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S.C. SUPREME COURT

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	ORDER GRANTING SUMMARY
Plaintiff,	)	JUDGMENT AND REQUIRING PRODUCTION
	)	OF PUBLIC RECORDS
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

THIS MATTER COMES BEFORE THE COURT for a hearing on the merits of Plaintiff's claims under the South Carolina Freedom of Information Act.¹ A hearing was held on November 19, 2020.² Present were Adam T. Silvernail, attorney for Plaintiff Adele J. Pope ("Plaintiff") and J. Emory Smith, Jr., attorney for Defendant Alan Wilson, as Attorney General of South Carolina ("Defendant" or "AG"). The Court also heard Defendant's motion for judgment on the pleadings and motions to strike. For the reasons discussed below, the Court **DENIES** Defendant's motions to dismiss, for judgment on the pleadings, and to strike and **GRANTS** the relief sought in Plaintiff's complaint herein.

BACKGROUND

Plaintiff, a South Carolina citizen residing in Newberry County, commenced this action

¹ Plaintiff moved for summary judgment in 2011, which motion remains pending. At the November 19, 2020 hearing, however, the parties argued all substantive matters related to this action, and the Court therefore proceeds with determining the merits of the case.

² The Court acknowledges that this case, filed more than nine (9) years ago, has had an extraordinarily long life for a FOIA case. The undersigned, however, was first involved with this case upon its remand in late 2019. Because the FOIA is explicitly intended to provide the public access to public documents "at a minimum cost or delay," this Court has endeavored to hear and dispose of this case as efficiently as possible after remand.

in Newberry County on August 10, 2011, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§30-4-10 *et seq.* (the “FOIA”). Alan Wilson, in his official capacity as Attorney General of South Carolina, is the Defendant.

In her complaint, Plaintiff alleges that on July 19, 2011, she made a proper FOIA request to the AG for the following documents:

1. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina (“AG”) with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.
2. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).
3. The contract of then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-40-0073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.
4. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina

Plaintiff’s complaint further alleges that the AG responded on August 5, 2011 to her FOIA request, with a member of the AG’s staff writing that “the wisest thing to do is to let the [judge presiding over Richland 4900 discovery motions] make the decision on which items, if any, are to be produced and which, if any, are not.” (*See Exhibit C to the Complaint herein*).

Plaintiff thereafter filed this action to enforce her rights under the FOIA. She seeks a declaration that the documents she has requested are public; injunctive relief directing the AG to turn over all responsive public documents; and attorneys’ fees and costs pursuant to S.C. Code Ann. §30-4-100(b).

The AG responded to the complaint with a motion to dismiss, filed September 12, 2011, asserting that the case should be dismissed under Rule 12(b)(3), due to improper

venue, and Rule 12(b)(8), because “[a]nother action is pending among the same parties as to the same or substantially the same claim.” The AG asserted that Plaintiff’s FOIA claims were subordinate to discovery motions pending in Richland County Case No. 2010-CP-40-4900³ (“Richland 4900”).

Beginning at the filing of its motion to dismiss, the AG has also filed several motions to strike affidavits filed by Plaintiff herein.

On September 21, 2011, Plaintiff moved for summary judgment on all of her causes of action.

On November 22, 2011, the Honorable Frank R. Addy, Jr., issued an Order in this case denying Defendant’s motion to dismiss; transferring venue of this case to Richland County; and consolidating, but not merging, this case with Richland 4900.

On December 6, 2011, the AG answered the complaint. The AG asserted in its answer that “Plaintiff cannot use FOIA to overrule or bypass proceedings in [Richland 4900].” Although the AG’s answer also asserts defenses of improper venue and lack of subject matter jurisdiction, it acknowledges that those arguments were disposed of by Judge Addy’s Order and are asserted “to preserve them in the event of an appeal.”

On December 21, 2012, Defendant AG moved for judgment on the pleadings, again alleging that the documents sought were “subject to the rules regarding discovery in the Rules of Civil Procedure.”

On March 7, 2013, Defendant AG moved to amend its answer and submitted a proposed amended answer. The amended answer asserts that the Court lacks subject matter

³ Richland 4900 is a tort suit brought by the AG and a number of private Plaintiffs on May 19, 2010, in which all plaintiffs, including the AG, were represented by private law firm Sweeny, Wingate & Barrow, P.A. (“SWB”).

jurisdiction over Plaintiff's FOIA claims because of pending discovery motions in Richland 4900. Subject to the AG's asserted defenses, it attached certain documents responsive to Plaintiff's FOIA request; withheld a "three page document" which "could be considered responsive to" Plaintiff's request for the contract of then-AG McMaster with SWB, because it was "under judicial review."

On May 17, 2016, the Honorable Doyet A. Early, III, heard pending motions in this matter.

On June 14, 2016, Judge Early issued an Order granting the AG's motion to dismiss on the basis that the documents Plaintiff requested under the FOIA "may be sought through discovery in" Richland 4900.

Plaintiff appealed, and the Court of Appeals reversed the dismissal of the action, holding that the AG must identify "specific language of a discovery rule that expressly prohibits disclosure of a particular type of record" in order to claim any responsive document is exempt from release under the FOIA.

The Court of Appeals remanded the case to this Court, and all issues in this case are ripe for disposition.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15. Plaintiff has requested certain public records from the AG, which is undisputedly a "public body," as defined in the FOIA. Because Plaintiff's complaint includes allegations which would entitle her to declaratory and injunctive relief, as well as an award of attorneys' fees and costs, the Court first disposes of the AG's pending motions.

Motions to Strike

The AG argues, as an initial matter, that more than a dozen affidavits filed by Plaintiff should be stricken from the record herein, including affidavits of journalists, a State Senator, members of the public and Plaintiff. The basis alleged for striking these affidavits is that they are irrelevant and contain inadmissible hearsay. The AG argues, “[a]ll that is relevant to her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need.”

The Court agrees that the affidavits are unnecessary and irrelevant to the FOIA issue and therefore **grants** the motion to strike.

