STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

APPELLANT'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

Appellant Adele J. Pope respectfully petitions this Court for rehearing pursuant to Rule 221, SCACR, and in light of the important issues in this case, she suggests pursuant to Rule 219, SCACR, that the Court rehear this matter *en banc.*

Summary of Grounds for Rehearing and Consideration *en Banc*

This Court's unpublished August 24, 2022 opinion (No. 2022-UP-346), attached hereto as Exhibit A, overlooks the following fundamental matters:

1. *Wilson v. Dallas* does not collaterally estop Appellant from asserting any counterclaim in this 2010 tort suit filed by parties to the *Wilson* appeal, and the James Brown Legacy Trust.

2. The record contains ample evidence supporting all counterclaims despite Respondents' 6-year discovery noncompliance and FOIA disruptions, and the lower court's refusal to allow discovery or correct the parties before granting summary judgment, including to Respondents Tommie Rae Hynie, the Legacy Trust and the dismissed Attorney General.

3. Appellant has never attempted to speak for the Estate/Trust in this case.

4. Dismissal of the Complaint (Exhibit B) was appropriate in 2011, 2016 and 2022.

5. This Court's finding that it could not review the lower court's denial of Appellant's and Buchanan's 2010 motion to dismiss a lawsuit being pursued by a private law firm on behalf of the State/Attorney General for the personal benefit of Hynie and those aligned with her is in conflict with this Court's own caselaw.

6. The Court's reading of U.S. Dist. Ct. Case 3-08-cv-00014-WOB (Exhibit C) which sought to reinstate David Cannon and Albert Dallas as trustees of Respondent James Brown 2000 Irrevocable Trust was erroneous.

Factual Background

On August 1, 2000 iconic entertainer James Brown finalized his estate plan, leaving his entire $100 million worldwide music empire to The James Brown 2000 Irrevocable Trust ("2000 Trust"). [R. 364; 370; 1371; 1372] Among those with Brown at the time were trustee David

Cannon, companion Tommie Rae Hynie, and daughter Venisha Brown[1]. Brown died on Christmas Day, 2006. [R. 1416]

Both Hynie and Cannon were already defrauding James Brown and the 2000 Trust and continued to do so until Cannon died in 2018. Hynie and those aligned with her continue to do so in this suit ("Richland 4900") today. *See Brown v. Sojourner,* 430 S.C. 474, 846 S.E.2d 342 (2020).

Between 1999 and the day after Brown's death on Christmas Day 2006 Cannon had stolen $17 million from funds devised to James Brown's "I Feel Good" education charity, reducing the fund for scholarships for needy students from about $95 million to about $80 million.

In 2007 Respondent Venisha Brown, with ten Respondents, represented by Louis Levenson, Esq., helped special administrators Robert Buchanan and Appellant uncover what Levenson described as the "rape" of James Brown's fortune by Cannon, Dallas and others. [*See* Record on Appeal, p. 1875, Appellate Case No. 2019-000362, Levenson Cross-examination]

In 2008 Respondent Terry Brown and his son Forlando joined Cannon, Dallas, music manager Frank Copsidas, attorney David Bell and Powell Goldstein in an effort to cover up Cannon's $17 million theft, laundering of the "$5 Million Check to Nobody" through a Barnwell bank, and forgeries with a $100 million sale that would reap $5 million more for Cannon, $5 million for Dallas and 20% for the law firm and music manager.

In January 2009 Respondent Venisha with 10 Levenson client-Respondents joined Terry and Forlando in their efforts to cover up Cannon's $17 million theft, $5 million money laundering and forgeries. They agreed that Terry should have nearly 5% of the newly-created Respondent James Brown Legacy Trust, as well as a right of first refusal ("ROFR") to buy Brown's music

[1] To avoid confusion, all descendants and claimed descendants of James Brown are sometimes referred to herein by first name.

empire. [R. 1762-64] They did so even though they had knowledge of what Levenson described as Cannon's "$15 - $20 million" theft, and that Terry and Bell had joined Cannon and Dallas in numerous improper activities, including Bell's filing six false grievances against Levenson in two states. [R. 2678-84]

By January 2009 Venisha and 10 Respondents represented by Levenson had actual knowledge that Hynie was defrauding the lower court with her claims to be the spouse of James Brown, as well as the claim that Respondent Hynie and James Brown II, then a minor, controlled more than 55% of the "termination rights" under Sections 203 and 304 of the U.S. Copyright Act, 17 U.S.C.A. § 101*et seq.*

Venisha and 10 Respondents knew that Hynie was not the spouse of James Brown; had no termination rights; and that Respondents Venisha, Terry and Tonya Brown Fegan held about 30% of the termination rights, with another 30% being held by DNA-proven daughters Jeanette Mitchell, Nicole Parris, and LaRhonda Pettit. [R. 1617-18; 1713-1716; 1575] They also knew, as did the lower court, that incarcerated son Michael Brown probably also held 10% of the termination rights.

Venisha, Tonya, Terry and all other Respondents had actual knowledge that covering up Cannon's $17 million theft, $5 million money laundering, three forgeries, and Hynie's false claim that she controlled the termination rights, and that they were worth tens of millions of dollars, was not what their father and grandfather wanted.

In January 2009 Robert Buchanan and Petitioner had been PR/Trustees under the Will and 2000 Trust for fourteen months. With attorneys Kendall Few and James Gilreath, they had filed five lawsuits to recover the $17 million Cannon had stolen. They were also facing:

- Four lawsuits by Hynie and 10 Levenson clients to set aside the Will and 2000 Trust filed in December 2007;

- Forlando's effort in 3:08-cv-00014-WOB (Exhibit C) to obtain a federal injunction until thief David Cannon and Albert Dallas were reinstated as Brown's trustees;

- A recommendation by Russell Bauknight that the AG's settlement of four 8-month-old will challenges by giving 52 ½% of Brown's assets to Hynie and five Respondents[2] in exchange for just over half of their termination rights going into the AG's new charity; and

- A recommendation by Bauknight that 1/42 of Brown's fortune set aside to educate Forlando and five Respondents[3] be dismembered as part of the AG's settlement.

At the time Buchanan and Petitioner projected defending against the baseless challenges would cost just over $1 million for four years, but their 5-year effort, including a 6-day trial, to prevent the AG from taking control of Brown's assets with Hynie and giving her about $1 million a year and a quarter of the $90 million sale in 2021, was less than $1 million. [R. 1283-1382; *Wilson*]

[2] Respondents Venisha, Terry, Larry, Deanna, Yamma and Daryl Brown would be given just over a quarter of Brown's assets. They assigned their termination rights proceeds to Respondent Legacy Trust, with Bauknight as trustee, in exchange for becoming "owner-beneficiaries" of just over a quarter of the Legacy Trust, with Hynie being and owner-beneficiary of just under a quarter and the AG's new charity being an owner-beneficiary of just under half. The termination rights of all owner-beneficiaries were valued by Respondents' expert in this case, Roger Miller, at $8.8 million in 2008, although Hynie and Peter Afterman claimed they were worth tens of millions of dollars, and that Hynie owned 50%.

[3] See Forlando's Complaint, Exhibit C, pages for a correct description of the education Trust to age 35 created by James Brown as a "fractional share" of the 2000 Trust. Then-minor Respondents whose 1/7 share of the 1/42 of the 2000 Trust set aside for their education to age 35 were Respondents Jason Brown-Lewis, Janise Brown, Lindsey Delores Brown, Sydney Lumar, and Carrington Lumar. The $4.7 million valuation increased the share of Forlando Brown and the named Respondents to 1/7 of nearly 1/3 (31%) of Respondent 2000 Trust, shifting about $1 million a year of income out of the "I Feel Good" charity and over to the taxable trust until they reach 35.

During their minority, and while Venisha was incarcerated, both the law firm of Kenneth Wingate, Esq. ("Wingate") and Bauknight obtained orders to prevent the appointment of a GAL for any of the five Respondents.

The cost of the 5-year defense of Brown's Will and 2000 Trust from the time it was announced by Hynie and 10 Respondents in August 2008 until May 2013 was substantially less than $1 million, due in part to the *pro bono publico* service of James Richardson, Esq. as lead appellate counsel, and the modest fees of Tressa Hayes, Esq., and James Bailey, Esq. during the 6-day trial in 2009.[4]

In 2009 Buchanan and Petitioner offered to give Venisha, Hynie's son, and all children acknowledged by James Brown 2% each of Respondent James Brown Estate, and Hynie 7% of Respondent Estate to drop her spousal claim, but all refused. This was the first of many settlement offers ignored or refused by all Respondents.

The lower court, on Bauknight's recommendation, approved the AG's 2008 settlement on May 26, 2009. Bauknight was made fiduciary for Respondent Estate/2000 Trust of James Brown, as well as trustee of Respondent Legacy Trust.

Within a month Bauknight had hired a dozen Legacy Trust attorneys on a "deferred pay" basis. By 2018 Bauknight, with the approval of all Respondents, had spent tens of millions of dollars from what Respondents claimed to be Brown's $4.7 million music empire to hold onto the AG's 2008 settlement for Hynie in this case ("Richland 4900"); to assist Respondent Terry Brown and Forlando cover up the theft of Cannon in Case 3-08-cv-00014; to conceal evidence of Hynie's

[4] See Status Report of the Honorable Doyet A. Early, III, filed in the Supreme Court on May 8, 2015, describing the fees of Bailey and Hayes. Judge Early also describes the hours of Buchanan and Pope devoted to the defense of the estate plan, although he incorrectly stated that Petitioner sought a $2 million SA fee and a $5 million PR/Trustee fee. The SA fee request was for only $47,972, and the PR/Trustee fee request, at trial in Aiken County Case in 2017, was for $1.47 million, with interest on each as set out in the "Payment Order" of Judge Early dated January 8, 2008. [R. 1543-45; 3-6] In 2019, after Buchanan had accepted a total PR/Trustee of $550,000, Judge Early reversed his earlier order and found that neither Buchanan nor Petitioner was entitled to any fee for their service to Respondent Estate/2000 Trust from 2008 – 2013. [*See Pope v. Estate of Brown,* Op. No. 2022-UP-229 (May 25, 2022)]

bigamy, the conspiracy to devalue James Brown's assets by $79 million, and the disastrous consequences to the Trust of the claimed $4.7 million value in at least three FOIA cases; and to assure that Petitioner and Buchanan not be paid and be blamed for the losses caused by the fraud of Hynie, Cannon, and those who supported them in the AG's 2008 settlement in Aiken County Case 2013-CP-02-1337 ("Aiken 1337").

All 17 Respondents supported Bauknight's actions until the decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013)[5]

All 17 Respondents supported the Powell Goldstein law firm, Terry, and David Bell, Esq., in their effort to help Cannon escape scrutiny of the $17 million theft, $5 million laundered through a Barnwell bank, and forgeries to cover up the theft. [R. 1721; 1734] All did so with knowledge that in 2007 Powell Goldstein had assisted Cannon and Dallas with efforts to move the 2000 Trust and "I Feel Good" charity out of S.C. [R. 1235; 21-70]

The sabotage of the efforts by Buchanan and Pope, with counsel Kendall Few and James Gilreath, to recover the $17 million Cannon had stolen began in 2009 and continued until 2016, with Bauknight claiming in 2013 that Forlando had done nothing wrong in his 4-year effort to reinstate Cannon as trustee of Respondent 2000 Trust.

In August 2009 Hynie's advisors proposed a massive devaluation of Brown's music empire to discredit "Bobadele." [R. 1350; 1002; 1729] It was completed by Bauknight and music manager Peter Afterman in September 2010. [R. 1003]

In May 2010 the private Wingate law firm, speaking for 17 Plaintiffs, including Brown's Estate/2000 Trust and the AG, sued Buchanan and Pope. [Exhibit B; R. 215] The complaint asserts that the claims are made on behalf of the James Brown Legacy Trust and its owner-beneficiaries,

[5] Terry Brown joined the AG's 2008 settlement on January 30, 2009.

to whom Buchanan and Appellant have never owed any duty. [R. 217-221] The complaint has never been amended, and seeks in 2022 the same relief it sought in 2010, to punish Buchanan and Petitioner for appealing the AG's 2008 settlement and working with lawyers Few and Gilreath to recover the $17 million Cannon had stolen and prevent Cannon and others from claiming an "exorbitant" $25 million on a sale to cover up the theft. Wingate claimed that the AG was its client. [*Id.*]

Since 2010 in this suit, and from 2011 in *Wilson v. Dallas,* all Respondents, with knowledge before this lawsuit was filed that the claims were untrue, have told multiple courts:

1. Brown's worldwide music empire was worth $4.7 million when he died;

2. Tommie Rae Hynie's elective share claim was a "slamdunk;"

3. Respondents Hynie and James Brown II hold more than 50% and control of the termination rights to Brown's 900+ copyrights under the Copyright Act;

4. But for the AG's 2008 settlement, there would be nothing left in the "I Feel Good" Charity by 2023 because of termination rights; and

5. Respondent Estate/2000 Trust has no corpus to speak of, but the termination rights are worth tens of millions of dollars. [R. 1734]

In September 2010, reserving rights under their motion to dismiss, Appellant and Buchanan answered, denying that they had any duty to many of the private Plaintiffs; asserting that Wingate's bringing this case on behalf of the State and more than a dozen private plaintiffs is illegal and unconstitutional; and asserting the counterclaims which are the subject of this appeal. [R. 362-394]

From 2010 until 2020, Wingate and all Respondents concealed the AG's public Special Counsel Litigation Retention Agreement with Wingate (the "Wingate Agreement") which makes all documents in Richland 4900 property of S.C. and subject to FOIA. Yet all Respondents entered into at least one of three FOIA lawsuits to prevent release of the Wingate Agreement, and

Bauknight and Wingate actively sought to enter three FOIA suits over 10 years to stop release of evidence of Hynie's bigamy, the conspiracy to create the $4.7 million valuation, and the tens of millions of dollars spent by Bauknight since 2010 to enforce the relief Hynie and Forlando Brown seek in the Richland 4900 complaint.

In 2010 Respondents named Cannon, Dallas, Brown's former music manager and the attorney, collectively seeking $25 million from the $100 million sale referenced in the Richland 4900 complaint, as witnesses for all named Respondents, including the AG who was prosecuting the criminal claim against Cannon. [R. 1454-55]

By January 2011 Respondent Legacy Trust was amended to allow Terry Brown to begin due diligence on the purchase of Brown's music empire.[6] That month Bauknight told the IRS Brown's worldwide music empire was worth $4.7 million when he died. [R. 1461-66; 471]

AG Wilson knew nothing about Richland 4900. AG Henry McMaster, who had just left office as AG, did not know he was a Plaintiff in Richland 4900 until after leaving office as AG, and would state under oath to Appellant six years later: "Ma'am, I did not sue you." [R. 863-864]

In October 2011 Cannon was allowed to enter an *Alford* plea to some of the theft which took place between 1999 and 2006, and Bauknight failed to file a victims' statement for the "I Feel Good" charity's students who had lost $15 million, seek any restitution, or seek any jail time. He later blamed the AG for his failure.

