dennis, Corbett, Ormond & Garner (L. Firm), 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006), in which the Circuit Court issued a form order dismissing a case and informed the parties it would later enter a formal order. The Court of Appeals found that, notwithstanding entry of the form order of dismissal, the circuit judge “retained jurisdiction until the time for post-trial motions elapsed after the issuance of his formal order.” Id. at 96, 637 S.E.2d at 319. The Court of Appeals reached the same result in Coker v. Cummings, 381 S.C. 45, 53, 671 S.E.2d 383, 387 (Ct. App. 2008), holding that, “although the form order did not mention the full order would follow, the master instructed one of the defendants’ attorneys to draft the longer order. Therefore, the master reserved jurisdiction and could enter the full order.” See also Corey v. State, No. 2005-MO-049, 2005 WL 7145300, at *1 (S.C. Oct. 10, 2005). This rule is also reflected in South Carolina Rule of Appellate Procedure 203, which states, “When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.”

Here, because Judge Price specifically asked Defendants to submit the draft proposed order in Word format and informed the parties in an email that he would “sign it as well,” the 10-day jurisdictional limit of Rule 59(e) did not begin to run when he entered the initial order on August 4, and he retained jurisdiction to enter the second order on August 24, 2021.

III. The Motion to Vacate should be denied because it merely rehashes arguments the Court has already considered and rejected.

Plaintiff’s Motion to Vacate tracks the paragraph numbering in the August 24 order denying Plaintiff’s Motion to Reconsider. Defendants need not point the Court to the paragraphs in the August 24 Order in which the Court addressed the issues repeated in the Motion to Vacate

because the Plaintiff has already done that. Plaintiff merely seeks to have the last word. Accordingly, Defendants will not repeat prior arguments, and the Court need not address each of the arguments Plaintiff continues to press in her Motion to Vacate. To the extent Plaintiff raises new arguments in the Motion to Vacate which she did not raise in the Motion to Recuse, those arguments may not be raised for the first time in a motion to reconsider. Johnson v. Sonoco Prod. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (“An issue may not be raised for the first time in a motion to reconsider.”).

CONCLUSION

For the reasons set forth above, the Court retained jurisdiction to rule and should deny Plaintiff’s Motion to Vacate.

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Beaufort, South Carolina

September 16, 2021

From: Alice Paylor <apaylor@rosenhagood.com>

Sent: Wednesday, August 4, 2021 11:23 AM

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Price, Bentley <bpricej@sccourts.org>

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Subject: FW: (Luzak v. Light, et al.) DB Ltr to Judge Price withdrawing motion

Please substitute this for the email that you have deleted:

Dear Judge Price: Aimee sent an email that you had previously denied Plaintiff's Motion to Reconsider Recusal, etc. That has not been filed yet. Because Ms. Ballard sent you a letter stating that Plaintiff was withdrawing this motion "without prejudice," we are assuming that Plaintiff may still want to appeal your decision. Therefore, we reviewed the hearing transcript and prepared a more fulsome order that addresses all of Plaintiff's arguments in accordance with your statements. If you are so inclined, let me know and I will file it in Word for you. Have a great day! Alice

Alice Paylor

|Attorney at Law|

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	MEMORANDUM IN OPPOSITION
Plaintiff,	)	TO PLAINTIFF'S MOTION TO
	)	RECONSIDER ORDER DENYING
v.	)	MOTION FOR RECUSAL
	)	
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.	)	

For the reasons set forth in the proposed order attached as **Exhibit A**, Plaintiff's Motion to Reconsider Order Denying Motion for Disqualification and Recusal should be denied.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

s/ Alice F. Paylor

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**Attorneys for Defendant Merrill B.
Light, individually and as trustee**

Charleston, South Carolina
August 3, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO: 2016-CP-07-01919
COUNTY OF BEAUFORT	)	
	)	
IN THE MATTER OF ESTATE OF PAUL	)	
BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	ORDER DENYING MOTION TO
	)	RECONSIDER DENIAL OF
Plaintiff,	)	PLAINTIFF'S MOTION TO RECUSE
	)	
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.	)	

This matter came before the Court on Plaintiff's Motion to Reconsider Order Denying Motion for Disqualification and Recusal (Motion to Reconsider). Plaintiff filed a Motion for Recusal and/or Disqualification (Motion to Recuse) on June 16, 2021, to which Defendants responded on June 22, 2021. Plaintiff replied on June 30, 2021, and this Court conducted a hearing on the motion on July 2, 2021. The Court subsequently denied the motion in an Order dated July 13, 2021. Plaintiff filed this Motion to Reconsider. Although as Chief Administrative Judge, I assigned this case to Judge Robert Bonds by Order of Reassignment of Case Designated as Complex on July 23, 2021, I hereby modify the Order of Reassignment to reflect that I retain

jurisdiction to rule on all motions to reconsider orders I previously entered as the presiding complex case judge in this case.

As a procedural matter, Plaintiff argues in paragraphs 1-3 of the Motion to Reconsider that the Order denying the Motion to Recuse is deficient under SCRCP 52(b) because it does not include findings of fact and conclusions of law. Rule 52, however, only requires findings of fact and conclusions of law in "actions tried upon the facts without a jury or with an advisory jury." Further, it states they "are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." Accordingly, no such findings are required. Further,

not all situations require a detailed order, and the trial court's form order may be sufficient if the appellate court can ascertain the basis for the trial court's ruling from the record on appeal. *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002). "[T]here is no blanket requirement that the trial court set forth a separate explanation on all of its rulings." *Id.* at 312, 578 S.E.2d at 26; *see also Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910 (Ct. App. 2001) *cert. dismissed as improvidently granted* 354 S.C. 57, 579 S.E.2d 605 (2003) (holding a form order stating only that the appellant's post-trial motions for JNOV and new trial were denied was, together with the record of the proceedings, adequate to enable appellate review).

Porter v. Lab. Depot, 372 S.C. 560, 568, 643 S.E.2d 96, 100 (Ct. App. 2007). Here, the record contains ample evidence to support the Court's denial of the Motion to Recuse. Nonetheless, I will address each of the points raised in Plaintiff's Motion to Reconsider to ensure the appellate courts will have a full understanding of my decision not to recuse myself. In doing so, I will address each numbered paragraph in the Motion to Reconsider.

Paragraph 4 merely notes the trial judge may revise an order at any time before entry of judgment, and no ruling is required on this point, as it is not in dispute.

Paragraph 5 states I violated Canon 3(E)(1)(a) by asserting I had "actual knowledge" supporting factual statements in the June 7 Letter. Canon 3(E)(1)(a) provides a judge shall recuse himself where he has "personal knowledge* of disputed evidentiary facts concerning the

proceeding." S.C. App. Ct. R. RULE 501 Canon 3. The term "knowledge" as used in this rule is defined to denote "actual knowledge of the fact in question." Here, my only "knowledge" of the facts at issue in this case came from the record. I have no personal knowledge of this case other than what I have gleaned from a careful review of the record and hearing arguments of counsel in open hearings. Accordingly, I did not violate this Canon. To be clear, I have no knowledge of any facts relating to this litigation from any extrajudicial source, and the basis for all statements and opinions contained in the June 7 Letter and expressed at the hearings in this case have been based upon the record, and only the record.

In paragraph 7, Plaintiff seeks reconsideration because, after Plaintiff filed the Motion to Recuse, I offered to have Plaintiff present in court when I addressed the concerns raised in her affidavit submitted in support of the Motion. This was not to be an ex parte meeting, but essentially a hearing in which I could address those concerns, which were raised in the Motion to Recuse. I provided this explanation at the hearing on July 2, and Plaintiff chose not to attend. Plaintiff offers no explanation as to why offering to meet with her (and all counsel) would constitute a basis for recusal.

In paragraphs 8 and 9, Plaintiff argues that at the hearing July 2, 2021, I failed to disclose the basis for my concern that Plaintiff's counsel misled the Court at a prior hearing. During arguments on May 27, I expressed a specific concern that Plaintiff's counsel (Alan Medlin) misled the Court. Professor Medlin argued that Mr. Barringer received very low scores on certain cognitive tests, including a zero on a scale of zero to thirty on one occasion. Mr. Medlin implied that these low scores created a genuine issue of material fact as to whether Mr. Barringer had testamentary capacity in February 2012. When I inquired, "When did he get a zero?" Mr. Medlin conceded that the test was in 2015, three years *after* the February 28, 2012 documents were

signed. Statements by a judge of this nature do not provide a basis for recusal. See Ex parte Monsanto Co., 862 So. 2d 595, 610 (Ala. 2003), as modified on denial of reh'g (May 9, 2003) (finding that recusal was not appropriate where the trial judge stated that “Defendants, through counsel, have been less than completely honest and straightforward with . . . this Court”).

In paragraph 10, Plaintiff seeks reconsideration because I indicated Ms. Luzak “was so excited about [a trial date being set] that she decided to ask me to recuse myself.” Similarly, Paragraph 17 suggests reconsideration is needed because of my “articulated belief that the motion [to recuse] was based upon Plaintiff’s dissatisfaction with [my] pretrial rulings.” Plaintiff does not explain why these statements justify recusal. I note, however, that Plaintiff never sought recusal or complained that I lacked jurisdiction as the complex case judge until after I ruled against Plaintiff on certain motions and set a trial date over Plaintiff’s objections. “Adverse rulings are insufficient in and of themselves to establish a trial judge’s bias or prejudice.” Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001); see also Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) (“The fact a judge rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his ruling.”). In addition, all of my statements about this case have been based on the record and have caused Plaintiff no prejudice. A judge is not “recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, [as is sometimes] necessary to completion of the judge’s task.” Liteky, 510 U.S. at 551; see also Citibank, N.A. v. Hine, 130 N.E.3d 924, 953–54 (Ohio Ct. App. 2019) (finding no evidence of judicial bias where trial judge stated that “[p]laintiff’s costs . . . were increased by the actions of [defendant and counsel] to obstruct and delay this matter, including actions in discovery and in failing to attend Court hearings and the

trial in this matter”); Haynes v. Union Pac. R.R. Co., 598 S.W.3d 335, 353–56 (Tex. Ct. App. 2020) (holding that a trial judge’s statements that plaintiff’s counsel had a “weak case” and was “trying to mislead the jury” with “[p]ure speculation,” as well as statement that plaintiff was “greedy coming back for a second go around” did not demonstrate bias that required recusal). Statements by the Court indicating Plaintiff chose to seek recusal immediately after receiving adverse rulings and a trial date do not justify recusal. Rather, these statements are consistent with the record as set forth above.

Paragraph 11 seeks reconsideration because I indicated at the hearing on July 2, 2021 that I had not threatened anyone with sanctions. Plaintiff claims the statement in the June 7 Letter that future desires to correct the Court would “be met with a firm response” constitutes a threat of sanctions. A “firm response” is not the same thing as sanctions. I never used the word sanction, nor did I contemplate sanctioning any party for making arguments in support of their position.

In Paragraph 12 Plaintiff seeks reconsideration because I stated at the hearing on July 2, 2021 that I was not going to address at the hearing the statement in Plaintiff’s affidavit that Defendants were the cause of delays in this case, and I further stated “Everybody says that one.” My acknowledgement that each party blames the other for delays does not indicate bias or prejudice and, even if it did, it is based solely on the record and not any extrajudicial source. The statement also did not prejudice Plaintiff. See Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005) (“Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge’s refusal to disqualify himself”).

In paragraph 13, Plaintiff argues the Court’s use of the term “unlimited resources” provides a basis for reconsideration of the Motion to Recuse. Similarly, in paragraph 14 she

seeks reconsideration because I said at the hearing there have been 1,030 filings in this case, implicitly blaming Plaintiff for these filings. These are innocuous statements that are based on the record and they demonstrated no actual bias or prejudice to Plaintiff. I made no decision based upon the resources of any party to this case or the number of filings that have been made. Accordingly, these statements provide no basis for reconsideration.

In paragraph 15, Plaintiff contends I “erroneously asserted that the source of the trial judge’s bias against Plaintiff had to be extrajudicial, when the Supreme Court has not adopted that standard.” Further, in paragraph 17 she claims I should reconsider “in light of demonstrated evidence of actual bias.” A party seeking to disqualify a judge for impartiality must present evidence of a personal bias or prejudice against a party. Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) (citing Rule 501, SCACR, Canon 3(E)(1)(a)). The courts of this state give “great weight to the trial judge’s assurance of his own impartiality.” Davis v. Parkview Apartments, 409 S.C. 266, 285, 762 S.E.2d 535, 545 (2014); see also, 46 Am. Jur. 2d Judges § 125 (“The law thus presumes that a judge is unbiased and unprejudiced.”). “It is not sufficient for a party seeking disqualification to simply allege bias; rather, the party must show some evidence of bias or prejudice. If there is no evidence of judicial bias or prejudice, a judge’s failure to disqualify himself will not be reversed on appeal.” Koon v. Fares, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008) (citations omitted); Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005). In addition, to justify recusal, the alleged bias must arise from **extrajudicial sources**, rather than what a judge has learned from presiding in a case. Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996). An “extrajudicial source” is “a source outside the judicial proceeding at hand.” Liteky v. United States, 510 U.S. 540, 545 (1994). Plaintiff alleged no actual or extrajudicial source of bias in her Motion to Recuse. She did not even attempt to

argue the motion at the hearing on July 2. She now presents no evidence of actual or extrajudicial bias in her Motion to Reconsider. Accordingly, these statements provide no basis for reconsideration.

Paragraph 18 quotes numerous statements from the June 7 Letter and argues that in denying the Motion to Recuse the Court should have explained why these statements do not demonstrate actual bias. First, as noted above, none of the statements is based on an extrajudicial source and therefore, they do not require recusal. Second, in her Motion to Reconsider, Plaintiff cites no authority to justify a recusal when a trial judge forms opinions about a case based solely upon the record. The only support Plaintiff offers in her Motion to Recuse for this drastic departure from the traditional recusal analysis is Moore v. State of S.C., 924 F.2d 1052 (Table), WL 15434 *1 (4th Cir. 1991). No decision in South Carolina or the Fourth Circuit, however, has held that a judge must recuse himself based on the “rarely invoked exception” described in Moore. Even the Court in Moore rejected the “rarely invoked exception” of the pervasive bias test. The Court explained that a judge cannot be disqualified “solely on the basis of a bias (or state of mind) against wrongdoers, civil or criminal, acquired from evidence presented **in the course of judicial proceedings before him.**” Id. at *4 (emphasis added). Any other rule would result in “an intolerable obstruction to the efficient conduct of judicial proceedings.” Id.

Third, even if the rarely invoked pervasive bias standard applied to Plaintiff’s Motion to Recuse, recusal is not appropriate because the June 7 Letter and statements at the hearing on July 2 caused no prejudice to Plaintiff. To justify recusal, the moving party is required to submit “evidence in the record showing actual bias or prejudice on the part of the judge.” Koon v. Fares, 379 S.C. 150, 157, 666 S.E.2d 230, 234 (2008). If the Judge “accurately cites the applicable law and reaches a sound conclusion based on application of the law to the facts on the record in this

case,” then recusal is not justified because there is no actual prejudice. Id.; see Davis v. Parkview Apartments, 409 S.C. 266, 288, 762 S.E.2d 535, 547 (2014) (Because the record supported the orders in the case, “[a]ppellants have not proven they suffered any prejudice from the judge's alleged bias against them.”); Burgess v. Stern, 311 S.C. 326, 331, 428 S.E.2d 880, 884 (1993) (objective review of the record indicated no actual prejudice resulting from a party’s undisputed *ex parte* communication with judge, and hence recusal was not required). Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005) (“Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself.”); Silvester v. Spring Valley Country Club, 344 S.C. 280, 289, 543 S.E.2d 563, 568 (Ct. App. 2001) (“We find no evidence in the record the trial judge's ruling was based on or influenced by any bias against either the Silvesters or *pro se* litigants as a class” and hence recusal was not required.)

In evaluating allegedly improper statements under this standard, courts are to consider the context in which they were made to determine whether the statements show personal bias or prejudice on the part of the judge sufficient to warrant disqualification. Shaw v. State, 276 S.C. 190, 193, 277 S.E.2d 140, 141 (1981). Here, the June 7 Letter did not prejudice Plaintiff at all. Other than advising the parties of scheduling order deadlines that affect all parties equally, the Letter did not rule on anything. It resolved no motions, made no findings of fact, neither admitted nor excluded evidence, and determined nothing about the mode of trial. In fact, the June 7 Letter came *after* I had already ruled from the bench, based solely on the record, on the numerous motions argued on May 27. Accordingly, the Letter does not prejudice any party; it does not even constitute an adverse ruling.¹

¹ In his Affidavit in support of the motion to recuse, Nathan Crystal agrees that prejudice is required for recusal, but every example of supposed prejudice he supplies falls in the category of an adverse ruling which, if erroneous, can

Next, in paragraph 19, Plaintiff argues recusal is required pursuant to Ledford v. Dep't of Pub. Safety, 428 S.C. 387, 392, 835 S.E.2d 509, 511 (2019), reh'g denied (Dec. 11, 2019). Neither Plaintiff nor her experts made any reference to this decision in support of her Motion to Recuse, and it therefore is an improper basis to raise in a Motion to Reconsider. Further, the Ledford case also supports the Court's decision not to recuse. In finding that a workers' compensation commissioner should have recused herself because of egregious extrajudicial conduct which is not at all comparable to this case, the Court cautioned that judges often engage in discussions with parties (through counsel) concerning "a host of matters involving the case" and that "such discussions may necessarily convey a preliminary view of the merits of a claim or defense, which may indirectly include an assessment of a party's or a witness's credibility." Ledford, 835 S.E.2d at 512.² The Court continued, "[t]his role of a trial court is both accepted and, quite frankly, invited. Nothing in our decision today should be construed to discourage this practice." Id. Here, the June 7 Letter does not evidence any actual prejudice, as is required for recusal, but instead falls in the category of communications expressly endorsed in Ledford.

be addressed on appeal. Liteky, 510 U.S. at 555, ("[T]hey are proper grounds for appeal, not for recusal.") Mr. Crystal complains that I have not clarified whether the August 30 trial will be jury or nonjury, that I am limiting the first trial to one-week, that I am ending discovery on July 30 without getting a status report from the parties, and that I threatened anyone who seeks a clarification from the Court with "a firm response." These alleged forms of prejudice to Plaintiff affect all parties equally and therefore cannot constitute prejudice to Plaintiff. Mr. Crystal also complains that I have "prejudged the case without hearing witnesses and evidence." But Mr. Crystal makes no effort to show that my comment on the merits of Plaintiff's case is based on anything outside of the record, which I thoroughly reviewed before sending the letter, or that my statements are not in fact supported by the record. Accordingly, even if Mr. Crystal's opinions are considered, they fall short of proving the prejudice to Plaintiff required to justify a recusal. See Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001) (adverse rulings are insufficient in and of themselves to establish a trial judge's bias or prejudice"); Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) ("The fact a judge rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his ruling.").

² The commissioner had refused to recuse herself, despite allegedly engaging in her own **extrajudicial** investigation of the merits, making "findings based on undisclosed materials outside the record," threatening criminal prosecution of the claimant if the case was not settled, and submitting a false affidavit in support of her decision not to recuse. Ledford, 428 S.C. at 389, reh'g denied (Dec. 11, 2019).

Paragraph 20 alleges the Court's statements at the July 2, 2021 hearing provide a further basis for reconsideration, but in this paragraph Plaintiff points to no specific statements I made at the hearing which justify recusal, and therefore her argument fails.

In paragraph 21, Plaintiff argues the Court failed to apply the Code of Judicial Conduct in making its decision. Similarly, in paragraph 23, Plaintiff argues I should reconsider denial of the Motion to Recuse because I applied a subjective standard, rather than an objective test. In ruling on Plaintiff's Motion to Recuse, I applied the legal standards set forth above and established over many years by the courts of South Carolina. Those decisions require an extrajudicial bias and actual prejudice to the party seeking recusal for recusal to be required. Further, Canon 3(E) provides that a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding." Again, I have no personal bias or prejudice towards any party in this case, and my opinions and statements about the case have all been based solely on the record. I do not find that my impartiality might reasonably be questioned merely because, as presiding judge, I have made statements to the parties based on my review of the facts in the record.

Paragraph 22 posits reconsideration is required because I failed to consider the supporting affidavits submitted by Plaintiff. I, however, carefully considered Plaintiff's affidavit and explained at the hearing on July 2, 2021 why her affidavit does not justify my recusal. I also considered the affidavits of Nathan Crystal and Greg Adams, both of whom are lawyers and professors offering their legal opinions to the Court. Experts are not allowed to testify regarding legal conclusions by offering opinions on what the law requires or by testifying as to the

governing law. Vortex Sports & Ent., Inc. v. Ware, 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008) (“Generally, expert testimony pertaining to issues of law is inadmissible.”); Dawkins v. Fields, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (“[T]he overwhelming majority of the affidavit is simply legal argument as to why summary judgment should be denied. For that reason, we hold the trial court correctly refused to consider it.”); see also Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207, 1213 (D.C. Cir. 1997) (“Each courtroom comes equipped with a ‘legal expert,’ called a judge”); 32 C.J.S. Evidence § 851. This includes testimony as to questions of law such as the interpretation of a statute or case law, the meaning of terms in a corporate charter, or the legality of conduct. 32 C.J.S. Evidence § 851. An expert may not present a legal argument as to why the court should, as a matter of law, rule a certain way. Green v. State, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002). In Green, the South Carolina Supreme Court found a lawyer expert witness should not have been allowed to proffer his opinion, “assuming certain facts, [that] trial counsel’s actions fell below acceptable legal standards of competence.” Id. The court found the opinion to be “legal argument.” Id. For the same reasons, the Affidavits of Nathan Crystal and Gregory Adams need not be considered. Even if I were inclined to consider legal arguments made by law professors who are not counsel of record in the case, Defendants presented affidavits from equally qualified experts on judicial ethics, and their arguments are more persuasive than those of Professors Crystal and Adams. Last, the affidavit of Plaintiff’s counsel complaining that they were chilled by statements in the June 7 Letter are not at all persuasive because the actions of Plaintiff’s counsel since receiving the June 7 letter demonstrate they are not at all afraid to represent their client very aggressively and to file motions seeking various forms of relief from this Court. I have applied the law of South Carolina as set forth above and find no basis for recusal.

Plaintiff's Motion to Reconsider has raised no issue that would lead me to find recusal is required here. In short, "What every litigant has a right to expect from a judge is that he or she be fair and, to paraphrase the inscription that appears on the seal of this court, he or she give the litigant his or her due, no more and no less." Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005). That is precisely what I have done as the presiding judge in this case.

IT IS, THEREFORE, ORDERED that, after careful consideration, Plaintiff's Motion to Reconsider the Order of July 13, 2021, in which I denied her Motion to Recuse, is also denied.

AND IT IS SO ORDERED.

The Honorable Bentley Price
Presiding Judge

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Wednesday, August 4, 2021 12:01 PM
To: Alice Paylor <apaylor@rosenhagood.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Price, Bentley <bpricej@sccourts.org>
Cc: Mike Macloskie <macloskielawfirm@hargray.com>; Alan Medlin <amedlin@sc.rr.com>; James Gilreath <jim@gilreathlaw.com>; Bill Hogan <bhogan@gilreathlaw.com>; Tom Traxler <Tom.Traxler@carterlawpa.com>; Desa Ballard <desab@desaballard.com>; Lee Walters <lwalters@twlawfirm.com>; Charles Molster <cmolster@molsterlaw.com>; Bijan Ghom <bghom@rosenhagood.com>; Ashley Twombly <twombly@twlawfirm.com>; Taylor Davis <tdavis@rosenhagood.com>
Subject: RE: (Luzak v. Light, et al.) DB Ltr to Judge Price withdrawing motion

Good morning all,

An order denying Plaintiff's Motion to Reconsider the Recusal was filed in all three cases on Monday July 26. Judge Price signed all the orders last week. I have spoken with the clerk's office and they indicated orders are sometimes lost in the clerk's queue when multiple orders are filed.

Judge Price has instructed me to refile the original orders that were filed on Monday July 26 for his signature. He asks Ms. Paylor to e-file her order in Word format, and he will sign it as well.

Thank you,
Aimee

From: Alice Paylor <apaylor@rosenhagood.com>
Sent: Wednesday, August 4, 2021 11:23 AM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Price, Bentley <bpricej@sccourts.org>
Cc: Mike Macloskie <macloskielawfirm@hargray.com>; Alan Medlin <amedlin@sc.rr.com>; James Gilreath <jim@gilreathlaw.com>; Bill Hogan <bhogan@gilreathlaw.com>; Tom Traxler <Tom.Traxler@carterlawpa.com>; Desa Ballard <desab@desaballard.com>; Lee Walters <lwalters@twlawfirm.com>; Charles Molster <cmolster@molsterlaw.com>; Bijan Ghom <bghom@rosenhagood.com>; Ashley Twombly <twombly@twlawfirm.com>; Taylor Davis <tdavis@rosenhagood.com>
Subject: FW: (Luzak v. Light, et al.) DB Ltr to Judge Price withdrawing motion

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Please substitute this for the email that you have deleted:

Dear Judge Price: Aimee sent an email that you had previously denied Plaintiff's Motion to Reconsider Recusal, etc. That has not been filed yet. Because Ms. Ballard sent you a letter stating that Plaintiff was withdrawing this motion "without prejudice," we are assuming that Plaintiff may still want to appeal your decision. Therefore, we reviewed the

hearing transcript and prepared a more fulsome order that addresses all of Plaintiff's arguments in accordance with your statements. If you are so inclined, let me know and I will file it in Word for you. Have a great day! Alice

Alice Paylor

|Attorney at Law|

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STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2016-CP-07-1919

IN THE MATTER OF:  
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,  
Plaintiff,

vs.

Merrill B. Light, ET AL.,  
  
Defendants.

**ORDER DENYING PLAINTIFF'S  
MOTION TO RECONSIDER**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NOS. 2019-CP-07-01253  
and 01294

IN THE MATTER OF:  
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,  
  
Plaintiff,

vs.

Merrill U. Barringer,  
  
Defendants.

**ORDER DENYING PLAINTIFF'S  
MOTION TO RECONSIDER**

The Plaintiff Hampton B. Luzak filed a motion asking this Court to reconsider its July 2, 2021 Ruling and Subsequent July 13, 2021 Order. Specifically, Plaintiff asks the Court to reconsider findings of fact and law to support the Court's decision to deny the Motion to Recuse.

STANDARD OF REVIEW



Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).<sup>1</sup> Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, \*2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff’s motion, the Court hereby DENIES Plaintiff Hampton B. Luzak’s Motion for Reconsideration.

AND IT IS SO ORDERED.

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<sup>1</sup> Rule 59 is substantially the same as the Federal Rule. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

ELECTRONIC SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2021 Aug 04 2:57 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919  
ELECTRONICALLY FILED - 2021 Sep 16 8:45 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253



Beaufort Common Pleas

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

**Case Number:** 2016CP0701919

**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-08-04 14:06:49 page 4 of 4

ELECTRONICALLY FILED - 2021 Aug 04 2:57 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919  
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|                                   |   |                                     |
|-----------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS        |
|                                   | ) | CIVIL ACTION NO: 2016-CP-07-01919   |
| COUNTY OF BEAUFORT                | ) |                                     |
|                                   | ) |                                     |
| IN THE MATTER OF ESTATE OF PAUL   | ) |                                     |
| BRANDON BARRINGER, II             | ) |                                     |
|                                   | ) |                                     |
| HAMPTON BARRINGER LUZAK,          | ) | <b>ORDER DENYING MOTION TO</b>      |
|                                   | ) | <b>RECONSIDER DENIAL OF</b>         |
| Plaintiff,                        | ) | <b>PLAINTIFF'S MOTION TO RECUSE</b> |
|                                   | ) |                                     |
| 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.                       | ) |                                     |

This matter came before the Court on Plaintiff's Motion to Reconsider Order Denying Motion for Disqualification and Recusal (Motion to Reconsider). Plaintiff filed a Motion for Recusal and/or Disqualification (Motion to Recuse) on June 16, 2021, to which Defendants responded on June 22, 2021. Plaintiff replied on June 30, 2021, and this Court conducted a hearing on the motion on July 2, 2021. The Court subsequently denied the motion in an Order dated July 13, 2021. Plaintiff filed this Motion to Reconsider. Although as Chief Administrative Judge, I assigned this case to Judge Robert Bonds by Order of Reassignment of Case Designated as Complex on July 23, 2021, I hereby modify the Order of Reassignment to reflect that I retain

jurisdiction to rule on all motions to reconsider orders I previously entered as the presiding complex case judge in this case.

As a procedural matter, Plaintiff argues in paragraphs 1-3 of the Motion to Reconsider that the Order denying the Motion to Recuse is deficient under SCRCP 52(b) because it does not include findings of fact and conclusions of law. Rule 52, however, only requires findings of fact and conclusions of law in "actions tried upon the facts without a jury or with an advisory jury." Further, it states they "are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." Accordingly, no such findings are required. Further,

not all situations require a detailed order, and the trial court's form order may be sufficient if the appellate court can ascertain the basis for the trial court's ruling from the record on appeal. *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002). "[T]here is no blanket requirement that the trial court set forth a separate explanation on all of its rulings." *Id.* at 312, 578 S.E.2d at 26; *see also Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910 (Ct. App. 2001) *cert. dismissed as improvidently granted* 354 S.C. 57, 579 S.E.2d 605 (2003) (holding a form order stating only that the appellant's post-trial motions for JNOV and new trial were denied was, together with the record of the proceedings, adequate to enable appellate review).

Porter v. Lab. Depot, 372 S.C. 560, 568, 643 S.E.2d 96, 100 (Ct. App. 2007). Here, the record contains ample evidence to support the Court's denial of the Motion to Recuse. Nonetheless, I will address each of the points raised in Plaintiff's Motion to Reconsider to ensure the appellate courts will have a full understanding of my decision not to recuse myself. In doing so, I will address each numbered paragraph in the Motion to Reconsider.

Paragraph 4 merely notes the trial judge may revise an order at any time before entry of judgment, and no ruling is required on this point, as it is not in dispute.

Paragraph 5 states I violated Canon 3(E)(1)(a) by asserting I had "actual knowledge" supporting factual statements in the June 7 Letter. Canon 3(E)(1)(a) provides a judge shall recuse himself where he has "personal knowledge\* of disputed evidentiary facts concerning the

proceeding." S.C. App. Ct. R. RULE 501 Canon 3. The term "knowledge" as used in this rule is defined to denote "actual knowledge of the fact in question." Here, my only "knowledge" of the facts at issue in this case came from the record. I have no personal knowledge of this case other than what I have gleaned from a careful review of the record and hearing arguments of counsel in open hearings. Accordingly, I did not violate this Canon. To be clear, I have no knowledge of any facts relating to this litigation from any extrajudicial source, and the basis for all statements and opinions contained in the June 7 Letter and expressed at the hearings in this case have been based upon the record, and only the record.

In paragraph 7, Plaintiff seeks reconsideration because, after Plaintiff filed the Motion to Recuse, I offered to have Plaintiff present in court when I addressed the concerns raised in her affidavit submitted in support of the Motion. This was not to be an ex parte meeting, but essentially a hearing in which I could address those concerns, which were raised in the Motion to Recuse. I provided this explanation at the hearing on July 2, and Plaintiff chose not to attend. Plaintiff offers no explanation as to why offering to meet with her (and all counsel) would constitute a basis for recusal.

In paragraphs 8 and 9, Plaintiff argues that at the hearing July 2, 2021, I failed to disclose the basis for my concern that Plaintiff's counsel misled the Court at a prior hearing. During arguments on May 27, I expressed a specific concern that Plaintiff's counsel (Alan Medlin) misled the Court. Professor Medlin argued that Mr. Barringer received very low scores on certain cognitive tests, including a zero on a scale of zero to thirty on one occasion. Mr. Medlin implied that these low scores created a genuine issue of material fact as to whether Mr. Barringer had testamentary capacity in February 2012. When I inquired, "When did he get a zero?" Mr. Medlin conceded that the test was in 2015, three years *after* the February 28, 2012 documents were

signed. Statements by a judge of this nature do not provide a basis for recusal. See Ex parte Monsanto Co., 862 So. 2d 595, 610 (Ala. 2003), as modified on denial of reh'g (May 9, 2003) (finding that recusal was not appropriate where the trial judge stated that “Defendants, through counsel, have been less than completely honest and straightforward with . . . this Court”).

In paragraph 10, Plaintiff seeks reconsideration because I indicated Ms. Luzak “was so excited about [a trial date being set] that she decided to ask me to recuse myself.” Similarly, Paragraph 17 suggests reconsideration is needed because of my “articulated belief that the motion [to recuse] was based upon Plaintiff’s dissatisfaction with [my] pretrial rulings.” Plaintiff does not explain why these statements justify recusal. I note, however, that Plaintiff never sought recusal or complained that I lacked jurisdiction as the complex case judge until after I ruled against Plaintiff on certain motions and set a trial date over Plaintiff’s objections. “Adverse rulings are insufficient in and of themselves to establish a trial judge’s bias or prejudice.” Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001); see also Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) (“The fact a judge rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his ruling.”). In addition, all of my statements about this case have been based on the record and have caused Plaintiff no prejudice. A judge is not “recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, [as is sometimes] necessary to completion of the judge’s task.” Liteky, 510 U.S. at 551; see also Citibank, N.A. v. Hine, 130 N.E.3d 924, 953–54 (Ohio Ct. App. 2019) (finding no evidence of judicial bias where trial judge stated that “[p]laintiff’s costs . . . were increased by the actions of [defendant and counsel] to obstruct and delay this matter, including actions in discovery and in failing to attend Court hearings and the

trial in this matter”); Haynes v. Union Pac. R.R. Co., 598 S.W.3d 335, 353–56 (Tex. Ct. App. 2020) (holding that a trial judge’s statements that plaintiff’s counsel had a “weak case” and was “trying to mislead the jury” with “[p]ure speculation,” as well as statement that plaintiff was “greedy coming back for a second go around” did not demonstrate bias that required recusal). Statements by the Court indicating Plaintiff chose to seek recusal immediately after receiving adverse rulings and a trial date do not justify recusal. Rather, these statements are consistent with the record as set forth above.

Paragraph 11 seeks reconsideration because I indicated at the hearing on July 2, 2021 that I had not threatened anyone with sanctions. Plaintiff claims the statement in the June 7 Letter that future desires to correct the Court would “be met with a firm response” constitutes a threat of sanctions. A “firm response” is not the same thing as sanctions. I never used the word sanction, nor did I contemplate sanctioning any party for making arguments in support of their position.

In Paragraph 12 Plaintiff seeks reconsideration because I stated at the hearing on July 2, 2021 that I was not going to address at the hearing the statement in Plaintiff’s affidavit that Defendants were the cause of delays in this case, and I further stated “Everybody says that one.” My acknowledgement that each party blames the other for delays does not indicate bias or prejudice and, even if it did, it is based solely on the record and not any extrajudicial source. The statement also did not prejudice Plaintiff. See Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005) (“Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge’s refusal to disqualify himself”).

In paragraph 13, Plaintiff argues the Court’s use of the term “unlimited resources” provides a basis for reconsideration of the Motion to Recuse. Similarly, in paragraph 14 she



seeks reconsideration because I said at the hearing there have been 1,030 filings in this case, implicitly blaming Plaintiff for these filings. These are innocuous statements that are based on the record and they demonstrated no actual bias or prejudice to Plaintiff. I made no decision based upon the resources of any party to this case or the number of filings that have been made. Accordingly, these statements provide no basis for reconsideration.

In paragraph 15, Plaintiff contends I “erroneously asserted that the source of the trial judge’s bias against Plaintiff had to be extrajudicial, when the Supreme Court has not adopted that standard.” Further, in paragraph 17 she claims I should reconsider “in light of demonstrated evidence of actual bias.” A party seeking to disqualify a judge for impartiality must present evidence of a personal bias or prejudice against a party. Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) (citing Rule 501, SCACR, Canon 3(E)(1)(a)). The courts of this state give “great weight to the trial judge’s assurance of his own impartiality.” Davis v. Parkview Apartments, 409 S.C. 266, 285, 762 S.E.2d 535, 545 (2014); see also, 46 Am. Jur. 2d Judges § 125 (“The law thus presumes that a judge is unbiased and unprejudiced.”). “It is not sufficient for a party seeking disqualification to simply allege bias; rather, the party must show some evidence of bias or prejudice. If there is no evidence of judicial bias or prejudice, a judge’s failure to disqualify himself will not be reversed on appeal.” Koon v. Fares, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008) (citations omitted); Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005). In addition, to justify recusal, the alleged bias must arise from **extrajudicial sources**, rather than what a judge has learned from presiding in a case. Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996). An “extrajudicial source” is “a source outside the judicial proceeding at hand.” Liteky v. United States, 510 U.S. 540, 545 (1994). Plaintiff alleged no actual or extrajudicial source of bias in her Motion to Recuse. She did not even attempt to

argue the motion at the hearing on July 2. She now presents no evidence of actual or extrajudicial bias in her Motion to Reconsider. Accordingly, these statements provide no basis for reconsideration.

Paragraph 18 quotes numerous statements from the June 7 Letter and argues that in denying the Motion to Recuse the Court should have explained why these statements do not demonstrate actual bias. First, as noted above, none of the statements is based on an extrajudicial source and therefore, they do not require recusal. Second, in her Motion to Reconsider, Plaintiff cites no authority to justify a recusal when a trial judge forms opinions about a case based solely upon the record. The only support Plaintiff offers in her Motion to Recuse for this drastic departure from the traditional recusal analysis is Moore v. State of S.C., 924 F.2d 1052 (Table), WL 15434 \*1 (4th Cir. 1991). No decision in South Carolina or the Fourth Circuit, however, has held that a judge must recuse himself based on the “rarely invoked exception” described in Moore. Even the Court in Moore rejected the “rarely invoked exception” of the pervasive bias test. The Court explained that a judge cannot be disqualified “solely on the basis of a bias (or state of mind) against wrongdoers, civil or criminal, acquired from evidence presented **in the course of judicial proceedings before him.**” Id. at \*4 (emphasis added). Any other rule would result in “an intolerable obstruction to the efficient conduct of judicial proceedings.” Id.