The AG’s Belated Production of Documents does not Moot this Case

The AG argues that it has provided all responsive documents to Plaintiff’s FOIA request; that the “three page document” withheld until 2020 was not responsive to Plaintiff’s FOIA request; and that Plaintiff is therefore entitled to no relief in this action. This Court disagrees. S.C. Code Ann. §30-4-30(c) provides that a public body must “notify the person making the request of its determination [of the public records it will release under FOIA] and the reasons therefore.” The AG’s belated release of responsive documents and recharacterization of the “three page document” as nonresponsive to Plaintiff’s FOIA request do not satisfy the requirements of the FOIA.

First, the AG produced **no** documents responsive to Plaintiff’s July 17, 2011 FOIA request until filing its proposed amended answer on March 7, 2013. Instead, its initial FOIA response proposed to delay a substantive response indefinitely pending a resolution of

discovery issues in Richland 4900. This response was similar to that given by the Department of Revenue in *Sloan v. SCDOR*, 409 S.C. 551, 762 S.E.2d 687 (2014). Therein, the Court found that the Department of Revenue's response -- indicating a wait-and-see approach -- was "equivocal and evasive." The Court further found that such a response, followed by production of responsive documents after the filing of a FOIA suit, did not moot the FOIA Plaintiff's case.

Importantly, the AG has taken the position since his original answer was filed herein in 2011 that it was in possession of a potentially responsive "three page document," which was being withheld pending further order of the Court. The Richland 4900 discovery motion was not decided until May 2020, but the pending discovery motions in Richland 4900 did not exempt the document from release under the FOIA as discussed below.

On February 24, 2020, more than eight (8) years after filing its answer, the AG filed a memorandum which for the first time alleged that the "three page document" was not responsive to Plaintiff's FOIA request. (See Second Supplemental Memorandum in Support of Motion for Judgment on the Pleadings). The AG alleged that "upon closer examination in preparation for the hearing in this case on February 21 [2020]," the AG had determined that the document in its possession was not identical to a signed contract declared public by the Federal District Court in another case in 2013. The AG asserts that the "three page document" is therefore "neither an agreement nor an unsigned copy of" the contract requested in the third item of Plaintiff's FOIA request. The Court finds that the document in possession of the AG is responsive to Plaintiff's FOIA request but, even if it were not, the AG cannot now take the position that his 2020 change of position should moot nine (9) years of litigation in this Court and the Court of Appeals based on the AG's 2011 answer. The Court of appeals has

recently held that a party cannot take action contrary to its own pleadings. *See The Kitchen Planners v. Friedman*, S.C. Ct.App. Op. No. 5738 (July 1, 2020),

The AG's belated production of documents does not negate the entitlement of Plaintiff to relief. To date, all documents provided to Plaintiff by the AG in this action have included caveats and reservations indicating that the AG was *not* producing the documents pursuant to Plaintiff's FOIA request, but instead "voluntarily" delivering them to her.

Richland 4900 Discovery Proceedings do not Exempt any Requested Document from Production under the FOIA

At the hearing on this matter, the AG argued that it is entitled to judgment on the pleadings because any response to Plaintiff's FOIA request was barred by discovery motions in Richland 4900 which were pending at the time Plaintiff's FOIA request was made. In the appeal in this case, the Court of Appeals found⁴ that in order to claim a FOIA exemption under S.C. Code Ann. §30-4-40(a)(4) as a result of pending discovery in another case, a public body "must point to the **specific** language of a discovery rule that **expressly** prohibits disclosure of a particular type of record" (emphasis supplied). The AG has not identified any rule expressly prohibiting it from disclosing the documents sought in Plaintiff's FOIA request, and this Court finds that pending motions regarding civil discovery in another case do not, under the applicable Rules of Civil Procedure, expressly prohibit a public body from releasing public records under the FOIA.

The AG's motion for judgment on the pleadings is therefore **DENIED**. I further find that the Plaintiff is entitled to Summary Judgment and an Order Requiring Production of Record.

⁴ *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448 (Ct.App. 2019).

Plaintiff is the Prevailing Party and is Entitled to Attorneys' Fees and Costs

Pursuant to S.C. Code Ann. §30-4-100(b), the Court may award the reasonable attorneys' fees and costs to a Plaintiff who has prevailed in an action to secure a public body's compliance with the FOIA. In this case, although the AG has provided Plaintiff with certain documents (beginning over 18 months after she filed this case, and most recently in May of 2020), the AG's initial response to Plaintiff's FOIA request was inadequate. Plaintiff is the prevailing party in this case, as set out in this Order, and the Court finds that she is entitled to an award of reasonable attorneys' fees and costs incurred herein. *See Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011)

CONCLUSION

Based on the foregoing, the Court finds that on this case Plaintiff made a proper request for public records under the FOIA to the AG, which is a public body. None of the grounds the AG has identified in its Motion for Judgment on the Pleadings and/or Answer support the AG's failure to fully respond to Plaintiff's FOIA request made more than nine (9) years ago, and Plaintiff's prosecution of this case, including her successful appeal, was necessitated by the AG's refusal to make a full and proper response to Plaintiff's July 17, 2011 FOIA request. The Court finds no basis for striking any affidavit filed by Plaintiff herein. The Court further finds that there are no genuine issues of fact and the Plaintiff is entitled to a summary judgment on the issues presented herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Defendant's motions to strike are **DENIED**;
2. Defendant's motion for judgment on the pleadings is **DENIED**;
3. The Plaintiff is granted a summary judgment on the issues presented herein;

4. Defendant shall, within 15 days, produce to Plaintiff all documents responsive to her June 30, 2011 FOIA request which are under the custody or control of the AG, or which the AG has prepared, owned or used;
5. To the extent the AG claims any FOIA exemption for any document, the AG shall produce to Plaintiff a log describing each such document and identifying specifically any exemption which the AG believes exempts the document from disclosure;
6. Plaintiff is the prevailing party in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff's counsel shall, within thirty (30) days, submit a detailed affidavit of fees and costs requested for consideration by this Court; and Plaintiff shall serve a copy of the affidavit of fees and costs on the Attorney General who will have 30 days to respond.

AND IT IS SO ORDERED.

Clifton B. Newman, Presiding Judge

 , South Carolina
December , 2020



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al

Case Number: 2010CP4004900

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

EXHIBIT B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

RUSSELL L. BAUKNIGHT, as) Civil Action No.: 2010-CP-40-04900
Trustee of the James Brown 2000)
Irrevocable Trust, as Personal)
Representative of the Estate of James)
Brown; 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,)
Plaintiffs,)
v.)
Adele J. Pope)
Defendant.)