When family members objected, Bauknight and the AG blamed each other for the failure to seek restitution and action was taken to try to amend the plea. [R. 621]

[6] Terry immediately assigned his interest in Brown's Estate, 2000 Trust and the Legacy Trust to Forlando. [R. 658]

In January 2012 Wingate urged the AG not to release the public Wingate Agreement under FOIA to avoid "public embarrassment" and damage to Respondents, and Wingate and Bauknight fought its release in two FOIA suits until 2020. [*See* Motion to Expedite, dtd. 11/5/20, Exhibit A, on file in this case][7]

On February 27, 2013 the Supreme Court addressed both Richland 4900 and the FOIA issues in it first, later substituted, *Wilson v. Dallas* decision, which found the AG's 2008 settlement to have been a "dismemberment" of James Brown's estate plan and reversed the circuit court's order approving the settlement. *See Wilson.*

In March 2013 Respondent Legacy Trust began claiming it did not exist and asked for a stay of the James Brown FOIA cases and Richland 4900. By May 10 all Respondents had joined in the request, and a *de facto* stay in both the FOIA cases and Richland 4900 prevented discovery for three years, until March 2016. [R. 1585; 155-157; 659-660]

On April 24, 2013 AG Alan Wilson informed Wingate that the Office of the AG had never hired Wingate; would not pay any portion of the costs advanced to Legacy Trust owners by Bauknight; would not pay Wingate; and that if *Wilson v. Dallas* remained unchanged Wingate would have to disgorge all of the fees it had received.

The final *Wilson v. Dallas* decision was handed down on May 8, 2013. The Supreme Court noted in footnote 30:

> We note the AG and/or Bauknight have allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellants on behalf of the State, Bauknight, and others while also representing private plaintiffs in the suit. We are aware that a suit has been filed in Richland County seeking damages to Brown's estate allegedly arising during Appellants' service as

[7] This Court previously declined to take judicial notice of the documents released in 2020, but Appellant renews her request in light of the bearing these documents, which existed but were not released in discovery or pursuant to FOIA requests dating back to 2011, on the Panel's ultimate opinion herein.

> fiduciaries. Despite FOIA requests, the AG had refused to publicly release all of the documents pertaining to this reported arrangement. . . .

On May 29, 2013 Tommie Rae Hynie and 10 other Respondents, through counsel, announced to the circuit court in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement, the goal sought in the never-amended Richland 4900 complaint. [R. 1739; 885-6]

In an August 2013 deposition Bauknight said Forlando had done nothing wrong in his 4-year effort to reinstate thief Cannon as Brown's trustee; defended the AG's 2008 settlement; called Petitioner dishonest; and claimed she (and presumably Buchanan, since their actions were joint) had "raped" James Brown's estate. [R. 1740] By then Bauknight's money manager was working with Hynie's lawyers to help Hynie and her son siphon off U.S. royalties owned by Brown's "I Feel Good" charity on the claim that she was James Brown's spouse. [R. 1016-27]

Between 2013 and 2019 the circuit court issued more that 40 orders and directives in this case, Aiken 1337 and cases from which Buchanan and Petitioner have been excluded since June 2013 supporting Hynie's announced plan to reinstate the AG's 2008 settlement. [R. 1-213]

The 3-year *de facto* stay of Richland 4900 ended in March 2016 when Richland 4900 and Petitioner's two FOIA cases were assigned to Judge Early. [R. 149-51]

In 2015 the circuit court declared Hynie to be the spouse of James Brown and failed to inform the Supreme Court in its May 8, 2015 status report of the May 29, 2013 announced plan of Hynie and Louis Levenson, Esq, to reinstate the AG's 2008 settlement.[8] [*See Sojourner, supra*; Status Report of Jg. Early, R. 1543-45]

[8] In May 2010 Levenson had signed the 40% contingency-fee agreement with Wingate for 10 Respondents. None, including the Venisha's Estate and the 5 now-adult minors listed in the complaint, has taken any action to repudiate his authority to act for them even though most of them terminated him in 2016.

In 2016 the circuit court dismissed two 2011 James Brown FOIA cases, including the consolidated case seeking the Wingate Agreement. [R. 152-157; 163-164] The circuit court also allowed Wingate to participate in Aiken 1337 depositions of the AG and his staff.

In May 2016, Respondents filed a half-page motion for summary judgment and memorandum asserting that "*Wilson v. Dallas* conclusively establishes facts which preclude Defendant Pope's counterclaims as a matter of law." Respondents further asserted that "there is no legal or equitable need for discovery to the Court's ruling" on their summary judgment motion. [R. 1553]

In March 2017 two Wingate attorneys, on direction of acting Judge Jean Toal, were required to testify about the commencement and continuation for Richland 4900. [R. 186-187]

In March 2017, under court order, Wingate was deposed; released the Wingate agreement which was not signed by AG McMaster; but claimed the AG was his client. [R. 186-187]

Concealing the April 24, 2013 document, Wingate claimed he had had no change in clients except the change of AG since 2010, and that he had been hired by Governor McMaster as AG.

On June 23, 2017, based solely on *Wilson v. Dallas* and judicial notice taken by the circuit court of the 4-year effort of Forlando Brown to reinstate the thief David Cannon as trustee of Respondent 2000 Trust, the circuit court granted summary judgment as to the Richland 4900 counterclaims. [R. 188-203]

The circuit court declined to consider the evidence amassed before 2013, including 100 filings by Respondents, and granted summary judgment to the AG, who had been dismissed, Hynie, and the Legacy Trust it had found not to exist, as well as numerous Respondents to whom Buchanan and Petitioner never owed a duty. [R. 188-202]

In 2017 seven of the experts named jointly by Hynie and others in Richland 4900 and Bauknight in Aiken 1337 were deposed. The experts confirmed that termination rights apply only to U.S. royalties and that the termination rights of all James Brown heirs were worth only $8.8 million, not the tens of millions of dollars claimed by Hynie and Respondents. Expert Roger Miller placed the copyrights at 15 – 20 times revenues, as much as $100 million, while Cox relied on his outside investors for the $40 - $50 million for Brown's right of publicity. [R. 1627-38]

In 2019 Hynie told the Supreme Court that Brown's estate wanted her to be the spouse of James Brown, and that statement was correct. [Oral Argument, *Brown v. Sojourner*] That year, at the request of Bauknight, the circuit court disregarded the testimony of the Governor, the AG and experts, to find that Brown's music empire was worth less than $4.7 million when he died, that the AG's 2008 settlement was good for James Brown's charity, and that Buchanan and Petitioner had breached their fiduciary duty by appealing the AG's 2008 settlement in *Wilson v. Dallas. Pope v. Estate of Brown,* Op. No. 2022-UP-229 (May 25, 2022).

By 2022, solely as a result of the interference with Buchanan's and Petitioner's contract to be paid and the order approving their special administrator fee in Richland 4900, Respondent Estate/2000 Trust, while paying tens of millions of dollars to enforce the AG's 2008 settlement was withholding Petitioner's $47,972 SA fee from 2007 on the claim that Richland 4900 and Aiken 1337 were "companion cases." *See* Appellate Case Nos. 2020-000967 and 2022-001195.

Richland 4900 was and is a case to retaliate against Buchanan and Petitioner for protecting James Brown's estate plan, as the law and his documents required. Aiken 1337 was to determine whether a demand for $1.47 million, plus interest, was reasonable compensation for Appellant's part of the 5-year joint service of Buchanan and Pope to James Brown's estate, 2000 Trust and "I Feel Good" charity from 2007 until May 8, 2013.

In 2022 the Panel affirmed 25 orders and directives of the lower court issued between May 2013 and February 2019 which advanced the May 29, 2013 announced plan of Tommie Rae Hynie to disregard the Supreme Court's decision in *Wilson v. Dallas*; reinstate the AG's 2008 settlement; and allow Hynie to retake control of James Brown's assets with the AG.

In doing so, the Court overlooked the undisputed evidence that the Richland 4900 complaint was unconstitutional in 2010 and still unconstitutional 2016, and that the complaint should be dismissed. The Court also overlooked that summary judgment was both premature and unwarranted by the facts before the circuit court. Some of the facts and law overlooked by the Panel in affirming a pre-conclusion-of-discovery summary judgment in this 2010 case are highlighted below.

Argument

I. The Court Overlooked its own Case Law in Finding that the Order Denying the Motion to Dismiss was not yet Appealable and Erred in Declining to Dismiss Respondents' Complaint.

In 2010 Buchanan and Petitioner challenged on 10 grounds, including constitutional Due Process grounds that a private law firm was acting for the State/AG for the primary benefit of Hynie and other private individuals seeking to destroy a charity the AG had a duty to protect. These facts were apparent on the face of the complaint. [R. 216-228; 231-272]

Appellant has fully briefed the constitutional and other issues which justified dismissal in 2011. This Court declined to review the circuit court's refusal to dismiss the case, finding that the order was not immediately appealable. [R. 108]

After dismissing Appellant's and Buchanan's request that this Court review the lower court's order denying her motion to dismiss in 2011, the Panel's opinion finds again in 2022 that the order "is not yet appealable," despite this case being before the Court on appeal from the

undisputedly appealable order granting Respondents summary judgment on Appellant's counterclaims.

Appellant submits that this Court overlooked case law which clearly allows this Court to review the Order in this appeal. In *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 371, 628 S.E.2d 902, 918 (Ct. App. 2006), this Court dismissed an appeal from the denial of summary judgment while recognizing an appellate court "may entertain appeals from interlocutory orders not ordinarily appealable when they are companion to reviewable issues." Later, in *Skywaves I Corp. v. Branch Banking & Trust Co*., 814 S.E.2d 643 (S.C. App. 2018), this Court analyzed the caselaw establishing that orders denying summary judgment were not appealable, but that other interlocutory orders became appealable when an appellate court was presented with an immediately appealable order.

Appellant submits that the order granting summary judgment on all of Buchanan's and Appellant's counterclaims is undisputedly immediately appealable, and this Court should review the lower court's refusal to dismiss the complaint herein. Appellant incorporates the arguments presented by Buchanan and Pope supporting dismissal in 2011 and made by Appellant in 2022.

2. Summary Judgment was Premature where Discovery was and Remains Incomplete.

The Panel failed to address Appellant's argument that summary judgment to Respondents herein was premature, as Appellant had not had a full and fair opportunity to conduct discovery on her counterclaims. The record, however, including 100 filings by Respondents in 2012, confirm that no Respondent was entitled to summary judgment as to any counterclaims timely asserted by Buchanan and Respondent, namely:

1. Abuse of Process;
2. Civil Conspiracy;
3. Fraud Under S.C. Code Ann. Section 62-1-106;

4. Attorneys' Fees; and
5. Intentional Interference with Contract.

Appellant Pope noticed the depositions of several Plaintiffs beginning in Spring 2011, but Respondents refused to appear, instead moving for protective Orders on deposition notices and written discovery requests issued by Pope or Buchanan. [R. 416-419; 420-422; 423-426; 444-473; 474-476] The first Respondent's deposition was taken in December 2012, and another was deposed in January 2013. Beginning in March 2013, Respondents sought a stay of this action related to the alleged "judicially created conflict" of Wingate, which has been sole counsel of record for all Plaintiffs since the commencement of this case. [Ltr. of Gende, dtd. 3/27/13]

As a result of their counsel's asserted conflict, Respondents again refused to appear at depositions until the stay request was lifted on April 8, 2016. [R. 151] Hynie was deposed on June 16 and 17, 2016. [R. 1565] Lt. Gov. Henry McMaster, in his individual capacity, was deposed on August 18, 2016. [R. 916-8] Other Respondents have refused to show up for properly noticed depositions and others have yet to be scheduled and taken. [R. 746-748] Indeed, discovery in this action was begun anew by Order of the circuit court on April 8, 2016. [R. 151] Each deposition that was taken by counsel for Appellant Pope after the lifting of the stay was incredibly difficult to schedule and subject to motions for protective orders that were never heard by the circuit court, thereby preventing Pope from even taking those depositions in full. [R. 739-40] At the time of the summary judgment motion, the parties were not even correctly determined, and motions to correct the parties had been pending since 2012 [R.]

Appellant identified many potential witnesses[9], and in 2010 Respondents provided a witness list naming more than two dozen witnesses. [R. 1454-5] Because of the extraordinarily

[9] Most of these witnesses have now been deposed in Aiken 1337.

slow and difficult process of obtaining party depositions, no non-party depositions had been taken at the time the circuit court entered summary judgment. [R. 739-40] Written discovery is also not yet complete—including outstanding discovery asking the Respondents to fully identify the damages sought in this action.

Because Appellant has not had a full and fair opportunity to undertake discovery, particularly the depositions of certain Respondents and other key witnesses, and the parties were not even correctly joined, summary judgment was premature. "[S]ummary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 112 410 S.E.2d. 537, 543, (1991).

3. The Court Erred in Finding that Appellant's Counterclaims are Barred by Collateral Estoppel.

The Panel's opinion affirms the lower court's erroneous holding that collateral estoppel barred all of Pope's counterclaims as a result of *Wilson v. Dallas* and the Federal District Court's Order in *Brown v. Pope and Buchanan*. "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). Appellant submits that the Panel overlooked the complaint in this case in determining that Appellant was collaterally estopped from litigating any issue in her counterclaims herein.

Importantly, the complaint states on its face that it was brought for the benefit of Legacy Trust beneficiaries. [R. 218] Appellant and Buchanan never had any duty to the Legacy Trust or its beneficiaries, as both the Legacy Trust and its beneficiaries were adverse to the Estate and Trust to which Appellant and Buchanan *did* have duties.

i. Wilson v. Dallas

The Panel found that the Supreme Court's affirmance of Buchanan and Pope's removal as PR/Trustees in *Wilson v. Dallas*, 743 S.E.2d 746 (2013) collaterally estops Appellant Pope from pursuing her counterclaims. In so finding, the Panel overlooks that Appellant's counterclaims are based on the Plaintiffs' conduct—not Pope's conduct. The Supreme Court simply did not decide in *Wilson v. Dallas* whether or not Respondents in this action are liable for abuse of process, civil conspiracy, intentional interference with contract, violation of S.C. Code Ann. Section 62-1-106, or an award of attorneys' fees in this case pursuant to S.C. Code Section 62-7-1004. Indeed, the *Wilson* appeal was filed nearly a year before Richland 4900 was filed. The filing of this action took place months later. Appellant Pope could thus not have had a "full and fair opportunity to litigate" the issues put forth in her counterclaims during the prosecution of the *Wilson* appeal both because it had nothing to do with the present counterclaims and because the record was closed.

The Panel, like the lower court, relied on the single paragraph in the *Wilson* opinion which acknowledges certain complaints not ruled upon in the circuit court in that case. The quoted paragraph is dicta, and the Supreme Court never made any finding that Pope or Buchanan breached any duty to any Respondent.

Instead, the issues decided in *Wilson* were:

1. Will the Circuit Court's approval of the McMaster settlement which dismembered James Brown's estate plan be reversed? [The Supreme Court answered this in the affirmative.]

2. Will the Circuit Court's decision to replace Pope and Buchanan as PR/Trustees prior to a hearing on their removal be reversed?[10] [The Supreme Court declined to do so.]

[10] The lower Court's Order Approving Settlement Agreement specifically noted that the "court ha[d] not heard the [removal action] pending the settlement approval." (May 26, 2009 Order at 9)

The Panel found that *Wilson v. Dallas* conclusively established that Respondents had legitimate reasons for bringing this action. As noted above, the Supreme Court made no finding that Appellant and Buchanan had breached any duty to any Respondent. At most, the Supreme Court identified a few allegations to support[11] its view that Appellant and Buchanan's continued service would not be in the best interest of the Estate and Trust.

Finally, regardless of the *Wilson* opinion, Appellant's counterclaims are based on the conduct and intent of Respondents; it matters not whether they can identify some justification for a lawsuit, if it was not their reason for filling *this* lawsuit. "To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. In the latter, the issuance of the process may itself be justified; it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967); see also *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct.App. 2008)(cert. den'd June 24, 2009).

None of the issues in the instant case was "directly determined by" the Supreme Court in *Wilson*. Further, Buchanan and Pope were precluded from participation in James Brown issues after May 8, 2013. Pope is therefore not collaterally estopped from pursuing the counterclaims which are based on issues not "directly determined by" the *Wilson* Court.