Third, even if the rarely invoked pervasive bias standard applied to Plaintiff’s Motion to Recuse, recusal is not appropriate because the June 7 Letter and statements at the hearing on July 2 caused no prejudice to Plaintiff. To justify recusal, the moving party is required to submit “evidence in the record showing actual bias or prejudice on the part of the judge.” Koon v. Fares, 379 S.C. 150, 157, 666 S.E.2d 230, 234 (2008). If the Judge “accurately cites the applicable law and reaches a sound conclusion based on application of the law to the facts on the record in this

case,” then recusal is not justified because there is no actual prejudice. Id.; see Davis v. Parkview Apartments, 409 S.C. 266, 288, 762 S.E.2d 535, 547 (2014) (Because the record supported the orders in the case, “[a]ppellants have not proven they suffered any prejudice from the judge's alleged bias against them.”); Burgess v. Stern, 311 S.C. 326, 331, 428 S.E.2d 880, 884 (1993) (objective review of the record indicated no actual prejudice resulting from a party’s undisputed *ex parte* communication with judge, and hence recusal was not required). Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005) (“Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself.”); Silvester v. Spring Valley Country Club, 344 S.C. 280, 289, 543 S.E.2d 563, 568 (Ct. App. 2001) (“We find no evidence in the record the trial judge's ruling was based on or influenced by any bias against either the Silvesters or *pro se* litigants as a class” and hence recusal was not required.)

In evaluating allegedly improper statements under this standard, courts are to consider the context in which they were made to determine whether the statements show personal bias or prejudice on the part of the judge sufficient to warrant disqualification. Shaw v. State, 276 S.C. 190, 193, 277 S.E.2d 140, 141 (1981). Here, the June 7 Letter did not prejudice Plaintiff at all. Other than advising the parties of scheduling order deadlines that affect all parties equally, the Letter did not rule on anything. It resolved no motions, made no findings of fact, neither admitted nor excluded evidence, and determined nothing about the mode of trial. In fact, the June 7 Letter came *after* I had already ruled from the bench, based solely on the record, on the numerous motions argued on May 27. Accordingly, the Letter does not prejudice any party; it does not even constitute an adverse ruling.<sup>1</sup>

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<sup>1</sup> In his Affidavit in support of the motion to recuse, Nathan Crystal agrees that prejudice is required for recusal, but every example of supposed prejudice he supplies falls in the category of an adverse ruling which, if erroneous, can

Next, in paragraph 19, Plaintiff argues recusal is required pursuant to Ledford v. Dep't of Pub. Safety, 428 S.C. 387, 392, 835 S.E.2d 509, 511 (2019), reh'g denied (Dec. 11, 2019). Neither Plaintiff nor her experts made any reference to this decision in support of her Motion to Recuse, and it therefore is an improper basis to raise in a Motion to Reconsider. Further, the Ledford case also supports the Court's decision not to recuse. In finding that a workers' compensation commissioner should have recused herself because of egregious extrajudicial conduct which is not at all comparable to this case, the Court cautioned that judges often engage in discussions with parties (through counsel) concerning "a host of matters involving the case" and that "such discussions may necessarily convey a preliminary view of the merits of a claim or defense, which may indirectly include an assessment of a party's or a witness's credibility." Ledford, 835 S.E.2d at 512.<sup>2</sup> The Court continued, "[t]his role of a trial court is both accepted and, quite frankly, invited. Nothing in our decision today should be construed to discourage this practice." Id. Here, the June 7 Letter does not evidence any actual prejudice, as is required for recusal, but instead falls in the category of communications expressly endorsed in Ledford.

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be addressed on appeal. Liteky, 510 U.S. at 555, ("[T]hey are proper grounds for appeal, not for recusal.") Mr. Crystal complains that I have not clarified whether the August 30 trial will be jury or nonjury, that I am limiting the first trial to one-week, that I am ending discovery on July 30 without getting a status report from the parties, and that I threatened anyone who seeks a clarification from the Court with "a firm response." These alleged forms of prejudice to Plaintiff affect all parties equally and therefore cannot constitute prejudice to Plaintiff. Mr. Crystal also complains that I have "prejudged the case without hearing witnesses and evidence." But Mr. Crystal makes no effort to show that my comment on the merits of Plaintiff's case is based on anything outside of the record, which I thoroughly reviewed before sending the letter, or that my statements are not in fact supported by the record. Accordingly, even if Mr. Crystal's opinions are considered, they fall short of proving the prejudice to Plaintiff required to justify a recusal. See Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001) (adverse rulings are insufficient in and of themselves to establish a trial judge's bias or prejudice"); Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) ("The fact a judge rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his ruling.").

<sup>2</sup> The commissioner had refused to recuse herself, despite allegedly engaging in her own **extrajudicial** investigation of the merits, making "findings based on undisclosed materials outside the record," threatening criminal prosecution of the claimant if the case was not settled, and submitting a false affidavit in support of her decision not to recuse. Ledford, 428 S.C. at 389, reh'g denied (Dec. 11, 2019).

Paragraph 20 alleges the Court's statements at the July 2, 2021 hearing provide a further basis for reconsideration, but in this paragraph Plaintiff points to no specific statements I made at the hearing which justify recusal, and therefore her argument fails.

In paragraph 21, Plaintiff argues the Court failed to apply the Code of Judicial Conduct in making its decision. Similarly, in paragraph 23, Plaintiff argues I should reconsider denial of the Motion to Recuse because I applied a subjective standard, rather than an objective test. In ruling on Plaintiff's Motion to Recuse, I applied the legal standards set forth above and established over many years by the courts of South Carolina. Those decisions require an extrajudicial bias and actual prejudice to the party seeking recusal for recusal to be required. Further, Canon 3(E) provides that a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding." Again, I have no personal bias or prejudice towards any party in this case, and my opinions and statements about the case have all been based solely on the record. I do not find that my impartiality might reasonably be questioned merely because, as presiding judge, I have made statements to the parties based on my review of the facts in the record.

Paragraph 22 posits reconsideration is required because I failed to consider the supporting affidavits submitted by Plaintiff. I, however, carefully considered Plaintiff's affidavit and explained at the hearing on July 2, 2021 why her affidavit does not justify my recusal. I also considered the affidavits of Nathan Crystal and Greg Adams, both of whom are lawyers and professors offering their legal opinions to the Court. Experts are not allowed to testify regarding legal conclusions by offering opinions on what the law requires or by testifying as to the

governing law. Vortex Sports & Ent., Inc. v. Ware, 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008) (“Generally, expert testimony pertaining to issues of law is inadmissible.”); Dawkins v. Fields, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (“[T]he overwhelming majority of the affidavit is simply legal argument as to why summary judgment should be denied. For that reason, we hold the trial court correctly refused to consider it.”); see also Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207, 1213 (D.C. Cir. 1997) (“Each courtroom comes equipped with a ‘legal expert,’ called a judge”); 32 C.J.S. Evidence § 851. This includes testimony as to questions of law such as the interpretation of a statute or case law, the meaning of terms in a corporate charter, or the legality of conduct. 32 C.J.S. Evidence § 851. An expert may not present a legal argument as to why the court should, as a matter of law, rule a certain way. Green v. State, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002). In Green, the South Carolina Supreme Court found a lawyer expert witness should not have been allowed to proffer his opinion, “assuming certain facts, [that] trial counsel’s actions fell below acceptable legal standards of competence.” Id. The court found the opinion to be “legal argument.” Id. For the same reasons, the Affidavits of Nathan Crystal and Gregory Adams need not be considered. Even if I were inclined to consider legal arguments made by law professors who are not counsel of record in the case, Defendants presented affidavits from equally qualified experts on judicial ethics, and their arguments are more persuasive than those of Professors Crystal and Adams. Last, the affidavit of Plaintiff’s counsel complaining that they were chilled by statements in the June 7 Letter are not at all persuasive because the actions of Plaintiff’s counsel since receiving the June 7 letter demonstrate they are not at all afraid to represent their client very aggressively and to file motions seeking various forms of relief from this Court. I have applied the law of South Carolina as set forth above and find no basis for recusal.

Plaintiff's Motion to Reconsider has raised no issue that would lead me to find recusal is required here. In short, "What every litigant has a right to expect from a judge is that he or she be fair and, to paraphrase the inscription that appears on the seal of this court, he or she give the litigant his or her due, no more and no less." Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005). That is precisely what I have done as the presiding judge in this case.

IT IS, THEREFORE, ORDERED that, after careful consideration, Plaintiff's Motion to Reconsider the Order of July 13, 2021, in which I denied her Motion to Recuse, is also denied.

AND IT IS SO ORDERED.

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The Honorable Bentley Price  
Presiding Judge



Beaufort Common Pleas

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

**Case Number:** 2016CP0701919

**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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ELECTRONICALLY FILED - 2021 Sep 16 8:45 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253



Nov 08 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
ROBERT BONDS, CIRCUIT COURT JUDGE

Case Nos.:  
2019-CP-07-01253  
2019-CP-07-01294

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

Hampton B. Luzak, .....Appellant,

v.

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

NOTICE OF APPEAL

Appellant Hampton B. Luzak (hereafter “Appellant”) appeals from the trial court’s order dated August 20, 2021 granting Summary Judgment on Plaintiff’s second and third causes of action, which was received by counsel for Appellant on August 20, 2021. A copy of the order dated August 20, 2021 is attached hereto as **Exhibit A**. In addition, Appellant appeals from the order denying the Appellant’s Motion for Reconsideration dated October 8, 2021, received by counsel for Appellant on October 8, 2021. A copy of the order denying the Motion for Reconsideration dated October 8, 2021 is attached hereto as **Exhibit B**.

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**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

)

)

HAMPTON BARRINGER LUZAK,

)

)

Plaintiff,

)

)

v.

)

)

MERRILL U. BARRINGER,

)

)

Defendant

)

)

**ORDER****RECEIVED****Nov 08 2021****SC Court of Appeals**

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.<sup>1</sup>

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,

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.”).<sup>3</sup>

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<sup>3</sup> 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<sup>4</sup> 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.

<sup>4</sup> 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.<sup>5</sup> 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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<sup>5</sup> 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,<sup>6</sup> 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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<sup>6</sup> 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.<sup>7</sup>

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

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<sup>7</sup> 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.**

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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

Electronically signed on 2021-08-20 12:04:07 page 16 of 16

STATE OF SOUTH CAROLINA  
COUNTY OF Beaufort  
IN THE COURT OF COMMON PLEAS

FORM 4  
ROA 005276

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0701253 **Exhibit B**

Hampton Barringer Luzak  
PLAINTIFF(S)

Merrill U Barringer  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider Summary Judgment is respectfully DENIED.

**RECEIVED**

**Nov 08 2021**

**SC Court of Appeals**

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/08/2021 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Beaufort Common Pleas

**Case Caption:** Hampton Barringer Luzak VS Merrill U Barringer

**Case Number:** 2019CP0701253

**Type:** Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2021-10-08 10:14:39 page 3 of 3

17                   The videotaped deposition of MERRILL  
18    UNDERWOOD BARRINGER, a witness in the  
19    above-entitled cause, taken pursuant to Notice  
20    and agreement, before Kyle J. Saniga, Certified  
21    Court Reporter and Notary Public, David Delaney,  
22    Videographer, at the Sabal 2 Room, at the Omni  
23    Resort, 23 Ocean Lane, Hilton Head Island, South  
24    Carolina on the 14th day of March 2019,  
25    commencing at or about the hour of 10:24 a.m.

BRANDON BARRINGER vs MERRILL B. LIGHT  
2016-CP-07-1919 - MERRILL BARRINGER

2

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BRANDON BARRINGER vs MERRILL B. LIGHT  
2016-CP-07-1919 - MERRILL BARRINGER

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7 ALSO PRESENT:

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9 (Paralegal to Ashley Twombly)  
Merrill Light  
Randolph Light

10

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12

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14

15 I N D E X

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1                   (Whereupon, Defendant's Exhibit  
2                   Numbers 1 through 13 were marked  
3                   for identification.)

4                   MS. PAYLOR: This the deposition  
5                   of Merrill Underwood Barringer taken in  
6                   the case of Hampton Luzak versus  
7                   Merrill Light, Randy Light, Mrs.  
8                   Barringer as personal representative of  
9                   the estate of Paul Barringer.

10                  My name's Alice Paylor and I  
11                  represent Merrill and Randy Light.

12                  MR. MOLSTER: My name is Charles  
13                  Molster. I also represent Merrill and  
14                  Randy Light.

15                  MR. TWOMBLEY: I'm Ashley  
16                  Twombley. I represent Ms. Barringer as  
17                  personal representative of the estate  
18                  of Paul Barringer.

19                  MR. GILREATH: Jim Gilreath  
20                  representing Jim Gilreath representing  
21                  Hampton Luzak.

22                  MR. MEDLIN: Alan Medlin  
23                  representing Hampton Luzak.

24                  MR. MACLOSKIE: Mike Macloskie  
25                  representing Hampton Luzak.



1                   MERRILL UNDERWOOD BARRINGER,  
2   having been produced and first duly sworn as a  
3   witness, testified as follows:

4                   DIRECT EXAMINATION

5   BY MS. PAYLOR:

6           Q     Good morning, Ms. Barringer.

7           A     Good morning.

8           Q     I'm Alice Paylor. I represent your  
9   daughter, Merrill and her husband Randy in this  
10   litigation. You are a witness to events that  
11   are essential to the outcome of this matter and  
12   I'm going to ask you some questions to get your  
13   best recollection of these events and your  
14   knowledge of your and your husband Paul  
15   Barringer's participation in them.

16                If you don't understand a question that  
17   I ask you please tell me and I'll try to make it  
18   more understandable.

19          A     All right.

20          Q     If you don't know or don't recall the  
21   answer you're perfectly -- you do perfectly well  
22   by saying that you don't know or you don't  
23   recall.

24          A     Right.

25          Q     This is not a guessing game.



1 A (Witness nods head.)

2 Q We don't want to you speculate.

3 If you need to take a break at any time  
4 please let me know. Okay?

5 A Uh-huh.

6 Q Ms. Barringer, would you state your  
7 full name for the record, please.

8 A Merrill Underwood Barringer.

9 Q Are you aware of Randy or Merrill Light  
10 or anyone else improperly influencing your  
11 husband, Paul Barringer to fire Kevin Luzak?

12 A No.

13 Q What is your understanding of why Paul  
14 Barringer took actions to fire Kevin?

15 A Well there were several reasons and he  
16 was not pleased with his performance and he -- I  
17 don't know whether you want me to go into  
18 reasons for that or just say he was not pleased  
19 with his performance.

20 Q And give us the reasons.

21 A Well a simple reason was he did not  
22 want him living in New York and he was -- also  
23 he was sent to Florida to work. He did not do  
24 well. He did not like it, just didn't like it.  
25 And there were lots of other reasons but he



1 wanted to take the company in a different manner  
2 from we wanted. We weren't -- we weren't  
3 interested in hamburgers or anything of that  
4 sort and so we had to curtail him or fire him  
5 and he took these from various ventures there  
6 that he wasn't supposed to. So those were the  
7 main reasons.

8 Q Okay, thank you. Are you aware of  
9 Randy or Merrill Light or anyone else improperly  
10 influencing your husband, Paul Barringer, to  
11 give Merrill Light his CFRC voting stock?

12 A They did not influence him. They did  
13 not do that.

14 Q And what is your understanding of why  
15 your husband, Paul Barringer, gave the stock to  
16 your daughter Merrill Light?

17 A Gracious you're asking questions that  
18 are right off the bat very serious.

19 Q Yes, ma'am.

20 A All right. He wanted our daughter  
21 Merrill to have more voting shares, stocks. He  
22 wanted her to be in charge of the future of our  
23 company. He did not want Hampton to do that.

24 Q And did he discuss this with you?

25 A Yes.



1           Q     Are you aware of Randy or Merrill Light  
2     or anyone else improperly influencing your  
3     husband, Paul Barringer, to change his estate  
4     plans so that he removed Hampton as a  
5     beneficiary?

6           A     Would you repeat that, please?

7           Q     Yeah. Are you aware of Randy or  
8     Merrill Light influencing Paul to change his  
9     will so that Hampton was not a beneficiary?

10          A     No, they did not do that.

11          Q     And what is your understanding of why  
12     he changed his estate planning documents?

13          A     Well there were lots of reasons but let  
14     me see where to start. He wanted to leave our  
15     daughter Hampton out of it.

16          Q     And why was that?

17          A     Because she had alienated him and the  
18     family. He wanted -- he gave that portion to  
19     Wade, Hampton's son.

20          Q     And then he took Wade out also, didn't  
21     he, at the end?

22                     MR. GILREATH: Object of that  
23     form. Leading question.

24     BY MS. PAYLOR:

25          Q     Did he make another change -- did he



1 make another change to his will with regard to  
2 Wade?

3 A He gave him some money.

4 Q Hampton claims that all of the actions  
5 that ultimately removed her as a beneficiary and  
6 from getting the voting shares of the stock were  
7 actually a big conspiracy between Randy Light,  
8 Merrill Light, Travis Bryant and John Jolley.

9 A That's ridiculous. That's not true.

10 Q Okay. And who was the moving force in  
11 all of the decisions that were made?

12 A My husband.

13 Q Was your husband a strong-willed  
14 person?

15 A Very.

16 Q Did he get his way often?

17 A Yes, he did.

18 MR. GILREATH: Object to the form  
19 of that last question, too as leading.

20 BY MS. PAYLOR:

21 Q When your husband made all of these  
22 decisions, in your opinion based on living with  
23 him for over sixty years was he mentally  
24 competent to make the decisions he made?

25 MR. GILREATH: Object to the form





1 of the question, leading question.

2 THE WITNESS: Yes.

3 BY MS. PAYLOR:

4 Q Were these decisions what Paul  
5 Barringer wanted to do?

6 A Yes.

7 Q Did anyone ever tell Paul Barringer  
8 what to do with his company's stock?

9 MR. GILREATH: Object to the form  
10 of the question.

11 THE WITNESS: That's almost  
12 ridiculous.

13 BY MS. PAYLOR:

14 Q Okay. To your knowledge, did anyone  
15 ever tell Paul Barringer --

16 A Nobody ever told him what to do.

17 Q To your knowledge, did anyone ever tell  
18 Paul what to do with his substantial assets  
19 outside of the company?

20 MR. GILREATH: Object to the form  
21 of the question.

22 THE WITNESS: Outside of the  
23 company people he hired to assist him  
24 suggested to him but they were  
25 suggestions from those type of people.



1 BY MS. PAYLOR:

2 Q Okay. Like -- and would one of those  
3 people be Robert Slane?

4 A Yes, early on.

5 MR. GILREATH: Object to the form  
6 of the question.

7 BY MS. PAYLOR:

8 Q Did you have any question, when Paul  
9 took these actions, that he knew what he wanted  
10 to do and was doing what he, Paul Barringer,  
11 wanted to do?

12 MR. GILREATH: Object to the form  
13 of the question.

14 THE WITNESS: Yes.

15 BY MS. PAYLOR:

16 Q So did you believe that he was doing  
17 what he wanted to do?

18 A Yes.

19 MR. GILREATH: Object to the form.

20 BY MS. PAYLOR:

21 Q Did your husband want Kevin Luzak to  
22 have any involvement in the management an  
23 operations of CFRC after June of 2012?

24 MR. GILREATH: Object to the form.

25 THE WITNESS: I'm not sure about



1 the date but Kevin only had at the  
2 beginning, at the beginning and then  
3 after 2012 I think it was that my  
4 husband did not want him to be  
5 involved.

6 BY MS. PAYLOR:

7 Q What's your birthday? I think it was  
8 the day before yesterday, correct?

9 A Yes, it was.

10 Q And how old are you?

11 A 87.

12 Q Congratulations. Happy birthday.

13 A Thank you.

14 Q Where do you currently live?

15 A I live -- you mean street and all that?

16 Q Hilton Head?

17 A Oh yes.

18 Q Thank you. How long have you lived in  
19 Hilton Head?

20 A We came to Hilton Head in 1973 and we  
21 were not living there full-time but we spent a  
22 good bit of time there.

23 Since then and then we went from  
24 condominium to a small house and then to a  
25 little bit bigger house and finally into a



1 community center.

2 Q Okay. And is that Tide Point where you  
3 live now?

4 A Uh-huh, yes.

5 Q How long were you and your husband  
6 married?

7 A 59 years.

8 Q Congratulations on that also. And what  
9 are the names of your children?

10 A There's Ann Hampton Luzak and Merrill  
11 Barringer Light and Victor Clay Barringer.

12 Q Thank you. And how many grandchildren  
13 do you have?

14 A Five.

15 Q Does -- what is Hampton's son's name?

16 A Wade, Wade Hampton.

17 Q Is there anything about your physical  
18 or mental well-being today that would prevent  
19 you from understanding my questions and  
20 providing truthful answers?

21 A No.

22 Q I'm going to ask you some questions now  
23 about Mr. Barringer's decision to fire Kevin  
24 Luzak.

25 Do you recall when that happened?



1           A       I think it was in 2012.

2           Q       Okay. Did he -- did your husband  
3 discuss with you what he was going to do prior  
4 to his doing it?

5           A       Yes.

6           Q       And what did he tell you?

7           A       Well he told me the reasons that he  
8 thought that Kevin was not suitable to -- and he  
9 wanted to fire him but I gave you those reasons.

10          Q       You did, thank you. Just as a little  
11 background, during your long marriage was your  
12 husband the primary owner of a lumber and timber  
13 company which is now known as CFRC?

14          A       Yes.

15          Q       And during his ownership and  
16 involvement with CFRC did that value of that  
17 company grow?

18          A       Oh yes.

19          Q       Was Mr. Barringer proud of his company?

20          A       Proud?

21          Q       Yes, ma'am.

22          A       Oh yes.

23          Q       Did he take great interest in the  
24 timberlands that were owned by CFRC?

25          A       Absolutely.



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16

1 Q Did he take great interest in the  
2 direction in which the company was going?

3 A Very much so.

4 MR. GILREATH: Object to form and  
5 the one before that, too.

6 BY MS. PAYLOR:

7 Q So tell me about what your husband saw  
8 as the future of CFRC what the direction, what  
9 the company would be doing?

10 A The direction was up.

11 Q Good.

12 A And wide.

13 Q And where did he see the company being,  
14 in what areas?

15 A Well, there were areas east coast of  
16 United States.

17 Q Okay.

18 A South, north.

19 Q Did he envision it being more than a  
20 timber and lumber company?

21 MR. GILREATH: Object to the form.

22 THE WITNESS: No. If you're  
23 talking about what Kevin wanted with  
24 hamburgers and so forth, absolutely  
25 not.



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1 BY MS. PAYLOR:

2 Q Was Mr. Barringer the President and the  
3 Chief Exhibit Officer of CFRC for many years?

4 A Yes.

5 Q And who made the primary decisions when  
6 he was President and CEO of CFRC? Who made the  
7 primary decisions for CFRC?

8 A He did.

9 Q And when he stepped down from being  
10 President who became the new President?

11 A Well, Kevin was named CEO and then that  
12 was -- there was some debate about that. Paul  
13 wanted him to be President and not CEO.

14 Q But did he name him to President and  
15 CEO?

16 A I'm not sure.

17 MR. GILREATH: Object to form.

18 THE WITNESS: I don't know.

19 BY MS. PAYLOR:

20 Q Okay. And who made the decision that  
21 Kevin Luzak would be an officer of CFRC?

22 A Well it would have to be a board  
23 meeting.

24 Q Was your husband in favor of it at the  
25 time?



BRANDON BARRINGER vs MERRILL B. LIGHT  
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18

1           A     I think that was probably in 2012 and  
2     he would have been in favor of it early on.

3           Q     Right. To your knowledge did Kevin  
4     Luzak have any experience running a timber and  
5     lumber company?

6           A     He doesn't -- did not.

7                     MR. GILREATH: Object to the form  
8     of that question.

9     BY MS. PAYLOR:

10          Q     In May of 2012 your husband was  
11     hospitalized in Savannah. Do you remember that?

12          A     Yes.

13          Q     And what was his hospitalization  
14     related to, what problems?

15          A     It was a prostate problem primarily.

16          Q     Okay. And had he had surgery on the  
17     prostate earlier?

18                     MR. GILREATH: Object to the form.

19                     THE WITNESS: Yes.

20     BY MS. PAYLOR:

21          Q     Had he had --

22          A     I'm trying to think whether it was -- I  
23     don't know the date of the surgery. I don't  
24     remember the date of the surgeries.

25          Q     Okay. And I -- that's not -- I



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1 understand that. Thank you.

2 After he was discharged did your  
3 husband get better?

4 MR. GILREATH: Object to the form.

5 BY MS. PAYLOR:

6 Q Was he able to care for himself?

7 A Yes.

8 MR. GILREATH: Object to the form.

9 BY MS. PAYLOR:

10 Q Was he able to drive?

11 A Yes.

12 MR. GILREATH: Object to the form.

13 BY MS. PAYLOR:

14 Q Was he able to make financial decisions  
15 for you and him?

16 MR. GILREATH: Object to the form.

17 BY MS. PAYLOR:

18 Q Was he able to monitor the happenings  
19 at CFRC?

20 A Yes.

21 MR. GILREATH: Object to the form.

22 BY MS. PAYLOR:

23 Q After his discharge did you accompany  
24 your husband to Charleston to meet with some  
25 doctors at the Medical University of South



1 Carolina?

2 A I did.

3 MR. GILREATH: Object to the form.

4 BY MS. PAYLOR:

5 Q Did you go with him to see a  
6 neurologist, Dr. Bachman?

7 A I did.

8 MR. GILREATH: Object to the form.  
9 You're asking leading questions. It's  
10 your witness.

11 MS. PAYLOR: I don't know how else  
12 you ask that --

13 MR. GILREATH: -- I can't tell  
14 you.

15 MS. PAYLOR: Well --

16 MR. TWOMBLEY: The objections are  
17 noted. You don't have -- don't worry  
18 about the objections.

19 MS. PAYLOR: What he says.

20 MR. TWOMBLEY: You just answer --

21 MR. GILREATH: Just a legal thing  
22 --

23 MR. TWOMBLEY: You just answer the  
24 questions.

25 MR. GILREATH: -- I'm doing, Ms.



1 Barringer. It's just -- I'm protecting  
2 the record.

3 THE WITNESS: All right.

4 MR. GILREATH: Let's take a break  
5 for a minute.

6 MS. PAYLOR: Okay.

7 MR. GILREATH: All right.

8 MR. TWOMBLEY: May I ask why we  
9 need to take a break?

10 MR. GILREATH: I want to confer  
11 with my counsel.

12 MR. TWOMBLEY: Okay.

13 (Whereupon, a short break was  
14 taken.)

15 BY MS. PAYLOR:

16 Q Ms. Barringer, when you were in  
17 Charleston where did you stay?

18 A Well different places.

19 Q Okay. And let me take you back. The  
20 time you went to the Medical University in May  
21 of 2012 where did you stay?

22 A I stayed with our daughter Hampton.

23 Q And was Kevin there?

24 A I think -- well, I stayed there, yes.

25 Q Okay. And was her husband there also,



1 Kevin?

2 A Yes.

3 Q Was Wade there?

4 A I don't remember that.

5 Q Okay. How did your husband get along  
6 with the Luzaks while you were staying with  
7 them?

8 A Very well. He's -- was a very polite  
9 man.

10 Q Did they talk about CFRC business any?

11 A No.

12 Q And were Merrill and/or Randy Light  
13 with you when you were in Charleston with the  
14 Luzaks?

15 A I don't think so.

16 Q Did you have any -- did you personally  
17 have any conversations with your daughter  
18 Hampton about your husband's decision to fire  
19 Kevin?

20 A No.

21 Q Did you have any conversations with  
22 Kevin about that?

23 A No.

24 MR. GILREATH: Object to the form.

25 BY MS. PAYLOR:



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23

1 Q All right. To your -- I've already  
2 asked a lot of these.

3 In June of 2012 had you noticed that  
4 your husband was having some issues with his  
5 memory?

6 MR. GILREATH: Object to the form.

7 THE WITNESS: It was very slight.

8 BY MS. PAYLOR:

9 Q Was he having trouble finding the right  
10 words to use?

11 MR. GILREATH: Object to the form.

12 THE WITNESS: No.

13 BY MS. PAYLOR:

14 Q Okay. Tell me what you -- what you  
15 noticed about your husband's mental state at that  
16 time in 2012.

17 A It was very slight memory problems.

18 Q Did your husband appear to be confused  
19 in any way to you?

20 MR. GILREATH: Object to the form.

21 THE WITNESS: He wasn't very  
22 confused then at all.

23 BY MS. PAYLOR:

24 Q Do you recall a day when Kevin Luzak  
25 was visiting with Paul on Hilton Head in the



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1 summer of 2012 and his son Wade was with him?

2 A No, I don't remember that. I -- I  
3 think our daughter Hampton came with Wade but I  
4 don't remember Kevin being there with Wade.

5 Q Do you recall Kevin ever saying  
6 anything to your husband about his son Wade?

7 A I'm assuming that he said Wade is fine,  
8 he's still on the wrestling team and -- or  
9 whatever, you know. Just normal, normal little  
10 social comments.

11 Q When was the last time in 2012 -- I  
12 know it's not exact dates -- but did you see  
13 Hampton in the summer of 2012?

14 MR. GILREATH: Object to the form.

15 THE WITNESS: I don't remember.

16 BY MS. PAYLOR:

17 Q You don't remember?

18 A No.

19 Q Do you remember the last time you saw  
20 her prior to all this litigation getting  
21 started?

22 A Well, I'm not certain that it was  
23 always the last time. I remember seeing her  
24 late in the -- late in -- before all this  
25 started but I don't know that it was the last



1 time.

2 Q Okay. So you don't have a recollection  
3 of when that was of her?

4 A Of the last time I do not.

5 Q Who determined who was going to replace  
6 Mr. Luzak as President?

7 A Well my husband would have.

8 Q And who did he pick?

9 A I can't answer that because I don't  
10 know that he picked anybody.

11 Q Who became President, do you know, of  
12 CFRC after Kevin left?

13 A I do not know because that was very  
14 incidental.

15 Q Okay.

16 A Maybe it didn't happen. He didn't need  
17 a President but I'm not certain about that.

18 Q Okay. Do you know Travis Bryant?

19 A Yes.

20 Q What's his --

21 MR. GILREATH: Object to the form  
22 of the question.

23 BY MS. PAYLOR:

24 Q -- position?

25 A I do not know what his title is.



1 Q Okay. Does he work at CFRC?

2 A Yes.

3 MR. GILREATH: Object to the form  
4 of that question.

5 BY MS. PAYLOR:

6 Q Were you present in the room when Paul  
7 Barringer and Merrill Light were participating  
8 in a CFRC Board of Directors meeting by  
9 telephone on June 28th 2012?

10 A Yes.

11 MR. GILREATH: Object to the form  
12 of that question.

13 BY MS. PAYLOR:

14 Q Were you talking to your husband during  
15 that telephone meeting?

16 MR. GILREATH: Object to the form.

17 THE WITNESS: I talked to him on  
18 the telephone.

19 BY MS. PAYLOR:

20 Q What did you say, do you remember?

21 A I was just making sure of what he said.  
22 If I could correct him in any manner or if he --  
23 just to hear how he was doing with that.

24 Q Did you know what he wanted to do at  
25 that meeting?





1 MR. GILREATH: Object to the form.

2 THE WITNESS: That was in 2012?

3 BY MS. PAYLOR:

4 Q Yes, ma'am.

5 A That's -- that could possibly have been  
6 when he was -- wanted to fire Kevin.

7 Q Yes, ma'am. And had he made that  
8 decision prior to the meeting?

9 A Well whether he talked to people about  
10 it --

11 MR. GILREATH: Object to the form  
12 of the question.

13 THE WITNESS: -- I don't know but  
14 he was thinking about it.

15 BY MS. PAYLOR:

16 Q Okay. Had he talked to you about it?

17 A Yes.

18 MR. GILREATH: Object to the form.

19 BY MS. PAYLOR:

20 Q In June of 2012 did Hampton send an  
21 e-mail asking that CFRC conduct an investigation  
22 into Paul Barringer's allegations against her  
23 husband Kevin?

24 MR. GILREATH: Object to the form.

25 THE WITNESS: I don't know whether



1 she did that in 2012 and I don't

2 know --

3 BY MS. PAYLOR:

4 Q Do you remember that she did that, that  
5 she asked for an investigation?

6 MR. GILREATH: Object to the form.

7 THE WITNESS: No, I don't. I  
8 don't.

9 BY MS. PAYLOR:

10 Q Okay. Let's look at Exhibit 1, please.

11 A Okay.

12 Q And is this a note from you to your  
13 daughter Hampton?

14 A Yes.

15 Q And is that your handwriting?

16 A Yes.

17 Q And you say here 'This is just to let  
18 you know that daddy and I love you very much and  
19 are grieving for you. We are so sorry that  
20 you're having to go through this. You don't  
21 deserve it. We got your e-mail beautifully  
22 written, by the way, but we don't want to get a  
23 lawyer or counselor as it would probably involve  
24 someone going through all your personal and  
25 business files and could get very involved.'



1 Do you remember writing that to her?

2 A Yes.

3 Q And why were you writing that to her?

4 A I have to remember what was going on at  
5 that point.

6 This was in 2012?

7 Q I think so, yes, ma'am.

8 A Because it makes a difference.

9 Q Yeah. The date is cut off but it's  
10 like 6 something 2012.

11 MR. GILREATH: Where do you see  
12 that?

13 MS. PAYLOR: It's on the second  
14 page down at the bottom it's cut.  
15 That's a 6.

16 MR. GILREATH: I object to you  
17 telling -- or answering to the witness  
18 what you think that is. Let her tell  
19 us, please.

20 THE WITNESS: All sorts of things  
21 went on but whether -- when this was  
22 I'm not sure.

23 BY MS. PAYLOR:

24 Q Okay. Do you know -- do you remember  
25 why you were telling her that we don't want to



1 get a lawyer or counselor?

2 A Yes. Because if she was involved I  
3 didn't want her to have to do that. I didn't  
4 want to have her to -- I didn't want things to  
5 proceed to that extent but whatever it was,  
6 because there was so many dissensions that I'm  
7 not sure what this was -- particular one was  
8 about.

9 Q Okay. Did anyone tell you what to say  
10 in that note or were these your words?

11 A Those are my words.

12 Q On July 20th 2012 Mr. Barringer changed  
13 his revocable trust with regard to his shares of  
14 voting stock. Do you remember that?

15 A Yes. I remember his -- about the  
16 voting stock.

17 Q Okay. And what do you recall about the  
18 voting stock?

19 A Well he gave my daughter, our daughter,  
20 Merrill, the -- I think it was 50 percent of the  
21 voting stock and he gave her the primary  
22 interest.

23 Q Over the nearly sixty years of your  
24 marriage did you and Mr. Barringer discuss your  
25 estate plans?



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1           A     My estate plan?

2           Q     Well, both of yours or his.

3                   MR. TWOMBLEY: I'm going --

4                   THE WITNESS: Or his estate plans?

5   BY MS. PAYLOR:

6           Q     Well his?

7           A     Yes.

8           Q     Okay. And in 2012 who was Mr.

9   Barringer using for estate planning?

10          A     I guess John Jolley.

11          Q     And when did he start using Mr. Jolley,

12   do you remember?

13          A     No.

14          Q     And whose decision was it to start

15   using Mr. Jolley?

16          A     His.

17          Q     And did he make that decision himself?

18          A     Yes.

19          Q     And how did you know about Mr. Jolley?

20          A     I don't remember where we met him.

21          Q     And have you met with him also?

22          A     Yes.

23          Q     Did you and your husband meet with Mr.

24   Jolley to discuss wills and revocable trusts and

25   those types of things?



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1 A Yes.

2 Q When you met with Mr. Jolley did  
3 Merrill Light meet with you?

4 A I don't remember that.

5 Q Okay. Do you ever -- do you remember  
6 Randy Light ever meeting with you with Mr.  
7 Jolley?

8 A He did not.

9 Q Do you recall anyone else who was in  
10 these meetings besides --

11 A No.

12 Q -- you and your husband --

13 A No.

14 Q -- and Mr. Jolley?

15 From your observations and close  
16 relationship with your husband did the Lights  
17 ever do anything to influence your husband to  
18 give his CFRC voting stock to your daughter  
19 Merrill?

20 MR. GILREATH: Object to the form.

21 THE WITNESS: They did not.

22 BY MS. PAYLOR:

23 Q And who made the decision to transfer  
24 Mr. Barringer's voting stock to Merrill Light?

25 A He did.



BRANDON BARRINGER vs MERRILL B. LIGHT  
2016-CP-07-1919 - MERRILL BARRINGER

33

1 Q Mr. Barringer?

2 A Yes.

3 Q And did the two of you discuss the fact  
4 that he was going to transfer the stock to  
5 Merrill?

6 A Yes.

7 MR. GILREATH: Object to the form.

8 BY MS. PAYLOR:

9 Q And did he tell you why he wanted her  
10 to have it?

11 A Yes.

12 Q And what -- why is that?

13 A She was the more responsible person to  
14 have it. He wanted her to have more control.

15 Q Were you present when Mr. Barringer  
16 told John Jolley what he wanted to do with his  
17 voting stock?

18 A I don't remember.

19 Q In your opinion was Mr. Barringer  
20 confused about that decision?

21 A He was not confused at all.

22 MR. GILREATH: Object to the form.

23 BY MS. PAYLOR:

24 Q Based on your time and your close  
25 relationship with your husband do you believe



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1       that he was competent to make a gift of the  
2       voting stock to your daughter Merrill?

3                   MR. GILREATH: Object to the form.

4                   THE WITNESS: Absolutely he was.

5 BY MS. PAYLOR:

6           Q       You and your husband did not file a  
7       gift tax return in 2013 showing the gift of that  
8       stock in 2012. Do you know why you didn't file  
9       that return in 2012?

10          A       We just forgot to.

11          Q       When it came to your attention that you  
12       hadn't filed one did you file it then?

13          A       Yes.

14          Q       Are you aware that CFRC invited Hampton  
15       to join the Board of Directors?

16          A       Yes, I am.

17          Q       And do you know what Hampton's response  
18       was?

19          A       Yes.

20          Q       And what did she decide?

21          A       Well she said it was just too far to  
22       travel and too much trouble and she was taking  
23       care of children and that was her response.

24          Q       Okay. So did she join the Board?

25          A       No.





1 Q Did she talk to you about the fact that  
2 she was not going to join the Board?

3 A No, she didn't.

4 Q Now, after Kevin was fired did you talk  
5 to your daughter?

6 A I don't know.

7 Q You don't remember?

8 A I think so.

9 Q You think you did?

10 A But I'm not -- uh-huh but --

11 Q Did you see her in person after that?

12 A I don't know.

13 Q You can't remember?

14 A No.

15 Q Look in that notebook behind Tab 2 and  
16 this is Exhibit 2. Do you recognize this  
17 handwriting?

18 A Yes.

19 Q Whose is it?

20 A My husband's.

21 Q And it's dated December 15, 2012,  
22 right?

23 A Uh-huh, yes.

24 Q Were you aware that your husband was  
25 writing to your daughter Hampton?



1           A     Yes.

2           Q     Did you tell him what to say in this  
3 letter?

4           A     Absolutely not.

5           Q     And were these his words?

6           A     These were his words.

7           Q     And he starts out 'As your father and  
8 patriarch of our family I am writing to caution  
9 you against alienating yourself from your  
10 family.'