ORDER CONCERNING PENDING
MOTIONS TO RECONSIDER

THESE MATTERS CAME BEFORE THE COURT on Friday, July 30, 2021. Present before the Court were Aaron J. Hayes, Esq., for Plaintiffs, and Adam T. Silvernail, Esq., for Defendant. Pursuant to remittitur from the appellate courts, currently pending before the circuit court are two Motions to Reconsider:

- Defendant Pope's Motion to Alter, Amend and/or Vacate Order Granting Plaintiffs' Motion to Set Aside Default (filed October 20, 2015); and
- Defendant Pope's Motion to Vacate, Set Aside, Alter and/or Amend Order Denying Injunction as to Russell L. Bauknight serving as Agent for the State/Attorney General and Denying Injunction and Disqualification of Sweeney, Wingate & Barrow, PA . . ." (filed July 30, 2012).

At the beginning of the proceedings on July 30, 2021, the undersigned confirmed from counsel that these Motions to Reconsider stem from Orders issued by Judge L. Casey Manning. Specifically, the Order Setting Aside Default was signed by Judge Manning on October 13, 2015. The Order Denying Disqualification/Injunction was signed by Judge Manning on July 5, 2012. This Court acknowledged that Judge Manning originally heard the factual and legal presentations of the parties prior to his issuance of the above-referenced Orders, and at the conclusion of the proceedings on July 30, 2021, the Court directed that the parties prepare a proposed order, jointly if possible, sending these Motions to Judge Manning for resolution. Therefore, the Court finds and orders as follows:

- The undersigned has received exclusive jurisdiction from the South Carolina Supreme Court to "hear and dispose of" the instant case. See Order of Supreme Court, Civil Action No. 2010-CP-40-04900, signed Dec. 4, 2019 and filed Dec 10. 2019. The undersigned is to "decide all matters pertaining to this case." Id.

- The two underlying Orders of Judge Manning, which generated the two Motions referenced above, were the subject of an appeal to the Court of Appeals which was dismissed by that Court due to the status of the instant Motions as not yet ruled upon. See Bauknight, et al. v. Pope, 2020-UP-216 (App. Case No. 2017-001899), withdrawn, substituted, and re-filed Sept. 16, 2020 (Ct. App. 2020).
- The Supreme Court denied Defendant Pope's Petition for Certiorari to review the above-referenced decision of the Court of Appeals, and stated that "[t]he motions currently pending before the Honorable Clifton B. Newman in the circuit court may now be resolved so that the extensive litigation in this matter may be promptly concluded." Bauknight, et al. v. Pope, App. Case No. 2020-001383 (decision filed April 21, 2021). Accordingly, the Remittitur to this Court was issued on April 23, 2021.
- The Court notes that Rule 59(f) of the South Carolina Rules of Civil Procedure provides, with respect to motions of the sort at issue here, that "the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion if not heard and disposed during the term." Of course, Judge Manning is the "trial judge" regarding these two Motions.
- In light of the above, this Court does not construe the Supreme Court's December 4, 2019 Order Granting Exclusive Jurisdiction, nor the Supreme Court's April 21, 2021 Order Denying Certiorari, as intended to deprive Judge Manning of his continuing Rule 59(f) jurisdiction to resolve these Motions. Further, this Court is unaware of any reason that Judge Manning is "unable to proceed," and therefore the provisions of Rule 63 of the South Carolina Rules of Civil Procedure are not triggered.

- Accordingly, in the interests of seeking a prompt conclusion to this litigation, the undersigned, with due regard for and pursuant to the grant of exclusive jurisdiction over this matter, and upon consideration of the mandate of Rule 59(f), hereby orders that these two Motions be heard by Judge Manning as soon as reasonably practicable. This Court holds that jurisdiction remains with Judge Manning concerning these two Motions. See Rule 59(f), SCRPC. This Court holds that jurisdiction remains with the undersigned on all other matters in this case. See December 4, 2019 Order of Supreme Court, supra.
- The parties are hereby directed to contact Judge Manning's office jointly, within 10 days of the date of this Order, and to work with Judge Manning's office in scheduling a hearing on these two Motions, to be held as soon as reasonably practicable. Nothing in this Order precludes Judge Manning from deciding these Motions on the written submissions of the parties, should Judge Manning so choose. See Rule 59(f), SCRPC ("[t]he motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.").
- This Order applies solely to the two pending Motions to Reconsider, referenced above. This Order applies to no other matter in this case.

AND IT IS SO ORDERED.

Clifton B. Newman, Circuit Judge

Columbia, South Carolina
August __, 2021



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al

Case Number: 2010CP4004900

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

EXHIBIT C

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 EXPEDITED LIFTING OF STAY AND
CONSIDERATION BY THE CIRUCIT COURT OF ISSUES REMANDED BY THE
COURT OF APPEALS IN CASE NO. 2017-001899,
AND SUPPORING MEMORANDUM**

TO: THE HONORABLE CLIFTON NEWMAN:

Petitioner respectfully moves this Court pursuant to Rule 241 SCACR and other applicable law, and based on an unpublished decision of the South Carolina Court of Appeals in this case, “Richland 4900¹” issued in 2022 for which reconsideration is being sought, for an expedited hearing and Order Lifting Stay, followed by immediate consideration of motions pending in this case since 2010, including those remanded by the Court of Appeals in 2020 which have not been heard.