[11] Levenson has confirmed under oath that the discord of 10 Respondents resulted solely from Buchanan's and Appellant's defense of James Brown's estate plan. [*See* Record on Appeal, p. 1870-74, Appellate Case No. 2019-000362, Levenson Cross-examination]

ii. The Forlando Federal Case

The Panel failed to address the clear error of the lower court in finding that the order of Honorable William O. Bertelsman in *Brown v. Pope and Buchanan*, 3:08-cv-00014-WOB (the "Forlando Injunction Case") collaterally estops Appellant or Buchanan from pursuing a counterclaim for civil conspiracy. [12]

The parties and causes of actions of the two cases are entirely different. In addition, Buchanan, paid in 2012 to settle all of his counterclaims against Respondents in Richland 4900, continued with Pope as a party to the Forlando Case until its conclusion.

As is clear from the complaint in the Forlando Injunction Case, neither the parties nor the issues would meet the requirement for estoppel.

Powell Goldstein, thief David Cannon and co-trustee Albert Dallas used then-21-year old Forlando Brown in what was a partially successful conspiracy to cover up the $17 million Cannon had stolen from funds devised to James Brown's charity, the $5 million Cannon had laundered

[12] Any comparison to the Forlando case is further complicated by the fact that Bauknight's service to the 2000 Trust was declared void by the Supreme Court [R. p. 1006]; that he served as agent for Terry Brown from 2010 in Richland 4900, and secretly became the agent for Forlando in January 2011 [R. p. 1008]; that he condoned Forlando's false statements to Judge Bertelsman in the Forlando Suit, including the false claim that Forlando had no assets, when he owned nearly 1/25 of the 2000 Trust, which had been enhanced from about 1/300 by the Bauknight/Afterman $79 million devaluation to $4.7 million [R. p. 1003]; that Bauknight withdrew the 2000 Trust's claims against Forlando for legal fees for his 4-year attempt to reinstate felon Cannon and his co-trustee Dallas as trustees of the 2000 Trust [R. p. 1008]; that in his August 2013 deposition Bauknight claimed that Appellant had "raped" the estate of James Brown' that Terry had not transferred his interest to Forlando; that Appellant was not truthful; and that Forlando had done nothing wrong in his 4-year effort to reinstate Cannon and Dallas as trustees of the 2000 Trust. [*Id.*] It is further complicated by the fact that Bauknight and Wingate continue to act for Forlando/Terry in Richland 4900 after Terry's transfer to Forlando; after John Donsbach, Esq., appeared for Terry/Forlando; and even after Donsbach was "terminated" by Terry/Forlando, a device Terry and Forlando, aligned with Cannon and Dallas, have used to change positions since 2008.

through a Barnwell Bank, and the three forgeries to cover it up, and to thwart the efforts of Few and Gilreath to recover the stolen funds from Cannon.

By 2011 Bauknight had given Cannon most of what he wanted by sabotaging the recovery of the $17 million theft and doing nothing about another $18 million in performance revenues for 2003 – 2006 for which Cannon never accounted. Instead, Cannon and Dallas were both named as witnesses in this Case.

At Cannon's *Alford* plea in 2011 Bauknight did not even submit a victims' statement for the needy students, seek restitution, or seek any prison time.

When Cannon escaped liability, Powell Goldstein's work was done. Forlando "fired" Powell Goldstein; asked to drop his 4-year injunction suit; and told Judge Bertelsman, incorrectly, that he had no assets from James Brown's estate and no expectation of assets.

Bauknight did not correct the claim or tell Judge Bertelsman that the $4.7 million valuation had increased Forlando's trust tenfold. Instead, Bauknight claimed under oath that Forlando had done nothing wrong, then hired Wingate to assure that Forlando did not pay any costs for his 4-years effort to cover up Cannon's theft.

Representing the 2000 Trust, Wingate failed to tell Judge Bertelsman that Forlando was an almost 5% owner of the Legacy Trust, and about 9% stakeholder in Richland 4900.

Having been told that the 2000 Trust did not seek costs from Forlando's 4-year effort to cover up Cannon's theft, and with Wingate and others supporting Forlando's claims that he had no assets, the Federal Court declined to "squeeze blood out of a stone."

The Panel overlooked that the circuit court merely noted that the causes of action in the two cases were the same, but made no effort to identify the issues and failed to note that the facts were entirely different. The circuit court failed to address Wingate and Bauknight's support for

Forlando's misrepresentation to the court about his assets. The Federal Court's ruling should not directly determine any issue in Richland 4900.

3. Appellant's Counterclaim for Fraud under §62-1-106 was Timely Made, Preserved and Supported Against all Respondents.

The Panel erroneously found that Appellant had, for the first time on appeal, argued that Terry Brown had conspired with others to devalue James Brown's assets, thereby committing a fraud under S.C. Code Ann. §62-1-106. The Panel overlooked that this appeal was far from the first time Appellant had raised that issue. In her March 5, 2013 Motion for Summary Judgment as to Terry Brown, Appellant set forth succinct but clear facts regarding Terry's fraud. [R. 634-640]

The Panel further found that the allegation that the AG and others had collectively defrauded the court was untimely, based on the Panel's view that any such fraud was discovered on August 10, 2008 when the AG's settlement agreement was signed. Appellant would show that there is nothing in the record to suggest that Buchanan and Appellant were aware of the terms of settlement on August 10, 2008, and the fraud was continuing at the filing of the counterclaim and continues today.

That is because the issue of this counterclaim being time-barred has never been raised by any party or court prior to the Panel's opinion. In fact, Buchanan and Appellant did not receive the settlement agreement until after September 30, 2008, meaning their September 30, 2010 counterclaim was timely even if their receipt of the AG's agreement was the date on which the claim accrued.[13]

[13] *See* the Record on Appeal in *Wilson v.* Dallas, Appellate Case No. 2010-142286, pp. 505-533, which is the *January 16, 2009* Motion for Approval of the Settlement. Appellant would show, however, that fraud by various respondents was continuing at the time the counterclaims were filed and continues. Appellant would show that *her* claim for fraud damages under Section 62-106 accrued at the time the complaint in this action was filed, as Respondents collectively attempted to use their incorrect heirs determination and valuation against her.

§62-1-106 of the South Carolina Probate Code directly applies to this action and states in relevant part:

> Whenever fraud has been perpetrated in connection with any proceeding or an any statement filed under this Code or if fraud is used to circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not, but only to the extent of the benefit received. [Emphasis supplied]

Plaintiffs knowingly engaged in the false heirs determination [R. 1001]; false claims about termination rights [*Id.*]; false claims about Buchanan and Pope; and other known false representations to the Courts, beginning before the commencement of this action, and continuing until the appeal was filed [*Id.*, R. 998; 1004; 1012]. Buchanan and Appellant were clearly damaged thereby. [*Id.*, R. 1005; 1006; 1013]

In addition, the fraud on the Supreme Court, following the claimed zero value of Brown's Right of Publicity and Tangible Person Property to the IRS and the securing of an ill-gotten "refund" proximately caused injury to Defendant as required by the Code. [*Id.*, R. 1005, n. 5]

While various Respondents committed fraud on various courts, the filing of this action and the damage done to Appellant and Buchanan gave rise to *their* claim for fraud damages. Appellant does not and has never asserted in this action a claim for fraud on behalf of the Estate, as the Panel seems to suggest in its Opinion. Facts supporting the fraud of Respondents are set out below.

No Duty to Hynie and Undisputed Evidence of Support for Hynie's Fraud

The undisputed evidence before the lower court and the Panel was that Hynie is a bigamist who defrauded multiple courts from 2007 until 2021. Also before the Court was the fact that the circuit court and all Respondents had not only endorsed Hynie's fraud since the May 29, 2013 announced plan to reinstate the AG's 2008 settlement, but supported it.

Hynie's fraud continued until *Sojourner, supra*, was decided in 2020. Despite furthering that fraud in this case, in which no amendment has ever been sought to the complaint, several other Respondents have during the pendency of this case represented to this and other courts that Hynie was not the surviving spouse, but a bigamist. *See* Briefs of Appellant Terry Brown, dtd. 4/16/16; Deanna, Yamma and Venisha Brown, dtd. 5/11/16; and Daryl Brown, dtd. 9/8/16 in *In re: Estate of James Brown*, Appellate Case No. 2015-002417, filed in this Court]

No Duty to the James Brown Legacy Trust and Fraud of the Legacy Trust

The Panel overlooked the undisputed fraud of the Legacy Trust which has existed in this proceeding since the complaint was filed, including its 2016 disappearance after claiming for six years that it was a charity. The Panel also overlooked that Buchanan and Pope never owed a duty to the Legacy Trust or any of its owner-beneficiaries, and that it is now controlled, as is Richland 4900, by Hynie and Forlando Brown.

Support for Terry Brown's $100 Million Sale to Cover Up Cannon's $17 Million Theft

It has been undisputed since Richland 4900 was filed that Forlando Brown was a part owner of TJBL in 2007; that Terry Brown became associated with TJBL in 2008; and that both were part of the $100 million proposed sales referenced in the Richland 4900 complaint, the purpose of which was to cover up the $17 million Cannon had stolen, the "$5 Million Check to Nobody" he had laundered through a Barnwell bank; and the three forgeries, as well as the Schedule B to the 2000 Trust Cannon and Dallas had fabricated as part of the coverup plan.

It was undisputed that Powell Goldstein advised Cannon, Dallas, Terry and Forlando; pursued 3:08-cv-00014 to cover up the theft; and secured the ROFR for Terry.

The panel overlooked that the fraud related to 3-08-cv-00014-WOB by Cannon and Dallas, and the support of Terry Brown and all Respondents for that fraud and $15 million loss to James Brown's "I Feel Good" charity has impacted Richland 4900 since it was filed.

The combined support for Hynie's fraud and the fraud of Forlando and Terry Brown in support of Cannon and Dallas, all adopted by all Richland 4900 Plaintiffs, is clear evidence that summary judgment as to the counterclaims was not warranted

Support for the False Felony Claim Against Buchanan and Petitioner in Richland 4900

The Panel overlooked that the undisputed facts show that Hynie orchestrated the conspiracy to devalue Brown's music empire by $79 million for one purposed: to discredit "Bobadele," so they would abandon the appeal of the AG's 2008 settlement. Evidence of this civil conspiracy was clear.

Although the $4.7 million took $1 million a year and nearly 1/3 of the assets from the "I Feel Good," charity, its principal purpose was to damage Buchanan and Pope with the false felony claim that they had overstated the value of James Brown's music empire by $79 million to claim about $4.6 million for six years' service to Brown's claimed $5 million estate.

The panel overlooked that the coverup of the tens of thousands of dollars of unnecessary taxes the $4.7 million valuation caused each year, as well as the $1 million a year of income it took form scholarships, became more of the continuing fraud of the Legacy Trust and its owners in violation of Section 62-1-106.

No Duty of Buchanan and Pope to Any Respondents After Will and Trust Contests Filed

The Panel overlooked that both *Wilson v. Dallas* and Brown's documents are clear that the duty of Buchanan and Appellant to the Respondents who were named in the Will and 2000 Trust ended when they challenged the estate plan.

Buchanan and Petitioner did Not Act for Estate in Their Defense

The Panel misapprehended the actions of Appellant and Buchanan in this case, neither of whom attempted to act for the Estate/Trust, but to protect themselves from the false felony claim and other attempts to retaliate against them for protecting James Brown's estate plan.

The Panel overlooked that not a penny of the damage sought in this case for 12 years was sought for Brown's Estate/2000 Trust which Buchanan and Pope served, while tens of millions of dollars were spent to advance Hynie's actions and retaliate against them.

The $4.7 Million Valuation Shifts Nearly 1/3 of the "I Feel Good" Charity to Family

The Panel overlooked that all Respondents have violated Section 62-1-106 in making false representation that the $4.7 million value "proved" not only that Buchanan and Petitioner were greedy felons, but that the AG's 2008 settlement saved taxes. In fact, it dramatically increased taxes – by tens of thousands of dollars each year.

The Panel overlooked that, in addition, under the "fractional share" clause of Brown's 2000 Trust it was immediately and patently clear that the $4.7 million valuation shifted $1 million of income a year and nearly 1/3 of the assets of the "I Feel Good" Trust out of the charity and over to the Trust for Forlando Brown and 5 Respondents, increasing their trusts tenfold.

The Wingate Contract and all Richland 4900 Documents are public State Property

The Wingate Contract is clear that it is a public document subject to release both by Wingate and the AG, and that every document used in Richland 4900 is property of the State of S.C. and subject to release under FOIA. It states in part:

> F. Any material, data, files discs, or documents created, produced or gathered by Special Counsel [Wingate] or in Special Counsel's possession in furtherance of this litigation [Richland 4900], or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-40-10 *et*

seq., and to maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document.

FOIA Disruption by Wingate Under Color of State Law

The Panel overlooked that the decision rewards Wingate, acting on behalf of the State/AG, and Respondents for a decade of FOIA disruption to conceal the fraud and bigamy of Hynie; the fact that Richland 4900 was never authorized by then-AG McMaster; and the claimed $4.7 million valuation and related documents which purportedly support the false felony claim lodged against Buchanan and Petitioner since 2010.[14]

The AG's 2020 FOIA Release Supports the Counterclaims

The Panel overlooked that on May 8, 2013 the Supreme Court's *Wilson v. Dallas* decision charged the circuit court with inquiry into the costs of that action, and on May 29, 2013 Sr. Asst. AG Jones told the circuit court the Attorney General would monitor the James Brown cases to protect Brown's charity.

In 2020, the AG released under FOIA some documents he had been ordered by the Honorable Eugene Griffith to produce under FOIA 5 years earlier, and which support dismissal of

[14] Emails, a list of which was produced by Solicitor General Robert Cook at his 2017 deposition, are just a few of the many documents which have been concealed although all are state-owned public records subject to release under FOIA by Wingate, and in Richland 4900 discovery.

Respondents' complaint and denial of summary judgment to Respondents as to Appellants' counterclaims. They include:

> a. The Attorney General's April 24, 2013 letter confirming that the Office of the AG never hired Wingate in Richland 4900; and
>
> b. Bauknight 2008 compensation sheet [Exhibit B] showing how much he would pay himself and a dozen Legacy Trust attorneys he hired between 2009 and 2013 to help the Attorney General and Hynie defend the AG's 2008 settlement and retain control over James Brown's music empire, through the Legacy Trust.

4. **Summary Judgment Should Not have Been Entered when the Court Found a Broad Stay Precluded Proceeding with Discovery and other Matters.**

In 2013 Respondents sought and obtained a 3-year *de facto* stay of Richland 4900 and two FOIA cases.

In 2016 Wingate, who concealed the AG's April 24, 2013 letter, was allowed to participate in Aiken 1337 depositions of the AG and staff to protect his "client" the AG.

In 2017 Respondents tried twice to consolidate discovery of Richland 4900 with discovery in Aiken 1337. In that case Respondents' own experts, the Governor, the AG and the AG's staff supported the Richland 4900 counterclaims and dismissal of Richland 4900. For example, now-Governor McMaster stated emphatically: "Ma'am, I did not sue you." [R. 863-864]

Wingate, when ordered to testify by acting Judge Toal testified that the AG had hired him, but the concealed AG's April 24, 2013 letter said he was never hired.

In December 2017 Respondents bitterly opposed the lifting of the automatic stay related to the dropping of the AG as a party, asking the circuit court to exclude the depositions they had tried to consolidate.

The circuit court declined to lift the stay. The circuit court found that the appeal dropping the AG as a party was broad and operated to stay all matters in this case.

Nonetheless, a year later the lower court proceeded to deny reconsideration of its order granting summary judgment to Hynie, the Legacy Trust, the AG and other Respondents which is the subject of this appeal.