11                   Had you discussed with him the fact  
12 that Hampton had alienated herself from the  
13 family?

14          A     Yes.

15          Q     And what did he want to happen?

16          A     He wanted to resolve all this and to --  
17 he wanted to have a peaceful family again if  
18 possible.

19          Q     And did that ever happen during --

20          A     No.

21          Q     -- his lifetime?

22          A     No.

23          Q     Look behind Tab 3. This is Exhibit 3.  
24 And this is a typewritten version of that letter  
25 I believe.



1 A Yes.

2 Q Who typed for your husband?

3 A Did -- what did you say?

4 Q Who did typing for your husband?

5 A Probably Pat Harrell who was his  
6 executive and assistant.

7 Q And did she work for CFRC?

8 A She worked for my husband.

9 Q Okay. And your husband said in his  
10 last paragraph, 'As you know, family is most  
11 important to us and we don't want to lose you  
12 and your family. It's time to separate business  
13 from family and remember what is most important  
14 in life.'

15 Did that reflect where your husband was  
16 at that point, where he wanted to get back  
17 together?

18 A Yes.

19 Q And were you in agreement with that?

20 A Yes, I was.

21 Q Did you ever reach out to Hampton, you  
22 know, and try --

23 A Yes.

24 Q -- to get her to come back?

25 A Yes, I did.



1 MR. GILREATH: Object to the form.

2 BY MS. PAYLOR:

3 Q What did you tell her when you talked  
4 to her?

5 A I wrote her. There was a long period  
6 of time when I had no communication with her  
7 because she wouldn't communicate with me. She  
8 wouldn't call. That was maybe three years or  
9 four years, something like that.

10 Q Was she communicating with your husband  
11 during that time period?

12 A No, no.

13 Q Did you try to communicate with her?

14 A Did I?

15 Q Yes, ma'am.

16 A Try to get her?

17 Q Uh-huh.

18 A I wrote her I think it was during that  
19 period but I didn't call her. I waited for her  
20 to call me and she didn't.

21 Q To your knowledge did she ever call  
22 your husband?

23 MR. GILREATH: Object to the form.

24 THE WITNESS: To my knowledge she  
25 did not.



1 BY MS. PAYLOR:

2 Q Okay. And this would have been after  
3 the summer of 2012?

4 A Yes. There was --

5 Q To your --

6 A -- a period of time of several years.

7 Q In that letter Mr. Barringer mentions  
8 that "Greed has continued to hinder you from  
9 seeing what is most important, family." Do you  
10 know what he meant by that?

11 A Yes. He meant just what he said.

12 Q So what do you think about greed with  
13 regard to Hampton and Kevin?

14 A I thought they were both very greedy.

15 Q And why is that?

16 A Because of their actions alienating  
17 themselves and trying at some point to get more  
18 for themselves, more for Hampton. Hampton  
19 wanted more. They were -- she was well-taken  
20 care of initially, all the children were. She  
21 wanted more and she didn't deserve more.

22 Actually, during that period of time  
23 Kevin wanted my husband to pay him a million  
24 dollars a year salary.

25 Q Did your husband like that?



1           A     I don't remember whether he laughed or  
2     whether -- he did not like that but his  
3     response -- he was either angry -- he probably  
4     didn't laugh.

5           Q     He also says in the letter 'I hope you  
6     will realize what position you are placing  
7     yourself in before it's too late.' Do you know  
8     what he meant by that?

9           A     Yes. I'm -- before the whole family  
10    split apart and it's too late to ever be a  
11    family again. It's too late to have her come  
12    back and be part of our family.

13          Q     And before he died did she ever come  
14    back and be part of the family?

15          A     No.

16                MR. GILREATH: Object to the form  
17    of that question.

18    BY MS. PAYLOR:

19          Q     Had you and your husband talked about  
20    taking Hampton back into the family?

21          A     We wanted her but -- to come back into  
22    the family but it was extremely difficult and we  
23    weren't going to just chase after her. If she  
24    wanted to come back we -- I wrote her letters,  
25    of course, and he did, too, but we let her make



1 the decision primarily.

2 Q Look at the Exhibit 4. That's behind  
3 the next tab. Whose handwriting is on that?

4 A That's my husband's.

5 Q Okay. And is this an application to  
6 become a resident at the Tide Point community?

7 A Yes, it is.

8 Q Okay. And it's dated January 11, 2013.

9 A Yes.

10 Q Did your husband do this by himself?

11 A Yes.

12 Q Look on pages -- page two. The  
13 question -- well he's responding to I can  
14 personally perform the following activities  
15 without assistance; and -- select menu items,  
16 prepare meals, schedule appointments, scheduled  
17 event -- attend scheduled events, participate in  
18 community activities, live communally in a  
19 cooperative and safe manner.

20 Was your husband capable of doing all  
21 these things --

22 A Yes.

23 Q -- that he responded yes to?

24 A Yes.

25 MR. GILREATH: Object to the form.



1 BY MS. PAYLOR:

2 Q And on page three he indicated that he  
3 did not need assistance with bathing, grooming,  
4 dressing, personal hygiene or medication  
5 administration.

6 Based on your time with him was he able  
7 to do those things?

8 A Yes.

9 Q Go to the next exhibit, Exhibit 5 and  
10 this -- is this another letter from you to your  
11 daughter Hampton?

12 A Yes.

13 Q If you go to the third page it is dated  
14 February 10th 2013.

15 A The third page. Let's see.

16 Q Do you see that at the bottom?

17 A I don't --

18 Q Look at the bottom of the third page.

19 A But this -- I don't know that this is  
20 page three.

21 Q Oh well it's the last page. Is it  
22 February 10 2013?

23 A Oh, it's the last page.

24 Q Okay. And it's dated, correct?

25 A Yes.





1 Q Did you write this letter?

2 A I did.

3 Q Did anyone tell you what to say in this  
4 letter?

5 A I'm going to have to go back to that  
6 first page and see what the letter was about.  
7 No, nobody told me to write this or what -- how  
8 to do it.

9 Q Okay. And was this one of the letters  
10 that you wrote to her trying to get her to come  
11 back?

12 A Well I'm reading --

13 MR. GILREATH: Object to the form  
14 of the question.

15 THE WITNESS: -- just to see what  
16 it says.

17 BY MS. PAYLOR:

18 Q Okay.

19 A Yes, but it is. My answer's yes.

20 Q Okay. And if you look at the second  
21 paragraph on that first page you said 'Some day  
22 maybe we can give you our perspective on what  
23 happened and why as I think, know that you're  
24 getting a one-sided view.'

25 So what were you telling her in that



1 sentence?

2 A I was telling her that she was  
3 listening to Kevin and not us and he was --  
4 absolutely had a different point of view than we  
5 did, always.

6 Q And what was your point of view?

7 A My -- our -- my point of view that we  
8 were her mother and father and we wanted her  
9 back.

10 Q And in the next sentence you said 'I  
11 thought, by the way, that your note to Merrill  
12 saying that you, Wade and Kevin did not ever  
13 want to have anything more to do with her was  
14 cruel.' Do you see that?

15 A Yes, I see that.

16 Q Okay. And what -- had she done  
17 something -- did she send a note to Merrill  
18 telling her not to send stuff to them?

19 A That she did.

20 Q And then you say 'We think that she did  
21 not vote against Kevin nor for daddy but what  
22 she thought was best for our company and all of  
23 us.' And is that what you thought?

24 A Yes.

25 Q 'Also, Kevin's veiled threats to sue



1 her if she didn't vote his way didn't help.'

2 A It didn't help.

3 Q Okay. What kind of veiled threats did  
4 he make?

5 A They were -- I didn't hear them but my  
6 daughter told me and she said they were veiled  
7 threats, insinuations.

8 Q Has CFRC done well since Kevin was  
9 removed?

10 A Much better.

11 Q Has there been a catastrophe or  
12 anything because he left?

13 MR. GILREATH: Object to the form  
14 of the question.

15 THE WITNESS: No catastrophes.  
16 Fires and things like that, tornados  
17 and those are catastrophes of a sort.

18 BY MS. PAYLOR:

19 Q Have -- to your knowledge had Merrill  
20 Light and Kevin Luzak always gotten along prior  
21 to your husband firing him?

22 MR. GILREATH: Object to the form  
23 of the question.

24 THE WITNESS: Would you repeat  
25 that?



1 BY MS. PAYLOR:

2 Q Your daughter, did your daughter  
3 Merrill and Kevin get along prior to Mr.  
4 Barringer's terminating him?

5 MR. GILREATH: Object to the form  
6 of that question.

7 THE WITNESS: My daughter Merrill  
8 didn't see Kevin much and she would  
9 have always been polite to him.

10 BY MS. PAYLOR:

11 Q Let's go to the next exhibit, Exhibit 6  
12 and do you recognize that handwriting?

13 A I do.

14 Q And whose is it?

15 A Oh that -- did you say who?

16 Q Yes. Who wrote that?

17 A My husband.

18 Q Okay. Did you help him write that  
19 letter?

20 A No.

21 Q To your knowledge did anyone else help  
22 him write it?

23 A No. Nobody else did.

24 Q And that says you and he were in  
25 Linville at this time. It's got 2013 up in the



1 right-hand side.

2 A Is it -- 2013, is that --

3 Q Yeah. Do you know whose handwriting  
4 that is?

5 A Up in the where?

6 Q Up in the right-hand corner there.

7 A The date?

8 Q Uh-huh, yes, ma'am.

9 A No, I don't.

10 Q Okay. So did you and your husband go  
11 to Linville?

12 A Yes, we did.

13 Q And that's in the mountains, correct?

14 A Uh-huh.

15 Q And in the third paragraph he says to  
16 his daughter Hampton, 'The older I get the more  
17 I appreciate family harmony. I hope everyone is  
18 heading in that direction before it's too late.'

19 Do you recall Hampton ever trying to  
20 come back and --

21 A No.

22 Q -- reach out?

23 A She never tried to come back.

24 MR. GILREATH: Object to the form.

25 BY MS. PAYLOR:



1 Q Do you recall your husband ever talking  
2 about providing incentives to Travis Bryant?

3 MR. GILREATH: Object to the form.

4 THE WITNESS: Yes.

5 BY MS. PAYLOR:

6 Q Okay. And what did he say about that?

7 A He was very anxious to keep Kevin -- I  
8 mean Travis. Very anxious. He was very pleased  
9 with him and he wanted to give him some  
10 incentive to stay.

11 Q And do you know who made the decision  
12 to give him -- to let him buy some of the stock?

13 A He did.

14 Q Mr. Barringer?

15 A Uh-huh.

16 MR. GILREATH: Object to the form.

17 BY MS. PAYLOR:

18 Q And did he talk to you about that?

19 A Yes.

20 Q Was providing these incentives your  
21 husband's idea?

22 A Yes.

23 MR. GILREATH: Object to the form.

24 BY MS. PAYLOR:

25 Q Did Merrill or Randy Light have



1 anything to do with making that decision?

2 A No.

3 MR. GILREATH: Object to the form.

4 THE WITNESS: They did not.

5 BY MS. PAYLOR:

6 Q Do you recall in June of 2014 that your  
7 husband changed -- signed a new will?

8 A Yes.

9 Q And do you recall what the change was  
10 in that will?

11 A Well, I'm -- I think that's when he  
12 left my daughter -- our daughter Hampton out and  
13 gave it to Wade, her share.

14 Q And why did he want to do that?

15 A Because he and -- Hampton had alienated  
16 him and was greedy he thought.

17 Q Was it his decision to make Wade the  
18 recipient rather than --

19 A Yes, it was.

20 Q -- rather than Hampton?

21 Did you discuss this with Merrill Light  
22 or Randy Light?

23 A No.

24 Q The changing in wills?

25 A No.



1 Q Look at the next exhibit, Exhibit 7.

2 And is this your handwriting, Mrs. Barringer?

3 A Yes, it is.

4 Q And on the second page it's got a date,  
5 December 26th 2014.

6 A Uh-huh.

7 Q Do you see that?

8 A Yes.

9 Q Would that have been the date on which  
10 you wrote this note?

11 A Yes.

12 Q You mention in here that you got a  
13 Christmas card with Wade's picture on it.

14 When was -- had Hampton been sending  
15 you pictures of Wade?

16 A I don't remember whether she did or  
17 not. I don't think so but I do remember what he  
18 sent me.

19 Q What did he send you?

20 A He sent to my estimation a remarkable  
21 poem that I realized how much talent he had and  
22 it was a very caring poem about how much family  
23 meant to him. I framed it.

24 Q Really? So prior to all of this  
25 happening in 2012 did you and your husband have





1 a good relationship with Wade?

2 A We didn't see him much.

3 Q Had you taken some trips with him?

4 A I don't remember any trips that we took  
5 with him because they didn't want to do that.

6 Q Okay. You say on the second page of  
7 this 'I would love to see you and Wade some  
8 time. I could meet you both in New York  
9 sometime after the bad weather goes away or I  
10 could get to Charleston when you're planning to  
11 be there.'

12 Did you ever work anything out to  
13 see them?

14 A I don't remember the time span. I just  
15 remember being there one time seeing them but I  
16 don't remember whether it was after this or not.

17 Q Okay. And you say 'Not having you and  
18 Wade in my life is a great gap and sorrow and  
19 something that I thought would never happen in  
20 our family. Not our family.'

21 What were you trying to convey to her  
22 when you told her that?

23 A How sad we were. At least I suppose  
24 me, me mostly about Wade. Well no, my husband,  
25 too. How sad to have a grandson really out of



1     our lives and not to see him grow up, not to see  
2     anything -- not to see him at all. It was very  
3     sad. A deprivation.

4           Q     Yes, ma'am. Look at Exhibit 8. This  
5     is an e-mail or it looks like it's an e-mail  
6     dated January 21, 2015 --

7           A     Uh-huh.

8           Q     -- to your husband from your daughter  
9     Hampton.

10                  Do you remember seeing this e-mail?

11          A     Yes.

12          Q     And she states in here that over  
13     Christmas I received the 2014 annual report and  
14     learned that in December of 2013 Travis Bryant  
15     borrowed money from the company on extremely  
16     generous terms to purchase 2.5 percent of the  
17     stock of CFRC for its book value which we all  
18     know is well under the stock's fair value.

19                  Travis also received an option to  
20     purchase an additional 2.5 percent of the stock  
21     at book value in December of 2013 with the  
22     company apparently agreeing to finance the  
23     exercise price. I am outraged by this  
24     arrangement and by its terms. I know that you  
25     never would have allowed a transaction like this



1 to take place while you were running the company  
2 and I will not sit by and let people take  
3 advantage of you.

4 Who made the decision with regard to  
5 Travis Bryant?

6 A My husband.

7 Q What did he think when he got this  
8 e-mail?

9 A He thought it was ridiculous and none  
10 of her business, really. My husband really,  
11 really liked and admired Travis Bryant and he  
12 wanted to give him a very good loan, wanted to.  
13 Wanted to do all sorts of things for him.  
14 Wanted to give him stock in the company.

15 Q Did he like to give incentives to his  
16 executives?

17 MR. GILREATH: Object to the form.

18 THE WITNESS: He was a very  
19 generous man and for any of the people  
20 who were working for him that he cared  
21 about he would do as well for them. He  
22 wanted to do well for them all the time  
23 unless it was somebody that  
24 disappointed him.

25 BY MS. PAYLOR:



1           Q     And had Travis Bryant been operating  
2     CFRC?

3           A     Yes.

4                     MR. GILREATH: Object to the form.

5     BY MS. PAYLOR:

6           Q     And in your opinion was he doing a good  
7     job?

8                     MR. GILREATH: Object to the form.

9                     THE WITNESS: Absolutely it was my  
10    opinion.

11    BY MS. PAYLOR:

12          Q     Do you recall Kevin receiving any  
13    incentive payments out of land deals that CFRC  
14    made?

15                     MR. GILREATH: Object to the form.

16                     THE WITNESS: Not unless he took  
17    them without our knowledge.

18    BY MS. PAYLOR:

19          Q     Do you recall the Stevenson tract being  
20    sold?

21          A     Yes.

22                     MR. GILREATH: Object to the form.

23    BY MS. PAYLOR:

24          Q     Did Kevin Luzak receive a fee out of  
25    that?



1           A       I'm sure he did.

2                   MR. GILREATH: Object to the form.

3                   THE WITNESS: He received a lot of  
4 fees that we didn't know about or would  
5 not have approved of.

6 BY MS. PAYLOR:

7           Q       Did Merrill Light ever complain to you  
8 about Kevin getting these fees?

9           A       I don't remember that she did.

10                  MR. GILREATH: Object to the form  
11 of that.

12 BY MS. PAYLOR:

13           Q       What do you -- did you ever talk to  
14 Hampton about this e-mail that she sent where  
15 she said 'I will not sit by and let people take  
16 advantage of you'?

17           A       I didn't talk to her about it.

18           Q       Do you have any idea who she might have  
19 been referring to there?

20           A       Well she was -- she was getting ready  
21 then to launch an attack on us.

22           Q       Okay.

23           A       So that's her sort of beginning,  
24 leadings toward it.

25           Q       Okay.



1           A     So we knew what she was going to do  
2     because this was such a mean-spirited letter.

3           Q     And in January of 2015 was your  
4     husband -- did your husband talk to you about  
5     receiving this e-mail and what it stated?

6           A     Yes.

7           Q     And was he competent at that point to  
8     understand what it was saying?

9                     MR. GILREATH: Object to the form.

10                    THE WITNESS: He -- yes. He had  
11     good days and sometimes he had bad days  
12     but, yes, he was.

13   BY MS. PAYLOR:

14           Q     Look at Exhibit 9.

15           A     Okay.

16           Q     And this is dated the same day as that  
17     e-mail and this is a letter to Travis Bryant  
18     from Michael R. Smith.

19           A     Yes.

20           Q     Do you know who Mr. Smith is or was?

21           A     I have met him. I know who he is.

22           Q     Okay. And he's a lawyer. Who was he  
23     representing?

24                     MR. GILREATH: Object to the form.

25                    THE WITNESS: Hampton and Kevin.



1 BY MS. PAYLOR:

2 Q And in this letter he's making a demand  
3 for copies of CFRC corporate and accounting  
4 records, correct?

5 A Yes.

6 MR. GILREATH: Object to the form.

7 BY MS. PAYLOR:

8 Q What was your husband's reaction to  
9 this letter when he saw it?

10 A He was angry and disgusted.

11 Q Do you recall that your husband changed  
12 his will another time after this letter came in?

13 A Well --

14 MR. GILREATH: Object to the form  
15 of that question.

16 THE WITNESS: No. I'm not sure  
17 whether he changed it after that.

18 BY MS. PAYLOR:

19 Q But do you remember that he did change  
20 it again?

21 MR. GILREATH: Object to the form.

22 THE WITNESS: He changed it a  
23 couple of times.

24 BY MS. PAYLOR:

25 Q Okay. And in the last will that he



1 signed did he leave anything to Hampton?

2 A He did not.

3 MR. GILREATH: Object to the form.

4 BY MS. PAYLOR:

5 Q Did he leave anything to her son Wade?

6 A Yes.

7 Q What did he leave to him?

8 A He left him it was either 25 or

9 \$50,000.

10 Q And who made the decision to make that  
11 change?

12 A He did.

13 Q Was Merrill Light or Randy Light  
14 involved in any way in making that decision?

15 A No, they were not.

16 Q Based on your observation of your  
17 husband did he know what he was doing when he  
18 made that decision with that will?

19 A Yes, he did.

20 Q Did he know what assets he owned in  
21 general?

22 MR. GILREATH: Object to the form  
23 of the question.

24 THE WITNESS: Yes.

25 BY MS. PAYLOR:





1           Q     Did he know who his children and loved  
2     ones were at that time?

3           A     Yes.

4                     MR. GILREATH: Object to the form.

5     BY MS. PAYLOR:

6           Q     And did he know to whom he wanted to  
7     leave his assets?

8           A     Yes.

9                     MR. GILREATH: Object to the form.

10    BY MS. PAYLOR:

11          Q     And were you present when he signed his  
12     will and trust amendment?

13                     MR. GILREATH: Object to the form.

14                     THE WITNESS: I don't remember.

15    BY MS. PAYLOR:

16          Q     Look at Exhibit 10 and is this a letter  
17     from you to Hampton?

18          A     Yes, it is.

19          Q     And is that your handwriting?

20          A     Yes.

21          Q     And it's got the date of February 15,  
22     2015 on it.

23          A     It is.

24          Q     Okay. And so that would have been a  
25     couple of -- several weeks after this January 21



1 letter, is that right?

2 A I'm -- need to look at this letter to  
3 see.

4 Q Okay.

5 A Yes. And what was your question?

6 Q This followed the letter we just looked  
7 at, correct?

8 A Yes.

9 Q And you state in here 'Daddy and I are  
10 very disappointed in you.'

11 So had you and Mr. Barringer had  
12 discussions about Hampton?

13 A Yes.

14 Q 'You have crossed the line in bringing  
15 legal action against your family company and for  
16 your astounding ungratefulness to your father  
17 for all that he has done to make you more than  
18 financially comfortable.'

19 Were those your words?

20 A Yes, they -- yes.

21 Q And when you say 'legal action' are you  
22 referring to this letter from the lawyer?

23 A Yes.

24 MR. GILREATH: Object to that  
25 question, object to the form I mean.



1 BY MS. PAYLOR:

2 Q And you last say 'This will not be  
3 easily forgiven nor forgotten.'

4 And where were you at this time in your  
5 feelings with Hampton?

6 A I was very angry and very disappointed  
7 in her and I thought she was very greedy.

8 Q Did Randy or Merrill Light influence is  
9 you or ask you to write this letter or influence  
10 your feelings about Hampton?

11 A No, they did not.

12 MR. GILREATH: Object to the form  
13 of the question.

14 BY MS. PAYLOR:

15 Q And you talk about that Mr. Barringer  
16 had done -- had done a lot to make her more than  
17 financially comfortable. When had that  
18 occurred?

19 A It occurred over a period of time not  
20 just one time.

21 Q Do you know what the value of the stock  
22 was that he had given to her?

23 A No.

24 Q Look at Exhibit 11 and this is dated  
25 February 26th 2015 and it's signed 'Best of



1     luck.  Dad.'  There's no handwriting on here,  
2     it's just a typewritten letter.  Do you know who  
3     did this?

4           A     Who typed it?

5           Q     Yes, ma'am.

6           A     No, I don't but I -- I'm -- our  
7     assistant had always typed everything else for  
8     us and I'm assuming -- I did not type this.

9           Q     Okay.  How did your husband convey to  
10    Ms. Harrell if he wanted to have a letter typed,  
11    did he call her?

12          A     He would often --

13                   MR. GILREATH:  Object to the form.

14                   THE WITNESS:  -- call her.

15    BY MS. PAYLOR:

16          Q     And did he dictate over the phone?

17          A     Yes.

18          Q     And --

19                   MR. GILREATH:  Object to the form.

20    BY MS. PAYLOR:

21          Q     -- read this letter and let me know if  
22    this sounds like what your husband would say.

23          A     All right.

24                   MR. GILREATH:  Object to the form.

25                   THE WITNESS:  This -- this is his



1 writing. I am just laughing because  
2 he's -- has -- it's humorous in a lot  
3 of ways.

4 BY MS. PAYLOR:

5 Q Yeah.

6 A Very humorous.

7 Q He says 'Don't let people in the south  
8 know who you are.'

9 A I laughed at this. I looked it and I  
10 laughed at it and he laughed, too. I mean this  
11 letter in certain respects is -- it's very  
12 comical and sort of ridiculous and it was what  
13 he was thinking.

14 Q Now, he says 'I support Travis and  
15 decisions we made as a Board.' Had he told you  
16 that during those times?

17 A Let's see.

18 MR. GILREATH: Object to the form.

19 BY MS. PAYLOR:

20 Q The second paragraph.

21 A Yes.

22 Q Look at the next exhibit, Number 12 and  
23 whose handwriting is this?

24 A That's my husband's.

25 Q Okay. And it's got a date of March 22,



1       2015 on it. And it says 'To whom it may  
2       concern. I was not coerced or otherwise forced  
3       into giving my CFRC stock to our daughter  
4       Merrill Light. It was my desire to do so. I  
5       also supported Travis Bryant as the CEO of our  
6       company to replace Kevin Luzak who I fired. I  
7       am also supportive of our Board of Directors.

8               Do you remember your husband writing  
9       that?

10       A       Yes.

11       Q       And was anyone there when he wrote it?

12       A       I might have been but nobody else was  
13       there.

14       Q       Did anyone tell him what to write?

15       A       No.

16               MR. GILREATH: Object to the form.

17       BY MS. PAYLOR:

18       Q       Do you know why he wrote that?

19       A       Yes. Because he said I was not coerced  
20       or otherwise forced and I guess he wanted to put  
21       this in writing so it would be very apparent to  
22       anybody that that's what he wanted to do.

23       Q       And is that a true statement?

24       A       Yes, it is.

25       Q       And do you believe that your husband



1 understood what he was saying when he wrote  
2 this?

3 A Yes.

4 MR. GILREATH: Object to the form.

5 BY MS. PAYLOR:

6 Q All right. Let's look at Exhibit 13  
7 and this has a date of April 23, 2015. Whose  
8 handwriting is this?

9 A That's mine.

10 Q Okay. Did you and your husband discuss  
11 the substance of this prior to your writing it?

12 A We must have because it's signed mom  
13 and dad.

14 Q And you would have discussed it with  
15 him --

16 A Yes.

17 Q -- before you put his name on it?

18 A Absolutely.

19 Q Did either Merrill Light or Randy Light  
20 have anything to do with your writing this note?

21 A No, they did not.

22 MR. GILREATH: Object to the form.

23 BY MS. PAYLOR:

24 Q You say 'Your father and I continue to  
25 be disappointed and shocked by your ongoing



1     ingratitude and threats against your own company  
2     and the family. We did not raise you in this  
3     way and we will never understand how you could  
4     do such a thing. You have embarrassed and  
5     shamed the Barringer family name and we will  
6     never forget it.'

7                 So, was that what your husband thought  
8     at the time?

9                 A     Yes.

10                MR. GILREATH: Object to the form.

11     BY MS. PAYLOR:

12                Q     And did he tell you that?

13                A     Yes.

14                MR. GILREATH: Object to the form.

15     BY MS. PAYLOR:

16                Q     In August of 2015 your husband filed a  
17     motion in a pending Virginia litigation  
18     involving CFRC and Hampton Luzak. Do you  
19     remember that?

20                A     I need to be reminded about what it was  
21     about but I remember that but I'm not sure.

22                Q     Okay. Did your father have a lawyer  
23     for the Virginia lit --

24                MR. GILREATH: Object to the form.

25     BY MS. PAYLOR:





1           Q     Your father -- did your husband have a  
2     lawyer in the Virginia litigation?

3                   MR. GILREATH: Object to the form.

4                   THE WITNESS: Yes, he did.

5     BY MS. PAYLOR:

6           Q     And do you remember his name?

7           A     Well it was probably Collins Denny.

8           Q     Do you remember a man named Robert  
9     Scully?

10                  MR. GILREATH: Object to the form.

11                  THE WITNESS: Yes, I do.

12     BY MS. PAYLOR:

13           Q     Okay. Did Mr. Scully visit with --

14                  MR. GILREATH: Object to the form.

15     BY MS. PAYLOR:

16           Q     -- Mr. Barringer?

17                  MR. GILREATH: Speaking.

18                  THE WITNESS: Yes.

19                  MR. GILREATH: Leading questions.

20                  THE WITNESS: He did.

21     BY MS. PAYLOR:

22           Q     And were you present when they were  
23     talking?

24                  MR. GILREATH: Object to the form.

25                  THE WITNESS: They were in -- they



1           were in the house with Mr. Scully but I  
2           left them alone.

3   BY MS. PAYLOR:

4           Q     Was it just the two of them?

5                   MR. GILREATH: Object to the form.

6                   THE WITNESS: When Mr. Scully came  
7           it was.

8   BY MS. PAYLOR:

9           Q     Did Mr. Barringer talk to you about  
10          whether he was going to do after that meeting?

11                   MR. GILREATH: Object to the form.

12                   THE WITNESS: I don't remember but  
13          I'm sure he did.

14   BY MS. PAYLOR:

15          Q     I'm almost finished but I want to take  
16          a quick break if that's okay.

17          A     Okay.

18          Q     All right?

19          A     All right.

20          Q     You need to go to the restroom?

21                   (Whereupon, a short break was  
22                  taken.)

23   BY MS. PAYLOR:

24          Q     Ms. Barringer.

25          A     Yes.



1 Q I've got just a few more questions.

2 A Okay.

3 Q And I believe you testified earlier  
4 that towards the end Mr. Barringer had good days  
5 and bad days.

6 A Yes.

7 MR. GILREATH: Object to the form.

8 BY MS. PAYLOR:

9 Q Tell me -- how would you describe that.

10 A I don't mean to -- I'm not -- I would  
11 describe it as good days and bad days but it  
12 was -- I can't tell you whether -- they varied  
13 whether it was just a slightly good day or  
14 slightly bad day or maybe a little worse in the  
15 middle, you know, it varied, but basically a  
16 better day or worse, worse day. That's --

17 Q Did there ever come a time when he did  
18 not know who you were?

19 MR. GILREATH: Object to form.

20 THE WITNESS: Never.

21 BY MS. PAYLOR:

22 Q Did there come a time when he needed  
23 assistance?

24 A Yes.

25 MR. GILREATH: Object to the form.



1 BY MS. PAYLOR:

2 Q And what did you provide for him?

3 A I had a couple whom we knew and he  
4 would come some and she would come some and it  
5 usually -- it wasn't for all day.

6 I did have another young -- young man  
7 who came in and they weren't there all day.

8 Q Okay. And were you still in your  
9 apartment at the Tide Point?

10 A Yes.

11 Q Did he ever not know who Merrill was?

12 MR. GILREATH: Object to the form.

13 THE WITNESS: Never.

14 BY MS. PAYLOR:

15 Q Did he talk about Hampton?

16 MR. GILREATH: Object to the form.

17 THE WITNESS: Yes.

18 BY MS. PAYLOR:

19 Q Describe that, what did he talk about?

20 A Describe it?

21 Q Yes, ma'am.

22 A Well he didn't talk much about her but  
23 when he did it was -- it was disappointment in  
24 her and not understanding how she could have  
25 become so greedy. Our child, how could she do



1       that.

2           Q       Did the court arrange a meeting for  
3       Hampton and Wade to come visit Mr. Barringer?

4           A       No, I don't remember the court --

5                   MR. GILREATH: Object to the form.

6                   THE WITNESS: -- doing that. I  
7       remember their visits if they did were  
8       as far as I know on their own volition.

9       BY MS. PAYLOR:

10          Q       Okay. Did they visit with Mr.  
11       Barringer before he died?

12          A       There was a long gap of years when they  
13       didn't come and I think they came really as he  
14       was -- as he had almost died, just at the very  
15       last minute practically.

16          Q       How did Hampton react to seeing you?

17          A       Well just as if I were somebody else,  
18       not her mother. She wasn't affectionate. I was  
19       just there. She was certainly polite and she  
20       talked a little bit to me but she was distant.

21          Q       Did your husband know who she was?

22                   MR. GILREATH: Object to the form.

23                   THE WITNESS: Well I would say

24       I -- I think so but I don't remember  
25       whether -- what he said if he spoke to



1 her. I'm assuming that he did.

2 BY MS. PAYLOR:

3 Q And when did your husband die?

4 A May 16th. Almost three years ago.

5 Q Hampton has alleged that your daughter  
6 Merrill and her husband Randy unduly and  
7 improperly influenced your husband to take  
8 actions that he would not have taken except for  
9 that influence.

10 A That's not true.

11 MR. GILREATH: Object to the form  
12 of the question.

13 BY MS. PAYLOR:

14 Q And based on what you observed and what  
15 you knew about your husband what do you think of  
16 Hampton's claims?

17 A I think it is -- it's based on greed  
18 and certainly not family affection.

19 Q Did Merrill or Randy Light influence  
20 you to use John Jolley as a lawyer?

21 MR. GILREATH: Object to form to  
22 the form of the question.

23 THE WITNESS: No, they didn't.

24 Well they probably said he's a really  
25 nice man. Have you met him?



1 BY MS. PAYLOR:

2 Q Do you recall using Rip Rose (phonetic)  
3 from that law firm as a lawyer prior to Mr.  
4 Jolley?

5 MR. TWOMBLEY: Hold on one minute.  
6 If you're asking about whether her  
7 husband --

8 MS. PAYLOR: Mr. Barringer.

9 MR. TWOMBLEY: -- Mr. Barringer  
10 used Mr. Rose I think that's fine, you  
11 can answer but not about your own  
12 personal matters, okay. So can you  
13 restate the question, please.

14 THE WITNESS: Yes, restate it,  
15 please.

16 BY MS. PAYLOR:

17 Q Did your husband --

18 MR. GILREATH: I object to you  
19 making a speaking objection to her  
20 trying to tell her what to say. That's  
21 improper and you know it. Go ahead and  
22 answer the question.

23 BY MS. PAYLOR:

24 Q Did your --

25 MR. TWOMBLEY: Well for the record



1 I don't think it's improper.

2 MR. GILREATH: You just -- you  
3 already told her. Too late.

4 MR. TWOMBLEY: It deals with a --  
5 well just go ahead. I'm not going to  
6 say anything else.

7 BY MS. PAYLOR:

8 Q Did your husband use Rip Rose as a  
9 lawyer?

10 MR. GILREATH: Object to the form.

11 THE WITNESS: No, not to my  
12 knowledge.

13 BY MS. PAYLOR:

14 Q In your observation and close  
15 relationship with your with your husband, was he  
16 of sound mind when he transferred the voting  
17 stock to Merrill Light?

18 A Yes, he was.

19 MR. GILREATH: Object to the form  
20 of the question.

21 BY MS. PAYLOR:

22 Q Did he make that transfer of his own  
23 free will?

24 A Yes.

25 MR. GILREATH: Object to the form





1 of the question.

2 BY MS. PAYLOR:

3 Q Did he make that transfer without  
4 influence from Randy or Merrill Light?

5 MR. GILREATH: Object to the form  
6 of the question.

7 THE WITNESS: Absolutely.

8 BY MS. PAYLOR:

9 Q Hampton claimed that she only -- in  
10 probate court that she only took actions to  
11 protect her father.

12 Do you think that Hampton's actions  
13 have in any way protected Mr. Barringer?

14 A I think that allegation is totally  
15 absurd.

16 MR. GILREATH: Object to the form  
17 of the question.

18 BY MS. PAYLOR:

19 Q Do you think that's Hampton's  
20 alienating herself from her family was  
21 beneficial to your husband during the last years  
22 of his life?

23 A It was definitely not --

24 MR. GILREATH: Object to form of  
25 the question.



1 THE WITNESS: -- beneficial.

2 MS. PAYLOR: That's all the  
3 questions I have. Thank you Mrs.  
4 Barringer.

5 CROSS-EXAMINATION

6 BY MR. TWOMBLEY:

7 Q Ms. Barringer, I'm going to ask you a  
8 few questions now.

9 A Okay.

10 Q Alice has covered some of them so I'm  
11 going to jump around.

12 I want to first ask you about a time  
13 when Mr. Barringer and Kevin and Wade and  
14 yourself were at the Calabogie house on Hilton  
15 Head and this is before the time that Kevin got  
16 fired.

17 Do you remember a meeting that took  
18 place between Kevin and your husband at the  
19 Calabogie house on Hilton Head?

20 A Yes, I do.

21 Q Okay. And I want to talk about what  
22 happened after that meeting. Can you tell us  
23 what happened after that meeting.

24 A Well, I think what you're referring to  
25 is that Kevin was angry and when he left the



1 house Kevin he said to his son, Wade, he said,  
2 Wade give pops my -- Paul, give pops a hug  
3 because you will never see him again.

4 Q Was that in fact -- was that in fact  
5 the last time that Wade ever saw Mr. Barringer?

6 A Yes.

7 Q Okay. How did it make you feel when  
8 Kevin said that to Wade?

9 A It was terrible. It was awful.

10 Q And Ms. Barringer, did you hear that  
11 with your own ears?

12 A I did.

13 Q Okay.

14 A I did. Cruel.

15 Q Why was it cruel?

16 A To try to keep a grandson from his  
17 grandfather is cruel.

18 Q I want to next talk about Kevin's  
19 salary while he was working at Coastal.

20 Tell me in your own words what you  
21 remember, if anything, about Kevin asking for  
22 any type of particular salary.

23 A I remember it very clearly because I  
24 heard it. He asked my husband, he said he  
25 thought he deserved a million dollars a year



1 salary. That's what he wanted.

2 Q And what did you think about that?

3 A I thought it was ridiculous.

4 Q And did you talk to Paul about it?

5 A Well, I did later, yes, and but at the  
6 time my husband thought it was very improper and  
7 also ridiculous. He said he'd never -- he said  
8 he'd never given any of his employees at the  
9 time a million dollars a year, never.

10 Q Now, after the discussion at the  
11 Calabogie house where Kevin told Wade to give  
12 pops a hug because you'll never see him again I  
13 will represent to you that there was a Board  
14 meeting on June 28th of 2012 that took place  
15 over the telephone.

16 A Uh-huh.

17 Q Everyone was not there in a room like  
18 we are now.

19 And that during that meeting Kevin was  
20 voted to be terminated, okay. Do you remember  
21 that telephone meeting?

22 A Yes.

23 Q Okay. And do you remember being with  
24 Paul while Paul called in to that meeting?

25 A Yes, I do.



1           Q     Okay. And what discussions, if any,  
2     had you and Mr. Barringer had prior to that  
3     meeting about whether or not Kevin should be  
4     fired?

5           A     We talked about it. We talked about it  
6     some and we were in agreement that he should be  
7     fired.

8           Q     Okay. When you were talking to Mr.  
9     Barringer about this --

10          A     Uh-huh.

11          Q     -- was there anyone there physically  
12     present with you?

13          A     No.

14          Q     Okay. Why did you attend that meeting  
15     with Paul or why did you decide that you wanted  
16     to be on the phone with Mr. Barringer during  
17     that board meeting?

18          A     I just wanted to hear what he said and  
19     to -- and maybe to indicate to him something he  
20     should say that he may have forgotten.