An expedited hearing and lifting of the stay is necessary stop the coordinated efforts since 2016 of Respondents Attorney General of South Carolina (“Attorney General” or “AG”); Tommie Rae Hynie (“Hynie”); and the James Brown Legacy Trust (“Legacy Trust”)² to wield the power and authority of the Office of the AG, without legal authorization, to render the issues in Richland 4900 appeals moot; reinstate a 2008 settlement brokered by the Attorney General; and blame the damage on Robert Buchanan, Jr. (“Buchanan”) and Petitioner. [Complaint, R. 4900, 5/19/10]

In 2011 the AG, Hynie and the Legacy Trust persuaded the Court of Appeals to dismiss (without prejudice) a writ of prohibition asking the Court to declare Richland 4900 void as unconstitutional. This issue of whether Richland 4900 is unconstitutional, unauthorized and illegal has been preserved for 12 ½ years. [Hearing, 8/24/22 and Brief of Appellant, this case]

On April 24, 2013 the Honorable Alan Wilson, AG, confirmed to SWB that the Office of the AG had never engaged SWB to bring Richland 4900, but SWB, the AG, Hynie and the Legacy

¹ Richland County Case 2010-CP-40-4900 (“Richland 4900”)

² As shown on the complaint and confirmed in the 2017 depositions of Kenneth Wingate, Esq., (“Wingate”) and Everett Kendall, Esq. (“Kendall”), sole acting counsel of record for all Richland 4900 Plaintiffs from the filing of Richland 4900 until at least 2017 was the private law firm of Sweeny, Wingate and Barrow, P.A. (“SWB”).

Trust have never produced the AG's April 2013 letter in Richland 4900 discovery, and it was concealed until released under FOIA in late 2020 by the Attorney General. [**Exhibit A**, Ltr. AG to SWB, 4/24/13]

In 2016 the Attorney General and Legacy Trust had two 2011 FOIA cases dismissed, one consolidated with Richland 4900, in order to conceal the AG's public, unsigned Special Counsel Litigation Retention Agreement with SWB; a claimed \$4.7 million valuation of Brown's \$84 million music empire by Peter Afterman which had become the backbone of Respondents' Richland 4900 efforts; and other public documents used in Richland 4900 which are property of the State of S.C., but which have been concealed for 12 ½ years.

In the effort to render issues moot and deprive the court of jurisdiction over the Legacy Trust and its owner-beneficiaries, the AG, Hynie and Legacy Trust were able to conceal the public, unsigned AG's Special Counsel Agreement from 2010 until 2021.

In October 2016 the Honorable Henry McMaster, now Governor, and AG in 2010, stated emphatically under oath that he had never hired SWB to bring Richland 4900 and did not know he was a Richland 4900 plaintiff until after leaving office as AG. By then, at least 11 Respondents had repudiated the relief sought in Richland 4900 and claimed that Hynie was not Brown's spouse; was not entitled to any portion of Respondent Estate of James Brown; and did not have any termination rights³ Yet the complaint asserted she was the spouse and entitled to have of the termination rights. [Complaint, **Exhibit B**,]

³ As used herein, "termination rights" refers to all rights of heirs of James Brown to claw back certain of Brown's U.S. royalties from his 1,100 song copyrights under Sections 203 and 304 of the U.S. Copyright Act, 17 U.S.C.A. § 101 *et seq.*, and to the proceeds of those rights to which Respondents are entitled. In 2010 SWB and Bauknight asserted to the circuit court that the termination rights of all Respondents were held by the Legacy Trust, and in 2012 an affidavit by Bauknight said that the Legacy Trust had been managed in Richland 4900 since 2009. Bauknight also signed the AG's Special Counsel Agreement with SWB as trustee of the Legacy

Since Governor McMaster's 2016 testimony, SWB and Bauknight, using the power and prestige of the AG's office, have redoubled their efforts to enforce all stays; conceal public documents and render the issues moot while depriving the appellate courts and lower court of jurisdiction over 15 Respondents, including the Legacy Trust and Hynie.

Between 2016 and 2019 Bauknight claimed under oath in a FOIA case and appeal that Respondent Legacy Trust never existed, but at the same time sought summary judgment in Richland 4900 as to the counterclaims of Buchanan and Petitioner. [**Exhibit C**, Bauknight Affidavit, 5/2/16]. And the Legacy Trust, with SWB, continued to advance Hynie's announced plan to disregard *Wilson v. Dallas*; reinstate the AG's 2008 settlement deal; and blame the damage on Buchanan and Petitioner.

The Attorney General, Legacy Trust and Hynie have also worked since 2016 to deprive the circuit court and appellate courts of jurisdiction over 15 Respondents, including the Legacy Trust, its trustee and all of its owners. [See Initial Brief of Respondents, 2017-001899, 7/25/18, as a single example.]

In 2017 Petitioner appealed various Richland 4900 circuit court orders, including an order granting SWB's 2010 to relieve all Richland 4900 Plaintiffs, including the Legacy Trust, Hynie, and Legacy Trust owners, from default as to the counterclaims of Buchanan and Petitioner. [**Exhibit D**, Notice of Appeal, Ct. Appeals 2017-001899, 9/12/17]

In 2018 Petitioner appealed various Richland 4900 circuit court orders, including a circuit court order granting all Respondents, including Hynie, the Legacy Trust and its owner-beneficiaries, summary judgment as to the counterclaims of Buchanan and Petitioner. The parties

Trust, and agreed for Respondent Brown Estate to advance the costs of Richland 4900 to the Legacy Trust and its owners, to be repaid in their "aliquot" ownership shares.

were not properly joined and SWB had bogged discovery down with a dozen circuit court protective orders since 2016 attempting to conceal public documents and evidence that Hynie was not Brown's spouse. [**Exhibit E**, Notice of Appeal, 2018-2229, 12/17/18, pp. 1 - 7] At the time the Legacy Trust was telling the Court of Appeals in a FOIA case that it did not exist. [Affidavit, Bauknight, 5/12, Ex. C]

In 2019 Bauknight, while acting both for Respondents Estate/2000 Trust and the Legacy Trust, obtained a ruling in a circuit court case which Respondents tried twice in 2016 to consolidate with Richland 4900. The ruling advances the relief sought by Hynie, the Legacy Trust and the AG in the Richland 4900 complaint, which is to dismember Brown's "I Feel Good" charity. [Order, Aiken Cty. Case 2013-CP-02-1337, "Aiken 1337," 1/16/19]

That year the two FOIA appeals were remanded, but the AG, and SWB, acting solely for Hynie, the Legacy Trust and SWB's private clients, delayed and interfered with both FOIA cases.

In 2020 the Court of Appeals in Case No. 2017-001899 remanded the following questions first raised in 2010 in Richland 4900 to the circuit court:

1. Should SWB's 2010 motion to relieve Hynie and all Respondents from default as to the counterclaims of Buchanan and Pope have been vacated? ⁴
2. Should the 2011 motion to disqualify SWB as counsel have been granted where SWB has concealed its lack of authority to act for the State/AG for 12 ½ years?
3. Should the 2011 motion to enjoin Bauknight from acting on behalf of the Attorney General while serving as fiduciary for Hynie and others have been granted?