It was prejudicial for the lower court to proceed with a summary judgment where the parties were not yet properly joined and the depositions it had allowed Wingate to take and of Richland 4900 experts made clear that the Richland 4900 complaint should have been dismissed, that no Richland 4900 Plaintiffs had a meritorious defense to the counterclaims, and that summary judgment was not warranted as to any of the counterclaims.

The Panel overlooked that Appellant had been deprived since the May 29, 2013 announced plan of Hynie of the ability to proceed with discovery, and no fewer than half of Respondents had repudiated her claim; the Governor repudiated the claims made on his behalf; and all Respondents had engaged in a pattern of both FOIA and discovery abuse for most of the existence of the case.

5. The Panel Erred in finding that Appellant's Civil Conspiracy Claim is Barred by *Wilson v. Dallas* and Overlooked Abundant Evidence in the Record to Support it.

Buchanan and Appellant met all of the elements of civil conspiracy necessary to recover.

In. *Lyon v. Sinclair Refining Co.,* 189 S.C. 136, 200 S.E. 78 (1938), and the "essential consideration" that the "primary purpose or object of the combination is to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc*. 289 S.C. 6, 13, 344 S.E. 2d 378, 383 (Ct. App. 1986). That was clearly the case with the $79 million devaluation and other acts. [R. 1350]

The Panel erroneously notes that the *Wilson* decision "recognized the evidence of maladministration, self-dealing, and extreme discord between the parties." The *Wilson* Court did not recognize any *evidence* of maladministration or self-dealing; instead, the Supreme Court notes the *allegations* made which gave rise to its decision that reinstating Buchanan and Appellant would not be in the best interest of the Estate/Trust.

As set out above, especially in the instances of fraud perpetrated by Respondents, the Respondents – long at war before this case was filed and after, but momentarily united in their zeal to preserve the AG's 2008 settlement which benefitted each of them – combined for the sole purpose of filing this lawsuit to force Buchanan and Appellant to abandon the *Wilson* appeal or face what has turned out to be more than a decade of expensive litigation involving career-threatening allegations made purportedly on behalf of the State of South Carolina. Summary judgment was inappropriate and should be reversed.

6. The Panel Erred in Finding that Respondents' filing of this Case is not an Abuse of Process.

As to each Respondent, all of the elements of Abuse of Process have been met, namely (1) an ulterior purpose and (2) willful acts in the use of the process not proper to the conduct of the proceeding. *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551, 555 -556 (2010).

The Panel appears to have overlooked the Supreme Court's decision in *Pallares v. Seinar,* 407 S.C. 359, 756 S.E.2d 128 (2014), which involved an abuse of process claim based on the filing of a civil action. ("Summary judgment was inappropriate on [plaintiff]'s claim for abuse of process because there are genuine issues of material fact regarding this claim". . . "even if [defendants] had cause to make some complaint against [plaintiff], the fact that those were properly instated does not foreclose an action for abuse of process if [defendants] have, in fact, committed acts outside the normal process that are improper").

Because Respondents successfully thwarted discovery for years, depositions of witnesses including James B. Richardson, Jr., Esquire, were not taken. Appellant has put forth evidence that such discovery, if completed, would lend additional evidence that Respondents threatened this suit for purposes other than the relief sought. [R. 699-707]

The ulterior purpose alleged was not to replace Buchanan and Pope, who had been replaced, but to use the mighty power of the State/Attorney General, through Bauknight and the McMaster Legacy Trust, to so damage their reputations and careers with false, fabricated accusations that they would be forced to abandon their duty to appeal a settlement which dismembered The James Brown "I Feel Good" Charity.

7. The Panel Misapprehended Appellant's Cause of Action for Tortious Interference with a Contract.

Appellant, like Buchanan, demonstrated that each of the elements of tortious interference with contractual relations had been met, namely: 1. The existence of a contract; 2. Knowledge of the contract; 3. Intentional procurement of its breach; 4. The absence of justification; and 5. Resulting damages. *Kindard v. Crosby*, 315 S.C. 237, 240, 433 S.E. 2d 835, 837 (1993) [*Id*, pp. 17, 18]

The Panel noted "Pope's appointment by court order" as the contract at issue, which was a misapprehension of Appellant's argument. Buchanan and Appellant did not allege that their *appointment* was contractual, but that their compensation, set by the circuit court's January 8, 2008 order was contractual. They reached a contract for payment and had it approved. [R. 3-6]

Hynie's lawyer praised them for asking for court approval, and all Respondents except Bauknight were parties to the proceeding and received the payment order in January 2008. None sought reconsideration. None appealed.

The contract existed. The Plaintiffs had knowledge of the contract. There was no justification for filing a 2010 Richland County complaint to address a January 2008 Aiken order they did not appeal. The damage is undisputed. While Buchanan was forced to accept far less than what he was owed, his collection was under the contract. Thirteen years after May 26, 2009, Appellant has not been paid any PR/Trustee commission.

8. The Panel Erred in Overlooking the Facts showing the Actions of Respondents, the AG and the Circuit Court after May 29, 2013 Deprived Buchanan and Pope of their Due Process Rights.

Since May 29, 2013, the circuit court, Respondents and AG have all known of the intention of Hynie and other Richland 4900 Plaintiffs to ignore *Wilson v. Dallas* and reinstate the 2008 settlement.

By September 2013, Bauknight had called Pope a liar and defended the 2008 settlement while Afterman assisted Tommie Rae in siphoning off copyrights belonging to the 2000 Trust. [R. 1016-27] In 2015 when asked, the circuit court declined to advise the Supreme Court of the announced intention to reinstate the 2008 settlement. [R. 1543-5]

The circuit court issued numerous orders which advanced the May 29, 2013 announced intention to dismember James Brown's estate plan. [Notice of Appeal, all Exhs.] As is shown by the undisputed record in this case and Aiken 1337 (Appellate Case No. 2019-000362), those orders became increasingly supportive of Hynie and retaliatory against anyone who did not support her claim to be the spouse of James Brown

The circuit court's January 2019 order finding that Buchanan and Petitioner had breached their fiduciary duty to Respondent Estate/2000 Trust by conducting the *Wilson v. Dallas* appeal, when added to the unauthorized State/AG action in this case, have denied Buchanan and Petitioner Due Process and a level playing field for a dozen years.

Conclusion

For the foregoing reasons, as well as all reasons set forth in Appellant's briefs and the record herein, Appellant respectfully submits that this Court should rehear the case *en banc*, or alternatively that the Panel should grant rehearing; reverse the orders on appeal; and remand the

case with instructions to dismiss the complaint, proceed with discovery and allow Appellant's counterclaims to proceed to trial.

Respectfully submitted,

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Counsel for Appellant Adele J. Pope

September 8, 2022

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Plaintiffs,

Of whom Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown,

individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown are Respondents,

v.

Adele J. Pope and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is the Appellant.

Appellate Case No. 2018-002229

Appeal From Richland County
Doyet A. Early, III, Circuit Court Judge
L. Casey Manning, Jr., Circuit Court Judge

Unpublished Opinion No. 2022-UP-346
Heard February 8, 2022 – Filed August 24, 2022

AFFIRMED IN PART, DISMISSED IN PART

Charles E. Carpenter, Jr., of Carpenter Appeals & Trial Support, LLC, Adam Tremaine Silvernail, of Law Ofc. of Adam T. Silvernail, Daryl L. Williams, of Gertz & Moore, LLP, all of Columbia; and William Jeffrey Smith, of Newberry, for Appellant.

Kenneth B. Wingate, Mark V. Gende, and Aaron Jameson Hayes all of Sweeny Wingate & Barrow, PA, all of Columbia; and Everett Augustus Kendall, II, of Murphy & Grantland, PA, of Columbia, for Respondents.

PER CURIAM: Adele J. Pope's current appeal of twenty-five circuit court orders arises from the voluminous litigation following the death of the famous singer and entertainer, James Brown. Pope has again appealed the circuit court's order denying her motion to dismiss Respondents' 2010 complaint against her and Robert Buchanan, Jr. Pope also appeals the circuit court's orders relating to Respondents' motion for summary judgment on her counterclaims, as well as several other orders relating to her involvement as a former special administrator, personal representative (PR), and trustee of Brown's Estate. We dismiss Pope's second attempt to appeal the denial of her motion to dismiss. As to the remaining orders, we affirm.

Facts and Procedural History

Upon his death on December 25, 2006, Brown left behind an estate estimated to be worth between $5 million and $100 million. After some of Brown's relatives became suspicious of prior PRs and trustees, Pope and Buchanan were appointed as special administrators. While overseeing the PRs/trustees' work in their capacities as special administrators, Pope and Buchanan uncovered serious financial misconduct, which ultimately led to the court's 2007 appointment of Pope and Buchanan as replacement PR/trustees.

Pope and Buchanan served in these capacities until May 26, 2009, when the circuit court approved a settlement negotiated by then-Attorney General Henry McMaster. The settlement plan removed Pope and Buchanan and replaced them with Russell Bauknight. Pope and Buchanan appealed, arguing the settlement's terms were contrary to Brown's desire that the majority of his estate go to charity. In *Wilson v. Dallas*, 403 S.C. 411, 448, 743 S.E.2d 746, 766 (2013), our supreme court set aside the settlement but affirmed Pope and Buchanan's removal, finding an irreconcilable

conflict existed between Pope and Buchanan and certain parties who expressed continuing opposition to their actions.

Unfortunately, *Wilson* addressed only a fraction of the litigation that has ensued since Mr. Brown's death. On May 19, 2010, Respondents filed this action for breach of fiduciary duty, breach of trust, and negligence arising from Pope and Buchanan's alleged failure to properly administer the Brown Estate. Respondents claim this maladministration caused significant financial damage to the Estate. Initially, Pope and Buchanan moved to dismiss and change venue; however, they subsequently answered and asserted multiple counterclaims.

On November 9, 2010, the circuit court denied Pope and Buchanan's motions to dismiss and change venue. On November 10, 2010, Pope and Buchanan filed an affidavit of default asserting Respondents failed to timely respond to their counterclaims. Respondents then filed an answer addressing the counterclaims, along with a motion to set aside the entry of default.[1]

In 2011, Pope appealed the circuit court's orders denying her motions to dismiss, to change venue, and to alter or amend. We dismissed that appeal, finding "the orders challenged on appeal are not immediately appealable."

On May 19, 2011, Pope filed a motion seeking, among other things, to disqualify the law firm of Sweeny, Wingate & Barrow from representing the Attorney General and enjoining Russell Bauknight, who was then trustee and PR of the Brown Estate, from purporting to speak on behalf of the Attorney General. Following a hearing, the circuit court denied Pope's motion.

The circuit court granted Respondents' motion to set aside the entry of default, and Respondents subsequently moved for summary judgment on Pope's counterclaims. Following a hearing, the Honorable Doyet A. Early, III, granted summary judgment.

In 2017, the circuit court granted the Attorney General's motion to withdraw as a party under Rule 21, SCRCP. Pope appealed, and this court affirmed in part and dismissed in part in an unpublished opinion, *Bauknight as Trustee of James Brown 2000 Irrevocable Tr. v. Pope*, Op. No. 2020-UP-216 (S.C. Ct. App. filed Sept. 16,

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[1] In 2012, Buchanan settled all claims with Respondents; thus, he is not a party to this appeal.

2020). We also found the circuit court correctly recognized the Attorney General's interest in protecting the charitable beneficiaries. *Id.*

Law and Analysis

I. Motion to Dismiss

Pope argues the circuit court erred in failing to dismiss Respondents' complaint under Rules 12(b)(6), (7), and (8), SCRCP. As noted above, Pope previously appealed this order in 2011. We find the order denying Pope's motion to dismiss is still not appealable.

"Denials of Rule 12(b)(6) motions are not immediately appealable." *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 234, 847 S.E.2d 268, 274 (Ct. App. 2020); *see also Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) ("Currently, this Court does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRCP motion."). "Although there are no cases addressing appealability in the context of a Rule 12(b)(7) motion, the appellate courts generally do not allow immediate appellate review of the denial of Rule 12(b) motions." Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 149 (3d ed. 2016). Similar to the denial of a motion for summary judgment, "the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings." *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994).

Here, the circuit court's order denying Pope's motion to dismiss does not establish the law of the case, affect a substantial right, or prevent Pope from raising her defenses at an appropriate stage of the litigation.

II. Motion for Summary Judgment

Pope argues the circuit court erred in granting Respondents summary judgment on her counterclaims. We disagree—summary judgment was appropriate.

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the [circuit] court pursuant to Rule 56(c), SCRCP." *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 189, 838 S.E.2d 698, 708 (Ct. App. 2019) (alteration in original) (quoting *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). Under Rule 56(c),

> The judgment sought shall be rendered forthwith 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 a judgment as a matter of law.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

The grounds for Respondents' motion for summary judgment are based on their contention that *Wilson* conclusively established facts precluding Pope's counterclaims as a matter of law. In *Wilson*, the supreme court affirmed the circuit court's "for cause" removal of Buchanan and Pope from their fiduciary roles and made other findings which establish a meritorious basis for Respondents' claims. 403 S.C. at 448, 743 S.E.2d at 766. Specifically, the court found "the circuit court did not violate the statutory provisions regarding the removal of personal representatives. *Notice and a hearing were provided, and the court had cause to remove [Pope] as it was in the best interests of the estate*." *Id.* (emphasis added). The court cited the following specific examples of conduct necessitating Pope's removal:

> We are also aware that Appellants have sought $5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, [Pope] sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. [Pope] also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing

> Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.

Id. at 448–49, 743 S.E.2d at 766–67. Certain issues regarding Pope's removal for cause were necessarily determined by the supreme court in *Wilson*. Thus, the elements for collateral estoppel have been met as to the majority of Pope's counterclaims because her removal for cause was (1) actually litigated; (2) directly determined by the court; and (3) necessary to support the prior judgment. Notably, the supreme court expressly determined Pope had notice and a hearing on the question of her removal for cause. Therefore, Pope was afforded a full and fair opportunity to litigate the question of her removal. We briefly address the merits of Pope's counterclaims below.

A. Civil Conspiracy Counterclaim

Initially, we note Respondents' prosecution of this suit for breach of fiduciary duty is neither an "unlawful act [n]or a lawful act by unlawful means." *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). While the *Wilson* court questioned whether Respondents' claims there were "asserted in good faith since the primary claim asserted by the parties as a basis for discarding Brown's testamentary documents, undue influence, was of dubious validity," 403 S.C. at 442, 743 S.E.2d at 763, the court recognized the evidence of maladministration, self-dealing, and extreme discord between the parties. *Id.* at 448-49, 743 S.E.2d at 766-67. To the extent the supreme court's findings in *Wilson* do not bar Pope's current claims, we find Pope has not put forth the evidence necessary to support a claim of civil conspiracy.

B. Abuse of Process Counterclaim

Regarding Pope's counterclaim for abuse of process, we are unable to find any evidence in the record demonstrating Respondents had an ulterior purpose in filing their complaint. *See Hainer v. Am. Med. Int'l. Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) ("Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required."); *see also First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 74–75, 451 S.E.2d 907, 914 (Ct. App. 1994) ("An ulterior purpose exists if the process is used to gain an objective

not legitimate in the use of the process. However, there is no liability when the process has been carried to its authorized conclusion, even though with bad intentions."). At oral argument, the panel repeatedly asked Pope what evidence she could produce to support this cause of action, such as an affidavit of either of the attorneys to whom Pope alleges an extortive threat of litigation was made. Other than Pope's own conclusory allegations, no such evidence was forthcoming. Thus, we find the circuit court did not err in granting summary judgment on Pope's abuse of process counterclaim.