21          Q     Okay.

22          A     And that was about it.

23          Q     Okay. And did you in any way try to  
24     change what he was going to do or what he wanted  
25     to do?



1 MR. GILREATH: Object to the form.

2 THE WITNESS: Well there wasn't  
3 anything that I wanted him to change  
4 and so I just was there in preparation  
5 in case he needed to ask me something  
6 or I could give him some thoughts on it  
7 but he handled it himself.

8 BY MR. TWOMBLEY:

9 Q Now, you've been asked about why Kevin  
10 was fired and what some of the reasons were and  
11 you've mentioned his salary. You've mentioned  
12 the direction of the company.

13 Is there anything else that you can  
14 think of about what had upset Mr. Barringer  
15 about Kevin Luzak?

16 A I remember a board meeting when he  
17 brought in people. We didn't know who they were  
18 or anything. I think there were two or three  
19 men that he brought in from New York and I  
20 remember we didn't like them very much and he  
21 brought them in without my husband's permission.

22 Q Okay.

23 A And he was really angry about that.

24 Q Okay. And did Mr. Barringer tell you  
25 those things?



1           A     Yes.

2           Q     And I think there was some dispute  
3     about whether or not Mr. Barringer knew they  
4     were coming but your testimony is Mr. Barringer  
5     did not?

6           A     Did not.

7           Q     Okay.

8                     MR. GILREATH: Object to the form.

9                     THE WITNESS: To my best  
10     recollection.

11    BY MR. TWOMBLEY:

12           Q     Okay. Can you describe for me in your  
13     own words what you believe Mr. Barringer's state  
14     of mind was in June of 2012 when Kevin was  
15     fired.

16           A     It was fine.

17           Q     Did you believe that he, Mr. Barringer,  
18     was able to make decisions for himself?

19           A     Yes, I did. Yes, I did.

20                     MR. GILREATH: Object to the form.

21    BY MR. TWOMBLEY:

22           Q     Ms. Barringer, you were asked about in  
23     general whether or not Mr. Barringer was easily  
24     influenced.

25                     Tell us a little more, please, about



1 Mr. Barringer's personality and whether or not  
2 someone could easily influence him.

3 A I will say that someone could not  
4 easily, definitely not easily influence him. He  
5 made his own decisions and if he wanted advice  
6 from people he would ask for it. Sometimes  
7 people gave him advice but he was -- he made his  
8 own decisions.

9 Q Ms. Barringer, in 2012 when Mr. Luzak  
10 was fired was Paul able to use the telephone at  
11 that point in time?

12 A 2012? Yes.

13 MR. GILREATH: Object to the form.

14 BY MR. TWOMBLEY:

15 Q He was able to write letters and  
16 communicate with people?

17 A Yes.

18 MR. GILREATH: Object to the form.

19 THE WITNESS: Yes.

20 BY MR. TWOMBLEY:

21 Q Because we know he went to see his  
22 lawyer, right?

23 A Yes.

24 MR. GILREATH: Object to the form.

25 BY MR. TWOMBLEY:





1 Q Was there anyone preventing or limiting  
2 Mr. Barringer from having access to his friends  
3 and business colleagues?

4 A Absolutely not.

5 MR. GILREATH: Object to the form.

6 BY MR. TWOMBLEY:

7 Q Okay. Did y'all travel?

8 A A little. Not much.

9 Q When you were able -- you and he were  
10 able to decide when you wanted to travel and  
11 when you did not?

12 A Yes.

13 MR. GILREATH: Object to the form.

14 THE WITNESS: He might have still  
15 been flying the airplane himself. He  
16 would have had a pilot, of course, with  
17 him but I wouldn't be a bit surprised  
18 if he didn't fly himself with a pilot  
19 as a -- at that point for awhile.

20 BY MR. TWOMBLEY:

21 Q Okay. I want to next talk about the  
22 transfer of the voting stock to Merrill Light.

23 A Right.

24 Q Describe for me in your own words what  
25 Mr. Barringer's state of mind was in September



1 of 2012 when he transferred his voting stock to  
2 Merrill Light.

3 A He wanted to make sure --

4 MR. GILREATH: Object to the form  
5 of the question.

6 THE WITNESS: -- that she would  
7 have controlling stock in the company  
8 over her sister Hampton because she  
9 wanted -- he wanted her to be in  
10 control.

11 BY MR. TWOMBLEY:

12 Q What was Mr. Barringer's state of mind  
13 at that point in time? How was he doing?

14 A I -- well he was very clear about it.  
15 He knew what he was doing.

16 Q Do you have any concern that that may  
17 not have been what he wanted?

18 A No. I talked to him about it.

19 MR. GILREATH: Object to the form.

20 THE WITNESS: We talked  
21 considerably and --

22 BY MR. TWOMBLEY:

23 Q When you talked about it were you  
24 alone? I mean you and Mr. Barringer --

25 A Yes.



1 Q -- were you alone?

2 A Uh-huh.

3 Q I know this may seem like an obvious  
4 question but you and Mr. Barringer were living  
5 in the same house at the same time?

6 A Yes.

7 Q And y'all saw each other, you know,  
8 everyday multiple times a day unless one of you  
9 were traveling, is that fair?

10 A Right, yes.

11 Q Okay.

12 MR. GILREATH: Object to the form.

13 THE WITNESS: Yes.

14 BY MR. TWOMBLEY:

15 Q You were asked a question about  
16 meetings between you and your husband and Mr.  
17 Jolley and whether or not anyone was present at  
18 those meetings other than the three of y'all and  
19 I want to make sure your testimony is clear that  
20 when you and Mr. Barringer would go to Mr.  
21 Jolley to talk about your estate plans and  
22 your -- his will and his trust, to the best of  
23 your memory was anyone else there other than  
24 you, Mr. Barringer and Mr. Jolley?

25 MR. GILREATH: Object to the form.



1                   THE WITNESS: If that's what we  
2           were doing to go discuss that we were  
3           the only ones there.

4   BY MR. TWOMBLEY:

5           Q     Okay. Why would you have been the only  
6           ones there?

7           A     Because we were discussing what we were  
8           going -- what he was going to do with his estate  
9           probably is why he didn't want to have other  
10          people there listening in.

11          Q     Okay.

12          A     He might not have wanted to leave them  
13          a single thing.

14          Q     Okay. Let's turn back to Exhibit 1.

15          A     Okay.

16          Q     And just to orient you, this is a  
17          letter that you wrote Hampton.

18          A     Uh-huh.

19          Q     And you say at the bottom of the first  
20          page going to the second 'We got your e-mail but  
21          we don't want to get a lawyer or counselor.'

22                   If you had wanted to get a lawyer or  
23          counselor at that point in time or let me  
24          rephrase that, if Mr. Barringer had wanted to  
25          get a lawyer would he have been able to do it?



1           A     Of course.

2                   MR. GILREATH: Object to the form.

3                   THE WITNESS: Of course.

4   BY MR. TWOMBLEY:

5           Q     You say at the end of this, disaster  
6   happen. Do you see that?

7           A     Yes.

8           Q     What do you mean by as disaster happen?

9           A     I -- I should have put an s on the end  
10   of that word. Not disaster, disasters happen.

11          Q     Okay.

12          A     And this is one of them.

13          Q     And what was the disaster you were  
14   talking about?

15          A     Well there are a number of disasters  
16   but Hampton trying to change her husband's (sic)  
17   will I guess and take things for herself.  
18   That's was the -- those were the disasters.

19          Q     Okay. I'd like for you to look again  
20   at Exhibit 2, please.

21                   Ms. Barringer what was Mr. Barringer's  
22   state of mind or condition at the time he wrote  
23   this letter?

24          A     It was -- he was clear. I was with him  
25   and he told me he was going to write this letter



1 and --

2 Q Was anyone else there when he told you  
3 that?

4 A I don't think so. And then he wanted  
5 me to read it.

6 Q And did you read it?

7 A Yes.

8 Q And did you discuss it with him after  
9 you had read it?

10 A Yes. Yes, I did.

11 Q Well what did you think about it?

12 A I told him that I thought it was a very  
13 good letter and he asked me what I thought of  
14 it.

15 Q And this is Mr. Barringer's own  
16 handwriting?

17 A It is. It is.

18 Q And I mean he came up with these words  
19 and these sentences by himself?

20 MR. GILREATH: Object to the form.

21 THE WITNESS: All by himself.

22 MR. GILREATH: Object to the form  
23 of the question.

24 BY MR. TWOMBLEY:

25 Q Let's turn to Exhibit Number 3, please.



1 In Mr. -- in the letter -- it's a typed version.

2 This is the same letter --

3 A Yes.

4 Q -- we just looked at.

5 A Yes.

6 Q This is a typed version.

7 A Yes.

8 Q But it says, 'I am writing to caution  
9 you against alienating yourself from the  
10 family.'

11 How had Hampton alienated herself from  
12 the family in December of 2012?

13 MR. GILREATH: Object to the form.

14 THE WITNESS: I guess she was  
15 really putting her -- putting Kevin  
16 ahead of her father and her thoughts  
17 and her affections and she was moving  
18 away from us and -- in her mind and she  
19 was thinking about, you know, she  
20 wanted more from the family and she  
21 wanted -- she was greedy and she was  
22 thinking about probably what she was  
23 going to do in the future.

24 BY MR. TWOMBLEY:

25 Q Had you -- do you remember



1 communicating with her in any way, you know, in  
2 person or on the phone in between the time Kevin  
3 was fired and the time of this letter?

4 A No. That may have been when she didn't  
5 communicate with us for a very long time, very  
6 long. Several years. She was angry of course.

7 Q Give me just a moment. I'm looking at  
8 my notes.

9 A Okay.

10 Q If you would please turn to Tab Number  
11 4. You've already been asked about this form.

12 A Uh-huh.

13 Q And we can see on the last page that  
14 it's dated January of 2011 if you want to  
15 confirm that.

16 A Yeah, I see it, yes.

17 Q Okay.

18 MR. MACLOSKIE: 2013.

19 BY MR. TWOMBLEY:

20 Q I'm sorry January 11th 2013.

21 A Yes.

22 Q If you had -- if you had had to fill  
23 this form out for you and Mr. Barringer how  
24 would you have responded to all the questions on  
25 page one and page two?





1           A     Well see, page one I would have  
2     responded --

3           Q     I'm sorry page two and three, I  
4     apologize.

5           A     Okay. Oh you mean do I have any  
6     difference of opinion?

7           Q     Correct.

8           A     Oh. Let me see. Page two is fine, he  
9     could do all that. Page three is fine, he could  
10    do all that.

11          Q     How long could Mr. Barringer do all  
12    these things?

13          A     In 2012 he really could. He didn't --  
14    it was just at the last six months of his life  
15    really and the last -- there was very -- he  
16    couldn't do much then, the last six months of  
17    his life.

18          Q     Would he still have good days and bad  
19    days in those --

20          A     Yes but he'd have --

21                   MR. GILREATH: Object to form.

22                   THE WITNESS: Yes, he could. But  
23    they were good but not wonderful days  
24    and there were bad days.

25    BY MR. TWOMBLEY:



1 Q In the last --

2 A And the last -- the last few months  
3 were very bad days.

4 Q But during the last six months of his  
5 life I mean did -- could he communicate with  
6 you?

7 A Yes, he could.

8 MR. GILREATH: Object to the form.

9 BY MR. TWOMBLEY:

10 Q Could you tell you what he wanted?

11 A Yes.

12 MR. GILREATH: Object to the form.

13 BY MR. TWOMBLEY:

14 Q Did you talk about -- well what did  
15 y'all talk about each day on an average day?

16 A Well, I had helped off and on and,  
17 would you like to go out, Paul? Would you like  
18 so and so to take you out? Would you want to go  
19 out or can you take a walk? Would you like --  
20 what would you like for lunch? Would you like  
21 to go out to see something. That was on a --  
22 those were on good days.

23 Q Okay.

24 A Would you like to read? Would you like  
25 to do this or that?



1 Q Could he still read during the last six  
2 months of his life?

3 A He didn't read much.

4 Q Okay.

5 A He would look at the paper and maybe he  
6 could read a little bit of it.

7 Q Okay. Prior to that time, prior to  
8 six months before he passed away could he read  
9 the newspaper?

10 A Yes.

11 Q Talk to you about current events?

12 A Yes.

13 MR. GILREATH: Object to the form.

14 BY MR. TWOMBLEY:

15 Q Let's turn to Exhibit 5, please. This  
16 is a letter that you wrote to Hampton on  
17 February of 2013.

18 A Yeah.

19 Q You were asked about some parts of this  
20 letter but turn to the second page for me.

21 A Okay.

22 Q The last paragraph you are telling  
23 Hampton that you are sending her two silver  
24 crosses. Do you see that?

25 A Yes.



1           Q     Okay. Tell me about those silver  
2 crosses.

3           A     Well they were very special. They were  
4 my mother's and had been given to her from her  
5 mother and they'd been in the family for a long  
6 time and they always hung on the headboards of  
7 the beds so when she gave me those I knew they  
8 were special and I was hoping that Hampton would  
9 feel the same way about them that was -- but I  
10 don't know. I don't know how she felt about  
11 them or what she did with them.

12          Q     Was --

13          A     And I kept the old ribbons, the old  
14 ribbons from her grandparents. I thought that  
15 was special to have those old ribbons on there.

16          Q     Why were you sending these what I'll  
17 refer to as kind of family heirlooms, why were  
18 you sending them to Hampton in February of --

19          A     I hadn't thought about that, really,  
20 but maybe I wanted her to do better and this  
21 would be an inspiration for her to come to her  
22 senses and to have some more respect for her  
23 family, for her father and to be a better  
24 person. It was just a hint.

25          Q     It's a pretty obvious hint --



1 A Pretty obvious hint.

2 Q -- in my opinion but --

3 A Right.

4 Q Did you ever -- you ever hear from  
5 Hampton about these silver crosses?

6 A I didn't hear a single word as I  
7 remember.

8 MR. GILREATH: Object to the form.

9 BY MR. TWOMBLEY:

10 Q How did that make you feel?

11 A Well I thought -- I was expecting that  
12 and I thought it was -- she was ungracious and I  
13 thought I should have had a note from her or  
14 something.

15 Q Okay.

16 A But I understood why she didn't do it.

17 Q Okay. Let's look at the next exhibit,  
18 which was Exhibit Number 6.

19 Now it appears, from the first  
20 paragraph, that Paul received the Father's Day  
21 card from Hampton in Linville. It says 'Thanks  
22 for the Father's Day card --

23 A Yes.

24 Q -- which reached me in Linville.'

25 A Yes.



1 Q Okay. And then it says 'where your  
2 mother and I are enjoying the good weather.'

3 A Yes.

4 Q It would appear to me that you both  
5 were in Linville at this time.

6 A Yes, we were.

7 Q Okay. And was anybody else there with  
8 you?

9 A I don't know. I don't remember.  
10 People came and family came and --

11 Q And went?

12 A -- left. But mostly what I remember is  
13 that we were by ourselves.

14 Q Okay. Do you remember when Paul wrote  
15 this letter to Hampton?

16 A Yes, I do.

17 Q Okay. Was anybody there with Paul when  
18 he wrote it?

19 A I was around.

20 Q Okay.

21 A But I didn't help him with the letter.

22 Q Okay. Did you read it after he wrote  
23 it?

24 A Yes.

25 Q Do you know if -- did Hampton call her



1 father after she received this letter?

2 A I don't -- I don't think she did. I'm  
3 looking at this letter and it sort of -- I  
4 hadn't noticed it before.

5 He says I hope everyone -- I hope you  
6 hear from -- 'I hope I hear from you before it's  
7 too late.'

8 He wrote before it's too late in big  
9 letters which I hadn't noticed that before.

10 Q Why do you think he did that?

11 A To emphasize to her that she better  
12 hurry up and get back onboard.

13 Q Okay. And then he ends the letter, I  
14 hope you had -- 'I hope you all have outstanding  
15 good health --

16 A Continuously.

17 Q -- continuously, I'm sorry, you're  
18 right -- 'continuously good health, wealth and  
19 happiness. Take care.' Is that something Mr.  
20 Barringer would typically say to Hampton?

21 A No, he didn't say that typically.

22 Q Okay.

23 A He just remembered that phrase from  
24 something.

25 Q Okay.



1           A     And struck it in.

2           Q     Let's look at Number 7, please.

3                     (Whereupon, a short lunch break was  
4                     taken.)

5   BY MR. TWOMBLEY:

6           Q     Ms. Barringer, we're back on the record  
7     and I want to go back for a moment and ask you  
8     about a couple of things.

9                     One is let me show you this document  
10    which we'll mark as 14.

11                    (Whereupon, Defendant's Exhibit  
12                    Number 14 was marked for  
13                    identification.)

14   BY MR. TWOMBLEY:

15           Q     Ms. Barringer, this is a letter dated  
16     September 17th of 2012 to Hampton where she was  
17     being invited back to sit on the Board of  
18     Directors for the company.

19                    Were you aware that Hampton was going  
20     to be invited back?

21           A     Yes.

22           Q     Or invited to sit on the Board of the  
23     corporation?

24           A     Yes.

25           Q     Okay. And did you approve of that?





1           A       Well it was okay with me. If that's  
2       what my husband wanted it was okay with me.

3           Q       Okay, all right.

4           A       I didn't care all that much.

5           Q       Okay. Did you ever hear from Hampton  
6       after this letter was sent --

7           A       Yes.

8           Q       -- about whether or not she should sit  
9       on the Board?

10          A       Well we heard from her. I think I  
11       spoke to her whether she wanted to.

12          Q       Okay. And what did she say?

13          A       She -- she declined with a frivolous  
14       reason I thought. It took too long to drive up  
15       wherever she was going to -- took too long to  
16       get there and she didn't want to leave her --  
17       any child that was at home.

18          Q       Okay.

19          A       That was her reason.

20          Q       And at that point in time Hampton had a  
21       residence in New York and Charleston and --

22          A       Yeah. She could easily have gotten  
23       there.

24          Q       Okay.

25          A       If she had wanted to.



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100

1 Q Okay, all right. Did you tell Paul  
2 that you had talked to Hampton?

3 A Yes.

4 Q And that -- what did Paul say when he  
5 found out that Hampton was declining the  
6 invitation to come back to the Board or to come  
7 to the Board?

8 A I don't think he said much.

9 Q Okay. Do you think he was hurt a  
10 little?

11 A I think -- I think he wanted to invite  
12 her to do it and if she didn't want to do it I  
13 don't think he cared.

14 MR. GILREATH: Object to that  
15 question I -- on the form.

16 BY MR. TWOMBLEY:

17 Q It would have been his preference for  
18 her to come and sit on the Board?

19 MR. GILREATH: Object to the form.

20 THE WITNESS: I guess so.

21 BY MR. TWOMBLEY:

22 Q You were asked some questions about  
23 Travis Bryant --

24 A Uh-huh.

25 Q -- being hired as the CEO after Kevin



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1 was fired.

2 A Uh-huh.

3 Q Tell me again what your conversations  
4 were with Mr. Barringer about hiring Travis.

5 A He was excited about the prospect of it  
6 and he was hoping that he would accept, Travis  
7 would accept.

8 Q To your knowledge did anyone try to  
9 convince Paul that he needed to hire Travis or  
10 try to improperly influence him to hire Travis?

11 MR. GILREATH: Object to the form.

12 THE WITNESS: Only me.

13 BY MR. TWOMBLEY:

14 Q What do you mean by that?

15 A Only I --

16 Q Okay.

17 A -- tried to influence him to --

18 Q And how would you have tried to  
19 influence him?

20 A Well it's so easy. Oh yes, this is a  
21 wonderful idea.

22 Q Okay. But you -- there was no improper  
23 influence?

24 A Oh no improper influence.

25 MR. GILREATH: Object to form.



1 THE WITNESS: No.

2 BY MR. TWOMBLEY:

3 Q Okay. If you could turn to your  
4 notebook. I want to ask you about Exhibit 7.  
5 You're right. That's it. You're right. That's  
6 it.

7 A Okay.

8 Q What is this we're looking at, Ms.  
9 Barringer?

10 A What is what?

11 Q What is this we're looking at?

12 A A letter from Hampton.

13 Q Okay. Is it from Hampton or is it to  
14 Hampton?

15 A Oh wait a minute it is -- no, I wrote  
16 her. I wrote her, excuse me.

17 Q Okay.

18 A I was thanking her for a wooden bowl  
19 that she sent us. Let me see what the date on  
20 this is. It's December for Christmas, so.

21 Q Okay.

22 A And a picture of Wade.

23 Q It says on the second page that you  
24 would love to -- 'I would love to see you and  
25 Wade sometime.'



1 A Yes.

2 Q Do you see that?

3 A Uh-huh.

4 Q Is that the way you felt in 2014?

5 MR. GILREATH: Object to the form.

6 THE WITNESS: Yes, obviously. It  
7 wasn't made up. Those were not made-up  
8 sentiments or I wouldn't have written  
9 them.

10 BY MR. TWOMBLEY:

11 Q Okay. And, you know, from this point  
12 in time back had you always been willing and had  
13 a desire to see Hampton and Wade?

14 A Yes.

15 MR. GILREATH: Object to the form.

16 BY MR. TWOMBLEY:

17 Q Now let's turn, if you will, to the  
18 next exhibit.

19 A Okay.

20 Q Which is Exhibit 8.

21 A All right.

22 Q Okay. Now, if you would just for a  
23 moment read this paragraph.

24 A I did. I did.

25 Q Okay.



1           A     Okay.

2           Q     All right. I guess this is an e-mail  
3 or a letter that Hampton had sent Paul.

4           A     Yes.

5           Q     Is that right? And it's signed by  
6 Hampton, is that right?

7           A     Yes.

8           Q     Okay. Ms. Barringer, who do you think  
9 actually wrote this letter?

10          A     Hampton did not write it but either --  
11 I'm just having to guess at this, either Kevin  
12 wrote it or she had a lawyer write it.

13          Q     Okay. How do you know Hampton didn't  
14 write it?

15          A     She wouldn't understand half what  
16 this -- you know, she could have written it if  
17 Kevin stood over her shoulder and said write  
18 this, write this, write this, write this.

19          Q     Okay, all right. Was -- in your  
20 opinion, was Hampton not a person that knew  
21 about things like book value of stock?

22          A     That's right.

23          Q     And options --

24                   MR. GILREATH: Object to the form.

25                   THE WITNESS: That's right, yes.



1 BY MR. TWOMBLEY:

2 Q Okay. Now the letter says 'I am  
3 outraged by this arrangement and by its terms.  
4 I know you would never have allowed a  
5 transaction like this to take place while you  
6 were running the company and I will not sit by  
7 and let people take advantage of you.'

8 A She's just gearing up for what they're  
9 planning to do and she is getting advice from  
10 Kevin or her lawyer, their lawyer but that's --  
11 those are not her thoughts and that's not the  
12 way she would write it and --

13 Q Okay. Well let me ask you this, other  
14 than receiving this letter, did Hampton ever  
15 call you to tell you that she was concerned  
16 about Paul being taken advantage of?

17 A No.

18 MR. GILREATH: Object to the form.

19 BY MR. TWOMBLEY:

20 Q In your opinion was anybody taking  
21 advantage of Paul?

22 A I don't think so at all.

23 MR. GILREATH: Object to the form.

24 BY MR. TWOMBLEY:

25 Q Did you and Paul talk about this?



1 A Yes.

2 Q Okay.

3 A The -- almost comical absurdity of this  
4 because it obviously didn't come from her, her  
5 thoughts. She's of course willing to go along  
6 with what they were doing but she wouldn't have  
7 written this. We were just --

8 Q What did Mr. Barringer say specifically  
9 about this letter?

10 A Specifically --

11 Q Or as best you can remember.

12 A Okay. He said the same thing that I am  
13 saying. That here she goes. This is what's --  
14 what they're working on. Hampton wouldn't have  
15 written this. She would have had -- she -- of  
16 course obviously she would have written it but  
17 she would have had advice from somebody else.

18 Q How did it make you feel?

19 A Angry.

20 Q Well specifically how did you feel that  
21 Hampton would write in this letter that people  
22 were taking advantage of her father but she  
23 wouldn't call you, her mother on the phone to  
24 talk about it?

25 A Well this is somebody else's idea and





1 she probably didn't half understand it or think  
2 about it and she was gearing up for her future  
3 which was greedy and money and how to take  
4 advantage. Somebody just told her to do this.

5 Q Okay. Let's turn to the next one,  
6 Number 9.

7 A Okay.

8 Q This is a letter from Hampton's  
9 attorney at King and Spalding.

10 A Oh yeah. He must have dictated that  
11 letter to her.

12 Q Well --

13 A Maybe.

14 Q Did you -- did you know that a lawyer  
15 had written a letter to the company on behalf of  
16 Hampton in -- around the time this letter was  
17 sent?

18 A A letter to our company addressed to my  
19 husband?

20 Q Well it looks like it's addressed to  
21 Travis but --

22 A Oh I see. Yes. Did I know about this  
23 letter? Well I knew about the letter after it  
24 came and I saw it.

25 Q Okay, all right. It says here in the



1 second paragraph, you can read along with me.

2 A Okay.

3 Q 'On behalf of Ms. Luzak I hereby demand  
4 pursuant to Sections 13.1-771 and 772 of the  
5 Code of Virginia that within five business days  
6 from the date of the receipt of this letter the  
7 company deliver copies of CFRC's corporate and  
8 accounting records identified in Exhibit A to  
9 this letter, the demand, to my attention at King  
10 and Spalding 1180 Peachtree Street Atlanta,  
11 Georgia 30309. E-mail mrsmith@kslaw.com. Do  
12 you see that?

13 A Yes.

14 Q Okay. Do you remember reading that  
15 provision --

16 A Yes.

17 Q -- back at the time the letter was  
18 sent?

19 A Yes.

20 Q Okay. And attached to this letter is  
21 the --

22 A Yeah.

23 Q -- there's one more page.

24 A Okay.

25 Q Keep going.



1           A     All right.

2           Q     Okay. This --

3           A     Yes, I remember all that, yes.

4           Q     Okay. This is a list of the documents

5     that Hampton is demanding pursuant to the

6     Virginia code.

7           A     Yes.

8           Q     Is that right? And did you -- I'm sure

9     you may not have read all of them but did you

10    see this list?

11          A     I did. I did.

12          Q     Okay. And what did you think when you

13    saw this letter?

14          A     I thought this is the most ridiculous

15    thing I've ever seen. They're doing this to --

16    I don't know, anger to us, anger us and they're

17    -- what they're doing is going ahead and getting

18    ready for a lawsuit.

19          Q     Did you interpret this letter and the

20    previous letter --

21          A     Yes.

22          Q     -- by Hampton saying -- well let me ask

23    you, how did you interpret the January 21st

24    letter from Hampton saying she would not sit by

25    and let people take advantage of you and this



1 letters dated the same day from King and  
2 Spalding?

3 A It was all in the same plot, yes. And  
4 saying that she would not let anybody take  
5 advantage of us was -- somebody was telling her  
6 to do that. Those words would not have been  
7 hers.

8 Q Let's turn to the next document,  
9 Exhibit 10, please. You wrote this letter to  
10 Hampton?

11 A I did.

12 Q These are your own words?

13 A Yes.

14 Q Anybody tell you what to say?

15 A No.

16 Q Anybody make you say this?

17 A No.

18 Q Okay.

19 MR. GILREATH: Object to the form  
20 of those questions.

21 BY MR. TWOMBLY:

22 Q It says 'Daddy and I are disappointed  
23 in you.'

24 Why were you and Paul disappointed in  
25 Hampton?



1 A Why?

2 Q Why?

3 A Because of all this stuff that we just  
4 went through.

5 Q Okay.

6 A Knowing what she was getting up -- had  
7 in her mind.

8 Q Okay. The next sentence says 'You have  
9 crossed the line in bringing legal action  
10 against your family company and for your  
11 astounding ungratefulness to your father for all  
12 that he has done to make your -- make you more  
13 than financially comfortable.'

14 I want to talk about the first part of  
15 that sentence and the second part.

16 A All right.

17 Q So the first part, what did you mean by  
18 'you've crossed the line by bringing legal  
19 action'?

20 A You know, that's just a phrase that --  
21 a phrase, crossed the line is something I  
22 probably heard in the movie or something.

23 Q Okay.

24 A And --

25 Q And what about the legal action? What



1 were you referring to about the legal action?

2 A Because we knew that she was going to  
3 bring legal action against us.

4 Q Okay. And how did you know that?

5 A Intuition.

6 Q Mother's intuition?

7 A Father's too because all of a sudden  
8 these letters were coming in, angry letters and  
9 they're not -- and they're leading up to  
10 something.

11 Q Okay. Now, Ms. Barringer were you  
12 aware at the time that you wrote this letter in  
13 February of 2015 that at that time on that day  
14 Hampton had not in fact filed any type of formal  
15 lawsuit in the court?

16 A No, I was not aware.

17 Q Okay. You were not aware that she  
18 had --

19 A I don't think so because this -- King  
20 and Spalding comes later, doesn't it?

21 Q Well let's look at the date.

22 A She hadn't or had -- oh, there's King  
23 and Spalding.

24 Q So that's dated January 21st.

25 A Yeah. So we're obviously aware that



1 she has contacted this firm and that -- so that  
2 leads us to believe that she's going to bring  
3 legal action against us.

4 Q Okay, all right. Now the next part of  
5 the sentence says that you're disappointed for  
6 your astounding ungratefulness. What did you  
7 mean by that?

8 A I meant exactly what I said because we  
9 have done -- had done so much for her and what  
10 this is implying is from a monetary point of  
11 view we have done so much -- did so much for her  
12 that how could she possibly be going after more.

13 Q You ended the letter 'This will not be  
14 easily forgiven nor forgotten sadly. Mamma.'  
15 Had you ever written a letter like that  
16 to Hampton before?

17 A Only what you've seen in this -- no,  
18 I've never -- but to answer your question, no, I  
19 have never written a letter to her like this.

20 Q Okay.

21 A But I meant every word.

22 Q Now let's turn to the next exhibit,  
23 Exhibit 11. This is --

24 A Oh this is the funny one.

25 Q Okay.



1           A       It's almost embarrassing.

2           Q       Well my -- I guess my question to you  
3       is is there's some very choice words in this  
4       letter.

5                   Is this -- is this the type of letter  
6       that Paul would write to Hampton under these  
7       circumstances?

8           A       No, it really isn't but he somehow came  
9       out with this. Maybe there was confusion in his  
10      mind but he came out with this, these funny  
11      things to say.

12          Q       Uh-huh.

13          A       Funny, funny things.

14          Q       Would -- do you think this was a  
15      representation of the way he felt at the time?

16          A       It's the way he felt but he would --  
17      unless he was just having a strange sense of  
18      humor it's the way he felt, all right, but he  
19      just wrote this comical letter.

20          Q       Okay. Do you know if anyone told him  
21      what to say in this letter?

22          A       Nobody told him anything.

23          Q       Okay. Let's turn to the last one,  
24      Exhibit 13. This is an April 23rd 2015 letter  
25      that you wrote to Hampton. Let me just point





1 out --

2 A Okay.

3 Q -- to save time, the dates here.

4 A Okay.

5 MR. GILREATH: What number is  
6 that?

7 MR. TWOMBLEY: 13.

8 THE WITNESS: 23rd.

9 MR. TWOMBLEY: Yeah, April 23rd  
10 2015.

11 THE WITNESS: Yeah, uh-huh.

12 BY MR. TWOMBLEY:

13 Q Okay. Now the letter is your  
14 handwriting?

15 A Yes, it is.

16 Q Okay. But it's signed, your mother and  
17 father. And then signed mom and dad.

18 A Yes. I wanted her to know that we both  
19 thought this way.

20 Q Okay.

21 A And he was there obviously.

22 Q Did you sign mom and dad or is that --

23 A I -- wait a minute. You know, I think  
24 he signed his own -- I think he signed dad.

25 Q Okay. You certainly would have



1 discussed this or did you --

2 A Yes.

3 Q Did you discuss this with anyone before  
4 you wrote it or after?

5 A No. I -- of course I discussed it with  
6 my husband.

7 Q Okay. Anyone other than him?

8 A No, no.

9 Q Okay. And were you embarrassed or did  
10 you -- I'm sorry, let me rephrase that.

11 You say 'you have embarrassed and  
12 shamed the Barringer family name.'

13 A Yes.

14 Q 'And we will never forget it'.

15 A Exactly.

16 Q Why did you think Hampton had  
17 embarrassed and shamed the Barringer family  
18 name?

19 A Because of all the things that she  
20 was -- had done and getting ready to -- she was  
21 greedy and she was not behaving nicely.

22 Q Okay. Now, Mr. -- Ms. Barringer I want  
23 to ask you, you know, after the Virginia lawsuit  
24 had been filed and then Hampton brought her  
25 claims and the litigation was proceeding Mr.



1 Barringer joined into that lawsuit.

2 A Uh-huh.

3 Q Were you aware of that?

4 A I was aware of it.

5 Q Okay. Did you have occasion to meet a  
6 gentleman named Mr. Scully?

7 A Yes.

8 Q Okay. Did Mr. Scully ever come to your  
9 home?

10 A Yes.

11 Q Okay. What was the purpose of him  
12 coming to your home?

13 A I don't remember.

14 Q Okay. Do you remember that he was  
15 representing Paul in the Virginia litigation?

16 A No. I had forgotten.

17 MR. GILREATH: Object to the form.

18 THE WITNESS: That's why -- what I  
19 didn't remember why he was coming but  
20 now that you said that I remember that.

21 BY MR. TWOMBLEY:

22 Q Okay.

23 A Yes, I do.

24 Q So why did he come to Hilton Head to  
25 meet with Mr. Barringer?



1 A Well he wanted to talk to him about it.

2 Q Okay. And did Mr. Barringer and Mr.  
3 Scully have a private meeting between the two of  
4 them?

5 A Yes.

6 Q Was anybody else in the room with them?

7 A No.

8 MR. GILREATH: Object to the  
9 form --

10 BY MR. TWOMBLEY:

11 Q Were you in a position to see Mr.  
12 Scully and Mr. Barringer meet?

13 A Yes.

14 MR. GILREATH: Object to the form.

15 BY MR. TWOMBLEY:

16 Q And you were able to observe who was in  
17 the room?

18 A I saw them go into a room together and  
19 I did not go with them because I wanted to leave  
20 them in private but they were at my house.

21 Q Okay. And there was no one else there?

22 A There was no one else there.

23 MR. GILREATH: Object to the form.

24 BY MR. TWOMBLEY:

25 Q Who else was there? I'm just trying to



1 clear up his objection and ask the question in a  
2 different way.

3 THE WITNESS: I don't remember  
4 anybody else being there.

5 BY MR. TWOMBLEY:

6 Q Okay, all right.

7 Ms. Barringer, I've just got a couple  
8 of followup questions.

9 You are aware that in this lawsuit that  
10 Hampton alleges that the gift of stock to  
11 daughter Merrill, Paul changing his estate plan,  
12 firing Kevin is all part of a conspiracy between  
13 your daughter, Merrill and Randy alike and  
14 others. Are you aware of that?

15 MR. GILREATH: Object to the form  
16 of the question.

17 THE WITNESS: I'm aware of --  
18 that's totally untrue.

19 BY MR. TWOMBLEY:

20 Q Well to -- today's our chance to hear  
21 from you and we -- I think you're going to be  
22 around for about 15 more years but-

23 A That's may be good or bad.

24 Q Right.

25 A Mostly bad. Go ahead.



1           Q     But I want to hear from you today on  
2     the record whether or not you believe that's  
3     true and why, if you don't think it's true why  
4     not?

5           A     What's -- what are you talking about?  
6     What's -- did Merrill and Randy try to  
7     influence? Is that what -- is that your  
8     question?

9           Q     Yes, ma'am.

10          A     It's not true at all.

11          Q     How do you know that?

12          A     Because I was there. I was -- lived  
13     with him, my husband. She never approached him.  
14     She never -- they never talked about it. He  
15     never mentioned it to me. It was -- it didn't  
16     happen. They did not try to influence him.

17          Q     Why do you think Hampton would bring a  
18     lawsuit like this and say these things?

19          A     Well, she was thinking of everything  
20     she could think of to cause trouble and she also  
21     had a very smart lawyer who was advising her  
22     about all these things and she was -- she was  
23     greedy and she was looking forward to getting a  
24     big share and he was looking forward, too, to  
25     them.



1 Q Who's he?

2 A Michael, Michael Smith.

3 Q Okay. I noticed today that Hampton's  
4 not here with us for this deposition.

5 A She's a coward.

6 Q Why do you think she didn't come?

7 A She didn't come because she didn't want  
8 to face me.

9 Q What do you mean that she didn't want  
10 to face you?

11 A She's embarrassed. Embarrassed, maybe  
12 humiliated, I'm not so sure. She's embarrassed  
13 that she would do such a thing to her mother.

14 Q It hurt you?

15 A Well, yes, it does. And it makes me  
16 very angry and it makes me think of her as a  
17 coward. How could she do this? And then if  
18 she -- she ought to come and face me.

19 Q Ms. Barringer, if at any point in time  
20 between 2012 and the time Paul died if you would  
21 have thought somebody was taking advantage of  
22 him or trying to get him to do something that he  
23 really didn't want to do what would you have  
24 done?

25 A I would have talked to him and told him



1     what I thought, that they were -- somebody was  
2     trying to take advantage of him and we would  
3     talk about it and then we would either -- that's  
4     what I would do.

5           Q     Okay. What if he wouldn't listen to  
6     you? What if you had to go further?

7           A     Then I would talk to the people who I  
8     thought were doing this myself.

9           Q     And what if that didn't work?

10          A     I'd have one of you fine people as a  
11     lawyer and I'd go after them.

12          Q     Okay.

13                   MR. TWOMBLEY: That's all the  
14     questions I've got. Thank you.

15                   THE WITNESS: I pick you though as  
16     the lawyer.

17                               CROSS-EXAMINATION

18     BY MR. GILREATH:

19           Q     Ms. Barringer, I'm Jim Gilreath. We  
20     met awhile ago. I represent Hampton along with  
21     these two gentleman next to, Mr. Medlin and Mr.  
22     Macloskie.

23                   I'm going to try to be as brief as I  
24     can but this is going to probably take awhile  
25     and if you want to take a break you just let me





1 know, raise your hand.

2 A Okay.

3 Q Because I'll probably have to take one  
4 before you do.

5 A All right.

6 Q And we'll try to get this over today.  
7 I can't -- you know, we'll just see how long it  
8 takes.

9 A Okay.

10 Q But you tell me if you get tired.

11 A All right.

12 Q We've gone too long and you want to go  
13 home and then you let us know and we'll just  
14 have to re-adjourn at a later date.