⁴ SWB admitted that it had received the answer and counterclaim; did not timely respond; and moved for relief from default. [Hearing 12/17/17, **Exhibit F**] The only support for the request for relief was a brief, 2-page excerpt from a sworn statement of resigned trustee Albert Dallas which related to his service as PR/Trustee during 11 of the 12 months after Brown died. [**Exhibit G**, Sworn Statement, Dallas; w/ Supp. Mot. and Order dtd. 7/5/12]

The AG, Bauknight, Legacy Trust and Hynie, through SWB, have taken extraordinary steps to assure that these questions are delayed and rendered moot, and the Court of Appeals loses jurisdiction over 15 Respondents. They have done so despite the order the Supreme Court denying certiorari in Case 2017-001899 which states that they should be expeditiously handled by the circuit judge assigned to Richland 4900. [**Exhibit H**, Order, Sup. Ct. Deny. Cert., 2021]

In 2022 the Court of Appeals issue an unpublished opinion in this appeal which affirms the grant of summary judgment to Hynie and all other Respondents as to the counterclaims of Buchanan and Petitioner. Reconsideration of the decision is being sought. If the stay is not lifted, and the undisputed facts heard in the issues remanded in 2020, the issues on remand and in that appeal may be rendered moot, and the effort of SWB, Hynie and others to deprive the appellate courts of jurisdiction by the unauthorized use of the power of the Office of the AG may be successful.⁵ [Decision, Ct. of Appeals, /22, this case.]

The AG's April 24, 2013 letter of the AG to SWB should have ended Richland 4900, but it was concealed by SWB and Respondents in Richland 4900 for 9 ½ years. It is just one of the undisputed facts that show that neither Hynie nor any Respondent should have been relieved from default or granted summary judgment because all of the State/AG action in Richland 4900 was unauthorized and improper.

Petitioner should be granted an expedited hearing. The stay in Richland 4900 should be lifted. The issues on remand from the Court of Appeals in 2020, and all other motions pending since 2010 should be expeditiously considered by the judge assigned to Richland 4900.

⁵ The issues before the Court of Appeals in both the 2017 and 2018 appeals involve the counterclaims of Buchanan and Petitioner.

This motion is supported by the record in Richland 4900 and its four appeals; the public admissions of Respondents during the 5-year stay; and the following memorandum.

MEMORANDUM IN SUPPORT OF EXPEDITED HEARING, LIFTING OF STAY, AND CONSIDERATION OF MOTIONS UNRESOLVED IN THIS CASE SINCE 2010

In 2022 termination rights expert Lee-Ford Tritt gave a presentation to the South Carolina Bar entitled *The Curious Case of James Brown*. [Exhibit I] Professor Tritt's presentation barely scratched the surface of the 14 years of termination rights problems caused by a settlement brokered by the AG in 2008 and exacerbated by the use of the State's power to enforce, and then to try to reinstate, that settlement for 12 ½ years in Richland 4900.

Tritt noted correctly that Brown's intentions in his estate plan had been to leave the bulk of his fortune to his "I Feel Good" charity for needy students, but not a penny in scholarships had been distributed in 15 years, even though the music empire sold for \$90 million in 2021.

The following briefly describes how the Attorney General, the Legacy Trust and Hynie used Richland 4900 and cases it tried to consolidate with Richland 4900 to carry out Hynie's announced plan of May 29, 2013 to reinstate the AG's 2008 settlement, disregarding *Wilson v. Dallas*. They did so by media attacks and successful state action to conceal public evidence that Hynie was not Brown's spouse; that the \$4.7 million value assigned by Peter Afterman to Brown's music empire was incorrect and shifted \$1 million a year and nearly 1/3 (31%) of the "I Feel Good" charity's assets over to a trust for family members; that termination rights of all heirs were worth only \$8.8 million ten years after Brown's death, not the claimed tens of millions of dollars; and that the AG's 2008 settlement was a charitable and tax disaster for Brown's "I Feel Good" Trust.

Concealing the AG's Special Counsel Litigation Agreement with SWB for 11 Years

On May 18, 2010 SWB, Bauknight⁶ and three attorneys seeking to stop the appeal in *Wilson v. Dallas* signed the Attorney General's Special Counsel Litigation Retention Agreement with SWB.

The next day the Attorney General, the Legacy Trust, Hynie and other Legacy Trust owner-beneficiaries sued Buchanan and Petitioner in Richland 4900. All Respondents knew that now-Governor McMaster did not sign the AG's Special Counsel Agreement with SWB, but all supported SWB's use of the power and authority of the Office of the AG to benefit the Legacy Trust owners for 12 ½ years.

SWB claimed for more than a decade that the AG's public, unsigned Litigation Agreement with SWB was the "epitome" of a private document. In 2011 Hynie and other Respondents tried to intervene in a Newberry County FOIA case to stop the release of the public AG's Litigation Agreement.

The FOIA case was moved to Richland County and consolidated with Richland 4900; dismissed by the circuit court in 2016; appealed until 2019; and remanded to the circuit court.

In 2021 the AG's public, unsigned Special Counsel Agreement with SWB which had been requested since 2010 was finally released.

For more than a decade SWB and Bauknight acted for the State/AG to benefit Hynie and other SWB private clients, using the authority of the Office of the AG. Since 2017 they have resisted every effort to lift the stay while trying to render issues related to this improper state action moot in the Richland 4900 appeals.

⁶ Bauknight signed the AG's Special Counsel Agreement as trustee of the Legacy Trust and also as PR of Brown's estate and trustee of Brown's 2000 Trust.

The Attorney General Seeks Dismissal of the First Richland 4900 Appeal (2011)

In early 2011 the Attorney General and other Respondents asked the Court of Appeals to dismiss an early appeal and writ of prohibition seeking a declaration that Richland 4900 was unconstitutional.

Buchanan and Petitioner sought the AG's Special Counsel Agreement in Richland 4900 discovery before the matter was considered by the circuit court in 2010, but the Attorney General and other Respondents refused to release it. The writ and appeal were dismissed, without prejudice, as premature.