C. Fraud Counterclaim

In referencing *Forlando J. Brown v. Adele J. Pope*, Case No.: 3:08cv00014-WOB, 2014 WL 12622445 (D.S.C. March 28, 2014), the circuit court correctly noted the federal court's order was persuasive because, although considering the claims of different plaintiffs, it addressed "the exact same counterclaims that Mrs. Pope has made in the instant case." With respect to Pope's statutory violation claim, the district court found that although Pope made claims about certain statements of the opposing party, she failed to "explain how any such statements were fraudulent or constituted circumvention of the Probate Code." *Id.* at *7. The same is true here.

As to the allegations in Pope's brief regarding the former Attorney General, Pope argues for the first time on appeal that the Attorney General joined with Forlando Brown and Terry Brown to defraud the court regarding the valuation of the Brown Estate. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Thus, this argument is not properly before us.

Additionally, Pope claims the Attorney General failed to address certain matters regarding the correct heirs to the Brown Estate in circuit court case 2008-CP-02-0872. Pope brought this claim on September 10, 2010, more than two years after the Attorney General entered the 2008 agreement. Therefore, such a claim fails as a matter of law due to the two-year statute of limitations. *See* S.C. Code Ann. § 62-1-106 (2022) ("Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud."). Moreover, Pope lacks standing to raise claims on behalf of the Estate or the Trust due to her removal as PR and trustee. *See Wilson*, 403 S.C. at 448, 743 S.E.2d at 766 (holding the circuit court had cause to remove Buchanan and Pope and replace them with a professional fiduciary).

D. Tortious Interference with Contractual Relations Counterclaim

Although we disagree with some of the circuit court's legal analysis addressing Pope's counterclaim for tortious interference with contractual relations, we agree that Pope has failed to present any evidence demonstrating Respondents intentionally procured the breach of a contract (*i.e.*, Pope's appointment by court order) without justification. *See e.g.*, *Forlando Brown* at *7 ("Pope and Buchanan were appointed by Judge Early to act as PRs and Trustees of James Brown's Estate. Even assuming that this arrangement constitute[s] a 'contract,' defendants have adduced no evidence that plaintiff intentionally procured the 'breach' of that agreement.").

Accordingly, we find Pope's counterclaims fail as a matter of law and the circuit court properly granted Respondents' motion for summary judgment. Furthermore, to the extent Pope seeks to assert claims on behalf of the Estate, she lacks standing to do so due to her removal as PR and trustee.

III. Due Process

Pope next alleges the Attorney General and the circuit court violated her due process rights; however, she presented a only brief argument on this point and failed to cite any authority to support it. *See* Rule 208(b)(1)(E), SCACR (requiring "discussion and citations of authority" for each issue in an appellant's brief); *see also State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

Even if Pope had not abandoned this issue, we would find no due process violation. Although Pope argues she has been denied a right to "a level playing field," she has not identified *how* her rights to due process have purportedly been violated. *See e.g., Moore v. Moore*, 376 S.C. 467, 472, 657 S.E.2d 743, 746 (2008) ("In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law."); *id.* at 473, 657 S.E.2d at 746 ("Procedural '[d]ue process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce

evidence; and (4) the right to confront and cross-examine witnesses.'" (alteration in original) (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)); *id.* (explaining the procedural due process requirements in a particular case "depend on the importance of the interest involved and the circumstances under which the deprivation may occur"). And other than the attorney's fees she contends she is owed, Pope has failed to identify any "cognizable property interest rooted in state law."[2] *Id.* at 472, 657 S.E.2d at 746 (quoting *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006), *overruled on other grounds by Joseph v. S.C. Dep't of Lab., Licensing and Regul.*, 417 S.C. 436, 790 S.E.2d 763 (2016)).

Conclusion

For the foregoing reasons, we again dismiss Pope's appeal of the orders denying her motion to dismiss and affirm as to the remaining orders.

AFFIRMED IN PART, DISMISSED IN PART.

THOMAS, MCDONALD, and HEWITT, JJ., concur.

[2] Issues relating to Pope's claim for fees and commission were addressed in *Pope v. Estate of James Brown and the James Brown 2000 Irrevocable Tr.*, Op. No. 2022-UP-229 (S.C. Ct. App. filed May 25, 2022).

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT

Civil Action No.

COMPLAINT
(Jury Trial Demanded)

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,
Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

COME NOW THE PLAINTIFFS who, for their claim for relief against the Defendants, allege and will show as follows:

PARTIES

1. Russell L. Bauknight is the court-appointed Trustee of the James Brown 2000 Irrevocable Trust and the Trustee of the James Brown Legacy Trust. Bauknight is also the court-appointed Successor Personal Representative of the Estate of James Brown, the celebrated entertainer, who died on December 25, 2006, a resident of Aiken County, South Carolina. Bauknight serves in each of these capacities pursuant to a Settlement Agreement approved by Order of the Aiken County Circuit Court dated May 26, 2009.

2. Bauknight brings this action as Trustee of the James Brown 2000 Irrevocable Trust (hereinafter "the Trust") and as Trustee of the James Brown Legacy Trust, and as Personal Representative of the Estate of James Brown (hereinafter "the Estate"), and on behalf of the beneficiaries of the Estate and the Trusts. Bauknight is hereinafter referred to as "Trustee Plaintiff."

3. The following are parties to this action by virtue of their being beneficiaries of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust and/or the James Brown Legacy Trust. These Plaintiffs will hereinafter be referred to as the "Beneficiary Plaintiffs" and include:

a. Henry Dargan McMaster in his capacity as the Attorney General for the State of South Carolina;

b. Tommie Rae Brown, individually and on behalf of her minor child, James Brown II;

c. Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown;

d. Lindsey Delores Brown;

e. Venisha Brown;

f. Deanna J. Brown Thomas;

g. Jason Brown-Lewis;

h. Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar;

i. Larry Brown;

j. Tonya Brown; and

k. Terry Brown

4. Defendants were formerly Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

JURISDICTION AND VENUE

5. The Estate of James Brown is being probated in Aiken County, South Carolina.

6. The principal place of the administration of the Trust is Richland County, South Carolina. The Trustee maintains his usual place of business in Richland County, South Carolina. The records pertaining to the Trust are kept in Richland County, South Carolina.

7. Defendant Adele J. Pope is, upon information and belief, a resident of Newberry County. At all times pertinent to the matters alleged herein, Pope was a licensed attorney with her law office located in Richland County, South Carolina. During the time she served as a co-trustee of the James Brown 2000 Irrevocable Trust, she maintained her office and kept all documents relating to the Trust and the Estate in Richland County.

8. Defendant Robert L. Buchanan, Jr. is, upon information and belief, a citizen and resident of Aiken County, South Carolina. At all times pertinent to the matters alleged herein, he

was a licensed attorney. During the time he served as a co-trustee and co-personal representative of the Estate, Buchanan transacted substantial business in Richland County and derived substantial income from the administration of the Estate and the Trust in Richland County and participated in the maintaining of the Trust and Estate documents in Richland County.

9 The Probate Court has exclusive jurisdiction over the matters raised herein pursuant to **S.C. Code Ann.** §§ 62-1-302 and -7-201.

10. Venue in this matter is proper in Richland County, South Carolina pursuant to **S.C. Code Ann.** §§ 62-7-108 and -204.

FACTUAL ALLEGATIONS

11. A document purporting to be Mr. Brown's Last Will and Testament ("Will"), dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. The Will nominated three individuals as Personal Representatives, namely, Albert H. Dallas, David G. Cannon, and Alfred A. Bradley, and they were appointed by the Probate Court by Order dated January 18, 2007. These same individuals were also appointed Trustees under a document purporting to create the James Brown 2000 Irrevocable Trust ("Trust").

12. Thereafter, a number of actions were filed in the Aiken County Probate Court in connection with the Will and Trust, all of which were removed to the Aiken County Circuit Court.

13. On or about September 24, 2007, the South Carolina Attorney General intervened in the Circuit Court actions to represent the interests of the charitable beneficiaries of the Trust.

14. On August 10, 2007, the Aiken County Circuit Court accepted Cannon's resignation as, *inter alia*, Personal Representative and Trustee. On November 20, 2007, the Aiken County Circuit Court accepted the resignations of Dallas and Bradley as Personal

Representatives and Trustees and appointed the Defendants Robert L. Buchanan, Jr. and Adele J. Pope as substitute Personal Representatives and Trustees.

15. Following additional litigation in the Aiken County Circuit Court, the Beneficiary Plaintiffs entered a comprehensive settlement resolving all their disputes and ending the litigation between them, which agreement was, after an extensive hearing, approved by the Aiken County Circuit Court by an Order entered on May 26, 2009. That Order also removed the Defendants as the substituted Personal Representatives and Trustees.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

16. All allegations set forth above are incorporated herein.

17. As Personal Representatives and Trustees of the Estate of James Brown and the James Brown 2000 Irrevocable Trust, the Defendants owed fiduciary duties to the Estate, Trust and the beneficiaries of each (collectively "The Affected Parties"), including a duty of care, of impartiality, and of loyalty as well as a duty to prudently administer the probate and trust estates.

18. Upon information and belief, during their appointment as substitute Personal Representative and Trustee, the Defendants repeatedly and chronically breached their fiduciary duty to the Affected Parties in multiple ways, including but not limited to the following particulars:

a. Failing to properly manage the estate and trust;

b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief, millions of dollars of lost opportunities for the estate and trust;

c. Failing to use due diligence in pursuing business opportunities for the estate and trust;

d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;

e. Mishandling an auction of personal property at great cost to the estate and trust;

f. Failing to timely settle the debts of the estate;

g. Failing to keep accurate accounting records for the estate and trust;

h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;

i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for $100 million in November 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;

j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;

k. Failing to account to the Attorney General as required by law;

l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;

m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;

n. Acting in bad faith, as evidenced by such actions as

i. filing a lengthy motion opposing the settlement even before they were informed of the terms of the settlement ;

ii. providing to the Internal Revenue Service a road map of the settling parties' plan to deal with tax issues, for no apparent purpose other than to sabotage the settlement agreement;

iii. Taking inconsistent legal positions for their own personal interests, such as asserting their right to continue as fiduciaries pending their appeals despite having taken the contrary position when their predecessors appealed, insisting that the settling parties give notice to noninterested persons when Defendants refused to do so whenever they sought relief (such as the payment of their fees), and contesting the settling parties' contention that the estate was in an emergency situation when they themselves had asserted that position shortly before;

iv. Despite being judicially estopped by the South Carolina Court of Appeals, asserting they have a right to prosecute the Trust's and Estate's claims against Dallas, Cannon, and Bradley.

o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:

i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and

failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;

ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;

iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."

p. Engaging in conflicts of interest, such as

i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;

ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.

iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be $5 million.

q. By misrepresenting or presenting inaccurate statements under oath to the Court;

r. By failing to file appropriate tax returns;

s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;

t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and

u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately $5 Million in fees.

19. Despite the terms of the Order of May 26, 2009, removing the Defendants as Personal Representatives and Trustees, the Defendants have nevertheless continued to breach their fiduciary duties to the Affected Parties by continuing to take actions harmful to the estate and trust and the interests of the Affected Parties, including but not limited to contesting the settlement by filing multiple appeals and objecting to substitution, all to the detriment of the Affected Parties and in violation of their fiduciary duty to the Affected Parties.

20. As a result of Defendants' breach of their fiduciary duties to the Affected Parties, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A SECOND CAUSE OF ACTION
(Breach of Trust)

21. All allegations set forth above are incorporated herein.

22. The acts and omissions of the Defendants constitute a breach of trust pursuant to **S.C. Code Ann.** § 62-7-1001(a).

23. As a result of Defendants' breach of trust, Plaintiffs are entitled to an order

a. compelling Defendants to redress the breach of trust by paying money, restoring property, or by other means as may be required to remedy the breach;

b. ordering the Defendants to account for all property of the Estate and Trust;

c. denying compensation to the Defendants for all services provided by them for work on behalf of the Estate or Trust;

d. such other relief as may be necessary to remedy the breach.

24. As a result of Defendants' breach of trust, Plaintiffs are entitled to judgment against the Defendants for damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A THIRD CAUSE OF ACTION
(Negligence)

25. All allegations set forth above are incorporated herein.

26. Defendants provided services to the Estate and Trust apart from, and in addition to the requirements for the administration of the Estate and Trust. In doing so, Defendants were obligated to provide such services in a reasonable manner, consistent with the applicable standard of care.

27. The acts or omissions of the Defendants in providing these services were careless, negligent, grossly negligent, willful, wanton, reckless, and in conscious disregard of the rights of the Affected Parties.

28. As a result of the Defendants' acts or omissions, the Affected Parties have incurred actual damages in the form of:

(a) loss, waste, or spoliation of the assets of the Estate and Trust;

(b) diminution in the present value and income generation of the Estate and Trust;

(c) diminution in the future stream of profit and income from the corpus of the Estate and Trust.

29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

WHEREFORE, The Plaintiffs pray for a judgment against the Defendants for, relief as set forth above, actual and punitive damages in such sums as may be proven at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

PLAINTIFFS DEMAND A JURY TRIAL.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

/Kenneth B Wingate

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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown, Plaintiff, v. Adele J. Pope, individually and As Trustee of the Irrevocable Trust established by James Brown in August 1, 2000, and Robert L. Buchanan, Jr., individually and As Trustee of the Irrevocable Trust established by James Brown in August 1, 2000, Defendants.	)	Case No._____

COMPLAINT

COMES NOW Plaintiff Forlando J. Brown and hereby files his complaint against Adele J. Pope, individually and as a purported Trustee of an Irrevocable Trust established by James Brown on August 1, 2000 (the Irrevocable Trust"), and Robert L. Buchanan, Jr., individually and as a purported Trustee of the Irrevocable Trust, and for his Complaint, respectfully alleges the following:

INTRODUCTION

1.

The Irrevocable Trust, for which Pope and Buchanan purportedly serve as Trustees, was established by James Brown on August 1, 2000, to pay for the education of his grandchildren under 35 years of age and to pay for the education of underprivileged and deserving children who attend educational institutions in Georgia and South Carolina.

2.

Plaintiff, Forlando J. Brown is a 21 years old resident of the State of Georgia, an undisputed grandchild of the late James Brown and is an intended beneficiary of the Irrevocable Trust.

3.

Forlando J. Brown was extremely close to his grandfather, James Brown, especially during the last seven years of the singer's life. James Brown took a tremendous interest in Forlando's education, helping him to select a college, providing for his tuition, and more importantly, providing encouragement in his studies. Forlando is now in his senior year at West Georgia College, maintains a high grade point average, and is pursuing a double major in both Political Science and Business Administration. Forlando attributes much of his academic accomplishments to his grandfather's encouragement and support.

4.

Forlando hopes one day to be able to attend law school following the completion of his undergraduate studies and would like to attend Emory University Law School.

Forlando knows all too well, however, that attending Emory University Law School is a very expensive proposition and that he may not be able to attend without considerable assistance from his grandfather's Irrevocable Trust.

5.

Following the appointment of Pope and Buchanan as putative Trustees of the Irrevocable Trust in November of last year, Forlando has asked Pope for funding for his current studies from the Trust assets. Pope has told Forlando that the administrative expenses of the Estate of James Brown, including of course, her own attorney's fees, will have to come first and that there are no funds for education. Thus far, Forlando has not received a single dime from the Irrevocable Trust his grandfather established for his education.

6.

Forlando J. Brown does not believe that the Trust is being administered in accordance with the wishes of his grandfather, in accordance with the terms of the instrument creating the Irrevocable Trust, in the interests of the beneficiaries of the Trust, or by the people whom his grandfather trusted to administer the Irrevocable Trust.

7.