15 A Don't want to do anything at a later  
16 date.

17 MR. TWOMBLEY: And I'm putting on  
18 the record that we're going to -- as  
19 I've said before we're going to put her  
20 up today and --

21 MR. GILREATH: Well then I'm going  
22 to put on the record that I'm going to  
23 -- y'all have done had -- we won't  
24 argue it on the record but you --

25 MR. TWOMBLEY: I understand.



1           MR. GILREATH: -- you've had  
2           plenty of time but you've asked a lot  
3           of leading questions that's caused me  
4           to have to object to delay it and so  
5           I'm going to put on the record that  
6           we're going to take as long as we need  
7           to do because we're trying to get to  
8           the bottom of this. Okay.

9   BY MR. GILREATH:

10          Q     You said right there at the end that if  
11          you thought somebody was trying to take  
12          advantage of Paul, your husband that -- and you  
13          couldn't get any attention or whatever you would  
14          -- if you had to you would hire a lawyer,  
15          correct?

16          A     If it came down to the very last bit,  
17          if I couldn't persuade him or talk to him I  
18          wouldn't let the matter just go.

19          Q     Right. Well let me -- before I get  
20          started here let me put in the record y'all have  
21          all got a copy of this. This is plaintiff's  
22          deposition notebook. Would you put that in  
23          front of her, Ashley.

24                   I'm going to be -- I've got a lot of  
25          stuff here and I'll be referring to these tabs.



1 Ashley will help you find it if you can't find  
2 it.

3 MR. TWOMBLEY: Are these the  
4 documents you sent over at yesterday at  
5 5 o'clock afternoon?

6 MR. GILREATH: That's the  
7 documents we gave on the record we  
8 furnished y'all sometime late  
9 yesterday.

10 MR. TWOMBLEY: Yeah, okay.

11 MR. GILREATH: And I brought some  
12 notebooks in here, what I've got here.

13 BY MR. GILREATH:

14 Q Now you said in reference to the -- I  
15 believe it was that exhibit talking about right  
16 here at the end the type -- the e-mail that --  
17 yeah, I think it's Exhibits 8 and 9 in Alice's  
18 book or I guess that's Alice's book.

19 MR. TWOMBLEY: It's in this book.  
20 Let me show it to you.

21 THE WITNESS: Okay.

22 BY MR. GILREATH:

23 Q Where Hampton wrote the e-mail on  
24 January 21st 2015 and you said you thought she  
25 had a lawyer and then you were talking also in



1 reference to Exhibit 9 which was the King and  
2 Spalding letter dated January 21st and you said  
3 if you thought somebody was trying to take  
4 advantage of your husband you would do what you  
5 had to do to try to protect him, correct?

6 A Right.

7 Q Do you understand that that's exactly  
8 what Hampton is trying to do. That she feels  
9 very strongly that people were trying to take  
10 advantage of your husband. Do you understand  
11 that? Has anybody ever told you that?

12 A No.

13 Q Okay. Well do you understand or did  
14 anybody ever tell you that when Hampton got  
15 those financial statements that she's referring  
16 to in that exhibit, the one -- her typed e-mail  
17 where she says she got the --

18 MS. PAYLOR: Exhibit 8.

19 BY MR. GILREATH:

20 Q It's Exhibit 8.

21 She says they received the 2014 annual  
22 report and learned that in December of 2013 that  
23 Travis Bryant had borrowed money from the  
24 company and had gotten a bunch of stock.

25 Has anybody ever told you that on that



1 date, January 21st 2015 that that was the first  
2 time that she was aware of that?

3 A No. Nobody's told me anything about  
4 it.

5 Q Has anybody ever told you that when  
6 the lawsuit was filed in the Eastern District of  
7 Virginia I believe on February the 15th and if  
8 you will look in my notebook at Tab 2 I believe  
9 it is, could you open that up for her?

10 MR. TWOMBLEY: I'm sorry. Look at  
11 that because he wants to --

12 THE WITNESS: Oh his?

13 BY MR. GILREATH:

14 Q Yeah. I'm going to be referring to  
15 that a lot. So turn over to Tab 2.

16 A Okay. Got it.

17 Q And did -- anybody ever told you that  
18 as a result of the letter that Mr. Michael Smith  
19 wrote on I believe it was January 15th that  
20 Hampton was eventually given copies of the stock  
21 ledger of CFRC. Did you -- were you aware of  
22 that?

23 A What did you say? Would you repeat  
24 that?

25 Q As a result of the letter that Mr.



1 Smith wrote which is --

2 A Yeah.

3 Q -- is Alice's Exhibit 9, the  
4 January 21st 2015 letter, has anybody told you  
5 that as a result of that Hampton was finally  
6 given some corporate records where she and her  
7 lawyer discovered for the first time that your  
8 husband had given to her sister all but one  
9 share of his voting stock in CFRC?

10 A You know, I am aware of that. I  
11 remember that she didn't get this information  
12 for quite awhile and I do not know why she  
13 didn't.

14 Q Well, do you understand that it's our  
15 contention that your oldest daughter who's  
16 sitting down here at the corner of the table,  
17 Merrill Light, hid that from her sister for over  
18 two years and that nobody ever told her,  
19 including your husband?

20 A If she didn't send it it's because she  
21 didn't know what it was and she probably thought  
22 -- she hadn't looked at it or read it or paid  
23 any attention to it and I think if she hadn't  
24 sent it -- she would never have done it  
25 deliberately or for -- with a malicious intent.



1 Q Now wait a minute. When you're talking  
2 about 'she' --

3 A I'm talking about she is daughter  
4 Merrill.

5 Q So you're saying that you don't think  
6 maybe Merrill understood what she got when she  
7 got the voting stock?

8 A I don't think she would have kept  
9 something from Hampton deliberately.

10 Q Well it's our position and the position  
11 of Hampton and we think the evidence in this  
12 case proves out pretty good that it was  
13 definitely hidden from Hampton. Did you know  
14 about it?

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Object to the form  
17 of the question.

18 MR. GILREATH: Go ahead because  
19 all you can is object now. I don't  
20 want any speaking objections where  
21 you're trying to telegraph to her what  
22 you want her answers to be, okay?

23 MR. TWOMBLEY: I'm going to object  
24 in accordance with the rules and my  
25 understanding of the law and not in



1       accordance with anything you have to  
2       say.

3               MR. GILREATH: Well I'm --

4               MR. TWOMBLEY: And you may proceed  
5       with the deposition.

6               MR. GILREATH: All right. That's  
7       what I'm trying to do. And I  
8       appreciate you not interrupting me in  
9       the middle of a question.

10              MS. PAYLOR: Object to the form.

11              MR. GILREATH: I'm trying but did

12       --

13   BY MR. GILREATH:

14       Q       So is it your testimony that you think  
15       Merrill maybe didn't understand when she got the  
16       voting stock what was going on?

17              MS. PAYLOR: Object to the form.

18              THE WITNESS: I only remember this  
19       vaguely and I remember some discussion  
20       about these papers not getting down to  
21       the proper place and time and I  
22       don't -- do not know why. I don't know  
23       really what happened.

24              This -- it was just conjecture if  
25       she had them that she didn't know. She





1 would never do that maliciously.

2 BY MR. GILREATH:

3 Q Well, have you ever had a conversation  
4 with her about that, with Merrill?

5 A I don't remember having a conversation.

6 Q You ever had a conversation with Randy  
7 about that?

8 A I don't remember ever having one.

9 Q Well, let me tell you that the record  
10 that we have based on a lot of Mr. Light's  
11 e-mails show that he was e-mailing back and  
12 forth to John Jolley who, by the way, was his  
13 attorney, also, about when is this stock  
14 certificate going to get signed. Were you aware  
15 of that?

16 MS. PAYLOR: Object to the form.

17 MR. TWOMBLEY: Object to the form  
18 of the question.

19 BY MR. GILREATH:

20 Q Were you aware of that?

21 A Did you hear him?

22 MR. TWOMBLEY: You can still  
23 answer if you know the answer.

24 BY MR. GILREATH:

25 Q You can still answer. You can still



1 answer.

2 A Okay.

3 Q He just -- that's a technical --

4 MR. TWOMBLEY: Unless I tell you  
5 not to you can answer.

6 THE WITNESS: Okay.

7 MR. GILREATH: Unless he instructs  
8 you not to answer --

9 THE WITNESS: Okay.

10 MS. PAYLOR: -- he's told her  
11 that.

12 BY MR. GILREATH:

13 Q -- you've got to answer.

14 A Now you'll have to repeat the question.

15 Q Read back my question. These  
16 objections are --

17 (Whereupon, the record  
18 was read back as requested.)

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Same objection.

21 BY MR. GILREATH:

22 Q You can answer now.

23 A I think I heard something about it but  
24 I wasn't --

25 Q Do what? I can't --



1           A     I think I heard something about all  
2     these discussions about the documents.

3           Q     Do you remember what you heard?

4           A     Not really.

5           Q     Isn't it true that Merrill had been  
6     running the company effectively since 2012 when  
7     she got the stock?

8                     MS. PAYLOR: Object to the form.

9                     THE WITNESS: Merrill herself did  
10    not run the company. She had lots of  
11    help and we had Travis.

12   BY MR. GILREATH:

13          Q     And she had her husband on the Board,  
14    correct?

15          A     Yes.

16          Q     Merrill's husband?

17          A     Yeah.

18          Q     So if she's on the Board and her  
19    husband's on the Board can you explain to me how  
20    they would not have fully understood what was  
21    going on?

22                     MS. PAYLOR: Object to form.

23                     THE WITNESS: I would assume they  
24    would understand it but I don't know,  
25    about the documents I mean, I don't



1 know about that. Maybe she stuck them  
2 in the kitchen drawer and forget about  
3 them if she had them.

4 BY MR. GILREATH:

5 Q Can you explain to me why she wouldn't  
6 have bothered to have told her sister who had  
7 the same amount of stock that she used to have?

8 A They didn't -- they weren't talking to  
9 each other.

10 Q Okay. Let me -- can you explain to me  
11 why your husband Paul wouldn't have picked up  
12 the phone or sent a letter or an e-mail or  
13 something to Hampton and told her that he didn't  
14 want her in control of the company and he was  
15 going to give control to Merrill?

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: I don't think he was  
18 interested in making that call to  
19 daughter Hampton. He just did what he  
20 wanted to do and she would find out  
21 about it. They weren't on good terms.

22 BY MR. GILREATH:

23 Q Well do you think he assumed that  
24 Merrill would tell him about it?

25 MS. PAYLOR: Object to the form.



1 THE WITNESS: Would tell him  
2 about?

3 BY MR. GILREATH:

4 Q Would tell Hampton about it?

5 A No, I would assume she would not.

6 Q Did you ever have a discussion with  
7 Paul about why he didn't tell Hampton about it?

8 A No, I did not.

9 Q Isn't it true that at the time he made  
10 this transfer in -- alleged transfer I would say  
11 in September of 2012 that he had already been  
12 diagnosed by Dr. Bachman as having dementia?

13 A This is what year, when?

14 Q 2012?

15 A 2012?

16 Q September 11th of 2012?

17 A He was perfectly -- he just had a  
18 slight bit of dementia. You can -- that's on  
19 the records, on medical records, Dr. Bachman.

20 Q Right.

21 A It was very slight.

22 Q But you agree that he was told that by  
23 Dr. Bachman correct?

24 A About the degree of the --

25 Q The dementia, yes.



1 A I would assume he'd been told.

2 Q Okay.

3 A But, but at that meeting daughter  
4 Hampton was there and she could have taken a  
5 different slant on it.

6 Q And isn't it true that daughter Merrill  
7 was back in Hilton Head --

8 A Yes.

9 Q -- playing tennis.

10 A Probably. I don't know what she was  
11 doing.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: She may have been  
14 digging ditches as far as I know and  
15 not playing tennis.

16 BY MR. GILREATH:

17 Q But she wasn't there with her father  
18 when he was in the hospital at the university --  
19 Medical University and was diagnosed with  
20 dementia. It was you and Hampton and Dr.  
21 Bachman and his -- and your husband, correct?

22 A This was an appointment with Dr.  
23 Bachman. It was not as if we were going into a  
24 hospital situation.

25 Hampton was living there in Charleston



1 and she went with us and she also had an  
2 interest in doing it.

3 Q Right. And Merrill had an interest in  
4 her tennis game that morning, didn't she?

5 MR. GILREATH: Object to the form.

6 THE WITNESS: That is very -- that  
7 is not nice.

8 BY MR. GILREATH:

9 Q Okay, all right. Now -- let me -- you  
10 said something in your earlier testimony and I  
11 wrote it down and I think I got it right. You  
12 said my daughter, and you're referring to  
13 Merrill, told me of veiled threats.

14 Do you remember that testimony?

15 A Yes.

16 Q All right. I want you to tell me, if  
17 you would, what kind of threat -- and you're  
18 referring to Merrill in that testimony, correct?

19 A I've sort of forgotten what -- about --  
20 you'd have to refresh my mind about who -- where  
21 the veiled threats were coming from.

22 Q Well I don't have the transcript here  
23 but it was -- you're referring to Merrill I  
24 think it's pretty clear. I'm just -- can you  
25 tell me of any veiled threats that --



1           A     I remember the word veiled threats. I  
2     do not remember who sent those words. If we  
3     talked about it today I don't remember who made  
4     threats, veiled threats or why.

5           Q     But it certainly wasn't Hampton. We  
6     were talking -- I think you were talking about  
7     Merrill.

8           A     Oh.

9           Q     You don't remember --

10           MS. PAYLOR: Object to the form.  
11     Object to the form.

12           THE WITNESS: Veiled threats to  
13     Merrill is what you said I think.  
14     Veiled threats to Merrill from somebody  
15     or -- I -- but I could be wrong about  
16     it. I'm not really remembering this.

17     BY MR. GILREATH:

18           Q     Okay. Well I'm not real good at  
19     writing it down. This lady over here and that  
20     tape recorder up there will get it straight but  
21     I think the record will reflect that you said my  
22     daughter told me of veiled threats and I --

23           A     I -- daughter Merrill but she may have  
24     told me. I'm not -- I don't know from whom the  
25     threats --





1 Q Okay.

2 A -- came.

3 Q Well talking about Merrill, let me ask  
4 you this, at that point in time, 2011, 2012  
5 before you moved into the place you're living  
6 now the assisted wherever you called it.

7 MR. TWOMBLEY: Object to the form  
8 of the question.

9 MR. GILREATH: I haven't asked it  
10 yet, please sir.

11 MS. PAYLOR: Object to the form.

12 BY MR. GILREATH:

13 Q Before you moved into the place you're  
14 currently residing how far did you live from  
15 Merrill?

16 A Several miles.

17 Q She lives here on Hilton Head, correct?

18 A Uh-huh.

19 Q And how long had Merrill been living on  
20 Hilton Head with you?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: A long time.

23 BY MR. GILREATH:

24 Q And how many miles was it from your  
25 house to her house?



1           A       Two or three.

2           Q       And how many times a day or a week  
3 would you see her?

4           A       Two or three times.

5           Q       A week?

6           A       Two or three or four times a week.

7           Q       Okay. How many times would you talk to  
8 her on the telephone?

9           A       Twice a day.

10          Q       Okay. Did you ever talk to Randy?

11          A       Briefly, sometimes.

12          Q       Would Randy be with her when she came  
13 to see you?

14          A       Sometimes.

15          Q       Okay. Did you go out to eat with them  
16 at night sometimes?

17          A       Frequently.

18          Q       Frequently, okay. You frequently in  
19 your testimony refer to Hampton as being greedy.

20                   Now can you tell me some specific  
21 instances you have in mind or what makes you say  
22 that about Hampton being greedy?

23          A       Hampton had been given -- her father  
24 had given her and the other children quite a lot  
25 to make them financially comfortable and she



1 wanted more and --

2 Q Can you tell me of any instance that  
3 you can recall where Hampton contacted you or  
4 Mr. Barringer and said I want more. I haven't  
5 got enough?

6 A Her lawyer would contact us.

7 Q Her lawyer?

8 A Uh-huh.

9 Q Can you tell me the name of that  
10 lawyer?

11 A I don't know. Should I?

12 Q You've got -- you can't ask him about  
13 questions now.

14 A Okay.

15 Q You've got to answer my question. I  
16 know you don't like them probably but I -- I  
17 apologize. I'm just doing my job.

18 A Should I -- you asked me the name of  
19 the lawyer?

20 Q Yeah. You said --

21 A Michael Smith I guess it was.

22 Q Well what when -- is that the only --

23 A Where's the date of this again?

24 Q Well -- you said it numerous times in  
25 your testimony that Hampton's greedy.



1           A     Right.

2           Q     And what I'm trying to get on the  
3     record so we have a record of this is what makes  
4     you say that.

5                     In other words, what did she do, what  
6     did she demand or whatever --

7           A     Threatened a lawsuit. Threatened the  
8     lawsuit.

9           Q     -- that led you to come to that  
10    conclusion? Ma'am?

11          A     Threatened a lawsuit against us. So  
12    I'm talking about 2015.

13          Q     She threatened a lawsuit against you.

14          A     Uh-huh.

15          Q     2015. But are you talking any time --  
16    all right, let's stop there for a minute.

17                     But until you say she "threatened a  
18    lawsuit against you in 2015" did she do anything  
19    before that that led you to believe she was  
20    greedy?

21          A     I can't think of anything.

22          Q     Okay. And it's really true isn't it,  
23    Ms. Barringer, that you and Mr. Barringer who  
24    took very good care of all your children based  
25    on what I've seen, you're to be commended, that



1 you tried to treat all of the children equally,  
2 didn't you?

3 A We did for awhile.

4 Q Okay. But now you use this term 'she  
5 threatened a lawsuit.'

6 Now, where did you hear that or how did  
7 you come up to that conclusion?

8 A I'm just talking about what she's  
9 doing. Litigation against now. Against --  
10 well, threatened litigation.

11 Q Well, let me ask you, are you telling  
12 me that Hampton called you up or wrote you a  
13 letter or had some lawyer write you and say I'm  
14 threatening litigation. I'm going to sue you  
15 and Mr. Barringer.

16 A No. But I'm getting letters from King  
17 and Spalding and from the unpleasant letters she  
18 wrote us about -- that she's written us that I  
19 know what she's intending she has on her mind.

20 Q Well the letter from King and Spalding  
21 came on I think it was January the 15th.

22 A Uh-huh.

23 Q Now, is there anywhere -- do you think  
24 there's something in that letter that led you to  
25 believe that Hampton was going to sue you or



1 your husband?

2 A Yes.

3 Q Okay. Get that letter. That's  
4 Exhibit 9 in that notebook.

5 A Okay.

6 Q All right. Look at the second  
7 paragraph on the first page and it said I hereby  
8 demand pursuant to code section so and so that  
9 within five business days the company deliver  
10 copies of certain corporate and accounting  
11 records. There's nothing in that paragraph  
12 where it says that he's going to sue anybody, is  
13 there?

14 A That was in very -- that's a leading  
15 thing for what's probably going to come. They  
16 gave us a very short period of time. I think  
17 five days to produce all of this -- these  
18 documents and send them -- it was harassment and  
19 -- in my mind.

20 Q But you'll agree with me that there's  
21 nothing in that letter where he says that --

22 A No but I'm thinking ahead.

23 Q -- she's going to sue Mr. Barringer?

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: No, absolutely, I



1 agree with you but I'm thinking ahead.

2 BY MR. GILREATH:

3 Q Okay.

4 A That this is what their intention is.

5 Q Okay. Now are -- I want you to look in  
6 my notebook on Tab 2. For the record Tab 2 --  
7 while she's finding that Tab 2 is a copy --

8 A Yeah.

9 Q -- of the lawsuit filed in the Eastern  
10 District of Virginia by Coastal Forest  
11 Resources, plaintiff, versus Hampton Luzak,  
12 defendant.

13 Now, do you understand or did anybody  
14 ever tell you that on April the 15th at  
15 approximately 1:41 p.m. Coastal Forest Resources  
16 Company, your husband's company, the family  
17 corporation which at that time is controlled by  
18 your daughter Merrill, Merrill Light --

19 MS. PAYLOR: Object to the form.

20 BY MR. GILREATH:

21 Q -- filed a lawsuit against my client  
22 and your youngest daughter, Hampton Luzak,  
23 Merrill and her company sued Hampton.

24 MS. PAYLOR: Object to form.

25 BY MR. GILREATH:



1 Q Do you understand that?

2 A I'm understanding it perfectly.

3 Q Okay.

4 A And I knew that had happened and they  
5 were doing this lawsuit knowing that a lawsuit  
6 was coming back to us and this was done with  
7 lawyers advice and exactly what their reasoning  
8 is I'm not clear about.

9 Q Okay.

10 A But I know that it happened and why.

11 Q When did you first hear of this  
12 lawsuit?

13 MR. TWOMBLEY: Hold on one second,  
14 Ms. Barringer I want to adjust your  
15 microphone.

16 THE WITNESS: Oh okay. I don't  
17 know when I first heard of it.

18 BY MR. GILREATH:

19 Q Do you remember the first person that  
20 told you about it?

21 A No, I don't.

22 Q Do you remember having any discussions  
23 with it about Merrill -- with Merrill or Randy?

24 A No, I did not.

25 Q They never had anything to tell you





1 about this lawsuit?

2 A I don't remember anything.

3 Q Did -- this is in April of 2015. When  
4 is the first time that you remember your husband  
5 knew about this lawsuit?

6 A I don't know when he -- what is the  
7 date?

8 Q It's in April of 2015.

9 A Well, he must have found out about it  
10 shortly thereafter.

11 Q How would he have found out about it?

12 A I don't know. Somebody told him.

13 Q Okay. What kind of shape was he in in  
14 April of 2015?

15 A That very day I do not know. As I have  
16 said he had good days and he had not so good  
17 days.

18 Q Okay.

19 A So I have no idea on that date which of  
20 those days it was.

21 Q Okay. Do you know when he found out  
22 about this lawsuit?

23 A No, I don't know what date.

24 MS. PAYLOR: Asked and answered.

25 THE WITNESS: He would have found



1 out about it quickly because he would  
2 have been informed of it quickly.

3 BY MR. GILREATH:

4 Q And who would have informed him?

5 A His lawyers or maybe John Jolley.

6 Q Okay. And do you know why this lawsuit  
7 was brought?

8 A No, I don't know why.

9 Q Okay. You testified talking about that  
10 January 15th letter from Mr. Smith that I think  
11 you said Hampton or they, talking about the two  
12 of them were getting ready to launch an attack.

13 Did you -- is that your terminology or  
14 did you hear that from --

15 A What's the terminology.

16 Q You said they were getting ready to  
17 launch an attack. That's what you said on the  
18 record if I wrote it down right.

19 A It was that -- that particular thing  
20 was not my terminology but I would have heard  
21 about it.

22 Q Would somebody have used that  
23 terminology with you about --

24 A Not with me, no.

25 Q -- they're getting ready to launch an



1 attack?

2 A Not with me, no.

3 Q Have you ever had a conversation with  
4 Merrill or Randy where anybody referred to  
5 launching an attack?

6 A Not that I can remember.

7 Q Okay. Can you tell me on January 15th  
8 -- well February the 15th now it is, that's when  
9 the lawsuit got filed -- can you tell me what  
10 kind of condition from a mental standpoint Mr.  
11 Barringer was in?

12 A This was in February of '15?

13 Q Yeah.

14 A I do not know. All I know is what I  
15 have told you.

16 Q Okay.

17 A That he had good days and bad days but  
18 on that day I don't know.

19 Q Okay. Well tell me for the record what  
20 was a bad day like?

21 A A bad day is when he was confused.

22 Q Okay. And when he was confused he  
23 didn't easily or couldn't completely comprehend  
24 or understand what was going on, is that  
25 correct?



1           A     No, I'm not saying that at all. There  
2     are all sorts of degrees of confusement.

3           Q     Right. And I believe that telephone  
4     board meeting we had that you helped him on the  
5     telephone he got -- he got confused in that  
6     board meeting, didn't he?

7           A     I don't know that he did because I --  
8     whether I could -- I'm assuming I heard his  
9     voice. I -- I didn't remember any confusion but  
10    I was there to give him -- if he wanted to ask  
11    me anything.

12          Q     Now, he was with you and you were on  
13    the phone and y'all were plugged into the  
14    meeting, is that correct?

15          A     No. He was on the phone.

16          Q     Were you with him?

17          A     Yes.

18          Q     So I mean the two of y'all were here in  
19    Hilton Head, is that correct?

20          A     Yes.

21          Q     And the meeting was somewhere else or  
22    it might have been -- it may have been  
23    everybody --

24          A     We were at a meeting. No wait a  
25    minute. No, let me think. I'm not sure. I



1 remember -- I think it was at a board meeting  
2 and the phone rang but I'm not sure. I'm not  
3 sure about that.

4 Q But you were with him when --

5 A Yes.

6 Q And he was on the phone and you  
7 were there?

8 A Yes.

9 Q You weren't on the phone but you were  
10 sitting next to him in the same room, correct?

11 A Right.

12 Q Okay.

13 A Well let me think. There were maybe a  
14 couple of times that I was on the phone with him  
15 at meetings. I'm not sure about that.

16 Q Okay. Let me -- let me go back to  
17 the -- kind of some starting stuff that -- you  
18 understand that Merrill and Randy were the ones  
19 that have required this deposition. They were  
20 the ones that wanted to depose you. You  
21 understand that?

22 A No, I do not.

23 Q You don't understand that Hampton had  
24 nothing to do with setting this deposition?

25 A I didn't know -- I really didn't know



1       that -- if that's so I did not know it.

2           Q       Okay. So they didn't tell you that. I  
3       will represent to you as Hampton's lawyer that  
4       we did not have anything to do with deposing you  
5       here this date.

6           A       Okay.

7                   MR. TWOMBLEY: And I will  
8       represent to you that that's not true.

9                   MS. PAYLOR: We noticed the  
10      deposition, no doubt.

11   BY MR. GILREATH:

12           Q       Quit talking to the witness, please,  
13      Ashley. You can't do that and you know that.

14                   MR. TWOMBLEY: If you're going to  
15      make --

16                   MS. PAYLOR: Object to the form.

17                   MR. TWOMBLEY: -- blatantly false  
18      statements to her I will correct you.

19                   MR. GILREATH: I -- you can object  
20      is what you do, please. I'm just  
21      trying to get your client to understand  
22      that my client did not notice this  
23      deposition. Do you understand that?

24                   THE WITNESS: Listen to me, if  
25      you're not telling me the truth then I



1 don't want to hear what you're saying.

2 BY MR. GILREATH:

3 Q I'm not going to -- I can tell you what  
4 I'm telling you is the --

5 A I want to hear the truth from you.

6 Q -- absolute God's truth. I'm not going  
7 to mislead you one iota.

8 A Well you better not.

9 Q I'm not, don't you worry. That's not  
10 my business. I've been doing this for 51 years,  
11 not quite as long as Mr. Macloskie down here but  
12 I don't mislead anybody.

13 A All right.

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: What did you say?

16 MS. PAYLOR: I objected to the  
17 form.

18 MR. GILREATH: I object to your  
19 observation.

20 BY MR. GILREATH:

21 Q Now can you tell me -- I don't want to  
22 know what was said in them but can you tell me  
23 who you have had discussions with about this  
24 deposition, not what went on but just the people  
25 you talked to. I assume you definitely talked



1 to your lawyer, Mr. Twombly but have you talked  
2 with anyone else?

3 A I have said to daughter Merrill what  
4 time are you going? Shall I ride with you or  
5 shall I ride with Mr. Twombly?

6 Q Okay. Is that it?

7 A That's it.

8 Q You haven't discussed anything that  
9 might come up?

10 A Nothing.

11 Q Or what your answers ought to be?

12 A Nothing.

13 Q Okay. Can you tell me when your  
14 husband decided to give Merrill the voting  
15 stock?

16 A No I can't tell you that because I -- I  
17 haven't looked at that -- those pages recently.

18 Q Before he -- well can you list for me  
19 all the reasons that he wanted to give her -- to  
20 give Merrill the voting stock.

21 A Well of course I have already done that  
22 today.

23 Q Well I want to get them in answer to  
24 this question so the record will be kind of  
25 straight on that if you don't mind.





1           A     All right. Because he thought that she  
2     was the most reliable of the two to do this and  
3     that's what he wanted.

4           Q     Okay. And it's your testimony that he  
5     told you that?

6           A     Yes.

7           Q     Okay. Can you tell me why he thought  
8     she was more reliable than Hampton?

9           A     It was his opinion.

10          Q     Okay. What if his reasons weren't  
11     true, would that change your mind?

12                   MS. PAYLOR: Object to the form.

13                   THE WITNESS: I'm so stunned at  
14     your questions. When he says she's  
15     reliable I know she's reliable. I mean  
16     I know exactly what he was saying and I  
17     agreed with him.

18   BY MR. GILREATH:

19          Q     Well can you tell me what -- what was  
20     it that y'all thought wasn't reliable about  
21     Hampton?

22          A     Maybe there's more words to describe  
23     the sisters than just reliable. I think so.  
24     There are a whole lot more words; trustworthy,  
25     reliable, honest, working hard, nice, capable,



1 all those words not just reliable. We wanted  
2 somebody upstanding who could do the job and  
3 represent us and she was the one -- she was our  
4 pick.

5 Q But can you tell me why Hampton wasn't  
6 all those things?

7 A Because she wasn't. She just wasn't.

8 Q Well can you give me particular reasons  
9 why she wasn't, an example.

10 A Well she had made many bad judgements  
11 in the past.

12 Q Well can you give us an example of some  
13 of the bad judgements?

14 A She married the wrong person, that was  
15 number one.

16 Q Okay. Number two?

17 A Oh dear.

18 Q I know you're not enjoying this and I'm  
19 sorry I'm having to do it but I'm her lawyer and  
20 we're just trying to get all the facts because  
21 she unfortunately was not given all the facts so  
22 can you give me anymore facts?

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: What facts was she  
25 not given?



1 MR. TWOMBLEY: You don't get to  
2 ask him questions.

3 THE WITNESS: Oh I don't get to  
4 ask you anything, you just get to ask  
5 me.

6 BY MR. GILREATH:

7 Q Well the biggest fact -- and I'm not  
8 supposed to answer questions but I'll assert  
9 that the biggest fact she wasn't given was that  
10 her sister got half of the voting stock which  
11 should have come to her and she would have --

12 MS. PAYLOR: Object to the form.

13 BY MR. GILREATH:

14 Q And she wasn't told --

15 A Well I --

16 MR. TWOMBLEY: Object to the form.

17 MS. PAYLOR: There was no greedy  
18 established that she -- had to do it.

19 MR. GILREATH: Quit testifying.

20 MS. PAYLOR: Well you're saying  
21 she did something wrong when -- that's  
22 what you're trying to tell her mother  
23 and that's not true.

24 THE WITNESS: I've asked you to be  
25 very truthful.



1 BY MR. GILREATH:

2 Q Okay. Let's go back to the first one.

3 You said she married the wrong person. I  
4 presume you're talking about Ham -- I mean about  
5 Kevin, correct?

6 A Correct.

7 Q That's the only person she's ever been  
8 married to, correct?

9 A Right.

10 Q Now can you tell us on the record how  
11 wrong was Kevin? What was wrong with Kevin?

12 A I think it's just a matter of  
13 everybody's thoughts about him and, you know,  
14 there were some good things about Kevin and then  
15 there were some things we didn't like and we --  
16 most of the things we didn't like -- they were  
17 most of them and he didn't fit in with our  
18 family.

19 Q Well tell me the good things about  
20 Kevin that you did like.

21 A I thought he was very smart. He had  
22 beautiful blue eyes.

23 Q I agree. He's definitely a good  
24 looking fellow, no question about it.

25 A Yes.



1 Q That's what my wife said the first  
2 time she saw him.

3 A Did she?

4 Q That's what she said.

5 MS. PAYLOR: Well she's been  
6 married to Jim all her life, so.

7 MR. GILREATH: Oh he definitely  
8 looks better than I do, I agree with  
9 that.

10 BY MR. GILREATH:

11 Q But tell me some other good things  
12 that --

13 A Well he was very pleasant. He was nice  
14 to talk to. He seemed very agreeable all at  
15 first.

16 Q Anything else?

17 A That's enough.

18 Q Well let's talk about what was wrong  
19 with him.

20 A Well you heard a lot of that this  
21 morning and I assume you want more for your  
22 record.

23 Q Right.

24 A He worked some, very little for us. He  
25 didn't like where we sent him in Florida. He



1 didn't -- he wanted to be in New York. He  
2 really didn't want to work much at all. He  
3 played squash all the time. He -- I guess he --  
4 I guess you could call him a playboy.

5 Q If my facts here are correct Paul hired  
6 Kevin to the Board in 1993 and made him CEO in  
7 early 2000 but he didn't fire him until 2012.

8 So would I be correct to assume that he  
9 was okay until -- from --

10 A Did you say -- what was that early  
11 date?

12 MS. PAYLOR: Object to the form.

13 That's not true.

14 BY MR. GILREATH:

15 Q He was -- I think the facts will --

16 A What was that early date?

17 Q The facts will show that Kevin was  
18 hired on the Board in 1993 and --

19 A 1993.

20 Q -- and he was made CEO in early 2000  
21 even, in early 2000.

22 A I don't remember that early time. If  
23 he was there that early time with us he was not  
24 around us much and I didn't see him. I don't  
25 know what he was doing.



1 Q Well --

2 A Or why he would have been hired at that  
3 early time.

4 Q Can you tell me why Paul didn't hire  
5 Randy Light before 2012?

6 MS. PAYLOR: Object to form.

7 BY MR. GILREATH:

8 Q Can you tell me that?

9 A I'm thinking whether there's an  
10 objection to that before I answer it.

11 Q Go ahead. Don't worry, they'll object.  
12 You can answer the question.

13 A Randy was busy with his own business.

14 Q Right.

15 A And he wasn't in any -- didn't want to  
16 be hired. He wasn't interested in it. He was  
17 interested in his business at the time and he  
18 was working and so forth.

19 Q And isn't it true that your husband  
20 would not even let Randy Light come to a CFRC  
21 board meeting, isn't that correct?

22 A If he -- I don't know. If he -- if  
23 you're saying he didn't come then prove it but  
24 it would be because he wasn't an officer or a  
25 member of the Board he wouldn't -- couldn't come



1 as a guest, I don't know what his title was or  
2 whatever, but he couldn't have just come in at a  
3 whim and been on the Board.

4 Q Well if he -- if he hadn't been on the  
5 Board -- what changed with Randy in 2012 that  
6 allowed your husband or made him decide he  
7 wanted to put Randy on the Board?

8 MS. PAYLOR: Object to the form.

9 THE WITNESS: Maybe Randy then  
10 decided that he wanted to be on the  
11 Board. Randy had --

12 MS. PAYLOR: Go ahead Ms.  
13 Barringer, you can answer.

14 BY MR. GILREATH:

15 Q Let me ask you this, what kind of  
16 business was Randy Light in?

17 A Well he was in -- early on he was in  
18 the rental business and then he had business in  
19 I think it was Tennessee with probably rentals.  
20 He could correct me if he were able to talk.

21 Q Did -- did he have any dealings down in  
22 Texas?

23 A I think he did.

24 Q Did -- you ever had any discussions  
25 with him or Merrill about his business down in





1 Texas?

2 A A little bit, yes, I did.

3 Q Tell me what you learned about that.

4 A Well I've forgotten exactly what he was  
5 doing but he had some troubles with business  
6 partner and the business was not doing well.

7 Q Did --

8 A And we were sorry.

9 Q And you were what?

10 A We were sorry. His business wasn't  
11 doing well. We were sorry. His partner had run  
12 off.

13 Q Did -- I may have come to back to  
14 that.

15 (Whereupon, a short break was  
16 taken.)

17 BY MR. GILREATH:

18 Q Back on the record.

19 Ms. Barringer, we were talking about  
20 Randy I think and what he was doing. I want you  
21 to look at Tab 21 and this is --

22 A Okay, I got it.

23 MR. TWOMBLEY: Now hold on a  
24 second. I want to turn to it, too.

25 BY MR. GILREATH:



1           Q     I'll represent to you that -- somehow  
2     it's not all of this here but this is a --

3           A     I can't hear you.

4           Q     I'll represent to you that this is part  
5     of an e-mail from Randy Light that was attached  
6     to some pleadings in a Texas case and he says --  
7     if you would look -- it's Luzak 000481 and it  
8     says 'My biggest concern is figuring out the two  
9     personal notes and the letter of credit you're  
10    asking for. I simply cannot make a commitment  
11    to pay the interest on these two notes quarterly  
12    moving forward until I am comfortable with at  
13    least the outcome of our upcoming mediation with  
14    the architect.

15                As I have shared with Jerry on numerous  
16    occasions I really am having difficulty  
17    convincing my wife to support a letter of credit  
18    back -- to back these two notes knowing that the  
19    notes would never have been needed if Larry,  
20    Victor and everyone else involved would have  
21    performed as expected.' And this deals with a  
22    thing called Stretford down in Texas.

23                Did you -- did Merrill or Randy ever  
24    tell you that Randy was trying to get Merrill to  
25    sign a letter of credit on some big million



1       dollar project down in Texas?

2               MS. PAYLOR: Object to the form.

3               THE WITNESS: I don't --

4               MR. TWOMBLEY: Can you hold  
5       one minute?

6               THE WITNESS: Yes.

7               MR. TWOMBLEY: I want to make sure  
8       that I know that I'm not waiving my  
9       right to talk to the witness about  
10      documents that were provided at  
11      5 o'clock yesterday. I don't want or  
12      need to talk to her about this document  
13      but I don't want that to be seen as  
14      waiving my right.

15              MR. GILREATH: That's fine.

16              MR. TWOMBLEY: I apologize. Go  
17      ahead Ms. Barringer.

18              THE WITNESS: Don't apologize to  
19      me.

20      BY MR. GILREATH:

21              Q       Did Merrill ever tell you that Randy  
22      was trying to get her to sign some huge letter  
23      of credit down in Texas?

24              MS. PAYLOR: Object to the form.

25              THE WITNESS: I don't know. I



1 don't remember.

2 BY MR. GILREATH:

3 Q Okay. You don't know anything about  
4 that.

5 MR. TWOMBLEY: Object to form.

6 MR. GILREATH: All right.

7 MS. PAYLOR: Object to the form.

8 BY MR. GILREATH:

9 Q But can you explain to me why -- well  
10 let me ask you this question first -- is it your  
11 understanding that Randy had some business  
12 problems down in Texas or --

13 A Yes, I did.

14 Q -- do you know anything about it?

15 Okay. Well is it true that Paul wanted  
16 to hire Randy at CFRC despite his business not  
17 doing well and --

18 A Yes.

19 Q -- despite the fact that he --

20 A That's right.

21 Q -- did not -- wouldn't even let Randy  
22 come to a board meeting?

23 MR. TWOMBLEY: Object to the form.

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: Wait a minute.