Buchanan and Petitioner have continued to assert their claim that Richland 4900 was unauthorized and unconstitutional, but the Attorney General, through SWB and Bauknight, is trying to render that issue moot. [Exhibit F, Hearing, 12/17/12]

SWB Counsels the Attorney General Not to Comply With his FOIA Duties (2012)

In January 2012, as shown on **Exhibit J**, SWB counseled Attorney General Alan Wilson, purportedly as the AG's attorney, not to comply with his duty as the public official charged with the enforcement of FOIA. [Ex. J, Ltr. of SWB to AG, 1/20/12]

SWB's 2012 letter is characteristic of the disruption of three FOIA cases for a decade to advance Richland 4900 and conceal public evidence that Hynie was not Brown's spouse and advance the AG's 2008 settlement as sought in the Richland 4900 complaint.

Between 2016 and 2022 the FOIA disruption was redoubled by the claim that the Legacy Trust never existed and delay of release of the AG's Special Counsel Agreement with SWB until 2021. [Exhibit C, Bauknight Affidavit]

AG Wilson Confirms that SWB was Never Engaged by the AG in Richland 4900 (2013)

As shown on **Exhibit A**, on April 24, 2013 Attorney General Alan Wilson notified SWB that the Office of the Attorney General had never engaged SWB to bring Richland 4900 and had never shared an attorney-client relationship with SWB. AG Wilson made clear that SWB would need to disgorge the funds Respondent Brown Estate had advanced for the Legacy Trust and its owner-beneficiaries in Richland 4900 if the decision in *Wilson v. Dallas* remained the same.

SWB, the AG, Hynie and all Respondents have concealed this evidence in Richland 4900 for 9 ½ years in an effort to enforce the AG’s 2008 settlement and disregard the Supreme Court’s decisions. [Complaint, R. 4900]

The AG’s April 24, 2013 letter makes clear that no Respondent should have been released from the counterclaims of Buchanan and Petitioner, and summary judgment should not have been granted before the parties were even joined and while SWB was refusing discovery. [See Notices of Appeal, Exhibits D and E]

Governor McMaster Confirms That he Did Not Authorize Richland 4900 (2016)

In 2016 the Attorney General and others moved twice to consolidate Richland 4900 with Aiken 1337. The cases were not consolidated, but SWB obtained permission to participate in Richland 4900 depositions of the Attorney General and staff to protect SWB’s “client” the Attorney General.⁷

⁷ Neither AG Wilson nor Governor McMaster, nor any AG staff member identified anything Buchanan and Petitioner had done wrong. None had seen the Bauknight/Afterman claimed \$4.7 million valuation, and none except Solicitor General Cook (who learned in 2013) knew about the damages caused to Brown’s charity by the \$79 million devaluation of Brown’s music empire to \$4.7 million. None knew anything about Richland 4900 since 2013, and none knew anything about termination rights or the incorrect claim that they were worth tens of millions of dollars.

In his deposition Governor McMaster stated emphatically that he had not authorized SWB to bring Richland 4900 and did not know he was a Richland 4900 plaintiff until after leaving office as AG in January 2011.

Governor McMaster's testimony, with the AG's concealed April 24, 2013 letter and the concealed unsigned AG's Litigation Retention Agreement, made clear that SWB and all Respondents had already used the power of the Office of the AG for six years, with no legal authority to do so, to try to enforce – and now to reinstate, the AG's 2008 settlement which was good for Hynie and the Legacy Trust, and severely damaged Brown's "I Feel Good" charity.

By the end of 2016 the AG and the Legacy Trust had secured dismissal of the FOIA cases that would conceal and tie up the unsigned AG's Special Counsel Agreement, Afterman claimed \$4.7 million valuation of Brown's \$99 million music empire, and other public documents for at least three years.

The FOIA dismissal orders relied on the AG's and Legacy Trust's claims that FOIA should be subordinate to Richland 4900 discovery, and also on Bauknight's extraordinary, bold effort to deprive the Court of Appeals of jurisdiction over the Richland 4900 Plaintiffs. Reversing his sworn 2012 testimony, Bauknight now told the circuit court and the Court of Appeals, under oath, that Respondent Legacy Trust never existed. **[Exhibit C]**

Experts Refute, and Most Respondents Abandon, Richland 4900 Claims (2017- 2018)

In 2017 and 2018 Judge (Retired) Walter Williams, a philanthropist and former IRS agent was just one of more than 35 expert and lay witnesses, including all nine the experts SWB and Bauknight jointly named in Richland 4900 and Aiken 1337, to support Buchanan's and Petitioner's claim that Brown's music empire was worth \$99 million less the \$15 million TIAA debt when he

died on Christmas Day 2006 – not the \$4.7 million Hynie, Bauknight and Peter Afterman were claiming.

SWB's Richland 4900 expert Woolley placed the value of Brown's 10,000 items of tangible personal property at as much as \$20 million, while Afterman placed them at under \$.5 million. SWB's expert Roger Miller testified that "frothy investors" were trying to buy "solid gold" music catalogues such as that of James Brown for 15 – 20 times annual royalties. This was as much as \$60 million when Brown died, and \$80 - \$100 million in 2009 when Bauknight took over.

Miller also debunked the claims of Hynie, Bauknight and Afterman that the termination rights were worth "tens of millions" of dollars and that there would be nothing in the "I Feel Good" charity by 2023 if the AG's 2008 settlement were not approved. Miller said what Buchanan and Petitioner had said years earlier. Termination rights apply only to U.S. royalties, about half of Brown's \$5 million annual royalties. The non-U.S. royalties will never be subject to termination rights. Further, Hynie was not the spouse and had no termination rights.

Miller confirmed that by 2017 Brown's copyrights had increased in number but the termination rights of all heirs were worth only \$8.8 million. In 2008 the AG had proposed to give away half of Brown's "I Feel Good" charity and \$2 million a year of income from 2011 until the music empire was sold, in exchange for termination rights worth much less than \$4.4 million

By 2016, Court of Appeals filings by 11 Respondents were clear: Hynie was a "bigamist" and not entitled to any termination rights, or to any share of Brown's estate.