To ensure that the wishes and intent of his grandfather, the late James Brown, are carried out, Plaintiff brings this Complaint to remove Pope and Buchanan as Trustees of the Irrevocable Trust for the following reasons:

a) Pope and Buchanan were not lawfully appointed Trustees in accordance with South Carolina law or the terms of the Irrevocable Trust, nor were their predecessors lawfully removed;

b) Pope and Buchanan have irreconcilable conflicts of interest with the interests of the Irrevocable Trust and the beneficiaries of the Irrevocable Trust in that their interests as Personal Representatives of the Estate of James Brown conflict with their interests as Trustees of the Irrevocable Trust;

c) Pope and Buchanan have violated their fiduciary duties to the Irrevocable Trust and the beneficiaries of the Irrevocable Trust;

d) Pope and Buchanan have violated their duty of loyalty to the Irrevocable Trust and the beneficiaries of the Irrevocable Trust;

e) Pope and Buchanan have disregarded the terms of the Irrevocable Trust established by James Brown;

f) Pope and Buchanan have commingled Trust assets with those of the Estate of James Brown;

g) Pope and Buchanan have transferred and sought to transfer assets of the Irrevocable Trust to the Estate of James Brown where they can be utilized to effectuate their administration of the Estate and pay their own personal legal fees in the hundreds of thousands of dollars;

h) Pope and Buchanan have systematically sought to interfere in the expeditious and efficient administration of internal affairs of the Irrevocable Trust and frustrated the purposes of the Irrevocable Trust and placed conditions on gifts under the Irrevocable Trust not intended or specified by James Brown in the Trust instrument; and

i) For all the reasons established in the Factual Background set forth below.

All of these facts, and those set forth in greater detail below, mandate the immediate removal of Pope and Buchanan as Trustees of the Irrevocable Trust, and an injunction prohibiting Pope and Buchanan taking further actions with respect to either the Irrevocable Trust or its assets.

JURISDICTION AND VENUE

8.

This Complaint alleges acts by the Defendant(s) that are within and under the jurisdiction of this Court and which took place within the District of South Carolina.

9.

Jurisdiction is appropriate under 28 U.S.C. § 1332 (diversity) in that this action constitutes a dispute between "citizens of different states."

10.

Venue is appropriate under 28 U.S.C. § 1391(b) (1) (as a judicial district where any defendant resides) and 28 U.S.C. § 1391(b) (2) (a judicial district in which a substantial part of the events giving rise to the claim occurred).

11.

The amount in controversy is in excess of $75,000 in that the value of the Irrevocable Trust is believed to be in excess of tens of millions of dollars or more, the value of the assets of the Irrevocable Trust that Pope and Buchanan are seeking to convert to the use of the Estate of James Brown is well in excess of $75,000, the value of the assets of the Irrevocable Trust that Pope and Buchanan have already converted to that of the Estate of James Brown is believed to be in excess of $75,000, and the benefits

available under the Irrevocable Trust to the Plaintiff for the pursuit of his education are in excess of $75,000.

THE PARTIES

12.

Plaintiff, Forlando J. Brown, is a resident of Toccoa, Georgia, is a citizen of Georgia, is 21 years old, is the grandson of James Brown and is therefore a beneficiary of the Irrevocable Trust.

13.

Defendant Adele J. Pope ("Pope") is a resident and citizen of South Carolina, is an attorney who was illegally appointed as a Trustee of the Irrevocable Trust on November 20, 2007 in derogation of the express terms of the Irrevocable Trust, and who may be served at Law offices of Adele J. Pope, PC 1218 Taylor Street, P.O. Drawer 7125, Columbia, South Carolina 29202-7125.

14.

Defendant Robert L. Buchanan, Jr. ("Buchanan") is a resident and citizen of South Carolina, is an attorney who was illegally appointed as a Trustee of the Irrevocable Trust on November 20, 2007, in derogation of the express terms of the Irrevocable Trust, and who may be served at 212 Newberry Street NW, P.O. Box 463, Aiken, South Carolina 29802-0463.

FACTUAL BACKGROUND

15.

On August 1, 2000, James Brown, sometimes reverentially known as "the Godfather of Soul," executed an Irrevocable Trust Agreement (the "Irrevocable Trust").

A true and correct copy of that Irrevocable Trust Agreement is attached hereto at Exhibit 1.

16.

On that same day, August 1, 2000, James Brown also executed his Last Will and Testament (the "Will"). The Will named Albert H. Dallas, Alford A. Bradley and David G. Cannon as personal representatives. The Will passed only Brown's household and personal effects to his children. All the rest and residue of his estate passed through a "pour over clause" to the Irrevocable Trust.

17.

James Brown was a resident of Aiken, South Carolina at the time he executed both the Irrevocable Trust Agreement and his Will.

18.

James Brown died on Christmas Day, December 25, 2006, while still a resident of Aiken, South Carolina.

19.

The Last Will and Testament of James Brown was filed with the Probate Court of Aiken County, South Carolina on January 18, 2007. Dallas, Bradley and Cannon were each appointed as co-personal representatives of the Estate of James Brown on that day.

The Terms of the Irrevocable Trust

20.

James Brown recognized the value of education and wished that he had been able to obtain more of an education during his life. James Brown constantly advocated the

value of education throughout his lifetime. The Irrevocable Trust reflects James Brown's wishes to provide those in need with the opportunity to receive an education.

21.

The Irrevocable Trust was the primary beneficiary of James Brown's Estate. The Trust was divided into two sub-trusts:

a) a private education trust for the benefit of certain of James Brown's grandchildren under the age of 35 (The "Brown Family Education Trust"); and

b) the James Brown "I Feel Good Trust" – a tax exempt charitable scholarship trust for the benefit of underprivileged children in the States of Georgia and South Carolina which was funded with the balance of the assets of James Brown's Estate.

22.

The Irrevocable Trust specifically provided that it was for the benefit of:

> poor and financially needy children, youth or young adults (who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia.

Irrevocable Trust Agreement at Article VII(1).

23.

The assets of the Irrevocable Trust are believed to have a value in excess of tens of millions of dollars or more.

24.

James Brown also named Dallas, Bradley, and Cannon as the Trustees of the Irrevocable Trust. These three Trustees were men who had long worked with and for James Brown, were his personal friends, and were individuals in whom Brown placed a great deal of trust.

25.

The Irrevocable Trust called for the appointment of an Advisory Board. After James Brown's death, on or about early January 2007, the Trustees met in Augusta, Georgia and designated an Advisory Board for the Trust. All five members of the Advisory Board accepted their appointment. The Advisory Board consisted of Coach Larry Campbell, the Lincoln County Athletic Director; Joseph Greene, Professor of Economics at Augusta State University; Dr. Shirley A.R. Lewis, President of Paine University in Augusta, Georgia; Dr. Ann Christiansen, president of the University of South Carolina Salakathchee; and Judge Walter Williams, former Municipal Court Judge in Chattanooga, Tennessee. Joseph Greene has died since his appointment and has not been replaced.

26.

James Brown set forth in the Irrevocable Trust Agreement a provision for naming future Trustees if any of the named Trustees could not serve:

> Individual Trustees Succession. If any of the three (3) individual Trustee should fail to qualify as Trustee hereunder, dies, or for any reason should cease to act in such capacity, the remaining Trustee(s) shall continue to serve and shall elect and/or appoint another Trustee so that at all times there are three (3) individual Trustee(s) serving. The notice and election provisions of Article XIII, powers of Trustee(s) Succession shall be followed.

Irrevocable Trust Agreement, Article VIII(1).

27.

In Article XIII of the Irrevocable Trust Agreement, James Brown vested the power of trustee succession in the Trustees upon effective resignation as follows:

> Upon receipt of notice [of resignation], . . . the Trustee(s) shall appoint a successor Trustee.

Id. at Article XIII. Should the Trustees fail to appoint a successor, the Agreement provides that "the trustees successor shall be determined by unanimous vote of the advisory board, as then in existence, if at all." Id.

28.

Under the terms of the Irrevocable Trust Agreement, James Brown relinquished all power and control over his interest in James Brown Enterprises, Inc. to the Trustees, in trust, and parted with title. Specifically, the Irrevocable Trust Agreement provides that:

> Grantor and Trustee(s) agree . . . Grantor transfers and delivers to Trustee(s), in trust, the property described in Schedule A . . .attached and incorporated by this reference. Receipt of the property is hereby acknowledged by Trustee(s). The property, and any other property subject to this trust, shall constitute the trust estate, and shall be held in trust for the uses and purposes expressed in this trust agreement and shall be subject to the conditions provided in this instrument.

Irrevocable Trust Agreement, Article 1.

29.

Schedule A to the Irrevocable Trust Agreement specifically provides the following property as being delivered to the Trustee(s) in trust:

1. Initial funding of $50.00;

2. "All ownership interest(s) in James Brown Enterprises, Inc" [including the office building of James Brown Enterprises, Inc. in Columbia County, Georgia]; and

3. All ownership in James Brown's primary residence located in Aiken, South Carolina.

30.

On the same day that James Brown executed the Irrevocable Trust Agreement, August 1, 2000, James Brown as Director and CEO of James Brown Enterprises, Inc., along with the other Directors of that corporation, signed a corporate resolution, authorizing James Brown individually and as CEO to transfer his shares and ownership interest in James Brown Enterprises, Inc. to the Irrevocable Trust. On that same day, James Brown executed a stock power appointing Dallas, as agent, to transfer all of James Brown's stock in James Brown Enterprises, Inc. to the Irrevocable Trust.

31.

The corporate records of James Brown Enterprises, Inc. also contained a stock certificate in the name of the Irrevocable Trust, made out by Dallas as attorney for the corporation, to evidence the transfer of the stock in James Brown Enterprises, Inc. to the Irrevocable Trust which was placed in the stock ledger.

32.

Because the trust was an Irrevocable Trust, it was beyond James Brown's power to revoke the gift of James Brown Enterprises, Inc. to the Trust:

> This trust shall be irrevocable. Grantor waives the right and the power to alter, amend, revoke, or terminate the trust or any of the terms of this trust agreement. Grantor renounces any power to determine or control, by alteration, amendment, revocation, termination, or otherwise, the beneficial enjoyment of the principal or income of the trust. Grantor renounces any interest in the income or principal of the trust estate, whether vested or contingent, including any reversionary interest or possibility of reverter.

Irrevocable Trust Agreement, Article II.

The Plan of Pope and Buchanan to Strip Away the Assets of the Irrevocable Trust and Place them in the Estate of James Brown

33.

After James Brown's death, his Will was filed in the Probate Court of Aiken County, South Carolina on or about January 18, 2007, the probate judge subsequently declined to oversee the administration of certain matters in Brown's Estate and these matters have been transferred to the Circuit Court of Akin, County, South Carolina. Judge Doyett A. Early, Jr. has thus far presided over various matters specifically assigned to him relating to the Brown Estate pursuant to S.C. Code § 61-2-302(d).

34.

On January 24, 2007, several heirs to James Brown's Estate filed a motion to remove Dallas, Bradley and Cannon as Personal Representatives of the Estate of James Brown.

35.

On February 9, 2007, a hearing was held on the motion to remove Dallas, Bradley and Cannon as Personal Representatives of the Estate of James Brown. In support of this motion, counsel for the heirs of James Brown submitted a false affidavit claiming that the Personal Representatives had removed property from the residence of James Brown. There is absolutely no dispute that this affidavit was false and the counsel for the heirs have subsequently conceded that the affidavit was false.

36.

Judge Early entered an Order following the hearing on February 20, 2007 denying the petition for removal, noting that "[t]he record is devoid of any credible evidence of

any wrongdoing by the Personal Representatives," such that "removal of the Personal Representatives is not warranted."

37.

Judge Early found no basis for the removal of Dallas, Bradley and Cannon as Personal Representatives to the Estate. Nonetheless, and asserting that he was doing so in "an abundance of caution," Judge Early also granted a motion by the heirs for the appointment of a Special Administrator pursuant to S.C. Code § 62-3-617.

38.

On March 12, 2007, Judge Early chose to appoint two Special Administrators – Pope and Buchanan -- to monitor the administration of the Estate of James Brown. Pope was recommended by the heirs of James Brown over the objections of the then Personal Representatives. Adele Pope is a long-time friend of Judge Early. When counsel for the heirs heard that Pope had been appointed, they celebrated and told Forlando Brown that Pope was "a bulldog" who "would get the existing Trustees of the Irrevocable Trust removed" and have more compliant trustees appointed in their stead that would be more likely to follow the wishes of the heirs.

39.

Judge Early declared that Pope and Buchanan would serve as Special Administrators over the Estate and would oversee the performance of the Personal Representatives of their duties with regard to the Estate.

40.

Having been appointed Special Administrators, Pope and Buchanan thereafter began a campaign to strip the Irrevocable Trust of its assets and bring those assets into the Estate where Pope and Buchanan could exercise control over them. This strategy was fully consistent with the strategy of those heirs who had recommended Pope for the position of Special Administrator. In choosing this course of action, Pope and Buchanan were motivated by one important fact: since James Brown had left only his personal and household effects to his heirs and had placed the balance of his Estate into the Irrevocable Trust, there were insufficient assets to pay the extraordinary fees that Pope and Buchanan planned to incur in their roles as Special Administrators and hoped to recover from the Estate. Indeed, the assets that are within the Estate of James Brown have only been valued at less than $100,000.

41.

After Pope and Buchanan were appointed as Special Administrators, they began a series of steps to interfere with the Irrevocable Trust, the administration of the Irrevocable Trust, the rights of the Trustees under that trust, and the rights of the beneficiaries of that trust. Pope and Buchanan allied themselves with the heirs of the Estate of James Brown who had had been cut out of the bulk of the Brown Estate through the Will. The Will also contained an *in terrorem* clause providing that if the heirs challenged the Will, they would lose even that which their father had specifically bequeathed them.

42.

On March 19, 2007, Pope and Buchanan met with counsel for the heirs, their supporters, and discussed the heirs' strategy for challenging the validity of the Irrevocable Trust to benefit the Estate before even meeting with Dallas, Bradley, and Cannon, the individuals with whom they were supposed to cooperate in the administration of the Estate.

43.

On March 23, 2007, Pope and Buchanan finally met with Dallas, Bradley and Cannon, the Personal Representatives of the James Brown Estate and the Trustees of the Irrevocable Trust. Though they had only been acting as Special Administrators for slightly over two weeks, and had only limited powers, already Pope and Buchanan had adopted the position of the heirs and that of Tommi Rae Hynie, who claims to be the wife of James Brown. During this meeting, Pope and Buchanan argued that the transfers of property to the Irrevocable Trust by James Brown during life were invalid. Pope and Buchanan began urging the Trustees to treat the assets of the Irrevocable Trust as assets of the Estate, continually asserting that the administration of the Estate would take a minimum of 5 years.

44.

Pope and Buchanan argued that one of the largest assets of the Irrevocable Trust, a company known as James Brown Enterprises, Inc. which held the rights to many of James Brown's songs, should be considered as part of the Estate and not the Irrevocable Trust. Pope and Buchanan made a number of arguments as to why the assets of the Trust should be included into the Estate. Counsel for the Trustees explained why each of these

arguments was unjustified under either the law or the facts and that such an approach would subject the assets of the Irrevocable Trust to the claims of pretermitted heirs and the claims of the putative spouse.

45.

After this initial meeting with the Trustees, Pope and Buchanan continued to reject any legal arguments that the assets of the Irrevocable Trust should not be part of the Estate. The Special Administrators repeatedly tried to convince the attorneys for the Trust and the Trustees to agree that the Irrevocable Trust's assets were a part of the Estate. The Trustees supplied legal opinions supporting the fact that James Brown Enterprises, Inc. was part of the Irrevocable Trust but Pope and Buchanan merely rejected the opinions out of hand.

46.

On June 22, 2007, in a formal report to Judge Early, Pope and Buchanan flatly stated:

> As of today (June 22, 2007), it appears to the SAs [i.e. Pope and Buchanan] that the only asset of James Brown which was actually transferred to the James Brown 2000 Irrevocable Trust was the Beech Island Real estate.