1 MR. TWOMBLEY: You can answer.

2 MS. PAYLOR: You can answer.

3 BY MR. GILREATH:

4 Q You can answer it.

5 A You said Paul wouldn't let Randy come  
6 to a board meeting.

7 Q Correct.

8 A Well Randy would have to have a certain  
9 title or job with the company in order to do  
10 that. He -- and I don't know where he was in  
11 that given situation. Paul wouldn't have had  
12 him in as a guest. If he had a responsibility  
13 with the company he could have come.

14 Now what was your other question about  
15 that?

16 Q Well, did you ever have any discussions  
17 with Paul about what he thought about Randy's  
18 business experience?

19 A Yes.

20 Q Or his business --

21 A Yes, I had discussions.

22 Q And what did Paul think about Randy as  
23 a businessman?

24 A Well he was very sorry that Randy was  
25 having problems. Very sorry.



1 Q He knew about the problems?

2 A Yes.

3 Q Yet he put him on the Board or allowed  
4 him to be put on the Board at CFRC?

5 A Well yes.

6 Q Correct?

7 A Yes.

8 Q Did he ever talk to you about that?

9 A Well he had a lot of faith in Randy  
10 and, you know, you forget that people have  
11 business problems maybe never have had them.

12 Q Right.

13 A But, you know, it's just a business  
14 problem.

15 Q Right.

16 A And Randy was perfectly capable of  
17 doing what Paul was asking him to do.

18 Q Okay. Do -- now have you given me all  
19 of the reasons that -- why you didn't like Kevin  
20 or why Paul didn't like Kevin?

21 A I don't know if I've given you all the  
22 reasons.

23 Q Well I want to hear them all if I  
24 could, please.

25 A I don't want to repeat it all again.



1 Q Right. Well --

2 A But I mean I may have left out a  
3 reason.

4 Q Well --

5 A I mean maybe there were 12 reasons and  
6 I've given you 11, I don't know.

7 Q Well I'm just trying to get them all on  
8 the record.

9 A Okay. I've given you all that I was  
10 able to think about then.

11 Q Was Paul concerned that Kevin was  
12 trying to sell the company off or sell off part  
13 of it in pieces?

14 A Very definitely.

15 Q So Paul never wanted to sell the  
16 company or to sell is it off in pieces?

17 A At times he had thought of selling the  
18 company but it would have been his decision.

19 Q Are you aware that Merrill wanted to  
20 sell the company?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: At times --

23 MR. TWOMBLEY: Object to the form.

24 THE WITNESS: -- she talked about  
25 maybe -- she said maybe we should but



1           -- and then my husband thought about it  
2           and he said if I get a big enough offer  
3           I might. I might.

4   BY MR. GILREATH:

5           Q     Are you aware that Merrill told Hampton  
6           one time that she wanted to sell the company?

7           A     No, I'm not aware of that.

8           Q     She never told you that?

9           A     No.

10          Q     Well Hampton will testify that  
11          that's --

12          A     Well she may very well testify.

13                   MS. PAYLOR: Object to the form.

14   BY MR. GILREATH:

15          Q     I think she may have already testified.

16          A     And maybe I'm mistaken but you'd have  
17          to repeat that again to me to make sure I'm not  
18          mistaken. You want to repeat that to me?

19          Q     Listen, my memory's --

20          A     Not --

21          Q     -- not as good as it used to be.

22          A     Okay.

23          Q     That's why we got that lady over there.

24          She can repeat it for you if you want me to.

25          Can you read that back for her?





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1           A     Well I just want to make sure that --  
2     now I've forgotten why I have to make sure. So  
3     just go on. Just go on. I've forgotten what I  
4     have to make sure.

5           Q     Can you read what that last question  
6     was?

7                     (Whereupon, the record  
8                     was read back as requested.)

9           THE WITNESS: Okay. I will have  
10    retract a bit because Merrill -- I have  
11    talked to her about the possibilities  
12    and the future of selling the company.

13                 I've talked to Paul about it and  
14    it was just -- it was a -- a discussion  
15    that we all had at some point.

16   BY MR. GILREATH:

17           Q     Yet -- but Paul didn't get upset with  
18    Merrill for wanting to sell the company, did he?

19                 MS. PAYLOR: Object to the form.

20           THE WITNESS: No. No, of course  
21    not. She was throwing out an idea and  
22    later at some point he thought about it  
23    and he said if I can get a good enough  
24    price, yes, I'll sell the company.

25   BY MR. GILREATH:



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1           Q     But yet when -- when Kevin brings that  
2     up everybody gets mad at him, correct?

3           A     Well it's because we --

4                   MS. PAYLOR: Object to the form.

5                   THE WITNESS: Yes probably so.

6     Yes, probably so. Probably so.

7     BY MR. GILREATH:

8           Q     Okay. Let me ask you this, going back  
9     to this Kevin situation.

10                   If at some point if time in your  
11     marriage Paul had been working for your daddy.

12          A     No.

13          Q     I know your daddy was a lawyer, wasn't  
14     he?

15          A     No, no, no. Wait a minute. No, no.

16          Q     No, I'm saying this is -- I'm just  
17     asking you if Paul for whatever reason some time  
18     in your marriage had been working for your daddy  
19     and your daddy fired Paul you wouldn't have  
20     liked that, would you?

21                   MS. PAYLOR: Object to the form.

22                   THE WITNESS: I would have had to  
23     have the reasons and my father was very  
24     reasonable. He -- I can only think of  
25     good qualities in him and I can only



1 think of good qualities in Randy -- I  
2 mean in Paul and they must have had  
3 good reasons which I would investigate.

4 BY MR. GILREATH:

5 Q Okay. But you'd been upset, correct?

6 A I would be upset that there's a problem  
7 in our family. We obviously don't like problems  
8 in our family.

9 Q Right. And would you -- had that  
10 happened would you have put your father ahead of  
11 your husband if you didn't like --

12 A I don't know. I would have had to have  
13 heard what his arguments were. I thought a lot  
14 about them both so it would have been difficult.

15 Q Okay. Well in 2012 did you and Paul  
16 love Merrill more than Hampton?

17 MS. PAYLOR: Object to the form.

18 MR. TWOMBLEY: Yeah, I object to  
19 that question too.

20 BY MR. GILREATH:

21 Q Well now y'all lodged your objections I  
22 want an answer.

23 A You're objecting but I --

24 Q You still got to answer. You  
25 understand the question?



1           A     I -- I have very different definitions  
2     for the word love and I can't answer you like  
3     that. I mean at that time I might have had more  
4     respect for Merrill. I might have had, etc.,  
5     etc., but in answer to that question I can't  
6     answer it like you've asked me.

7           Q     Well did you and Paul quit loving  
8     Hampton?

9                     MS. PAYLOR: Object to the form.

10                    THE WITNESS: There you go again.

11    BY MR. GILREATH:

12           Q     Well I'm sorry, I've got to ask these  
13     questions.

14           A     We lost respect for her and we were  
15     angry with her.

16           Q     Well did y'all --

17           A     But I always felt -- I was always very  
18     close to my children until they -- until they  
19     disappointed me in which Hampton did.

20           Q     Okay. Did you and Paul quit loving  
21     Wade?

22           A     I don't see him enough to be -- to have  
23     much of an opinion about him and Paul saw him  
24     less than I do. I'm assuming he's a very nice  
25     young man and I'm assuming that he is -- I'm



1 assuming that he would like him.

2 Q Look in this book here. There's a  
3 picture of you and Wade on --

4 A Oh that's a terrible picture. I don't  
5 want to look at that.

6 Q That's the only one we had I think,  
7 unfortunately.

8 A And if he was a real young child I love  
9 all little young children mostly.

10 Q And there -- and that's a picture of  
11 Wade and Paul behind that one, Tab 1, correct?

12 A Oh my goodness.

13 Q Is that correct?

14 A I'm going -- can I tear this picture up  
15 later?

16 MR. TWOMBLEY: You want me to  
17 object to that particular picture being  
18 used.

19 THE WITNESS: Yes. Yes, yes, I  
20 do.

21 BY MR. GILREATH:

22 Q Why would -- did Paul love Wade?

23 A No, Paul didn't love Wade. You're  
24 using the term love in a much different context  
25 that I would.



1 Q Well why did?

2 A Paul -- for one thing Paul didn't see  
3 that much of Wade and for the other thing I  
4 think he liked him a lot but whether he loved  
5 him I don't know that.

6 Q Can you tell me why he would disinherit  
7 him?

8 A Disinherit Wade?

9 Q Yeah. I mean he ended up giving him  
10 \$50,000 but at one time he had him in there for  
11 a lot more.

12 A Well, okay. I didn't hear everything  
13 you said on that. I'm not sure he has  
14 disinherited Wade.

15 Q Well I think in the last version of the  
16 trust as I understand it, you correct me if I'm  
17 wrong -- he gave him 50,000 but I think in  
18 another version he gave him a lot more.

19 A Well that doesn't sound like -- well I  
20 guess he -- oh he disinherited him and then he  
21 gave him money. There must have been a real  
22 reason. I don't know what that reason was.

23 Q You never talked to him about that?

24 A I don't remember talking to him about  
25 it.



1 Q Did he ever talk to you about it?

2 A I don't remember that he did.

3 Q Did you ever talk to Merrill and Randy  
4 about it or either one of them?

5 A No.

6 Q Okay. Can you tell me when -- when  
7 Paul actually gave Merrill his voting stock do  
8 you know when it was?

9 A I'd have to look up the date.

10 Q Do you know how that occurred?

11 A Well yes pretty much more or less.

12 Q Tell me how he did it.

13 A Well, he said I want to give Merrill  
14 the stock and then he made the arrangements for  
15 it.

16 Q But you don't know how he did it from a  
17 mechanical standpoint?

18 A From a mechanical standpoint, no, I  
19 don't.

20 Q Whether it went to her or went to a  
21 trust or whatever you don't really know?

22 A I don't know how he --

23 Q Well did Paul -- so did Paul really --  
24 did Paul ever discuss the specifics of how he  
25 was going to do this or when he was going to do



1 it?

2 A I don't remember that he did and he --  
3 I don't remember that he did but that's --  
4 really wasn't very important to me. He was  
5 going to attend to it however and he was --  
6 however he wanted to.

7 Q Were you aware that at one time Wade's  
8 picture was on Paul's Facebook page?

9 A On -- you mean that --

10 Q There was a picture of Wade on Paul's  
11 Facebook page.

12 A Oh I see it. Did Paul put that there?  
13 Would he have put that there? Can anybody else  
14 put a picture on --

15 Q Well it -- you were aware of that,  
16 weren't you?

17 A I don't -- I don't know. I hate  
18 Facebook. And Paul --

19 Q I'm with you.

20 A Paul did a few things with Facebook for  
21 a couple of days and then he and I -- I said you  
22 shouldn't do. You just shouldn't do it.

23 Q Were you aware --

24 A No. No. No. No, I wasn't.

25 Q So are you aware that when I started





1     this litigation I wrote a letter to all the  
2     lawyers and told them not to destroy any  
3     evidence. You ever know that?

4           A     No.

5           Q     Are you aware that after I wrote that  
6     letter somebody took that evidence, i.e. the  
7     picture of Wade off his Facebook?

8                   MS. PAYLOR: Object to the form.

9                   THE WITNESS: That -- after that  
10     letter?

11    BY MR. GILREATH:

12           Q     Yeah, that's correct?

13           A     That this was put on there?

14           Q     Yeah.

15           A     No, I don't know any --

16           Q     You didn't have anything to do with  
17     that?

18           A     No. Gracious.

19           Q     Well can you tell me who did?

20           A     No.

21           Q     I want to know if it's somebody in this  
22     room.

23           A     I don't --

24           Q     You've already said it wasn't you and  
25     it wasn't me and it's not anybody on this side



1 of the table so there's some people going around  
2 that way.

3 MS. PAYLOR: Object to the form.

4 BY MR. GILREATH:

5 Q I want to know if anybody on your side  
6 took it off. You've told me you didn't. Do you  
7 know --

8 A Not to my knowledge.

9 Q You ever had a conversation with Randy  
10 or Merrill about that?

11 A No, I haven't.

12 Q Okay. Now did you and Mr. Barringer  
13 know when you needed to file gift tax returns?

14 A I think it was a couple of weeks late  
15 -- later he realized it.

16 Q Well no I'm just talking about gift tax  
17 returns in general.

18 A Oh what did you say? What was your  
19 question.

20 Q You knew and Mr. Barringer knew that if  
21 you made a gift --

22 A Oh yes of course we knew.

23 Q -- you had to file a gift tax return,  
24 correct.

25 MS. PAYLOR: Object to the form.



1 THE WITNESS: Yes, of course.

2 BY MR. GILREATH:

3 Q All right. And presumably you knew the  
4 deadline for filing a gift tax return, correct?

5 A Well, I didn't pay much attention to  
6 it. My husband did and he would -- he'd know  
7 and he might have forgotten.

8 Q He would have known, okay.

9 MR. TWOMBLEY: Object to the  
10 statement from counsel.

11 BY MR. GILREATH:

12 Q So I want to go to the -- hold on a  
13 minute. I want to go to the tax organizer. Is  
14 that yours, Ashley, or I've got it in mine.  
15 Look at Tab 4 -- Tab 3.

16 A Okay.

17 Q Tab 3 is the --

18 MR. TWOMBLEY: May I say one thing  
19 to Ms. Barringer? If you want to talk  
20 to me about any of these documents we  
21 can do that.

22 THE WITNESS: Okay.

23 MR. TWOMBLEY: So I'm just letting  
24 you know.

25 THE WITNESS: Okay.



1 BY MR. GILREATH:

2 Q Well my position on all this is all of  
3 these documents are in the record in this case  
4 not just when you give -- my position is that  
5 when -- if it's a document that's been in  
6 discovery then you don't get to talk to them  
7 about it.

8 MR. TWOMBLEY: My position is  
9 that's completely absurd.

10 MR. GILREATH: Okay.

11 MR. TWOMBLEY: And you'll need to  
12 take it up with the judge.

13 MR. GILREATH: Well good. I mean  
14 I want to move it along but I just told  
15 you my position you've already said  
16 your position.

17 BY MR. GILREATH:

18 Q Now Ms. Barringer, I want to look at  
19 Number 2, Tab 3. Yeah.

20 A Okay.

21 Q This is the tax organizer and on the  
22 first page there tax organizer for the year  
23 2012. Is that your signature?

24 A It is.

25 Q And is that his on the top line?



1           A     Yes, it is.

2           Q     And then I want you to turn over a  
3     couple of pages to a question on here -- on page  
4     34 I believe.

5           A     In this?

6           Q     Page 34 of this. I've got to find --  
7     we'll come back to that.

8                     Anyway, go over to Tab 4 which is a  
9     copy of the gift tax return for the year 2012.  
10    See that?

11          A     Yes.

12          Q     That's your signature there --

13          A     Yes.

14          Q     -- in the middle of the page?

15          A     Yes.

16          Q     And that's the 2012 gift tax return and  
17    you sign -- and that's signed by Paul Barringer  
18    on May 28th of 2015, correct?

19          A     Correct.

20          Q     And is that his signature?

21          A     Yes.

22          Q     Were you there when he signed that?

23          A     I don't know.

24          Q     Do you remember who brought this over  
25    to your house or how you got it?



1           A     I don't know whether it came by mail or  
2     whether somebody brought it.  We --

3           Q     Did Randy Light or Merrill have  
4     anything to do with it?

5           A     No.  We had somebody from his office  
6     come one time and whether it was with this or  
7     not I don't know.  He brought some stuff over.  
8     Sometimes they bring things over.  Sometimes --

9           Q     Okay.

10          A     -- we get things in the mail.

11          Q     And I'll represent to you that this tax  
12     return if you turn over a few more pages you'll  
13     see on down at Barringer 12 in the bottom  
14     right-hand corner there's a Bate stamp number  
15     that says it's -- it's describing the gift and  
16     it says 38,271 shares on common stock of Coastal  
17     Forest Resources.  And then if you look at the  
18     date of the gift in the column that's on 12,  
19     Ashley.

20                 MR. TWOMBLEY:  I think he's  
21     talking about that.

22                 THE WITNESS:  Okay, I'll take a  
23     look.

24     BY MR. GILREATH:

25          Q     And you see in that column it says the



1 date of the gift is 12-31-12?

2 A Yes.

3 Q Okay. Do you think that's correct?

4 A Yes, I do.

5 Q Okay. And you realize that when you  
6 signed this return if you look down on the -- by  
7 your signature and your husband's signature I'll  
8 represent it says the same thing.

9 It says -- you realize it says, under  
10 penalties of perjury I declare that I have  
11 examined this return including any accompanying  
12 schedules and statements and to the best of my  
13 knowledge and belief it is true, correct and  
14 complete.

15 A Yes.

16 Q And you signed that and your husband  
17 signed it, correct?

18 A Correct.

19 Q And did you -- did you ask anybody  
20 about that or what did anybody tell you about  
21 the fact that you were telling the government  
22 under penalties or perjury this gift occurred on  
23 21-31 of the year 2012?

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: I don't know. I



1        didn't talk to Bobby Davis much about  
2        it. He's been working for us about  
3        30 years I guess and he's always done  
4        everything for us and I didn't -- I  
5        didn't go into a lot of what ifs, what  
6        is this tax return.

7        BY MR. GILREATH:

8        Q        Okay.

9        A        Because we get a lot of them and either  
10       my husband or Bobby Davis would say please sign  
11       it.

12       Q        Did Randy Light have anything to do  
13       with that or do you remember?

14       A        No.

15       Q        Okay. Merrill have anything to do with  
16       it?

17       A        No.

18       Q        Whose handwriting is that that wrote  
19       Merrill in there beside your signature, whose  
20       handwriting?

21       A        I -- that's Paul's I think. That's  
22       Paul's or it's either his or Bobby Davis.

23       Q        Okay.

24       A        Or it must be Bobby Davis, yes.

25       Q        All right. Now while I'm on this same





1 tab I believe, in that same Tab 4.

2 A That's what it is.

3 Q Go to the page that says 2C up at  
4 the -- 2055 of 33 and 20 -- 3230.

5 MS. PAYLOR: What's the Bate stamp  
6 number?

7 MR. GILREATH: It ain't got a Bate  
8 stamp on it.

9 MR. PAYLOR: You still in Tab 4?

10 MR. GILREATH: It's in Tab 3.

11 MS. PAYLOR: Well you were in Tab  
12 4.

13 MR. GILREATH: I know but I'm  
14 going back to Tab 3 now.

15 MS. PAYLOR: You've got to tell  
16 us.

17 MR. GILREATH: It's on page 2055  
18 of 3230.

19 BY MR. GILREATH:

20 Q And you see the question there that  
21 says -- when you get to it -- you some writing  
22 in the middle of the page --

23 A You mean somebody's written something?

24 Q Yeah, they've written something. I  
25 don't know what it was.



1           A     Okay. Is that what you're asking  
2     about?

3           Q     And there's a question there, fourth  
4     question from the bottom says, did you make  
5     gifts of more than \$13,000 to any individual.

6           A     Oh.

7           Q     You see that?

8           A     No because that was the tax ruling,  
9     13,000 you don't give more in that year to any  
10    one individual.

11          Q     Well, there's a question that says --  
12    do you see the question, it says did you make  
13    gifts of more than \$13,000 to any individual.

14          A     Well it has to be no because that was  
15    the legality of it, you could not make a gift of  
16    more than 13,000 per person.

17          Q     Well no, they wanted to know if you --  
18    yeah, you could. I'll represent to you they  
19    could but they want --

20          A     I would not do --

21          Q     -- Bobby wanted to know if you did  
22    that.

23          A     I wouldn't do it if it's illegal.

24          Q     It's not -- well I'll represent to you  
25    it's not illegal.



1 MR. MEDLIN: Is it marked no?

2 BY MR. GILREATH:

3 Q But it's marked no, isn't it.

4 A It's marked no. Why are you asking me  
5 when it's marked no?

6 Q Well I -- okay. And either you or your  
7 husband marked that no, correct?

8 A Correct.

9 Q Okay. Yet -- so he had -- just shortly  
10 before he signed this form on March the 2nd of  
11 2013 he had, in September, allegedly in  
12 September of 2011 -- I mean 2012 he had given  
13 controlling interest of his family corporation  
14 to his daughter Merrill, correct?

15 A All right. Well I don't know all the  
16 legalities of all this but obviously it was  
17 legal. Obviously. That's huge.

18 Q I'm not --

19 A So of course he could do that.

20 Q I know it. But the problem -- what I'm  
21 saying is, even though he had given away control  
22 of his family corporation to his oldest  
23 daughter, Merrill --

24 A Right.

25 Q -- he couldn't remember on September --



1 on March the 2nd of 2013 that he had done it.

2 MS. PAYLOR: Object to the form.

3 BY MR. GILREATH:

4 Q Do you agree? You see what I'm saying?

5 A I see what you're saying but I don't  
6 see the papers in front of me on that where he  
7 didn't -- is this the paper that he's talking  
8 about?

9 MR. TWOMBLEY: I'm not sure.

10 MS. PAYLOR: We're not following  
11 it either.

12 BY MR. GILREATH:

13 Q This is the 2012 tax organizer. He  
14 signed it on March 2nd of 2013. Now allegedly  
15 according --

16 A Is this page 2C?

17 Q Huh?

18 A Is this page 2C?

19 Q Yes.

20 A Okay, so it is. So -- so what is your  
21 question?

22 Q All right. My question is, you see --

23 A Yes.

24 Q -- page 2C.

25 A Yes, I do.



1           Q     And you see the question, did you --  
2     they're asking you and your husband, Bobby Davis  
3     is asking you, did you make gifts of more than  
4     \$13,000 to any individual and your husband on  
5     the 13th day of March, which wasn't that far  
6     after the date that some people in this room try  
7     to claim he made the gift which was September  
8     the 11th of 2012 and that's what this in  
9     reference to despite the fact that he gave away  
10    controlling interest in his family corporation  
11    he didn't remember that?

12           A     That wasn't --

13                   MS. PAYLOR:  Object to form.

14                   MR. TWOMBLEY:  You can answer.

15  BY MR. GILREATH:

16           Q     Answer.  Go ahead.  You can answer my  
17    question now.

18           A     No, I've forgotten now my question.

19           Q     Well I'll start over.

20           A     Are you talking about the legalities of  
21    all of this?

22           Q     No, I'm not talking about the  
23    legalities.  I'm talking about the state of mind  
24    of your late husband.

25           A     Oh, the state of mind.



1 Q And what I'm telling you is that there  
2 are people in this room and in this lawsuit that  
3 contend he made that gift on September 11th of  
4 2012.

5 A Right.

6 Q There are other people in this room  
7 that say that it happened on December 31st of  
8 2012.

9 A Well he was pretty much fine in 2012.

10 Q Okay.

11 A What in the world are they contending?

12 Q All right. So we -- okay. But now  
13 we're -- now we're two months -- we're two  
14 and-a-half months into 2013.

15 A Okay.

16 Q And he has forgotten that he made the  
17 gift when he signed this form, that's the point  
18 I'm trying to get across.

19 A Well I forget things sometimes. Don't  
20 you forget things?

21 Q I forget.

22 A Sometimes?

23 Q But I mean something as monumental as  
24 him giving control of his family corporation.

25 A But this isn't monumental this 13,000,



1 that's not monumental.

2 Q It's not 13,000. That's -- this is  
3 asking a question, did you make a gift of more  
4 than \$13,000 value to any individual.

5 A It does not say value.

6 Q Well it's same thing. It says --

7 A It does not say that.

8 Q -- did you make gifts of more than  
9 \$13,000 to any individual.

10 A They're talking about cash here.

11 Q I'll have to argue with you about that.

12 MS. PAYLOR: Object to the form.

13 Move on. Asked and answered.

14 BY MR. GILREATH:

15 Q It says gifts of more than \$13,000 and  
16 he said -- you agree with me that you and he  
17 signed the document where y'all told Mr.  
18 Davis --

19 A I agree with you but I'm saying --

20 Q Okay.

21 A This 13,000 is cash is what. And  
22 you're --

23 Q Well I don't -- I won't agree with you  
24 on that.

25 A -- not talking about that big one is



1 not cash.

2 Q Well --

3 A So I think your --

4 Q Well let me put it this way.

5 A I can't refute you on this. I am not a  
6 lawyer. I'm not a legal expert and you're  
7 wasting your time going on and on with me about  
8 this.

9 Q Well let me ask you this, you say it  
10 wasn't cash. Well if it wasn't cash then why  
11 did Randy Light two years later call up Bobby  
12 Davis trying to find out if there was a gift tax  
13 return filed on the transfer of the stock to  
14 Merrill?

15 MS. PAYLOR: Object to form.

16 BY MR. GILREATH:

17 Q And why did Robby Davis file one and  
18 why did you sign it and Paul sign it? It was  
19 required, trust me.

20 MS. PAYLOR: Object to the form.

21 BY MR. GILREATH:

22 Q My question is, Paul did not remember  
23 shortly after he made the gift in March of the  
24 next year?

25 A Well in 2012 he pretty much remembered





1 things.

2 Q Well, in March of 2013 he pretty much  
3 forgot it, didn't he?

4 MS. PAYLOR: Object to the form.

5 BY MR. GILREATH:

6 Q Wouldn't you agree with that?

7 A I don't know.

8 MR. TWOMBLEY: Same objection.

9 THE WITNESS: I don't know that,  
10 that I agree with you.

11 BY MR. GILREATH:

12 Q Well he signed the document here that  
13 said --

14 MR. TWOMBLEY: Jim, I think you've  
15 covered this topic.

16 THE WITNESS: I think so too.

17 MS. PAYLOR: Let's move on. Asked  
18 and answered.

19 THE WITNESS: I think we've got to  
20 get on. Eventually we've got to get on  
21 to something else.

22 BY MR. GILREATH:

23 Q This document says this information is  
24 true, correct and complete to the best of our  
25 knowledge and that was signed by you and your



1 husband on March 2nd 2013 and in fact it must  
2 not have been correct or you wouldn't have filed  
3 a gift tax return later, correct?

4 A If our --

5 MS. PAYLOR: Object to form.

6 THE WITNESS: -- accountant  
7 thought it was correct. Our accountant  
8 must have thought it was correct.

9 BY MR. GILREATH:

10 Q Well he -- if he didn't know he  
11 wouldn't have any reason not to believe you.  
12 He'd been representing you for years, correct?

13 MS. PAYLOR: Object to the form.

14 BY MR. GILREATH:

15 Q Are you -- can you answer that?

16 MS. PAYLOR: She's already  
17 testified he made a mistake.

18 BY MR. GILREATH:

19 Q Mr. Davis has got to take what you give  
20 him and believe him -- and believe you, correct?

21 A He takes the papers and he examines  
22 them and he sees if we have made a mistake and  
23 then he gives us his opinions on things. We  
24 hire him to make judgements.

25 Q But Mr. Davis can't know you made a



1 mistake until he knows some facts about that,  
2 correct?

3 MS. PAYLOR: Object to the form.

4 BY MR. GILREATH:

5 Q Let me put it another way. Mr. Davis  
6 can't know about the gift until somebody tells  
7 him, correct?

8 A You're really talking to the wrong  
9 person wrong about this and I don't know much  
10 about gift tax and when they had to be -- and do  
11 you have to pay the IRS and I don't know much  
12 about that.

13 Q But your husband had made -- he made a  
14 lot of gifts over the years, hadn't he?

15 A Right.

16 Q And he filed a number of gift tax  
17 returns, correct?

18 A I suppose so. He must have -- wait.  
19 Oh I don't know. If you have -- if you have --  
20 don't give more than 13,000 I don't know that he  
21 filed many gift tax returns.

22 Q Well I'll represent to you that in  
23 Bobby Davis' file there are a bunch of gift tax  
24 returns. I saw them.

25 MS. PAYLOR: Object to the form.



1 THE WITNESS: Well would he file them for  
2 small amounts?

3 BY MR. GILREATH:

4 Q Well sometimes --

5 A We only usually gave small amounts,  
6 10,000, 13 --

7 MR. TWOMBLEY: Just listen to his  
8 question and answer it if you can.

9 THE WITNESS: Okay. Thank you.

10 MR. TWOMBLEY: Just listen to his  
11 question and answer it if you can.

12 THE WITNESS: All right.

13 BY MR. GILREATH:

14 Q But are -- but you are aware that as a  
15 result of the gift to Merrill it was discovered  
16 by Randy or somebody on his side that Paul had  
17 not filed a gift tax return.

18 A Right.

19 MS. PAYLOR: Object to form.

20 THE WITNESS: Yes. Yes.

21 BY MR. GILREATH:

22 Q And they had to go down to Paul -- I  
23 mean --

24 A Yes, yes.

25 Q -- to Mr. Davis and he filed gift tax



1 returns and you signed them, correct?

2 A Yes.

3 Q Okay.

4 A Yes.

5 Q But the point I'm trying to make is  
6 that when he signed this thing here in February  
7 of 2013 Mr. Barringer still had forgotten he  
8 made the gift, correct?

9 MS. PAYLOR: Object to form.

10 THE WITNESS: I don't know that  
11 you're correct or not but --

12 BY MR. GILREATH:

13 Q And did you know about the gift in  
14 2013?

15 A Let me see. Which gift was that?

16 Q The gift that Merrill made.

17 A Oh of course.

18 Q Well --

19 A Well if -- yes, of course I did.

20 Q But when you signed this you said you  
21 didn't make any gifts, correct?

22 A Are you talking about the voting stock  
23 that we gave?

24 Q Yes.

25 A And you're saying did I know about it?



1 Q Yes.

2 A Of course I knew about it.

3 Q But you signed this on March 13th and  
4 said you didn't know about it.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: Where was this?  
7 You've got to show me where this is  
8 that --

9 MS. PAYLOR: Let's move on.

10 BY MR. GILREATH:

11 Q You signed this -- this organizer it  
12 says you didn't -- you didn't know -- make any  
13 gifts over \$13,000?

14 A What page is this and where is this at?

15 MR. TWOMBLEY: Ms. Barringer, just  
16 let him ask a question and then you  
17 answer it if you can.

18 BY MR. GILREATH:

19 Q It's on page 2C. We've already been  
20 over it. It speaks for itself. I've got to  
21 move along. We'll be here all night.

22 A Yes, you do.

23 Q I agree with you on that. It's a lot  
24 harder asking the questions than it is  
25 answering. I've been in the seat down there



1 where you are too.

2 A Okay.

3 Q So I know what it's like. It's not  
4 something a lot of people like to do.

5 And are you aware that when Randy --  
6 that Randy was in the airplane with Mr.  
7 Barringer in March of 2013 when he took this  
8 thing down to Bobby Davis. Were you aware of  
9 that?

10 A Yes, I think I was.

11 Q And were you aware that your husband  
12 told Mr. Davis at that meeting that this would  
13 probably be the last time he'd be meeting with  
14 him on his taxes and he was turning all of his  
15 taxes over to Randy. Did you know that?

16 A No.

17 Q He didn't ever tell you that?

18 A No.

19 MS. PAYLOR: Object to the form.

20 BY MR. GILREATH:

21 Q Well Mr. Davis testified and the  
22 record's clear on this I believe --

23 MS. PAYLOR: Object to the form.

24 BY MR. GILREATH:

25 Q -- that he said from now on Randy is



1 going to be handling my tax matters. I won't  
2 about coming down here anymore.

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: I am not aware of  
5 that.

6 BY MR. GILREATH:

7 Q Okay. That's what he said Paul told  
8 him.

9 MS. PAYLOR: Object to the form.

10 BY MR. GILREATH:

11 Q And this was the meeting where this was  
12 delivered --

13 MR. TWOMBLEY: Just ask her a  
14 question.

15 BY MR. GILREATH:

16 Q Randy was aware when he took this down  
17 there that the gift had been made.

18 MS. PAYLOR: Object to the form.

19 MR. TWOMBLEY: Asked and answered.

20 BY MR. GILREATH:

21 Q You'd agree with me on that, wouldn't  
22 you?

23 MS. PAYLOR: Object to the form.

24 BY MR. GILREATH:

25 Q Can you agree with me on that? Do you





1 think -- do you think on March the 13th when  
2 this went to Mr. Davis that Randy was aware that  
3 his wife had gotten control of the family  
4 corporation?

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: No. I have no idea.

7 No.

8 BY MR. GILREATH:

9 Q You don't know?

10 A No.

11 Q Okay, all right. Did you ever have any  
12 discussions with your husband about the fact  
13 that a gift tax return hadn't been filed for the  
14 year 2013 -- I mean '12, excuse me.

15 A I might have. This is a small matter,  
16 something he'd forgot and then he attended to.

17 Q Okay. Do you know why Merrill hid the  
18 voting stock transfer from Hampton --

19 MS. PAYLOR: Object to the form.

20 BY MR. GILREATH:

21 Q -- for three years?

22 A I don't know that she did.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: No.

25 BY MR. GILREATH:



1           Q     Would y'all please now, I'm telling  
2     you --

3                   MS. PAYLOR: You are misleading  
4     the witness and this is very abusive of  
5     her.

6                   MR. GILREATH: I'm not trying to  
7     be abusive.

8                   MS. PAYLOR: She is 87 years old  
9     and had been here for a long time and  
10    you ask misleading questions that  
11    are -- have no foundation and are not  
12    based in the truth and I'm going to  
13    object every time.

14                  THE WITNESS: Thank you.

15                  MR. GILREATH: All right. I'm  
16    going to stop this deposition and go  
17    see the judge if you don't calm down.

18                  MS. PAYLOR: You need to calm  
19    down.

20                  MR. GILREATH: You've got the  
21    right to ask questions, okay -- I mean  
22    I've got the right to ask questions.

23                  MS. PAYLOR: You certainly do but  
24    you're not asking questions.

25                  MR. GILREATH: But what I am going



1 to tell you the way it works is I ask  
2 the question and when the words get out  
3 of my mouth and they're over then you  
4 lodge your objection. You don't  
5 interrupt my question. You got that?

6 MS. PAYLOR: I can't tell when  
7 you're going to ask a question because  
8 half the time you don't. You are just  
9 testifying --

10 MR. MEDLIN: All right kids -- all  
11 right, let's move IT along.

12 MR. TWOMBLEY: I'm going to tell  
13 everybody in this room that you've got  
14 about another hour and-a-half on Ms.  
15 Barringer and then that's going to be  
16 it so --

17 MR. GILREATH: It's not going to  
18 be it. I'll tell you that right now.  
19 I've got a lot more questions.

20 MR. TWOMBLEY: You can use --

21 MR. GILREATH: We'll go see the  
22 judge. We're going to see her  
23 Monday --

24 MR. TWOMBLEY: Use your time as  
25 best you see fit.



1           MR. GILREATH: I knew you were  
2 going to pull this but that's okay.  
3           But I would respectfully request I  
4 ask my question and if I have to I say  
5 all right I'm through with the question  
6 and you're welcome to object all you  
7 want to but please do not interrupt  
8 my -- my question because my mind is 77  
9 years old and when you interrupt it it  
10 doesn't come back in gear too good  
11 sometimes. Okay?

12           MR. TWOMBLEY: But Jim, you're  
13 making a statement after statement  
14 after statement and I --

15           MR. GILREATH: Well I'm sorry you  
16 don't like the way I'm asking the  
17 questions.

18           MR. TWOMBLEY: It's not a  
19 question. It's just like you're --

20           MR. MEDLIN: All right, that's  
21 enough. Let's get on with this right  
22 now.

23           MR. GILREATH: Now I'm going to  
24 ask the questions and we're going to  
25 stop a lot quicker than he wants to



1           because if you keep interrupting me  
2           we're going to stop and --

3                   MR. MEDLIN: Jim, ask your next  
4           question, please.

5                   MR. GILREATH: All right.

6   BY MR. GILREATH:

7           Q     Now do you know -- when did you know  
8           that Merrill hid the voting stock transfer from  
9           Hampton for three years?

10                  MS. PAYLOR: Object to form.

11                  THE WITNESS: I don't know that  
12           she did. I don't know that she hid  
13           that and that's a very misleading --

14   BY MR. GILREATH:

15           Q     Okay.

16           A     -- question.

17           Q     Do you know how Hampton found out?

18           A     No.

19           Q     Okay. Are you aware -- do you know  
20           what the purpose of the Virginia litigation was  
21           that was filed by CFRC against Hampton?

22           A     No.

23           Q     You don't know what the purpose of that  
24           was, okay.

25                   Do you know -- did you understand that



1 when Hampton found out about the stock transfer  
2 that -- and that when Merrill filed that she  
3 sued Hampton, correct, or the company sued  
4 Hampton, correct?

5 A I think so, yes.

6 MS. PAYLOR: Object to the form.

7 BY MR. GILREATH:

8 Q Okay. Do you know that Hampton has  
9 never sued the company?

10 A She was -- we were thinking she was  
11 threatening to.

12 MS. PAYLOR: Object to the form.

13 BY MR. GILREATH:

14 Q Has anybody ever told you that Hampton  
15 never sued the company?

16 MS. PAYLOR: Object to the form.

17 MR. TWOMBLEY: Object to the form.

18 THE WITNESS: I think he's  
19 objected.

20 BY MR. GILREATH:

21 Q You can answer.

22 MR. TWOMBLEY: You can still  
23 answer if you know.

24 MR. GILREATH: They can say  
25 object. If you answer then we can get



1 moving on.

2 THE WITNESS: Repeat the question  
3 please.

4 BY MR. GILREATH:

5 Q Are you aware that Hampton never sued  
6 the company?

7 MS. PAYLOR: Object to the form.

8 MR. TWOMBLEY: Object to the form.

9 THE WITNESS: Yes, I guess so,  
10 yes.

11 BY MR. GILREATH:

12 Q So you're aware of that?

13 A I guess so.

14 Q Did anybody ever tell you that Hampton  
15 sued the company?

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: No.

18 BY MR. GILREATH:

19 Q Okay. Did anybody ever tell Paul that  
20 Hampton sued the company?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: Not to my knowledge.

23 BY MR. GILREATH:

24 Q Okay. Do you know that Merrill and  
25 Randy had Paul fired from running the company?



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1 MS. PAYLOR: Object to the form.