With the April 24, 2013 letter, the Governor's sworn testimony, and the hidden AG's Special Counsel Agreement, SWB, Hynie, the Legacy Trust and Bauknight needed to render the issues in Richland 4900 moot. The Legacy Trust and its 14 owner-beneficiaries needed to escape

the jurisdiction of the appellate courts in the Richland 4900 FOIA appeal and the two appeals which would follow in 2017 and 2018.

In Court-Ordered Depositions SWB Attorneys Claim Authority to Act for AG (2017)

In March 2017, waiving potential conflicts because of *Wilson v. Dallas*, two SWB attorneys, Wingate and Kendall, asked the Honorable Jean Hoefer Toal (“Judge Toal”) to stop their noticed depositions by Petitioner, *pro se*, in Aiken 1337. Judge Toal ordered that they be deposed on SWB’s authority to commence and continue the lawsuit of the Attorney General and others, Richland 4900, which had begun in 2010 and was continuing that day. [Exhibit K, Order, Jg. Toal, 3/1/17]

In extraordinary testimony both SWB lawyers, concealing the existence of the April 24, 2013 letter, said the AG and all Respondents were SWB’s clients. Wingate testified that he was unaware of any change in SWB’s Richland 4900 clients since 2010 except the change of AG from Governor McMaster to AG Wilson.

It would be 3 ½ years before the AG released the April 24, 2013 letter making clear that Wingate had lacked candor with the court in his deposition.

Meanwhile, SWB, the Legacy Trust and Bauknight, acting for the State/AG, bitterly opposed three efforts to lift the stay in Richland 4900 while concealing both the AG’s April 24, 2013 letter and the public, unsigned AG’s Litigation Retention Agreement with SWB.

Ex Parte Litigation Records Discarded and Support for Hynie’s May 29, 2013 Plan (2018)

By 2018 Bauknight, aided by Afterman and 17 Legacy Trust attorneys, had spent tens of millions of dollars since 2009 trying to make Hynie the spouse of James Brown and reinstate the AG’s 2008 settlement. He filed those records *ex parte* with the Aiken 1337 court, calling it the “customary” way of dealing with the court.

When Petitioner objected to the circuit court's having reviewed tens of millions of dollars of litigations costs from a claimed \$4.7 million music empire, the circuit court discarded the records of the tens of millions of dollars Bauknight had spent, and rescinded the order for them to be produced.

By 2018, however, a number of Respondents had filed a federal suit claiming that Bauknight, Hynie, and Respondent James Brown II had engaged in secret "backroom deals" to deprive certain Richland 4900 Plaintiff/Respondents of their termination rights. They said it was a conflict of interest for Afterman to be working for Hynie to siphon off royalties from the "I Feel Good" and being paid by Brown's Estate/2000 Trust. *See Brown-Thomas v. Hynie*, Case No. 1:18-cv-02191-JMC.

If Bauknight's 2018 claim that he made as much as the \$5+ million Buchanan and Petitioner brought in each year, \$50 million would have come in between the payoff of the TIAA debt in 2011 and the \$90 million sale in 2021.

Bauknight testified in 2018 that he had no idea of the value of the music empire and had not had any valuations since Afterman's. \$4.7 million

What is clear is that neither Hynie, nor the Legacy Trust, nor any Legacy Trust owner-beneficiary who supported Hynie's attempt to use the AG's 2008 settlement to take \$1 million a year and more than \$20 million when the music empire was sold in exchange for termination rights she and James Brown II held, with a total value of under \$.5 million, was entitled to relief from default as the counterclaims of Buchanan and Petitioner.

The Circuit Court Supports \$4.7 Million Valuation, Hynie Spousal Claim (2019)

Despite the clear evidence that Hynie was not Brown's spouse; that the AG's 2008 settlement dismembered Brown's estate plan; and that Brown's assets were worth \$90 million and

making at least \$5 million a year in 2009 when the AG's Legacy Trust took control, in 2019 Bauknight sought – and got – an order in Aiken 1337 that would support his efforts to make Hynie Brown's spouse and help Hynie reinstate the AG's 2008 settlement under the plan Hynie and Louis Levenson, Esq. had announced to the circuit court on May 29, 2013. [See Order, Aiken 1337, 1/16/19] The circuit court even adopted Bauknight's claim that James Brown's worldwide music empire had been worth less than \$4.7 million when Brown died, and that Buchanan and Petitioner breached their fiduciary duty by appealing the AG's 2008 settlement.

Now the only remaining task was to deprive the Richland 4900 appellate court of jurisdiction over the 15 Respondents, including the Legacy Trust and its owner-beneficiaries. (See Complaint, Exhibit B)

2020 – The Court of Appeals Remands Richland 4900 Issues for Consideration

In 2020 the Court of Appeals remanded the questions referenced above for consideration by the circuit court. Instead of having them heard, SWB, still acting for the State/AG, delayed for years, even persuading the assigned Richland 4900 judge, the Honorable Clifton Newman, that he lacked jurisdiction to hear the matters on remand. This was inconsistent with the Supreme Court's ruling when it denied certiorari. [Exhibit H]

\$90 Million Sale of Brown's Music Empire and Bauknight Withholds \$47,972 SA Fee (2021)

The \$90 million sale makes clear, as stated above, that no Respondent is entitled to relief from default as to the counterclaims of Buchanan and Petitioner. These and all other 2010 motions pending should have been heard more than a year ago.

By 2021 Bauknight was refusing to pay Petitioner even the \$47,972 SA fee she earned in 2007, which was approved in three separate court orders. That amount has now grown to \$119,000. Bauknight secured an order to hold the funds until Hynie, the Legacy Trust, and the

Attorney General have finished the damage they started 12 ½ years ago in Richland 4900. This is just one example of the state action in Richland 4900 which has deprived Buchanan and Petitioner of their Due Process, FOIA and other rights for more than a decade.

The stay should be lifted. The matters on remand should be considered before Respondents deprive the circuit court and court of appeals of jurisdiction over the Legacy Trust and other parties and the issues on appeal and on remand in Richland 4900 become moot.

The Court of Appeals Affirms Summary Judgment for Hynie and Others (2022)

Before the issues it remanded in 2020 had been heard, the Court of Appeals in this case affirmed an order by the same circuit court granting the Legacy Trust, Hynie and all Respondents summary judgment on Buchanan and Petitioner's claims before discovery was concluded, and before a 2012 motion to reinstate Buchanan as a party was even heard.