First Report of Special Administrators to Personal Representative (June 22, 2007). Pope and Buchanan further contended in that report that:

> There is abundant evidence, and the SAs believe, that James Brown Enterprises, Inc. was never transferred to the 2000 Irrevocable Trust.

Id. at p. 5.

47.

Also, in the same formal report, Pope and Buchanan erroneously claimed that James Brown's royalty rights were in the Estate as follows:

> Royalty Recaptures. The SAs are hopeful that the Estate will be the proper claimant for this valuable right to recapture the Publisher's share of the James Brown's songs prior to 1978. The SAs believe the Estate needs to protect its claim to these rights, which will begin to vest within the next few years, and will need protection between now and 2033.

Id. at p. 8.

48.

On June 22, 2007, Pope and Buchanan advanced their plan to strip the property from the Irrevocable Trust and place it into the Estate. On June 22, 2007, at the request of Pope and Buchanan, Judge Early signed an Order relating to the access of the Special Administrators to books and documents of the Irrevocable Trust. In this Order, Judge Early gave Pope and Buchanan unfettered access to every aspect of the Irrevocable Trust: "The Special Administrators of the Estate of James Brown are hereby granted complete, direct and continuing access to all information documents and records, in any form, related to... the James Brown 2000 Irrevocable [Trust] and all trusts created thereunder." On information and belief, the Order was prepared by Pope and Buchanan and signed, without change, by Judge Early.

49.

On July 27, 2007, following disclosures about certain financial transactions involving David Cannon prior to James Brown's death, Pope and Buchanan moved to remove one or more of the Trustees of the Irrevocable Trust (though the motion focused only on Cannon), moved to have all original books and records of the Trust delivered to

them regardless of whether these books and records were in the possession of the Trustees, attorneys, accountants, or otherwise, and moved for their own appointment as Special Trustees of the Irrevocable Trust.

50.

Not surprisingly, those heirs of James Brown's Estate who wished to destroy his testamentary plan, also advocated through their counsel that the Trustees be removed from the Irrevocable Trust. Doing so, of course, would have removed the last impediment to the mutual goal of these heirs and Pope and Buchanan, the inclusion of the Trust assets in the Estate, as there would be no party left to object to their plans.

51.

Prior to a hearing on the motion, David Cannon resigned as Trustee of the Irrevocable Trust on or about August 1, 2007.

52.

Pope and Buchanan then took a further step to seize control of the Irrevocable Trusts. Pope and Buchanan threatened to have Dallas and Bradley removed as Personal Representatives of the Estate of James Brown and Trustees of the Irrevocable Trust, even though there was no evidence of malfeasance involving them, unless they consented to an order of the Court giving Pope and Buchanan more control over Dallas and Bradley and the Irrevocable Trust. Dallas and Bradley consented.

53.

During the hearing on August 10, 2007, Pope and Buchanan focused only on David Cannon and his duties and actions. No allegations or evidence of wrongdoing, mismanagement or other malfeasance was asserted against either Dallas or Bradley.

54.

There is no evidence that Dallas and Bradley had knowledge of those actions and financial dealings of Mr. Cannon with which Pope and Buchanan took issue.

55.

Later on August 10, 2007, at the request of Pope and Buchanan, Judge Early issued an written order firmly taking control over the internal and external affairs of the Trust and placing them in the de facto control of Pope and Buchanan even though there had been no evidence presented to suggest, much less prove, that either Dallas or Bradley had engaged in any wrongdoing, mismanagement or other malfeasance with respect to the Irrevocable Trust.

56.

In the August 10, 2007 Order, at the request of Pope and Buchanan, Judge Early ordered that while Dallas and Bradley could continue as Trustees, their authority would be "strictly limited." Judge Early ordered that Dallas and Bradley could not, in fact, perform any action for the Irrevocable Trust, unless Pope and Buchanan gave prior consent in writing. Pope and Buchanan thereafter exercised the powers granted them under this Order by taking such extraordinary control of the affairs of the Irrevocable Trust that Dallas and Bradley were unable to exercise their fiduciary duties as Trustees. Dallas and Bradley were subjugated to the complete will and discretion of Pope and Buchanan.

57.

In the August 10, 2007 Order, at the request of Pope and Buchanan, Judge Early also ordered that the mailing and business address for the Estate and the Irrevocable Trust would thereafter be the address of Buchanan's law office.

58.

In the August 10, 2007 Order, at the request of Pope and Buchanan, Judge Early further ordered that all the original files related to the Trust be moved to the law offices of Pope. The Order required original files and documents of the Trust in the possession of the Trustees and professionals representing the Trust located all over Georgia and South Carolina be placed in the sole possession of Pope.

59.

In the August 10, 2007 Order, and at the request of Pope and Buchanan, Judge Early took the final step of firing all attorneys, accountants, or financial advisors that had worked on the administration of the Irrevocable Trust and its business, save and except one law firm that had been hired after Brown's death for litigation purposes. In doing so, the Trust lost the advice of numerous professionals who were critical to the administration and ultimate success of the Trust. The sole purpose of this action was to consolidate control of the Trust in Pope and Buchanan and further their plans and those of the heirs who wished to frustrate the testamentary plan of James Brown. Pope and Buchanan thereafter replaced these professionals, when it became necessary, with professionals loyal to them.

60.

The control of the Trust had now virtually been stripped away from those people whom James Brown had entrusted with its care and instead placed into the hands of those who had consistently and repeatedly expressed a desire to bring the assets of the Irrevocable Trust into the Estate of James Brown where, among other things, those assets would be subject to their claims for attorneys fees and fiduciary fees.

61.

The original records of the Irrevocable Trust were now in the possession of Pope. The address of the Irrevocable Trust was now Buchanan's law office. All of the professionals necessary to operate the Trust had been fired. All professionals hired thereafter owed their employment to Pope and Buchanan. Dallas and Bradley were powerless to do anything unless Pope and Buchanan allowed it. And, if either Dallas or Bradley had any thought of exercising their fiduciary responsibilities under the Irrevocable Trust in opposition to Pope and Buchanan, Judge Early's final line in his August 10, 2007 Order was all that they needed to consider: "Any person violating this Order shall be subject to a contempt proceeding before the Court."

62.

One of the first acts Pope and Buchanan took following their seizure of control over the Trust was to insist that all Trust funds and Estate funds be maintained in a single account where each was commingled with the other. From this account, expenses of the Estate of James Brown were paid.

63.

In September of 2007, now firmly in charge of the Irrevocable Trust, Pope and Buchanan insisted that Dallas and Bradley consent to their position that James Brown Enterprises was an asset of the Estate of James Brown. Given their precarious position as Trustees, and the ever present threats of removal, Dallas and Bradley filed a motion with the Court to determine that James Brown Enterprises, Inc. was an asset of the Estate of James Brown. At the same time, Dallas and Bradley also purposefully notified the Attorneys General of the States of South Carolina and Georgia, whom they knew would take action to defend the charitable beneficiaries of the Irrevocable Trust in the proceeding. At all prior times, when Dallas and Bradley had suggested calling in the Attorneys General to represent the charitable beneficiaries, Pope would oppose the idea as "unnecessary" as the Estate allegedly did not need additional lawyers.

64.

Representatives of the Attorneys General for Georgia and South Carolina both appeared at a hearing on the motion determining James Brown Enterprises, Inc. to be an asset of the Estate of James Brown held on September 24, 2007. The Attorneys General were allowed to intervene, opposed the motion, and have subsequently acted to protect the charitable beneficiaries of the Irrevocable Trust.

65.

At the September 24, 2007 hearing, Pope unequivocally informed the Court that she and Buchanan believed that James Brown Enterprises, Inc. was an asset of the Estate as follows:

> The Special Administrators after a fair amount of research agree that James Brown Enterprises was solely owned by James Brown at his death and is an asset of the Estate.

September 24, 2007 Hearing transcript (emphasis supplied). Pope further explained that "[t]he Special Administrators after some investigation believe that the only asset held by – legally held by the Trust at James Brown's death was the Beech Island Real Estate and possibly a negligible amount of cash." Id.

66.

Judge Early thereafter found that "Mrs. Pope put on the record on behalf of the special administrators as to their stipulation" as follows:

> The SAs stated on the record their agreement with the position of the PRs that James Brown Enterprises, Inc. is owned by the Estate of James Brown, and that as of December 25, 2006, the only legitimate assets of the James Brown 2000 Irrevocable Trust were the Beech Island real estate and a negligible amount of cash.

Order, entered October 2, 2007, at p. 2.

67.

On November 9, 2007, Dallas and Bradley, having now been joined by the Attorneys General of Georgia and South Carolina in their fight against Pope and Buchanan and their attempts to strip assets from the Trust, filed an amendment to their motion to determine whether James Brown Enterprises, Inc. was part of the Estate. In that amendment, Dallas and Bradley made it clear that they could not support the position of Pope and Buchanan that James Brown Enterprises, Inc. was part of the Estate of James Brown.

68.

This action was properly viewed by Pope and Buchanan as being an obstacle to their plans since the only opportunity Pope and Buchanan had to obtain significant fees rested on their ability to bring James Brown Enterprises, Inc., and its assets, into the Estate. Dallas and Bradley did not have to wait long for the retribution of Pope and Buchanan or to see the next step in the strategy of Pope and Buchanan to take over the Irrevocable Trust.

69.

Pope first directed that Dallas and Bradley permit counsel for certain of the heirs to view the home of James Brown, which has been under constant guard since the singer's death. Strangely, however, and contrary to the established security protocols established for the home requiring each person entering the home to identify themselves and sign a log, Pope directed that counsel for these heirs be permitted to enter the home with a number of unidentified individuals, without following procedure, and without explanation.

70.

On November 12, 2007, a Monday, these same heirs filed an amended motion to remove Dallas and Bradley from their positions as Personal Representatives of the Estate of James Brown based upon the inspection of the Brown home and premised on the assertion that the household and personal effects of Brown were being damaged. These were the same heirs that had earlier moved to remove Dallas and Bradley as personal representatives on the basis of a false affidavit. The allegations supporting this new motion were as baseless and false as had been the allegations earlier asserted by these

same heirs and their counsel in their January motion. Indeed, experts have examined the items in the home and found that they are in virtually the same condition as when the singer died. Experts in the field have also opined that the value of the items in the home would be diminished were they to be removed from the home. Perhaps more telling, Pope and Dallas have allowed this property to remain in exactly the same position in the home to this date.

71.

Significantly, there was no motion filed seeking to remove either Dallas or Bradley as the Trustees of the Irrevocable Trust. There was no evidence in the form of affidavits or otherwise filed in support of this motion. All that supported the motion were the naked allegations contained in the pleading filed by the heirs.

72.

In advance of the hearing, and without hearing evidence, Judge Early wrote counsel for Dallas and Bradley and told them to consider resigning as Personal Representatives of the Estate. In the chambers of Judge Early, prior to the hearing of the motion to remove Dallas and Bradley as personal representatives, a discussion of the motion occurred with the Court. During that discussion, Pope and Buchanan supported the motion along with their allies, those heirs to the Estate of James Brown who wished to undo his testamentary plan. Pope then added a new condition. Pope insisted that Dallas and Bradley resign from their positions as Personal Representatives *and* Trustees of the Irrevocable Trust. There was, of course, no such motion pending and no real opportunity to defend against this new tactic. By insisting upon their resignation, Pope sought and intended to deprive Dallas and Bradley of their last vestige of control over the

Irrevocable Trust and the fates of the beneficiaries of that trust. Judge Early adopted the position of Pope and Buchanan and made it clear, without hearing any evidence, that he would remove Dallas and Bradley as Personal Representatives and Trustees, and would sanction them unless they consented. To make sure that Dallas and Bradley and their counsel understood the consequences of defying his will, Judge Early told everyone that if the hearing went forward, "it would be ugly."

73.

Under threat of removal and sanctions, Dallas and Bradley allowed their attorney to tell Judge Early that Dallas and Bradley would proffer a resignation as Personal Representatives of the Estate and Trustees of the Irrevocable Trust.

74.

Upon receiving this news, but without regard for the law of South Carolina involving the replacement of trustees or the terms of the Irrevocable Trust (and in violation of them), Judge Early appointed Pope and Buchanan as Personal Representatives of the Estate of James Brown and Trustees of the Irrevocable Trust. Judge Early indicated that he would give the Attorneys General of Georgia and South Carolina ten (10) days in which to object to the ruling.

75.

At the request of Pope and Buchanan, Judge Early later entered a final written order on November 20, 2007, the same day, appointing Pope and Buchanan as Trustees of the Irrevocable Trust.

76.

At last, Adele Pope and Robert Buchanan had achieved what they had so long desired – complete control over the Estate of James Brown and the Irrevocable Trust. The assets of the Irrevocable Trust could now be brought into the Estate and Pope and Buchanan would be fully in charge of their administration and disposition. There would now be funds from which Pope and Buchanan's legal and fiduciary fees could be paid.

77.

The Order was entered in violation of S.C. Code Ann. § 62-7-201 in that it was entered without the invocation of appropriate jurisdiction over the Irrevocable Trust or its Trustees. Pursuant to that section, "the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts." S.C. Code Ann. § 62-7-201(a). Among those matters as to which the Probate Court has exclusive jurisdiction are "proceedings to… appoint or remove a trustee." The only proceeding that had ever been filed against Dallas and Bradley as Trustees was an action for an accounting. No petition was ever filed to remove them as Trustees of the Irrevocable Trust.

78.

Moreover, if this were not sufficiently clear, the provisions of S.C. Code Ann. § 62-1-302 (a)(3) state "[T]he [probate] court has exclusive original jurisdiction over all subject matter related to . . . trusts, *inter vivos* or testamentary, including the appointment of successor trustees.

79.

Inasmuch as no such proceeding of any kind was filed anywhere, much less in the Probate Court of Aiken County, to remove Dallas and Bradley, the Court acted without jurisdiction in removing them and in appointing Pope and Buchanan in their stead.

80.

Even where the jurisdiction of the probate court has been properly invoked pursuant to S.C. Code Ann. § 62-7-201, such "[a] proceeding under this section does not result in continuing supervisory proceedings." Id. Rather, it is required that

> The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, **acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court**, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust.

S.C. Code Ann. § 62-7-201(b) (emphasis added).

81.

Pope and Buchanan were not appointed consistent with the terms of the trust as S.C. Code Ann. § 62-7-201(b) commands. Indeed, in appointing Pope and Buchanan, the Court did directly intervene and interfere in the management of the Irrevocable Trust, the acceptance and change of trusteeship, and without reference to the terms of the Irrevocable Trust.

82.

The "provision for naming . . . Trustee succession" of the Irrevocable Trust is found in Articles VIII(1) and XIII of the trust instrument. Article VIII(1) provides, in pertinent part:

> (1) Individual Trustees Succession. If any of the three (3) individual Trustee should fail to qualify as Trustee hereunder, dies, or for any reason should cease to act in such capacity, the remaining Trustee(s) shall continue to serve and shall elect and/or appoint another Trustee so that at all times there are three (3) individual Trustee(s) serving. **The notice and election provisions of Article XIII, Powers of Trustee(s) Succession shall be followed.**

Irrevocable Trust Agreement of James Brown, dated August 1, 2000, Article VIII(1) (emphasis supplied).

83.

Under Article XIII of the trust instrument, James Brown vested the power of trustee succession in the Trustees upon effective resignation as follows:

> Upon receipt of notice [of resignation], . . . the Trustee(s) shall appoint a successor Trustee.

Id. at Article XIII.

84.

The trust instrument further provides that should the trustees fail to appoint a successor: "the trustees successor shall be determined by unanimous vote of the advisory board, as then in existence, if at all." Id.

85.