2 MR. TWOMBLEY: Object to the form  
3 of the question. I may answer the  
4 question.

5 BY MR. GILREATH:

6 Q You can answer the question. Do you  
7 want me to read it again?

8 MR. TWOMBLEY: No. I'm going to  
9 -- I want --

10 MR. GILREATH: Let me ask my  
11 question, please.

12 BY MR. GILREATH:

13 Q Are you aware that Merrill and Randy  
14 had Paul fired from running the company?

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: We're going to take  
17 a break and you can answer that  
18 question when we come back. I'm going  
19 to have a discussion with Mr. Gilreath  
20 outside of your presence so that I  
21 don't coach you or suggest of what you  
22 need to say but we're going to take a  
23 -- I instruct you not to answer that  
24 question and I'm asking for a five  
25 minute break.



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1       A       Okay. Sounds good to me.

2               MR. TWOMBLEY: Good.

3               MR. GILREATH: So you're  
4   instructing her not to answer that  
5   question on the record?

6               MR. TWOMBLEY: For the time being  
7   I am.

8               MR. MEDLIN: We've already done  
9   that, Jim. It's on the record. Let's  
10  go kids. Recess.

11               (Whereupon, a short break was  
12   taken.)

13               MR. TWOMBLEY: Let the record  
14  reflect that we just took a break.

15               I was not planning on taking a  
16  bathroom break. I asked Mr. Barringer  
17  to quickly step out of the room so that  
18  I could make a statement to Mr.  
19  Gilreath without being accused of  
20  coaching the witness but Mr. Gilreath  
21  wanted to take a bathroom break so we  
22  accommodated him.

23               I have instructed Ms. Barringer  
24  not to answer because you have told her  
25  that Randy Light and Merrill Light



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1 fired Mr. Barringer from CFRC  
2 corporation. I do not believe that is  
3 true. I believe you've asked that  
4 question solely for purposes of  
5 harassing Ms. Barringer and I wanted to  
6 give an opportunity to tell me just  
7 what you were talking about and what  
8 evidence you were talking about outside  
9 the presence of Ms. Barringer so that I  
10 can determine if you are intending to  
11 solely harass her or if you do have  
12 some type of evidence for which you are  
13 basing what I believe is a completely  
14 improper question.

15 Now I'm asking you, please tell me  
16 what evidence you have that Randy Light  
17 and Merrill Light fired Mr. Barringer  
18 from CFRC corporation.

19 MR. GILREATH: I'm not going to  
20 answer questions in our deposition. If  
21 you want to get my position on that you  
22 can send us an interrogatory is the way  
23 to do it but I want to say two things.

24 One is, statements made describing  
25 questions that I ask the witness or



1     that any lawyer asks a witness is  
2     untruthful, absurd or misleading tend  
3     to influence the witness in a  
4     deposition to a degree of hostility  
5     that is not conducive to getting facts.  
6     It's very -- as far as I'm concerned  
7     it's obstructive and is designed to  
8     make the questioner, which is myself,  
9     get his thoughts offline and I know  
10    that you may not like my questions but  
11    that's not -- the answer to that  
12    question is not privileged and if I  
13    want to characterize it that way I'm  
14    free to do so and I contend that we  
15    have facts in the record that we can  
16    prove that with but I'm not going to --  
17    I'm not under a duty to tell you that  
18    as we sit here today and I want to go  
19    on with this deposition and so we can  
20    get it over with, so.

21           And the other point I want to make  
22    was that book that I have in front of  
23    her I asked you to -- I think I said to  
24    give it to the court reporter and be  
25    sure we get it marked. Ma'am, I want



1 that booked mark as a plaintiff's  
2 exhibit for the deposition and it's got  
3 numerous tabs in it which I've been  
4 referring to during the course of the  
5 deposition so call that whatever --  
6 it's got the name on it. Call it  
7 plaintiff's deposition exhibit  
8 notebook. Just mark it plaintiff's  
9 exhibit --

10 MS. PAYLOR: Well we have an  
11 objection. Only the exhibits that you  
12 refer in this deposition should be  
13 exhibits. The fact that you just threw  
14 something in here does not make it  
15 automatically an exhibit to the  
16 deposition. If she doesn't know  
17 anything about it or whatever but you  
18 haven't referred it.

19 MR. TWOMBLEY: I don't have a  
20 problem with them being an exhibit and  
21 I'm asking that we please get Ms.  
22 Barringer back in here so we can get  
23 back to start.

24 MR. GILREATH: I contend that this  
25 is our exhibit book. If I'm not able



1 to get to all of them or I have more in  
2 there that I decided I didn't want to  
3 get to for whatever reason or that you  
4 covered, fine, but these are our  
5 exhibits in this deposition and I want  
6 them part of the record so y'all can  
7 lodge any --

8 MR. MEDLIN: We can argue about  
9 all this stuff -- we can argue that  
10 later.

11 MR. GILREATH: I want to get on  
12 with this and we've told you all along  
13 we were concerned about, you know,  
14 exactly what's happened.

15 Y'all've spent, I don't know, the  
16 record will show how many hours you  
17 spent and then here we get her after  
18 lunch and now you're saying you're  
19 going to walk out of here in 30 minutes  
20 or something. I can't stop you from  
21 walking out so -- but I'd like to get  
22 on with it but I -- and I don't mind  
23 you objecting.

24 Listen, I just got back from  
25 depositions in New York. I've heard



1 every kind of objection known to man  
2 kind up there and but I would like for  
3 it -- to get my question out of my  
4 mouth, let you lodge your objection and  
5 then let the witness answer. That's  
6 the way it's supposed to work. That's  
7 my speech.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 1 was marked for  
10 identification.)

11 BY MR. GILREATH:

12 Q Back on the record. I'll start over.  
13 I think this is where -- my question,  
14 were you aware that Merrill and Randy supposedly  
15 in control of CFRC in 2012 after Merrill gave --  
16 after Paul gave Merrill his voting stock had  
17 Kevin fired?

18 MS. PAYLOR: Object to the form.

19 BY MR. GILREATH:

20 Q Okay. Are you aware they had Paul  
21 fired?

22 MS. PAYLOR: Object to the form.

23 BY MR. GILREATH:

24 Q Or terminated?

25 MS. PAYLOR: Object to the form.



1                   MR. TWOMBLEY: Object to the form  
2           of the question.

3   BY MR. GILREATH:

4           Q     Can you answer that?

5           A     That got me -- you will have to repeat  
6           that question.

7           Q     Okay, all right. You're aware that  
8           after Merrill got control of CFRC and Randy's on  
9           the Board, you knew that happened, correct?

10          A     Yes.

11          Q     And that happened shortly in --  
12          sometime in 2012, correct? Are you aware that  
13          the Board had Kevin fired?

14          A     Yes.

15          Q     And you're aware that the Board  
16          terminated or fired Paul. He was no longer  
17          employed?

18                   MR. TWOMBLEY: Object to the form  
19           of the question.

20                   MS. PAYLOR: Object to the form.

21   BY MR. GILREATH:

22          Q     Were you aware of that?

23          A     They did not fire Paul.

24          Q     Okay. Are you aware that they did not  
25          tell Hampton that Paul had given away control of



1 the company?

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: No.

4 BY MR. GILREATH:

5 Q You didn't know that?

6 A I mean no.

7 Q Okay.

8 A I didn't care.

9 Q Are you aware that rather than letting  
10 Hampton know about the revocable trust owning  
11 the stock for which he was trustee Merrill  
12 instead lied at the meetings about how or misled  
13 at the meetings about how she controlled the  
14 stock?

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Object to the form.

17 THE WITNESS: I don't think that  
18 question -- I think that's an  
19 untruthful question and the answer is  
20 no to all of it.

21 BY MR. GILREATH:

22 Q Okay.

23 A Merrill would not lie.

24 Q Are you aware that Hampton never sued  
25 the company?





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1 MS. PAYLOR: Object to the form.

2 MR. TWOMBLEY: Object to the form.

3 THE WITNESS: I don't -- yes, I  
4 don't know about that. Whether -- I  
5 don't think she did. Thinking about it  
6 probably.

7 BY MR. GILREATH:

8 Q Are you aware that CFRC controlled by  
9 Merrill and Randy never disclosed to Hampton the  
10 bargaining stock option given to Travis Bryant  
11 until Hampton found it hidden in a company  
12 footnote in 2015?

13 MS. PAYLOR: Object to the form.

14 THE WITNESS: In a footnote?

15 BY MR. GILREATH:

16 Q Yes.

17 A What kind of footnote?

18 Q It was in the financial statements.

19 A Oh I'm not aware of any of that.

20 Q Do you know anything about the stock  
21 option that the company gave Travis Bryant?

22 A Yes.

23 Q Did you know that he got a deal or some  
24 kind of a deal to buy I think it was five or  
25 five and-a-half percent of the stock in the



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1 company?

2 MR. TWOMBLEY: Object to the form.

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: This was with my  
5 husband's approval.

6 BY MR. GILREATH:

7 Q Okay. Did your husband ever tell you  
8 that he had given approval to Travis Bryant  
9 getting a deal to buy five and-a-half percent of  
10 its stock in the company?

11 A Yes.

12 Q And he was okay with it?

13 A Yes, he --

14 Q Where were you -- can you remember  
15 where you were when he told you that?

16 A Yes.

17 Q Where were you?

18 A I was in Hilton Head in our house.

19 Q And was anybody else there?

20 A No. I don't think so.

21 Q Tell me a little bit about that  
22 conversation. How did it come up? I mean how  
23 did he bring the subject up?

24 A Paul liked -- my husband liked Travis  
25 Bryant a lot. He wanted to do more for him and



1 he wanted to do all these things that you are  
2 talking about and he made sure that they were  
3 done.

4 Q Okay. What did he like about Travis?

5 A Everything.

6 Q And is it -- it's your testimony that  
7 nobody ever told you and Paul that Hampton sued  
8 the company?

9 MS. PAYLOR: Object to the form.

10 BY MR. GILREATH:

11 Q Is that correct?

12 A That's correct.

13 Q Were you aware that very soon after  
14 that lawsuit was file against Hampton that the  
15 company canceled her health insurance?

16 MR. TWOMBLEY: Object to form of  
17 the question.

18 THE WITNESS: I didn't hear what  
19 my lawyer said.

20 MR. TWOMBLEY: I just said object  
21 to the form. You can answer.

22 THE WITNESS: Oh object to form.

23 BY MR. GILREATH:

24 Q Let me restate that question. I think  
25 I got it --



1           A     Okay.

2           Q     Were you aware that shortly after Kevin  
3     was fired that the company canceled Kevin's  
4     health insurance?

5           A     Yes.

6           Q     Did y'all have health insurance for  
7     CFRC?

8           A     Yes.

9           Q     Okay. Have you always had health  
10    insurance?

11          A     Have I always had health insurance?

12          Q     Yeah.

13          A     Yes.

14          Q     Okay. And you had it even after Paul  
15    was no longer an officer or director, didn't  
16    you?

17          A     We had health insurance with CFRC  
18    for -- it's changed now.

19          Q     Okay. Well did anybody ever tell you  
20    after Kevin was fired that the company had  
21    canceled Kevin and Hampton's health insurance?

22          A     I think so, yes.

23          Q     What do you think about that? Did you  
24    think that it was okay?

25          A     I thought it was okay.



1 Q Okay. Who told you that? Did Merrill  
2 tell you?

3 A Yes, I think so.

4 Q Did she say she did it on purpose?

5 A Who -- did you say who? She who --

6 Q I said who told you about cancelling  
7 Hampton's insurance?

8 A My husband.

9 Q He told you that?

10 A Uh-huh.

11 Q You think he knew that?

12 A (Witness nods head.)

13 Q Okay. Do you think that was right?

14 A Yes.

15 MS. PAYLOR: Object to the form.

16 BY MR. GILREATH:

17 Q Now are you aware of the -- I think I  
18 asked you to look -- were you aware of the fact  
19 that I believe it was in August of 2015 after  
20 Merrill called CFRC to file the lawsuit I think  
21 they filed that in February, were you aware that  
22 in I believe it was August that your husband  
23 Paul intervened in that case against Hampton?

24 MS. PAYLOR: Object to form.

25 BY MR. GILREATH:



1           Q     And do you know -- let me ask you this,  
2     do you know what intervention means? In other  
3     words he came --

4           A     From a legal point of view I'm not  
5     sure. I certainly know --

6           Q     Legally he came in -- he filed an  
7     action so that he could come in on the side of  
8     Merrill. That's what he did I'll represent that  
9     to you.

10          A     Well is this -- was this in Virginia?

11          Q     Yes, that was in Virginia.

12          A     Yes, I'm -- was aware.

13          Q     Okay. Did you have any -- when did you  
14     first know about that?

15          A     Oh I don't know.

16          Q     Well, let me ask -- let me get you to  
17     look -- find that motion. Where's my -- look at  
18     Tab 7 of our exhibit book and I'll represent to  
19     you that that's Mr. Barringer's motion to  
20     intervene. He wanted to intervene in that  
21     action as a defendant and that's signed on the  
22     28th day of August by his attorney Michael Kim  
23     and Robert E. Scully who were representing him.  
24     Are you familiar with that filing?

25          A     Yes but I didn't really know much about



1 it.

2 Q Okay. And I think Mr. Twombly asked  
3 you some questions about Mr. Scully. He was  
4 representing your husband, right?

5 A Yes.

6 Q And did you say Mr. Scully came down to  
7 Hilton Head and met with your husband?

8 A Yes.

9 Q And when did it -- he would have met  
10 with him before August of 2015, correct?

11 A I think so.

12 Q And what kind of shape was Paul in in  
13 August of 2015?

14 A Seemed fine to me.

15 Q Well now he died in May of 2016.

16 A Well if he met with Mr. Scully and I  
17 remember him meeting with Mr. Scully he looked  
18 fine. No not -- he wasn't -- didn't look like  
19 he looked in high school but he --

20 Q None of us do.

21 A Huh?

22 Q None of us do.

23 A You're right about that.

24 Q Anyway, did --

25 A He was certainly well enough to meet



1 with Mr. Scully. He wasn't a hundred percent.  
2 He had some confusion by then but he met with  
3 Mr. Scully and he -- things were -- I don't know  
4 whether things -- how things were because I  
5 wasn't listening.

6 Q You didn't meet -- you didn't go into  
7 that meeting, correct?

8 A No, I did not.

9 Q Now, did you tell Mr. Scully that your  
10 husband by that time definitely had some pretty  
11 serious dementia?

12 A No, I did not.

13 Q So nobody told Mr. Scully that that you  
14 know of?

15 A That I know of.

16 Q Okay.

17 A I don't know if anybody else told him  
18 any what -- but I didn't.

19 Q Could -- was Paul at that point in time  
20 having trouble expressing himself?

21 A Let me see. What was the date on this?

22 Q August the 28th of 2015.

23 A He might have had some -- I don't know.  
24 I can't answer that because I don't -- no, I  
25 don't remember on that particular time.





1 Q Could he at that point in time read  
2 something and understand what he was reading?

3 A I think so.

4 Q Are you aware that -- where is that?  
5 Is that -- do you have a copy of that?

6 Let me call your attention to -- let me  
7 call your attention to Tab 11, please, ma'am.  
8 Can you flip over to that?

9 Is that -- that is -- I'll represent  
10 that's the declaration of Dr. Paul Mazzeo. You  
11 know Dr. Mazzeo, right?

12 A I remember him slightly.

13 Q He was treating your husband, correct?  
14 It says he's a board --

15 A Well.

16 Q -- board certified neurologist.

17 A I think he met him once.

18 Q Okay. And he says that Mr. Barringer  
19 was under his care since October of 2017.

20 A 2015.

21 Q 2015, excuse me. And he says that he  
22 did an evaluation and the administration of a  
23 min-mental exam on October the 19th.

24 Now, Mr. Barringer intervened on the  
25 28th day of August, okay, you got that? Can you



1 keep that kind of mental note of that point?

2 A He did what on the 28th?

3 Q He intervened according to Tab 9 -- Tab  
4 7, excuse me, he intervened on August the 28th.  
5 Okay?

6 A Okay.

7 Q And August comes right before September  
8 and the next months is October. In the middle  
9 of October is when this -- when he's talking  
10 about giving him this test, well it was October  
11 the 19th. He said that he scored ten out of  
12 30 points. Do you see that? That's in Tab 11.

13 A Okay.

14 Q And he says in paragraph nine, his,  
15 talking about Mr. Barringer -- well first in  
16 Number 8 he says he exhibits severe memory loss  
17 and expressive aphasia, the inability to use  
18 language to express thoughts.

19 In paragraph nine he says his memory  
20 loss and expressive aphasia make it practically  
21 impossible for him to recall past events with  
22 accuracy and then find the words to express  
23 whatever recollection he may have without his  
24 wife's assistance. Do you see that?

25 A Yeah.



1 Q Okay. Yet his lawyer, his new lawyer,  
2 this fellow Scully --

3 A Uh-huh.

4 Q -- who came down here he goes in and  
5 talks to him but you didn't go in to help him  
6 talk to Mr. Scully, did you?

7 A No.

8 Q And if what Mr. -- if what the doctor  
9 here is saying is right that probably wasn't a  
10 whole lot of a conversation going on between him  
11 and Mr. Scully, was it?

12 MS. PAYLOR: Object to the form.

13 MR. TWOMBLEY: Object to the form.

14 THE WITNESS: I don't know. I  
15 don't -- they spent a good bit of time  
16 so I would have thought that Mr. Scully  
17 would have left.

18 BY MR. GILREATH:

19 Q Did Mr. Scully ever come out and say  
20 anything to you like, Ms. Barringer I'm having a  
21 little trouble communicating with Mr. Barringer.  
22 Did he ever express that to you?

23 A No.

24 Q So he gave you no idea that he had any  
25 problem?



1 A No.

2 Q You thought everything was okay with  
3 Mr. Scully?

4 A I don't know what he thought.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: I'm saying he did  
7 not express that to me.

8 BY MR. GILREATH:

9 Q He did not tell you that?

10 A No.

11 Q And if -- do you even know what they  
12 were talking about?

13 A I've forgotten. At the time I knew why  
14 he was coming but I don't --

15 Q You don't remember what it was?

16 A I don't remember what it was.

17 Q Okay. When he left did Paul say  
18 anything to you about --

19 A Not --

20 Q -- what they talked about?

21 A Not that I remember.

22 Q Well if what Dr. Mazzeo's saying he  
23 says he's got severe memory loss so it's  
24 probably likely that he probably wouldn't  
25 remember what Mr. Scully told him.



1           A       I don't know.

2                   MR. MOLSTER:  Objection.

3                   THE WITNESS:  My husband saw a lot  
4       of these people, psychiatrist -- not --  
5       what, neurologists in a short period of  
6       time and he did not want to go to see  
7       them and maybe I made him go and many  
8       time he would not cooperate with them.  
9       So whether these things are entirely  
10      true according to what they're saying  
11      or whether my husband who was a  
12      psychology major just wouldn't  
13      cooperate.

14   BY MR. GILREATH:

15           Q       Are you suggesting that maybe he --

16           A       He deliberately one time I know --

17           Q       He's deliberately flunking these tests?

18           A       One time he deliberately would not  
19      cooperate.  He was tired of all this stuff.

20           Q       Tell me about that situation.  Where  
21      was it and what doctor.

22           A       Well let me see which one it was.  He  
23      saw two or three.  He saw them I think it was  
24      Charleston I think it was maybe Beaufort.  Some  
25      of them were Beaufort.  He didn't want to go.



1 Q Okay.

2 A He says, you know, so I said well why  
3 didn't you cooperate? Why didn't you answer  
4 this doctor's -- all these questions? He said,  
5 I didn't want to. I'm tired of being here.

6 Q Okay. But you knew as early as the  
7 meeting with Dr. Bachman which I think occurred  
8 in either 2011 or 2012, the record was clear on  
9 that, that he said he's got some kind of  
10 dementia. He told you and Hampton that.

11 A He said it was very slight.

12 Q Right.

13 A And you can find those records if you  
14 choose.

15 Q We've got them.

16 A Okay. Read them then.

17 Q Well, I've read them. But it'd gotten  
18 a little worse than slight when we get in here  
19 into September, October of 2015. Do you  
20 remember that?

21 A Yes, it does.

22 Q And do you remember that -- I believe  
23 you were in the courtroom when we had the  
24 conservatorship thing that Hampton filed and Dr.  
25 Long I believe testified in that and my



1 recollection is that he testified Mr. Barringer  
2 pretty well fell off the cliff around the middle  
3 of 2015.

4 MR. TWOMBLEY: Object to the form.

5 BY MR. GILREATH:

6 Q The record will be clear on that.

7 A Are you --

8 MR. TWOMBLEY: Object to the form  
9 of the question.

10 BY MR. GILREATH:

11 Q Were you in the courtroom when that  
12 happened?

13 A I was in the courtroom but I don't  
14 remember -- he didn't -- I don't remember him  
15 saying that in the courtroom.

16 Q Well it -- trust -- I think I'm  
17 correct.

18 A Okay.

19 Q I think even Ashley and I might can  
20 agree on that but I think he might have been the  
21 one who got it out of him.

22 MR. TWOMBLEY: I remember what he  
23 said if you want me to say.

24 MR. GILREATH: No I don't want you  
25 to testify.



1 THE WITNESS: Now wait a minute.

2 Are you just not wanting him to say

3 because --

4 MR. GILREATH: I don't want him to

5 say --

6 THE WITNESS: -- you're not

7 correct?

8 MR. GILREATH: He's not supposed

9 to say.

10 THE WITNESS: Are you not correct?

11 MR. GILREATH: I think I'm

12 correct. I'm not trying to mislead

13 you.

14 THE WITNESS: You think you're

15 correct is not enough.

16 MR. GILREATH: I think I've got a

17 copy of his testimony in the book

18 somewhere but I'm having to find it --

19 BY MR. GILREATH:

20 Q Did -- what did -- let me ask you this,

21 what did you think of the fact that somebody, I

22 presume it must have been Merrill got your

23 husband to go up to Richmond, Virginia or

24 wherever it was and file a lawsuit and get

25 involved in the lawsuit that CFRC had against





1 Hampton?

2 MR. TWOMBLEY: Object to form of  
3 the question.

4 MS. PAYLOR: Object to the form.

5 BY MR. GILREATH:

6 Q What did you think about that?

7 A I thought if my husband wanted to do it  
8 then he should do it and if he was -- if his  
9 lawyer thought he should do it then do it.

10 Q Did anybody talk to you about it before  
11 he did it?

12 A No.

13 Q And so when Mr. Scully showed up and  
14 knocked at your door that day how did he get  
15 over there? Did Merrill bring him over there?

16 A No, not to my knowledge. I think he  
17 drove.

18 Q Did he just show up at the door?

19 A He knocked at the door, yes.

20 Q Did you know who he was? Did anybody  
21 tell you that he was coming?

22 A I don't remember that.

23 Q Had you had any conversations with  
24 Merrill?

25 A He wouldn't have just popped in.



1 Q That's the kind of the point I'm trying  
2 to make.

3 A Right. He --

4 Q I don't he drove down here from  
5 Richmond because that's a pretty good drive and  
6 took a chance on catching you. That's not what  
7 happened, is it?

8 A No, that's not what happened because my  
9 husband knew he was coming.

10 Q Who told him he was coming?

11 A My husband.

12 Q No, no, who told your husband that he  
13 was coming?

14 A Mr. Scully as far as I know. I'm  
15 assuming it was Mr. Scully.

16 Q Okay. Do you know whether Merrill or  
17 Randy had anything to do with that?

18 A I'm assuming they didn't but I'm  
19 assuming they didn't. They never told me they  
20 did.

21 Q They never told you he was coming?

22 A Somebody --

23 Q Well somebody told you he was --

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: Mr. Scully called me



1           and I don't know whether my husband had  
2           called him, I simply do not know but he  
3           had an appointment with my husband.

4           Q     Okay. Well, let me ask you this, in  
5           August of 2015 could Paul pick up the telephone  
6           and make a coherent telephone call to somebody  
7           he never knew such as Robert Scully?

8           A     This was in what year? What is the --

9           Q     This is in August of 2015, the latter  
10          part of August.

11          A     You know he had -- sometimes he had --  
12          when things got bad the last six months of his  
13          life but otherwise he had good days and bad  
14          days, better days.

15          Q     Well what happened if he was having a  
16          bad day and he got a telephone call from Mr.  
17          Scully?

18          A     I guess --

19                MS. PAYLOR: Object to the form.

20                THE WITNESS: -- Mr. Scully would  
21          not have come if he thought my husband  
22          was confused and not able to meet with  
23          him Mr. Scully wouldn't have come.

24          BY MR. GILREATH:

25          Q     Well what was he like when he was



1 confused?

2 A Merrill, what did I do with that piece  
3 of paper that I had by the telephone, I don't  
4 remember it. Or Merrill did you leave that book  
5 out for me or something like that.

6 Q Would he not know sometimes who people  
7 were?

8 A What people -- what did you say?

9 Q Would he sometimes not know who people  
10 were?

11 A You mean people that he should have  
12 known. People who --

13 Q Well let's say -- let's start off with  
14 people he should have known, yeah.

15 A Sometimes with people I -- I have known  
16 I can't remember their names.

17 Q I have that problem, we all have that  
18 problem.

19 But my question is seriously, if  
20 somebody like Mr. Scully called him up and he  
21 didn't know who he was and he was having a bad  
22 day he wouldn't have been able to communicate  
23 with him, would he?

24 A That's right.

25 MR. TWOMBLEY: Object to the form.



1 MS. PAYLOR: Object to the form.

2 THE WITNESS: So he obviously was  
3 having a good day of a good time  
4 because he made the appointment with  
5 Mr. Scully. Mr. Scully would not have  
6 come if there was no reason for him to  
7 come.

8 BY MR. GILREATH:

9 Q Well somebody had to know that Mr.  
10 Scully was coming, correct?

11 A My husband knew it.

12 Q Did you know it before he knocked on  
13 the door?

14 MR. TWOMBLEY: Object to the form.

15 THE WITNESS: Yes.

16 BY MS. PAYLOR:

17 Q You did? And Paul had told you he was  
18 coming?

19 A Yes.

20 Q Did he tell you what he was coming for?

21 A He may have but I don't remember what  
22 he was coming for.

23 Q Did Merrill tell you he was coming?

24 A Merrill told me nothing.

25 Q Merrill didn't tell you he was coming



1 to help her in the lawsuit, correct?

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: To my knowledge --

4 to my remembrance Merrill told me

5 nothing.

6 BY MR. GILREATH:

7 Q Okay, all right. Now let's -- while  
8 we're on this interference thing let's go over  
9 to Tab 10 which is Paul Barringer's second  
10 amended responses and objections to Hampton's  
11 first set of interrogatories.

12 That's a filing in the Eastern District  
13 lawsuit that -- where CFRC had filed and then as  
14 the parties got rearranged the way I'll  
15 represent to you just to keep it simple that  
16 through some orders or the judge or whatever the  
17 way the parties got realigned it ended up that  
18 Hampton was the plaintiff and Merrill was the  
19 defendant. That's why it shows that on that  
20 first page.

21 Now, you see here on the last page of  
22 this -- look at number -- look on page 19 and  
23 there's an interrogatory there, number 16, and  
24 what's happening here just -- you're not a  
25 lawyer and I understand that and you've already



1 told me that -- but the interrogatory, which is  
2 a question, it's a written question that you ask  
3 a party.

4 A 19 -- page 19?

5 Q Page 19.

6 A Okay.

7 Q In interrogatory Number 16 the original  
8 interrogatory said --

9 MR. TWOMBLEY: She's not there.

10 BY MR. GILREATH:

11 Q It's on page 19 Tab 10.

12 MS. PAYLOR: You have a couple of  
13 things in that tab.

14 BY MR. GILREATH:

15 Q Looking at Interrogatory Number 16 and  
16 it -- it's the original interrogatory said that  
17 Mr. Barringer or the PB revocable trust, that's  
18 talking about his revocable trust received any  
19 dividends on the 38,271 voting shares owned by  
20 Paul Barringer revocable trust after  
21 September 11th of 2012. Do you see that? It  
22 says, if so please describe all such dividends.

23 And then underneath that is his  
24 original disclosure and he says, no, I did not  
25 receive any dividends after September 11th 2012



1 and he -- I'll represent to you that in that  
2 answer he would have made that statement under  
3 penalties of perjury.

4 And then what he's doing here through  
5 his lawyer, Mr. Scully, he's now coming back and  
6 filing an amended response that says, instead of  
7 no now he's changing his answer and this is in  
8 February of 2016. We're going to move forward  
9 now from August when he -- when Mr. Scully came  
10 and knocked at the door or whatever and he met  
11 with him and now we're all the way up into  
12 February, just a little bit over five months  
13 before he died and he's telling him now, I do  
14 not recall receiving any dividends but I am  
15 informed that CFRC records reflect that I  
16 received dividends on the stock for 2012.

17 Now we -- we've got testimony from Dr.  
18 Long that he fell off the cliff in the mid part  
19 of 2015. We've got -- we've got another --  
20 we've got another -- we've got another  
21 mini-mental that took place on October the 19th  
22 in his office. We've got on in Tab 11 that said  
23 he scored I believe ten, right?

24 MR. MEDLIN: Yes.

25 BY MR. GILREATH:





1 Q And then if we go to Tab 12, you turn  
2 over to Tab 12 can you look at that in the book.

3 A Page what? What page.

4 Q Tab 12. It's just Tab 12. When you  
5 turn over you'll see it.

6 A Oh okay. Tab 12.

7 Q It's just one page.

8 A Okay.

9 Q On April -- that's dated April the 22nd  
10 of 2016.

11 MR. TWOMBLEY: Hold on. You  
12 turned one too many.

13 THE WITNESS: Oh okay.

14 BY MR. GILREATH:

15 Q And you see on April 22nd 2016, which  
16 is only 21 days after he signed this under  
17 penalties of perjury, three weeks letter after  
18 he signed this document he made -- he made one  
19 on the mini-mental and the only question he  
20 could answer correctly was read this and do what  
21 it says and what it says is close your eyes.  
22 That's the only question he got right here. He  
23 could not even pick up a piece of paper. I  
24 think one of the questions on there is -- isn't  
25 that on there? Take a piece of paper, fold it



1 in half, lay it on the floor and pick it up. He  
2 couldn't even do that.

3 Now my question is, do you believe,  
4 based on what I've just laid out to you, that he  
5 really honestly knew what he was doing when they  
6 had him sign this document?

7 MS. PAYLOR: Object to the form.

8 MR. TWOMBLEY: Object to form of  
9 the question.

10 BY MR. GILREATH:

11 Q Do you believe that?

12 A And the document was date when?

13 Q February 1st of 2016.

14 A February the 1st?

15 Q Less than four -- around four -- less  
16 than five months before died.

17 A Yes, he could have done -- yes, he  
18 could easily have known five months before he  
19 died.

20 Q This was on February the 1st of 2016.  
21 And he dies on what --

22 A May 16th.

23 Q On May 16th. So February, March,  
24 April -- February. On April 22nd he couldn't  
25 even pick up a piece -- he couldn't even pick up



1 a piece of paper off the ground.

2 A That's April 22nd though.

3 Q Yeah.

4 MR. TWOMBLEY: Object to the form.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: That's different.

7 MR. TWOMBLEY: Object to the form.

8 MS. PAYLOR: Object to the form.

9 BY MR. GILREATH:

10 Q But my question is, given that  
11 background, do you honestly believe as we sit  
12 here that when he signed this document that he  
13 really and honestly knew what he was doing?

14 MS. PAYLOR: Object to the form.

15 MR. TWOMBLEY: Object to the form.

16 BY MR. GILREATH:

17 Q Do you believe that?

18 A If he -- let me -- is the document in  
19 here?

20 Q Yes.

21 A What page?

22 Q Let's go back and look at -- the  
23 document's number 19 and he's saying --

24 A Document -- that's number 19.

25 Q Page 19 on Tab 10.



1           A     Okay.

2           Q     I'll just summarize it to try to speed  
3     it along if that's okay with you.

4                   MS. PAYLOR: I think -- you just  
5     want to look at his signature?

6     BY MR. GILREATH:

7           Q     Signature is on page 20 and the date's  
8     February 1st of 2016 and he's saying -- he's  
9     changing his answer. So this isn't like he's  
10    giving an answer. He's got to go back and see  
11    what the original answer was and then he's got  
12    to change it, he's got to understand all that.  
13    Somebody's got to explain it to him and here we  
14    are like, what, four months before he dies,  
15    right? Two and-a-half months before he scored  
16    that one and then he died in May I believe  
17    that's right or June, I can't --

18                  MS. PAYLOR: May.

19    BY MR. GILREATH:

20           Q     My question is, do you really honestly  
21    believe that in the shape he was in, because  
22    you've said several times under questioning from  
23    the other side that things really got bad the  
24    last six months of his --

25           A     Well I'm looking at his --



1 MS. PAYLOR: Object to the form.

2 THE WITNESS: -- response and his  
3 response makes some sense to me and  
4 because he said I do not recall  
5 receiving any dividends. Well I don't  
6 recall any dividends coming in on that  
7 and he never -- he never talked to me  
8 about dividends coming in from that  
9 sale but I am informed that I received  
10 dividends on the stock for 2012. That  
11 sounds like a pretty responsible reply.

12 BY MR. GILREATH:

13 Q What the question is though, did he  
14 have the mental capacity --

15 A But that's what I'm saying, he's been  
16 able to answer this responsibly and making  
17 sense. So I'm saying that he did have the  
18 mental responsibility and I'm also telling you  
19 that he has -- as I told you he had good times  
20 and bad times during this time.

21 Q Don't you really believe that this is  
22 something his lawyer stuck in front of him and  
23 he just signed it?

24 A No, I do not believe that a lawyer --

25 MS. PAYLOR: Object to form.



1           THE WITNESS: -- would write down  
2           this in the words that he said and  
3           make -- I don't believe a lawyer would  
4           make that up, what he's saying right  
5           there.

6       BY MR. GILREATH:

7           Q     I'm not suggesting his lawyer made it  
8           up and I'm not suggesting that it's even not  
9           true.

10                  The question is, does the man who put  
11           the ink on this piece of paper over on page 20  
12           named Paul Barringer, your late husband, did he  
13           -- when he sat down and wrote his name on page  
14           20 did he have enough going on that day to fully  
15           understand what he was doing and this is a  
16           20-page document now.

17           A     Okay, I'm looking at that signature and  
18           I'm saying that's not so bad. I can see that he  
19           has had some confusion, he's not a hundred  
20           percent. I'm looking at that signature and I'm  
21           saying that's not such a bad signature of his.

22           Q     But the question is, what's going on up  
23           here?

24           A     Well, when you sign something you've  
25           got some mental capabilities about it.



1           Q     Do you think -- you think if somebody  
2     had run into him an hour later he could complain  
3     to them what he did?

4                     MS. PAYLOR: Object to the form.

5                     THE WITNESS: Well he had a good  
6     response here and --

7     BY MR. GILREATH:

8           Q     Well who -- he didn't write that  
9     response. That was something drawn up by Mr.  
10    Scully.

11          A     He said this response and then somebody  
12    else wrote it down. He said this.

13          Q     So you think these are his exact  
14    words that he --

15          A     I would think so, yes.

16          Q     That he could express himself that  
17    articulately at that point in time?

18          A     That's what I'm saying to you, it's  
19    pretty articulate.

20          Q     Okay.

21          A     And I -- that sounds like he said this.

22          Q     Okay, all right. Well while I'm on  
23    that point, let's go back to Tab 4A. We're  
24    going to move even further down towards the day  
25    that he died and I'm sorry he did pass away and



1 so is Hampton but I want to look at page -- Tab  
2 4. And look at that first thing there, 4A -- I  
3 got it wrong, 4A. There's an A under that 4.  
4 You see that A sticking out there?

5 A I guess so. I guess I've got the right  
6 -- it's 8879 at the top.

7 Q This -- I will represent to you that  
8 this is an IRS e-file signature authorization on  
9 your 2015 tax return and this is a -- what  
10 happens is Mr. Davis files your returns  
11 electronically and then he sends you over a copy  
12 of them and before he can mash the button on his  
13 computer and send it to the IRS he has to have  
14 the client sign this form. And you see there  
15 where --

16 A Is it Exhibit 15?

17 Q 2015 Exhibit A.

18 A 2015.

19 Q Right.

20 A Okay so I've got it. I've got the  
21 right page.

22 Q Okay. And if you look up at the top  
23 where all that fine print is under Part 2 I'm  
24 going to read this into the record maybe --  
25 hopefully not all of it. It's right above his





1 signature.

2 A Uh-huh.

3 Q And it says under penalties of perjury  
4 I declare that I have examined a copy of my  
5 electronically individual income tax return and  
6 accompanying schedules and statements for the  
7 tax year ending December 31, 2015 and to the  
8 best of my knowledge and belief it is true,  
9 correct and complete.

10 I further declare that the amounts in  
11 Part 1 above are the amounts for my electronic  
12 income tax return.

13 I consent to allow my intermediate  
14 service provider, transmitter or electronic --  
15 originator to send my return to the IRS and to  
16 receive from the IRS an acknowledgement of  
17 receipt or reason for rejection and I won't read  
18 the rest of it in, it's in the record.

19 And then you see down there where he  
20 signed this on April the 12th of 2016 and you  
21 signed right below him. So you both signed  
22 under penalties of perjury saying that we have  
23 read his return, looked at the return and it's  
24 correct. Do you see that? That's your  
25 signature, isn't it?



1 A Yes.

2 Q And is that his signature up there?

3 A Yes.

4 Q Were you there when he signed that?

5 A Probably.

6 Q And he died -- he died on May 30th,  
7 correct?

8 A He died on May 16th.

9 Q Okay. And ten days after that on April  
10 the 22nd we've already looked at that, right?  
11 That was in Tab 11 I believe he scored one on  
12 the mini-mental exam. You remember me showing  
13 you that?

14 MR. MEDLIN: 12.

15 THE WITNESS: You told me about  
16 it, yeah.

17 BY MR. GILREATH:

18 Q Tab 12. And here he is now, he's  
19 signing under penalties of perjury that he's  
20 examined that return and I will represent to you  
21 that I have seen the return and that I took  
22 Bobby Davis' deposition and he told me this was  
23 a very complicated return and I mean it was  
24 probably somewhere between a half inch and an  
25 inch thick if I remember my question to him. So



1 it wasn't a one-sheet piece of paper. It was  
2 something, you know, maybe a half inch, inch  
3 thick, maybe thicker and you see that, correct?

4 MR. TWOMBLEY: Object to the form.

5 MS. PAYLOR: Object to the form.

6 BY MR. GILREATH:

7 Q You see that?

8 MS. PAYLOR: See what?

9 BY MR. GILREATH:

10 Q You understand what I pointed out to  
11 you on the return?

12 A I think so.

13 Q All right. Now, as we sit here today,  
14 do you believe that your husband really  
15 understood what he was doing when somebody had  
16 him sign this document?