The beneficiaries of the Irrevocable Trust, represented by and through the Attorneys General of Georgia and South Carolina, were similarly deprived of notice and an opportunity to be heard on the removal of Dallas and Bradley and the appointment of successor trustees of the Trusts in violation of Article I, Section 3 of the Constitution of South Carolina.

86.

Regardless of the original propriety of their appointment as Trustees, the continued service of Pope and Buchanan as Trustees of the Irrevocable Trust consistent with their fiduciary responsibilities has become impossible because their interests as Personal Representatives of the Estate of James Brown are in direct conflict with the interests of the beneficiaries of the Irrevocable Trust. This conflict has become acute because Pope and Buchanan have taken and continue to take actions that are directly inconsistent with the interests of the Irrevocable Trust and the beneficiaries of that trust. Pope and Buchanan continue to assert, in cooperation with those who would destroy the Irrevocable Trust, that James Brown Enterprises, Inc. is an asset of the Estate of James Brown in direct contradiction to the plain terms of the trust instrument and the evidence.

87.

The beneficiaries of the Irrevocable Trust are being substantially harmed by the positions taken by Pope and Buchanan. The position of Pope and Buchanan ignores James Brown's testamentary plan and subjects the assets of the Irrevocable Trust to the vast and ever increasing administrative expenses of the Estate, the elective share claims of Brown's putative spouse and the pretermission claims of any after born children.

88.

The Attorneys General of the State of Georgia and for the State of South Carolina, on behalf of the charitable beneficiaries of the Irrevocable Trust, have moved to set aside or amend the November 20, 2007 Order appointing Pope and Buchanan as successor trustees on the grounds, among others, that Pope and Buchanan are in a conflict of interest. Copies of the filings of both the Attorney General of Georgia and the Attorney

General of South Carolina are attached hereto as Exhibits 2 and 3. The Attorneys General have similarly objected to the commingling of Estate and Trust funds by Pope and Buchanan. See Exhibit 4 attached hereto.

89.

Dallas and Bradley also both moved to vacate the November 20, 2007, Order removing them as Trustees and appointing Pope and Buchanan as successor trustees. Copies of their objections to the Court's Order are attached hereto as Exhibit 5.

90.

Having achieved their goal of obtaining sole control of the Estate of James Brown and the Irrevocable Trust, however, Pope and Buchanan have promptly moved to consolidate their gains.

91.

On November 26, 2007, and before the objections of the Attorneys General could even be heard, Pope and Buchanan executed a document purporting to appoint a new Advisory Board of the Irrevocable Trust that would be loyal to them.

92.

On November 27, 2007, and before the objections of the Attorneys General could even be heard, Pope and Buchanan, in their capacities as Trustees, filed a Complaint for Declaratory Judgment for Emergency Relief calling for an emergency plan of administration and seeking, among other things, for the Court to declare that James Brown Enterprises, Inc. belongs to the Estate, and not to the Irrevocable Trust. This action by them is fraught with conflict and danger for the beneficiaries of the Irrevocable

Trust. The very persons charged with defending the Irrevocable Trust – Pope and Buchanan – have maintained a long-standing desire to strip it of its assets.

93.

Indeed, rather than carefully gather the evidence that supports the claims of the Irrevocable Trust to those assets, and engaging in discovery to locate such evidence, Pope and Buchanan have asked Judge Early to rush this incredibly important issue to trial in January of 2008 over the objections of the Attorneys General and counsel for Forlando Brown. There is little doubt that Pope and Buchanan will argue in favor of stripping the Irrevocable Trust of its assets at this hearing.

94.

On December 4, 2007, and before the objections of the Attorneys General could even be heard, Pope and Buchanan adopted bylaws for the James Brown "I Feel Good" Trust, one of the two sub-trusts created under the Irrevocable Trust. In those bylaws, Pope and Buchanan unilaterally provided for their own compensation including:

> Trustees shall receive reasonable compensation commensurate with this service, with a total compensation for all Trustees to be One-Half (1/2) of One Percent per year of the fair market value of the Trust divided equally among them.

95.

On December 5, 2007, and before the objections of the Attorneys General could even be heard, Pope and Buchanan filed an Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code for the James Brown "I Feed Good Trust". Under the space in the form where assets of the Irrevocable Trust were to be disclosed to the IRS, Pope and Buchanan indicated, in all caps, "NONE." In the notes

to the filing, Pope and Buchanan stated "[d]ue to extensive litigation involving the Estate of James Brown and the James Brown 2000 Irrevocable Trust, the trust funding has been minimal and the funding of the Trust has been delayed." None of these statements are true. The Irrevocable Trust was funded on August 1, 2000. These filings are nothing more than an attempt by Pope and Buchanan to carry out their plan to strip the Irrevocable Trust of its assets and place those assets in the Estate.

96.

The declaratory judgment action is not the only litigation where the conflict of interest by Pope and Buchanan will imperil the interests of the Irrevocable Trust and its beneficiaries. The Irrevocable Trust and its beneficiaries are also imperiled by challenges to the Will and the Irrevocable Trust that have been brought by those heirs who wish to destroy the testamentary intent of James Brown and his putative spouse, Tommi Rae Hynie. Those challenges have just been filed in the last week. A true and correct copy of one of these actions is attached hereto as Exhibit 6.

97.

Tellingly, those who wish to challenge the validity of the Irrevocable Trust have only named Pope and Buchanan to defend the Trust. The Attorneys General of Georgia and South Carolina were not named as parties. Indeed, those heirs of James Brown who wish to destroy his testamentary plan, have moved to dismiss the Attorney General of Georgia from litigation involving the Irrevocable Trust entirely contending that he lacks standing. Pope and Buchanan, of course, are not even remotely capable of adequately and fairly defending the Irrevocable Trust given the adverse positions that they have taken and the enormous conflicts of interest with which they are burdened.

98.

The inability of Pope and Buchanan to serve as Trustees could not have been clearer when, at a hearing before the Circuit Court of Aiken County on December 21, 2007, Pope announced to the Court that it was the "position of the Trustees" that the Irrevocable Trust "was not funded." This position is legally and factually incorrect and its assertion is a direct violation of the fiduciary duties, including the duty of loyalty, owed by Pope and Buchanan to the Irrevocable Trust and its beneficiaries. More to the point, this position is identical to the position taken by those heirs and the putative spouse of James Brown who hope to destroy both his Will and the Irrevocable Trust.

99.

Unless and until they are removed, Pope and Buchanan, saddled with inherent and irreconcilable conflicts of interest as they are, will continue to determine what is in the best interests of the beneficiaries of the Irrevocable Trust in the litigation seeking to destroy the Irrevocable Trust.

100.

The conflict of interest presented by the continued service of Pope and Buchanan as Trustees is not merely potential; it is manifest and both Pope and Buchanan have been and are carrying out their new duties as Trustees in a manner that conflicts with the interests of the beneficiaries of the Irrevocable Trust and in breach of their fiduciary duties in the following ways:

- Pope and Buchanan have moved for the payment of their own attorneys' fees, which is in the hundreds of thousands of dollars ($317,000 for 10 months

work by Pope and Buchanan) for administering the Estate of James Brown from trust funds;

- Pope and Buchanan have directed that trust funds improperly be used to pay other administrative expenses of the Estate of James Brown;
- Pope and Buchanan have directed that no trust funds be used or distributed for educational expenses – the very purpose of the Irrevocable Trust;
- Pope and Buchanan have commingled trust funds with Estate funds in violation of S.C. Code Ann. § 62-7-810;
- Pope and Buchanan have filed a motion for declaratory judgment seeking a declaration that assets of the Trust are, in fact, assets of the Estate;
- Pope and Buchanan have ignored the Advisory Board lawfully appointed by the Trustees to the Trust and instead appointed one of their own;
- Pope and Buchanan have amended the Trust by enacting by-laws which provide for the payment to them of fiduciary fees in the amount of ½ of one percent of the fair market value of the trust assets per year (perhaps more than $500,000 per year);
- Pope and Buchanan have further sought attorneys fees for their services as Personal Representatives of the Estate at the rate of $300+ per hour, all of which will be paid out of assets of the Irrevocable Trust;
- Pope and Buchanan held a meeting of the Board of Directors of James Brown Enterprises, Inc. on or about November 20, 2007, where they took actions which are, at present, unknown;

- Pope and Buchanan have instructed those professionals who were hired to market the image of James Brown to refrain from doing any further work thus reducing income to the Irrevocable Trust and endangering the value of the assets of the Irrevocable Trust;
- Pope and Buchanan have previously fired all those professionals with the skill and talent to manage a trust with the types of intellectual property contained in the Irrevocable Trust, and not hired professionals to replace them, thus placing those assets in serious danger;
- Pope and Buchanan have failed to elect a third Trustee as required by the express terms of the trust documents;
- Pope and Buchanan have failed to consider the wishes of the lawful representatives of the charitable beneficiaries, the Attorneys General from Georgia and South Carolina, and have in fact willfully sought to obstruct the wishes of these representatives of the charitable beneficiaries of the Irrevocable Trust; and
- Pope and Buchanan have acted in concert with counsel for the six named children under the Will and counsel for Tommi Rae Hynie, and as advocates of the positions of the heirs and Hynie, and to the detriment of the Brown grandchildren and the charitable beneficiaries, all contrary to the primary educational and charitable purposes of the Irrevocable Trust.

101.

Both Pope and Buchanan are currently administering the Irrevocable Trust without legal authority, in contravention of the goals of the Irrevocable Trust, in breach

of their fiduciary duties and their duty of loyalty to the Trust, and to the detriment of beneficiaries like Forlando Brown who simply wish to enjoy the benefits of the Trust that his grandfather established for their benefit.

102.

Unless the Irrevocable Trust and its assets are adequately protected, no grandchild of James Brown will receive the gift that their grandfather set aside for them and no underprivileged children of Georgia or South Carolina will be able to take advantage of the opportunity to obtain a better education and a better life that James Brown hoped and planned to give them.

COUNT I – REMOVAL OF POPE AND BUCHANAN AS TRUSTEES OF THE IRREVOCABLE TRUST

103.

Plaintiff incorporates the allegations in paragraphs 1 through 102 of this Complaint as if fully set forth herein.

104.

A Trustee may not place himself in a position where his interest conflicts with those of the trust beneficiaries. *Ramage v. Ramage*, 283 S.C. 239 (1984). The requirement of loyalty and fair dealing and good faith are at the core of every trust instrument, whether specifically stated or not. Restatement (Second) of Trusts § 164 *comment* h, at pp. 343-44 (1980).

105.

A trustee may be removed where the trustee is found unfit because of dishonesty, serious breaches of trust, unfitness, unwillingness, or persistent failure of the trustee to

administer the trust effectively, where the trustee has interests in conflict with those of the trust that the trustee serves, where the trustee acts adversely to the trust that he serves, where the trustee commingles assets of the trust with other funds, where the trustee disregards the terms of the trust instrument and the intention of the creator of the trust, or where the court determines that removal of the trustee best serves the interests of the beneficiaries. *See* S.C. Code Ann. § 62-7-706 and *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (2005).

106.

Pope and Buchanan should be removed as Trustees for the following reasons:

a) Pope and Buchanan were not lawfully appointed Trustees in accordance with South Carolina law or the terms of the Irrevocable Trust, nor were their predecessors lawfully removed;

b) Pope and Buchanan have irreconcilable conflicts of interest with the interests of the Irrevocable Trust and the beneficiaries of the Irrevocable Trust;

c) Pope and Buchanan have violated their fiduciary duties to the Irrevocable Trust and the beneficiaries of the Irrevocable Trust;

d) Pope and Buchanan have violated their duty of loyalty to the Irrevocable Trust and the beneficiaries of the Irrevocable Trust;

e) Pope and Buchanan have disregarded the terms of the Irrevocable Trust established by James Brown;

f) Pope and Buchanan have commingled Trust assets with those of the Estate of James Brown;

g) Pope and Buchanan have transferred and sought to transfer assets of the Irrevocable Trust to the Estate of James Brown where they can be utilized to effectuate their administration of the Estate and pay their own personal legal fees; and

h) For all the reasons established in the Factual Background above.

107.

Pope and Buchanan have caused and will continue to cause damage to the Irrevocable Trust and the beneficiaries of the Irrevocable Trust unless and until they are removed as trustees and enjoined from taking further action antagonistic to the interests of the Irrevocable Trust and its beneficiaries.

COUNT II – INJUNCTIVE RELIEF

108.

Plaintiff incorporates the allegations in paragraphs 1 through 107 of this Complaint as if fully set forth herein.

109.

The continued service of Pope and Buchanan as alleged Trustees of the Irrevocable Trust, unless restrained and enjoined by order of this Court, will cause great and irreparable injury to the Plaintiff and to the other beneficiaries of the Irrevocable Trust. The Trust is believed to have assets that may be valued in the tens of millions of dollars or more. Included among those assets is real property described in the trust

instrument as well as various types of intellectual property rights associated with the image and recordings of James Brown.

110.

The Plaintiff and the other beneficiaries have no adequate remedy at law for the injuries being suffered and that will be suffered by them if the conduct of Pope and Buchanan is not restrained and enjoined. The real estate owned by the Irrevocable Trust is unique and money damages are inherently inadequate to compensate the Trust and the beneficiaries for its loss. The loss of intellectual property rights associated with the image and recordings of James Brown, and the damage done to those rights, may also be impossible to quantify in many respects and thus monetary damages are inadequate to compensate the Trust for these losses. Moreover, given the extraordinary magnitude of the potential monetary losses to which the continued service of Pope and Buchanan would expose the Irrevocable Trust, there is reason to believe that Pope and Buchanan have insufficient personal assets to indemnify the Trust for such losses.

111.

Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under S.C. Code Ann. § 62-7-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries. *See* S.C. Code Ann. § 62-7-706.

112.

Pursuant to S.C. Code Ann. § 62-7-1001(b), to remedy a breach of trust that has occurred or may occur, the Court may enjoin the trustee from committing a breach of trust.

113.

For all of these reasons, Pope and Buchanan should be restrained and enjoined from further breaches of their duties as purported Trustees of the Irrevocable Trust and from taking any further actions or positions on behalf of the Irrevocable Trust in which they assert that the Trust is not valid or fully funded or which are consistent with such a position in any way.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter a judgment and order:[1]

(a) immediately and permanently removing Pope and Buchanan as Trustees of the Irrevocable Trust;

(b) immediately restraining and enjoining Pope and Buchanan from any further activities involving the Irrevocable Trust;

(c) permitting the Irrevocable Trust to operate according to its express terms, and in accordance with South Carolina law, in electing its own Trustees without further interference from Pope or Buchanan; and

(d) awarding the Plaintiff such other and further relief as the Court may deem just, equitable and proper.

JURY DEMAND

Plaintiff Forlando J. Brown hereby demands a trial by jury of all issues properly triable to a jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

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[1] Plaintiff attaches hereto copies of the summons for Pope and Buchanan (Exhibit 7), the civil cover sheet (Exhibit 8), and Plaintiff's responses to Local Rule 26.01 Interrogatories (Exhibit 9).

Respectfully submitted, this 2nd day of January, 2008.

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COUNSEL FOR FORLANDO J. BROWN

VERIFICATION

I, Forlando Brown, the Plaintiff, do hereby certify that the entire contents of this Complaint are true and accurate to the best of my belief and knowledge as of the writing of this Complaint.

Forlando Brown

Subscribed and sworn to before me
this 31ST day of DECEMBER, 2007.

Deborah A. Hopkins
Notary Public
My commission expires: 10/21/11.

DEBORAH A. HOPKINS NOTARY PUBLIC FULTON COUNTY EXPIRES GEORGIA OCT. 21, 2011

#1243829

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of Appellant's Amended Petition for Rehearing with Suggestion for Rehearing *en Banc* on all Respondents on the date shown below, by emailing a copy of the same to their counsel, addressed as follows:

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September 8, 2022