17 MS. PAYLOR: Object to the form.

18 THE WITNESS: Well I doubt if he  
19 read every single word of the -- of  
20 these things because we never did read  
21 every single word. Just like this  
22 paragraph, I don't read every single  
23 word that has -- however, we had Davis  
24 & Company for about 30 years and we  
25 trusted them, still do, and, you know,



1           there wasn't any point for him to read  
2           every -- try to read everything and I  
3           don't either when these papers come in.

4                   I also look at that signature and  
5           it's not a bad signature and it  
6           certainly does not look like a  
7           signature that he's about to die.

8   BY MR. GILREATH:

9           Q     That wasn't one of his better  
10          signatures though, was it?

11          A     Well it was -- no.

12          Q     Did his signature get progressively  
13          worse as he got worse?

14          A     No, I don't know that anything got  
15          progressively worse. I have not studied that.  
16          I have not looked into it. You know, sometimes  
17          a signature might be better one time than  
18          another.

19          Q     Let me ask you this, can you tell me  
20          who brought this over to your house and knocked  
21          on your door and got your signature -- got his  
22          signature on there?

23          A     Well either --

24                   MS. PAYLOR: Object to the form.

25                   THE WITNESS: -- Bobby Davis might



1           have or one of his sons might have.

2       BY MR. GILREATH:

3           Q     Would Randy or Merrill have brought it  
4       over there by chance?

5           A     No.

6           Q     Bobby Davis has testified that at this  
7       point in time Randy was handling all of his tax  
8       stuff.

9           A     Oh --

10           MS. PAYLOR: Object to the form.

11           THE WITNESS: I don't remember  
12       them bringing it over. He could have.  
13       I don't remember that.

14       BY MR. GILREATH:

15           Q     Do you know whether anybody with Wells  
16       Fargo might have brought it over there?

17           A     I don't remember that either.

18           Q     Okay. It says that it was sent by Fed  
19       Ex.

20           A     Then nobody brought it over.

21           Q     Wait a minute. Well no, I think this  
22       is -- I think this is where it -- I don't know  
23       what that -- I don't know whether that means  
24       where he says --

25           A     Well good. You brought that up.



1 Nobody brought it over. It was left at our  
2 door.

3 Q Well I don't know -- I don't -- excuse  
4 me, I don't know what that means. That's Bobby  
5 Davis' writing I believe but anyway.

6 MR. TWOMBLEY: Object to the form.

7 MS. PAYLOR: Object to the form.

8 BY MR. GILREATH:

9 Q Look at his signature over on the  
10 second page compared to is where he -- same  
11 thing, this is in Pennsylvania. His signature  
12 on the second page is a lot worse than the one  
13 on the first page, isn't it?

14 A Yeah but the word Paul looks like it's  
15 been smeared.

16 Q Okay. And then look over on the  
17 Virginia return. Look at his signature.

18 A On page --

19 Q That's on --

20 A There's a number of place -- that looks  
21 like -- that looks very good.

22 Q Well. But the Barringer part just kind  
23 of goes off the line.

24 A You know, you've -- you're glossing  
25 over that one because it looks good.



1 Q Okay.

2 A And that's the same date.

3 Q All of these are signed on the same  
4 date.

5 A I told you, he had good days and bad  
6 days and --

7 Q Okay.

8 A Sometimes if you -- my signature is un  
9 -- illegible.

10 Q I have the same problem. I merchandise  
11 what you're saying.

12 A Yeah.

13 Q Your signature gets worse the older you  
14 get I --

15 A Well it's that I'm in a hurry and it  
16 doesn't matter that it looks perfect.

17 Q Okay.

18 A You go to the grocery store and you  
19 can't even read my signature.

20 Q All right. I want to come back to  
21 something else here. Look over at page 8 Tab 8  
22 now, my white book. These are some letters  
23 from --

24 A Now I've got a lot of comments about  
25 this.



1 MR. TWOMBLEY: Well wait until he  
2 asks you a question. Okay?

3 THE WITNESS: Okay. Thank you.

4 BY MR. GILREATH:

5 Q All right. This is a letter from the  
6 law firm of Fulcher, Hagler dated June 28th 2012  
7 from Michael B. Hagler to Brad Herring.

8 My first question is have you ever seen  
9 that document before since say you've got a lot  
10 of comments about it?

11 A Was that -- did you ask me a question?

12 Q Yeah. My question is have -- first  
13 question is, have you ever seen that document  
14 before?

15 A This?

16 Q Look familiar?

17 A I might have but I don't remember it.

18 Q All right. Well let me -- let me read  
19 you what's there in paragraph two in the record  
20 says, he's writing as a sole independent member  
21 of the Board and I -- if my recollection is  
22 right this has something to do with what  
23 happened at the Board meeting where Paul was  
24 terminated -- I mean Kevin was terminated.

25 In paragraph two he says, I mean no





1     disrespect to Paul but as I discussed in the  
2     meeting I am concerned about Paul's mental  
3     state. This is in 2012.

4             Paul is voting an acting based on facts  
5     that exist in his mind but nowhere else is his  
6     vote valid. Can the directors in the company  
7     act when a fellow director appears to be  
8     confused?

9             On more than one occasion during the  
10    meeting Paul actually cast his vote in the  
11    opposite way he meant to cast the vote until he  
12    was corrected and coached by whoever was in the  
13    room with him.

14            The remaining cast a vote until he was  
15    corrected and coach by whoever was in the room  
16    with him. The remaining board members and the  
17    company's attorneys heard Paul being coached in  
18    the background.

19            And to further complicate matters, if  
20    Merrill for some unknown reason was coaching  
21    Paul is she conflicted out? Have you ever seen  
22    or been told about that letter?

23            A     I might have.

24            Q     Was this the meeting in June of 28  
25    where -- would you have been the one coaching



1 him? Was that the telephone meeting of -- I'm  
2 not sure. I'm just asking do you remember?

3 A I'm not sure either.

4 Q Did you know Michael Hagler? Have you  
5 ever met him?

6 A Yes.

7 Q Was he a pretty sharp guy?

8 A I assume he was.

9 Q Did Paul like him?

10 A No.

11 Q Paul didn't like him?

12 A No.

13 Q Didn't Paul put him on the Board?

14 MR. TWOMBLEY: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: He may have.

17 BY MR. GILREATH:

18 Q Do you know why he was put on the  
19 Board?

20 A I don't know Paul's reasons for doing  
21 that.

22 Q Have you ever had a conversation with  
23 Randy or Merrill about this letter?

24 A No.

25 Q Do you have any recollection of doing



1 any coaching with Paul in regard to this  
2 June 28th meeting?

3 A I did not coach him.

4 MR. TWOMBLEY: Object to the form  
5 of the question.

6 MS. PAYLOR: Object to the form.

7 BY MR. GILREATH:

8 Q You see what he's -- turn over one more  
9 page. There's another e-mail from Mr. Hagler  
10 dated July the 1st and he says -- and this is an  
11 e-mail to Merrill Light now with a copy to Kevin  
12 Luzak and Brad Herring and he says that he  
13 respects both Paul and Kevin and then he goes  
14 onto say for the record, the person who attended  
15 the April board meeting who call me last  
16 Saturday --

17 A Yeah, I've read this letter.

18 Q You've read that letter before?

19 A I did.

20 Q And he says it was not Paul. He's in  
21 Paul's body but he seems to be ill and not  
22 thinking or acting rationally. Do you think  
23 he's correctly describing what was going on at  
24 that point in time with Paul?

25 MS. PAYLOR: Object to the form.



1 THE WITNESS: What I think is I  
2 think I need a minute or two, not long,  
3 to speak to my lawyer privately.

4 MR. TWOMBLEY: About this  
5 document?

6 THE WITNESS: Yes.

7 MR. TWOMBLEY: Okay.

8 THE WITNESS: And it won't take --  
9 it won't take long. Can I have that  
10 minute or two?

11 MR. GILREATH: Yeah, I'll give it  
12 to you.

13 MR. TWOMBLEY: Yes you may.

14 MR. GILREATH: I'm not sure you're  
15 entitled to it but I will -- out of  
16 respect I'll give it to you.

17 THE WITNESS: Okay. I'll be --  
18 we'll be right back.

19 (Whereupon, a short break was  
20 taken.)

21 BY MR. GILREATH:

22 Q When we adjourned you wanted to go talk  
23 to your lawyer about the exhibit at Tab 9 which  
24 was Mr. Hagler's e-mail to --

25 MS. PAYLOR: It's not Tab 9.



1 BY MR. GILREATH:

2 Q No, 8, excuse me, Tab 8, an e-mail from  
3 Mr. Hagler July 1 2012 at 2:35 p.m. to Merrill  
4 Light, Kevin Luzak and Brad Herring and you  
5 wanted to go meet with your lawyer and you've  
6 met with him.

7 Can you -- are you ready to talk about  
8 that or you have something to tell me about it  
9 or what?

10 MR. TWOMBLEY: Is there a  
11 question.

12 MS. PAYLOR: Object to the form.

13 MR. GILREATH: Well I don't -- I  
14 frankly don't remember.

15 MR. TWOMBLEY: Well then you'll  
16 have to ask another question.

17 MR. GILREATH: Well I'm going to  
18 ask her if she's ready to discuss this  
19 now.

20 MR. TWOMBLEY: Okay.

21 BY MR. GILREATH:

22 Q You had something you wanted to talk to  
23 your lawyer about. I know I can't -- I'm not  
24 supposed to ask about that so I won't because  
25 that will really get him rounded up. I don't



1 want to get him anymore excited --

2 A Well I'm not going to say. I'm not  
3 going to say.

4 Q I don't want to know what you --

5 A Well I mean that's why I'm talking to  
6 my lawyer. I'm not going to say all the things  
7 I have to -- I'm thinking about, I will not but  
8 I will answer your questions.

9 Q Okay.

10 A And --

11 Q Well my first question is going to be,  
12 what were you thinking about when you saw this  
13 document?

14 A I was thinking that all of these  
15 observations are not correct and they were more  
16 serious.

17 He's -- my husband saw Mike Hagler very  
18 seldom and he's making these observations of  
19 him.

20 I lived with him, my husband for  
21 59 years and I know him, knew him a lot better  
22 than Mike Hagler and I'm saying that what he's  
23 saying is very more negative than I can agree  
24 with.

25 Q So your testimony is you don't believe



1 what Mr. Hagler's saying is correct, right?

2 A To a certain extent.

3 Q Okay. Can you tell me whether you  
4 agree with anything he says in there?

5 Let's just look at the -- what I'm  
6 looking at is the main three paragraphs starting  
7 with the second full paragraph where it says the  
8 person who attended the April board meeting so  
9 on and then the two paragraphs over that, can  
10 you tell me --

11 A Well that paragraph I just think I'm --  
12 is far too harsh.

13 Q Okay. What about the second paragraph?

14 A That's -- I am looking at the second  
15 paragraph beginning with 'the person'?

16 Q No. He says that -- now I'm talking  
17 about the one -- you said you don't like the  
18 second one.

19 A No.

20 Q All right. Then he goes onto say, the  
21 current courses of action may harm your father  
22 and the company he loves so much. I understand  
23 it must be extremely difficult to disagree with  
24 your father but we must act in the company's  
25 best interest and I cannot now -- I cannot know



1    how to do that if you do not vote for an  
2    investigation. And I think they're talking  
3    about an investigation of Hampton -- I mean of  
4    Kevin. Do you know something about the  
5    situation that has not been discussed or  
6    disclosed to me? Is there something I do not  
7    understand?

8                   And then it goes on and says, from my  
9    observations your father does not seem to be  
10   acting rationally. If he is not allowing him to  
11   run the company may have a substantial negative  
12   effect on his value. What if he next  
13   misunderstands the company's management team and  
14   fires them?

15                  Of course, what if they hesitate to  
16   contradict your father for fear of retribution  
17   and follow some irrational order, could this  
18   harm your future, your children's, your  
19   father's?

20                  So he's a lawyer. He's seeing  
21   something that causes him some concern.

22                  My comment to you is do you -- what do  
23   you think about those second two paragraphs that  
24   I just read?

25           A       I think his --





1 MS. PAYLOR: Object to the form.

2 THE WITNESS: -- writing is too  
3 harsh and I don't agree with all of  
4 that. I knew my husband much better  
5 than Mike Hagler did.

6 BY MR. GILREATH:

7 Q Okay, all right. So did you ever have  
8 any discussions with Merrill about that letter?

9 A No.

10 Q Never talked with Merrill about it?

11 A I don't remember any discussions about  
12 it.

13 Q Do you think that that's something  
14 Merrill should have concerned herself about?

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I think -- no, I  
17 don't think so. I think it's -- it  
18 would have been me to do it or Paul to  
19 do I don't think she should have. I  
20 don't think -- so the answer is no.

21 BY MR. GILREATH:

22 Q So you don't think that -- so it's your  
23 testimony that as far as Hampton, she got a copy  
24 of this letter, in fact I think it was sent to  
25 her. Well it was sent to Kevin so it got to



1 her.

2 So your position is Hampton should have  
3 just more or less not paid any attention to this  
4 letter and not done anything, correct?

5 MS. PAYLOR: Object to form.

6 THE WITNESS: Well It though you  
7 said Merrill should have done something  
8 about this letter.

9 BY MR. GILREATH:

10 Q No I'm talking about Hampton now.

11 A Oh.

12 Q What do you think? You think Hampton  
13 should have just thrown this letter in the trash  
14 and moved on?

15 A Well what did she do about it, Hampton?  
16 I don't know what Hampton did about this letter.

17 Q I think part of what she did about it  
18 is why we're sitting in here all day today.

19 A This letter?

20 Q Yeah.

21 A Uh-huh.

22 Q This is what Hampton's upset about.  
23 This is why she filed a lawsuit. She was trying  
24 to protect the company and your husband and  
25 apparently Merrill was not bothered by this and



1 it didn't bother her.

2 MS. PAYLOR: Object to form.

3 MR. TWOMBLEY: Object to the form.

4 BY MR. GILREATH:

5 Q But it bothered Hampton and I mean this  
6 is a lawyer --

7 A Well Hampton's an agitator.

8 Q Hampton didn't write this letter?

9 A But I said it didn't bother Hampton but  
10 Hampton is an agitator.

11 Q Hampton is represented by a very  
12 capable lawyer for a law firm that your lawyer  
13 used to work for, by the way. He used to work  
14 for Michael Smith's lawyer. Okay?

15 A I think Michaels' just a capable.

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: I'm not --

18 MR. TWOMBLEY: Object to the form.

19 THE WITNESS: -- objecting to that  
20 at all.

21 BY MR. GILREATH:

22 Q Hampton has done what she's done with  
23 the advice of counsel. She's not just somebody  
24 that goes out and --

25 A I understand Michael Smith's reputation



1 and have heard about him.

2 Q Well now who -- what have you heard  
3 about Michael?

4 A That he's very smart.

5 Q Right, okay. And he's Hampton's --

6 A Yes.

7 Q -- he was Hampton's lawyer in part of  
8 this.

9 A Right.

10 Q You aren't suggesting that Hampton got  
11 any bad legal advice, are you?

12 A No, I am not. I think Michael Smith is  
13 very capable.

14 MS. PAYLOR: Object to the form.

15 BY MR. GILREATH:

16 Q If Michael Smith advised her that  
17 needed to take the course of action that she, in  
18 fact, has taken then she was actually acting in  
19 good faith on the advice of counsel, correct?

20 MS. PAYLOR: Object to the form.

21 MR. TWOMBLEY object -- yeah, same  
22 objection.

23 BY MR. GILREATH:

24 Q Can you answer that question?

25 A Advice of counsel I guess that's



1 correct.

2 Q So do you think there's anything wrong  
3 with that?

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: Well no.

6 BY MR. GILREATH:

7 Q Do you think her acting on advice of  
8 counsel makes her greedy?

9 MS. PAYLOR: Object to the form.

10 THE WITNESS: It depends on what  
11 the advice is and whether the lawyer is  
12 greedy or whether -- it depends upon  
13 the advice. Might be fine advice,  
14 might be terrible advice.

15 BY MR. GILREATH:

16 Q All right. Let me -- I've got another  
17 question here.

18 MR. TWOMBLEY: It's about  
19 ten minutes to 5 so I'm just letting  
20 you know.

21 MR. GILREATH: How are you? Can I  
22 ask one more question and then we'll  
23 talk about it.

24 MR. TWOMBLEY: Sure. You ask as  
25 many as you'd like.



1           MR. GILREATH: Well, I don't know  
2 her state. She's been here a long  
3 time. I want to ask her when she wants  
4 to leave. When you get ready to leave,  
5 Ms. Barringer, you've had enough of me  
6 I mean that you're getting tired --

7           MR. TWOMBLEY: Don't answer.

8           MR. GILREATH: -- then we'll call  
9 it a day and come back another day but  
10 if you want to stay and let us keep  
11 going I'm willing to go if you're  
12 willing to go.

13          MR. TWOMBLEY: Don't answer.

14          MR. GILREATH: You understand?  
15 I'm asking her a question.

16          MR. TWOMBLEY: Well, we've already  
17 had a discussion with the judge about  
18 Ms. Barringer's deposition and Judge  
19 Mullen has stated what her expectation  
20 was in the deposition and I intend to  
21 honor Judge Mullen's expectation.

22           I have the transcript. I'm happy  
23 to review it for you or with you but we  
24 are going to conclude this deposition  
25 today very shortly. Ms. Barringer is



1 87 years old. I think you've had a  
2 fair opportunity to question her and  
3 we're not stopping you. Keep going.  
4 Ask.

5 MR. GILREATH: Well we're going to  
6 be here late. I'll represent to you  
7 it'll probably be dark before we get  
8 through. I've got a lot more questions  
9 so. I'll go as long as she can stand  
10 it. You tell me when you want to stop,  
11 we'll stop. We're not going to stop,  
12 we're going to adjourn it and that'll  
13 be our position and if you want to make  
14 her available we'll talk to the judge  
15 about it, too. Fine with me. I don't  
16 -- anyway.

17 MR. TWOMBLEY: How many more hours  
18 do you think you have?

19 MR. GILREATH: I could have two or  
20 three more hours easy maybe. I don't  
21 know.

22 MR. TWOMBLEY: Well I want to know  
23 how much longer you think you have.

24 MR. GILREATH: I can't tell you  
25 that answer.



1 MR. TWOMBLEY: Okay.

2 MR. GILREATH: A lot depends on  
3 what she's saying.

4 MR. TWOMBLEY: Okay.

5 MR. GILREATH: A lot depends on  
6 how much you object, how much  
7 obstruction, action I get, whatever.  
8 Anyway.

9 MR. TWOMBLEY: Please proceed.

10 BY MR. GILREATH:

11 Q You would agree with me that Hampton is  
12 a shareholder of Coastal Forest, correct?

13 A Yes.

14 Q And would you agree with me that she's  
15 entitled to protect her property or equity in  
16 that corporation?

17 A Yes.

18 MS. PAYLOR: Object to the form.

19 BY MR. GILREATH:

20 Q So the letter that said Exhibit 9 which  
21 is -- Exhibit 9 in Alice's book, the June 21st  
22 King and Spalding letter from Mr. Michael Smith  
23 who you said has an excellent reputation or  
24 something to that effect just asked for  
25 information, you agree?





1           A     I don't -- where is that that King and  
2     Spalding letter?

3           Q     It's in that -- over there. Hand her  
4     that, Ashley. It's in Alice's.

5           A     Where is it?

6           Q     The little notebook.

7           A     Okay.

8           Q     Exhibit 9. Might be in mine but I  
9     don't know where it is.

10                Would you agree with me that that  
11     letter just asks for information, correct?

12           A     Yes.

13           Q     And as a shareholder would she not have  
14     a reason to ask for that information where she  
15     had just discovered that a stock transfer which  
16     substantially or arguably substantially watered  
17     down her interest in the corporation or voting  
18     interest had been hidden from her?

19                MS. PAYLOR: Object to the form.

20                MR. TWOMBLEY: Same objection.

21     BY MR. GILREATH:

22           Q     Do you understand my question?

23                My question is, when she discovered  
24     that the stock transfer had been hidden from  
25     her, would you agree with me that she



1 wouldn't -- that she would have a good reason to  
2 ask for information from the corporation --

3 A Well I --

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: You're saying that  
6 it was hidden from her. I object to  
7 that and I think -- I don't think  
8 anything was hidden from my daughter  
9 Merrill.

10 BY MR. GILREATH:

11 Q I'm not talking about Merrill now we're  
12 talking about Hampton. You meant Hampton?

13 A Oh I don't -- I don't think anything  
14 was hidden from her.

15 Q Well you -- you understand that she did  
16 not know about that stock transfer for over  
17 two years. You understand that, don't you?

18 A Well she wasn't --

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: -- in contact with  
21 the family and --

22 BY MR. GILREATH:

23 Q Well who in the family --

24 A Why does she have to know about the  
25 stock transfer? It had nothing to do with her.



1 Q Had nothing to do with her.

2 A Well I mean it was given to Merrill as  
3 a gift.

4 Q Yeah. And it took away the total  
5 control of the corporation -- it put total  
6 control of the corporation into Merrill's hands,  
7 correct?

8 MS. PAYLOR: Object to form.

9 THE WITNESS: It was pretty much  
10 there anyway.

11 BY MR. GILREATH:

12 Q It wasn't before Merrill got the stock.

13 A That's true.

14 MS. PAYLOR: Object to the form.

15 BY MR. GILREATH:

16 Q So when Hampton found out that for the  
17 rest of her entire life Merrill and Randy were  
18 going to be running the family corporation that  
19 was so dear to your husband's heart it upset  
20 her. Do you understand that?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: Yes.

23 BY MR. GILREATH:

24 Q And she felt like somebody may be  
25 taking advantage of your father (sic) and that



1 that was not necessarily in her best interest or  
2 in the best interest of the corporation.

3 MS. PAYLOR: Object to the form.

4 BY MR. GILREATH:

5 Q Do you understand that?

6 A Yes.

7 Q And you understand that she knew that  
8 your father had a very I guess poor opinion of  
9 Randy and wouldn't even --

10 A What?

11 Q That your father -- her understanding  
12 was that your father would never let Randy even  
13 come to a board meeting, correct?

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: I object. That's  
16 not so, no. I mean that is not so.

17 BY MR. GILREATH:

18 Q So you say the fact that she has  
19 testified I think or will testify that your  
20 father would never let Randy come to a board  
21 meeting, isn't that true?

22 A No.

23 MS. PAYLOR: Object to the form.

24 BY MR. GILREATH:

25 Q Okay. So you -- is it your position



1     that the fact that total control of the  
2     corporation was given -- went from basically a  
3     situation where it really had to be Merrill and  
4     Hampton together or either your father gets with  
5     one of them but it's got to be two people  
6     getting together and now Merrill's got total  
7     control. You don't think that's something  
8     Hampton should have been concerned about?

9           A     I was not concerned. I was very angry  
10    with Hampton. She had not seen us --

11               MS. PAYLOR: Object to the form.

12               THE WITNESS: -- for years and I  
13    was not concerned about how she felt.

14    BY MR. GILREATH:

15           Q     Okay. So really the fact that for  
16    whatever reason she was with her husband, they  
17    were living in New York at the time or whatever  
18    and she didn't get down here to see you as much,  
19    she had a young child so you felt like because  
20    of that --

21           A     No it was not just because of that.

22               MS. PAYLOR: Object to the form.

23               THE WITNESS: But that was a  
24    factor.

25    BY MR. GILREATH:



1 Q That was a factor.

2 A She had -- she didn't -- was out of  
3 contact with us for years.

4 Q Well anyway, when you got that letter  
5 did you guess that Hampton was going to sue the  
6 company?

7 MS. PAYLOR: Object to the form.

8 MR. TWOMBLEY: Yeah, what -- could  
9 you tell us what letter?

10 MR. GILREATH: I'm talking about  
11 the January 16th letter.

12 THE WITNESS: We -- we were  
13 assuming that this is certainly a  
14 possibility. A possibility.

15 BY MR. GILREATH:

16 Q But as you've seen from what I showed  
17 you here today Hampton didn't sue the company,  
18 did she?

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Object to the form  
21 of the question.

22 THE WITNESS: No, she didn't. No.

23 BY MR. GILREATH:

24 Q She didn't. The company sued her,  
25 correct?



1           A     Yes.

2           Q     Okay. So if you're mad at the family  
3     and suing the family you shouldn't have been mad  
4     at -- she shouldn't have been mad at Merrill  
5     Light for having the company sue Hampton,  
6     correct?

7                   MS. PAYLOR: Object to the form.

8                   THE WITNESS: Miss -- would you  
9     repeat that?

10    BY MR. GILREATH:

11           Q     So you think that Hampton should have  
12     just said okay, I'll not be mad because  
13     Merrill's suing me.

14                   MS. PAYLOR: Object to the form.

15                   THE WITNESS: I didn't care what  
16     Hampton thought and if she was mad it  
17     didn't make any difference to me.

18    BY MR. GILREATH:

19           Q     Okay. And your testimony is that you  
20     never discussed -- all of this is going on now.

21           A     Right.

22           Q     These letters from Hagler, they're  
23     coming in and I assume Merrill got all that.  
24     You said you'd seen it and your testimony is  
25     that you never -- and you're living a mile or so



1 from Merrill's house -- and your testimony here  
2 today is that you and Merrill and Randy never,  
3 ever discussed this, correct?

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Object to the form  
6 of the question.

7 THE WITNESS: I don't remember  
8 whether we did or not.

9 BY MR. GILREATH:

10 Q You think you might have?

11 A I don't remember whether we did or not.

12 Q Okay. And isn't it true that you  
13 really just -- looks to me like you're mad at  
14 Hampton because she's trying to protect her  
15 father who's your husband.

16 A Oh she --

17 Q Which is exactly what you said you  
18 would do if you were in a similar situation.

19 A I don't believe --

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: -- she was trying to  
22 protect him.

23 BY MR. GILREATH:

24 Q Well what do you think she was trying  
25 to do?





1           A     I think that was -- somebody got her to  
2     write that letter and she -- that did not sound  
3     like her at all.

4           Q     But that's just -- that's what you  
5     think, correct?

6           A     That's what I think but it was --

7                   MS. PAYLOR: Object to the form.

8                   THE WITNESS: -- not her.

9     BY MR. GILREATH:

10          Q     Did you and Merrill and Randy ever sit  
11     down over a cup of coffee somewhere --

12          A     No.

13          Q     -- and look at that letter?

14          A     No.

15          Q     You never drank coffee or ever --

16          A     I do drink coffee but I never sat down  
17     with her and talked about it.

18          Q     I used but I had to quit. I wish I  
19     didn't.

20                   But wherever you were having a drink, a  
21     glass of wine or a cup of coffee or whatever,  
22     you're telling me that you and Merrill, as often  
23     as you saw her because you said you saw her a  
24     lot, that y'all never talked about it?

25          A     I don't remember talking to her about



1 it.

2 Q You have no recollection?

3 A No.

4 Q Do you understand that if Merrill were  
5 to die before Randy that he could inherit her  
6 stock and he could run the company afterwards.  
7 Do you understand that?

8 MS. PAYLOR: Object to the form.

9 THE WITNESS: I hadn't thought  
10 about it.

11 BY MR. GILREATH:

12 Q Well I believe that if I --

13 A I mean I certainly understand that he  
14 would inherit her stock but I hadn't thought  
15 about his running the company.

16 Q Well what do you think of that?  
17 Merrill's dead and Randy --

18 A I think Randy --

19 MS. PAYLOR: Let her answer the  
20 question.

21 BY MR. GILREATH:

22 Q Are you through? I didn't mean to  
23 interrupt you.

24 So let's assume -- I hope it doesn't  
25 happen but all of us in this room is going to



1 die sooner or later -- and Randy and Merrill who  
2 are sitting over here across the way, one of  
3 them's going to die and one of them's going to  
4 die before the other unless they get killed in  
5 an airplane crash or something and if Merrill  
6 happens to go first presumably Randy's going to  
7 get her stock or he'll be able to file some kind  
8 of claim against it I would think.

9 MS. PAYLOR: Object to the form.

10 MR. TWOMBLEY: Object to the form  
11 of the question.

12 BY MR. GILREATH:

13 Q So I just want to ask you, do you think  
14 that's okay?

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I think Randy's very  
17 capable and could run the company.  
18 He's very capable and honest and smart  
19 and he could run the company and he  
20 will inherit her stock and that's okay  
21 with me.

22 BY MR. GILREATH:

23 Q And you think if Paul's up there  
24 looking down on us --

25 A I don't know.



1 Q -- that all of that would be okay with  
2 Paul?

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: I don't know what  
5 Paul would think. I --

6 BY MR. GILREATH:

7 Q Do you think anybody ever told Paul  
8 that when he made this transfer that something  
9 like that could happen?

10 A We never --

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: -- even thought  
13 about it what -- that could happen.  
14 I'm just telling you that I would be  
15 very pleased with Randy and so I expect  
16 that Paul would be too and he could do  
17 a good job.

18 BY MR. GILREATH:

19 Q All right. And of course you know when  
20 women die a lot of times their husbands remarry.  
21 You understand that?

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: I'm very aware.

24 BY GILREATH:

25 Q And what -- Randy's got all this stock



1 now. Merrill's dead. Randy's got all this  
2 stock and then he remarries and he gets run over  
3 by a Mack truck then we got some woman nobody's  
4 ever heard of who's going to get her hands in  
5 the stock. Have you thought about that?

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: Object to the form.

8 THE WITNESS: I had not but I  
9 think that's very likely in a terrible  
10 situation.

11 BY MR. GILREATH:

12 Q And you know, if you think that -- and  
13 if you were in Hampton's shoes and this terrible  
14 situation that you've just been made aware of  
15 that could happen that would be something you  
16 might want to be concerned about, wouldn't you?

17 A I think --

18 MS. PAYLOR: Object to the form.

19 THE WITNESS: I think Merrill  
20 should be concerned about it and I  
21 think she should probably get a very  
22 good lawyer sitting right over there to  
23 help her deal with the situation if  
24 this should happen and I think he can  
25 take care of it and I think -- I'm so



1           glad you brought this up.

2                   MR. GILREATH: Can I send you a  
3           bill?

4                   THE WITNESS: And I would gladly  
5           pay it because that's very valuable  
6           advice.

7   BY MR. GILREATH:

8           Q     But you never got that advice from Mr.  
9           Jolley, did you?

10                  MS. PAYLOR: Object to the form.

11                  MR. TWOMBLEY: Object to the form  
12           of the question. Do not answer  
13           anything about any advice you've  
14           received from Mr. Jolley.

15                  THE WITNESS: Okay.

16   BY MR. GILREATH:

17           Q     All right. Well now I've got to talk  
18           about Mr. Jolley just a little bit.

19                  You knew -- tell me when Mr. Jolley  
20           first came on the scene.

21           A     A long time ago.

22                  MS. PAYLOR: Object to the form.

23                  THE WITNESS: But I don't know how  
24           many years. I've known Mr. Jolley a  
25           long time.



1 BY MR. GILREATH:

2 Q Did Merrill and Randy or either one of  
3 them or both of them, did they suggest to either  
4 you or Paul that maybe Jolley would be a good  
5 guy to go see?

6 A That's possible. That's possible.

7 Q And you knew that he was their  
8 attorney, didn't you?

9 A Yeah.

10 Q Did he ever tell you before or did he  
11 ever make you aware --

12 A Well now that you mention it --

13 MS. PAYLOR: Object to the form.

14 THE WITNESS: -- now I -- yeah, I  
15 realize I did know that.

16 BY MR. GILREATH:

17 Q You did know it?

18 A Yeah.

19 Q Did that ever concern Mr. Jolley?

20 MS. PAYLOR: Object to the form.

21 MR. TWOMBLEY: Object to the form  
22 of the question.

23 THE WITNESS: I don't think so but  
24 it may have -- may have -- you've got a  
25 point, should get another lawyer not



1 use the same one. You've got a point.

2 I don't think we did use him much.

3 BY MR. GILREATH:

4 Q That's the point I'm trying to -- you  
5 didn't use him much? He drew up all these  
6 documents I got in this notebook over here.

7 A That's true, that's true. I take that  
8 back, yes.

9 Q Okay. Now, you had another lawyer who  
10 -- I can't remember his name, he's out  
11 Charlotte. What's that guy's name? I'll think  
12 of his name in a minute. I know who he is.  
13 He's got a very good --

14 Do you know who did Paul's estate  
15 planning before Mr. Jolley got on the scene?

16 A Let's see? Was it -- it may have been  
17 Collins Denny.

18 Q No, it wasn't him. It was a guy -- I  
19 think it was a guy in Charlotte. His name -- I  
20 thought Alan knew him.

21 A I'm not -- I think a Jim Dorset from  
22 Charlotte got involved but I don't think that  
23 carried through. I don't think he stayed there  
24 long. I think he got -- I think it was Dorset  
25 and something.





1           Q     Have you ever met or heard of a lawyer  
2     in Charlotte named Neil McBride?

3           A     Yes. The name sounds familiar.

4           Q     Would he perhaps be the one that did  
5     some work for you before Mr. Jolley came on the  
6     scene?

7           A     Well if he did it was a very long time  
8     ago and I don't remember well and I don't  
9     remember much about him.

10          Q     Okay.

11          A     But I know the name.

12               MR. TWOMBLEY: Jim, I'm going to  
13     give you about five more minutes.

14               Judge Mullen said -- I just pulled  
15     the transcript. It said, I don't want  
16     to see anyone getting in there and  
17     deposing this woman all day long or for  
18     days on end. I just don't think that's  
19     fair or right.

20               And I agree with Judge Mullen and  
21     if you disagree with it I mean you can  
22     certainly take that up with her but I'm  
23     going to give you about five more  
24     minutes and we're going to --

25               MR. GILREATH: Well, I'm going to



1     --

2           MR. TWOMBLEY:  -- terminate it for  
3     today for sure.  I think you've had a  
4     fair, reasonable time.

5           MR. GILREATH:  I'm going to say on  
6     the record that first of all, the  
7     record will reflect it -- I'm not going  
8     to bother the court reporter to go back  
9     and see -- will reflect how many hours  
10    or maybe she can tell us right now  
11    because I'd like to have that on the  
12    record.  Could you tell me, ma'am, when  
13    we -- just give you a few minutes how  
14    many hours he had and how long I've had  
15    on the record, ma'am.  Breaks don't  
16    count.

17          MR. TWOMBLEY:  You can tell us  
18    after this.

19          MR. GILREATH:  I want to know now.

20          MS. PAYLOR:  Well we don't --

21          MR. TWOMBLEY:  If you want to  
22    spend your remaining minutes doing  
23    that, that's fine.

24          MR. GILREATH:  Well you're giving  
25    me five minutes so I'm not going to --



1 this lady's 87 years old. She's been  
2 here -- it's now almost ten after 5.

3 MR. TWOMBLEY: Are you going to  
4 ask Ms. Barringer anymore questions  
5 today?

6 MR. GILREATH: Not if you're  
7 cutting us off in five minutes. I'm at  
8 a good stopping place and I think she  
9 -- like me she's probably ready to stop  
10 aren't you, Ms. Barringer?

11 MR. TWOMBLEY: You can use your --

12 MR. GILREATH: She just nodded  
13 affirmative that she is.

14 MR. TWOMBLEY: Do you want to come  
15 back again?

16 THE WITNESS: Well I am ready to  
17 stop and I definitely don't want to  
18 come back again.

19 MR. TWOMBLEY: Okay. You don't  
20 have to answer anymore of those  
21 questions about that.

22 If you have anymore questions you  
23 can ask her for the next five minutes.  
24 It's ten minutes after 5. The record  
25 will reflect how long everybody's had



1 and Judge Mullen can determine whether  
2 or not that's fair and reasonable.

3 MR. GILREATH: Well Ms. Barringer,  
4 you say you don't want to come back.  
5 Are you willing to come back?

6 THE WITNESS: If I have to I will  
7 come back.

8 MR. GILREATH: Do you think it's  
9 fair for him to have more time with you  
10 than I did?

11 MS. PAYLOR: Object to the form.  
12 Object to the form. That's not a  
13 proper question.

14 MR. TWOMBLEY: Object to the form  
15 and I'm going to instruct you not to  
16 answer that question.

17 THE WITNESS: Yeah, I don't want  
18 to answer that question.

19 MR. TWOMBLEY: Okay, all right.  
20 (Whereupon, a short break was  
21 taken.)

22 MR. GILREATH: The plaintiff is  
23 adjourning the deposition. He's  
24 objecting.

25 (RESERVED SIGNATURE.)



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1 (Whereupon, the deposition of  
2 Merrill Underwood Barringer was  
3 concluded at  
4 approximately 5:16 p.m.)

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## 1 C E R T I F I C A T E

2

3 STATE OF GEORGIA:

4 CHATHAM COUNTY:

5

6 I, Kyle J. Saniga, Court Reporter and  
7 Notary Public in and for the above county and  
8 state, do hereby certify that the foregoing  
9 testimony was taken before me at the time and  
10 place herein-before set forth; that the witness  
11 was by me first duly sworn to testify to the  
12 truth, the whole truth, and nothing but the  
13 truth, that thereupon the foregoing testimony  
14 was later reduced by computer transcription; and  
15 I certify that this is a true and correct  
16 transcript of my stenographic notes so taken.

17 I further certify that I am not of  
18 counsel to either party, nor interested in the  
19 event of this cause.

20

21

22

*Kyle J. Saniga*

23

Kyle J. Saniga, CCR

24

Notary Public, B-2038

25

Savannah, Georgia



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1 ERRATA SHEET

2

3 CAPTION: ESTATE OF PAUL B. BARRINGER II

4 HAMPTON BARRINGER LUZAK -vs-  
5 MERRILL B. LIGHT, MERRILL U.  
BARRINGER, et. AL.

6

7

8 DECLARATION UNDER PENALTY OF PERJURY

9 I declare under penalty of perjury  
10 that I have read the entire transcript  
11 of my Deposition taken in the  
12 above-captioned matter or the same  
13 has been read to me and the same is  
14 true and accurate, save and except for  
15 changes and/or corrections, if any, as  
16 indicated by me on the COASTAL COURT  
17 REPORTING DEPOSITION ERRATA SHEET  
18 hereof, with the understanding that I  
19 offer these changes as if still under  
20 oath. Signed on the \_\_\_\_\_ day of  
21 \_\_\_\_\_, 2019.

15

16

17

18 \_\_\_\_\_  
19 MERRILL UNDERWOOD BARRINGER (Deponent)

19

20 SWORN TO and subscribed before me  
21 THIS \_\_\_\_\_ day of \_\_\_\_\_, 2019

21

22

23 NOTARY PUBLIC: \_\_\_\_\_

23

24 My commission Expires: \_\_\_\_\_

25



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