The stay should be lifted. The question of default should be promptly decided before the Court of Appeals continues.

All Legacy Trust owner-beneficiaries have now confirmed in filings in 2022 that they have released all James Brown Estate/2000 Trust fiduciaries. [See Waivers filed, 2022, Case 2007-CP-02-122] Richland 4900 is about the unlawful use of the State/AG's authority to help the Legacy Trust and its owners stop the *Wilson v. Dallas* appeal and blame the damage caused by the AG's 2008 settlement on Buchanan and Petitioner.

Richland 4900 had been unjust, unauthorized and unconstitutional since it was filed. The power of the State/Attorney General has been used to advance the agenda of Hynie, the Legacy Trust, other SWB private clients.

Lifting the stay will help prevent the appellate court from losing jurisdiction over 15 of the 17 Respondents, including the Legacy Trust and its trustee.

Conclusion

Resolving the issues remanded to the circuit court by the Court of Appeals is critical to prevent the Court of Appeals from losing jurisdiction over 15 Respondents and rendering the issues on appeal moot. Bauknight and SWB, without authority, have used the AG's power and prestige to stop the lifting of the stay for five years to deprive the appellate court of jurisdiction over most Respondents and render the issue in both appeals moot.

An expedited hearing should be granted. The stay which has been in place since 2017 should be lifted. All motions pending since 2010 should be expeditiously heard by the circuit court judge to whom Richland 4900 is currently assigned

Respectfully submitted,

Charles E. Carpenter, Jr.
4825 Portobello Road
Columbia, SC 29206
Telephone: (803) 758-2886
S.C. Bar No. 1133

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
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William Jeffrey Smith
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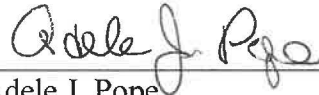
Daryl L. Williams
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

November 1, 2022

Counsel for Appellant Adele J. Pope

VERIFICATION

The undersigned Petitioner Adele J. Pope hereby certifies that I have read the allegations in the forgoing Petition and that they are true based on my knowledge and belief.


Adele J. Pope

SWORN TO BEFORE ME THIS 1st Day
of November, 2022

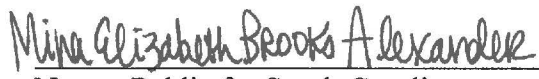
 (L.S.)
Notary Public for South Carolina
My Commission expires: 1/29/2025

Exhibit A



ALAN WILSON
ATTORNEY GENERAL

April 24, 2013

Everett A. Kendall, II, Esq.
Sweeny Wingate & Barrow, PA
P. O. Box 12129
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Your File: 4077-7389

Dear Mr. Kendall:

This is to advise that the Attorney General's Office has no responsibility for legal fees to Sweeny, Wingate & Barrow, as this Office did not employ the firm's services.

Your letter is entitled "Privileged Attorney-Client Communication". Please be advised that the Office of Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

My letter of April 18, 2013, was a response to your letter of April 12, 2013. However, we are not signing any documents and are always willing to discuss matters. As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

CC: Kenneth Wingate, Esq.

JWM/ds

SCANNED

Exhibit B

10 MAY 19 PM 1:08

ANY
PROBATE JUDGE
RICHLAND COUNTY, S.C.

IN THE PROBATE COURT

Civil Action No. 2010CP4000073

SUMMONS

2010 JUL 26 AM 11:47

FILED

JEANETTE M. MORRIS
C.C.P. & G.S.STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

TO: THE DEFENDANTS, ADELE J. POPE AND ROBERT L. BUCHANAN, JR.:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

FILED

FILED

10 MAY 19 PM 1:08
2010 JUL 26 AM 11:47

ANY OTHER JUDGE
PROBATE JUDGE
RICHLAND COUNTY, S.C.
JEANETTE M. MCBRIDE
C.C.P. & G.S.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

IN THE PROBATE COURT

Civil Action No.

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

**COMPLAINT
(Jury Trial Demanded)**

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;

Complaint

- 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

Complaint

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

Complaint

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;

Complaint

- 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;

Complaint

- 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

Complaint

- 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;

Complaint

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

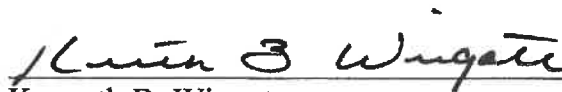
29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law,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

SWEENEY, WINGATE & BARROW, P.A.


Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

Exhibit C

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

Adele J. Pope,)

C/A No. 12- CP-40-350

Plaintiff,)

vs.)

SUPPLEMENTAL AFFIDAVIT OF
RUSSELL L. BAUKNIGHTAlan Wilson, in his capacity as
Attorney General of South Carolina,
and James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.)

PERSONALLY APPEARED BEFORE ME, the affiant, Russell L. Bauknight, who,

being sworn, deposes and states the following:

1. I am a resident of Richland County, South Carolina;
2. The principal place of administration and usual place of business for the below mentioned Trust is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201;
3. Since 2009, I have served continuously as the court-appointed Personal Representative and Trustee of the James Brown Estate and August 1, 2000 Irrevocable Trust Agreement (Trust);
4. Also in 2009, the parties to the Will and Trust contest entered into a court approved settlement agreement forming what is often referred to as the court approved Legacy Trust (Legacy Trust). The Legacy Trust was created pursuant to a court approved settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and Trust;
5. The Legacy Trust was to be funded with the private property of James Brown pursuant to the terms of the settlement agreement;
6. The validity of the settlement agreement creating the Legacy Trust and the court order approving the settlement was appealed to the South Carolina Supreme Court;



7. The South Carolina Supreme Court's 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), overturned the court approved settlement agreement and the creation of the Legacy Trust;
8. The South Carolina Attorney General is not the agent or principal of the Legacy Trust. The settlor, a cotrustee, or a beneficiary may also request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. See S.C. Code Ann. § 62-7-706;
9. It is my understanding that *Wilson v. Dallas* effectively terminated any potential involvement of the South Carolina Attorney General's Office in the Legacy Trust;
10. Since the Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement in the Legacy Trust;
11. Because of the Supreme Court's order overturning the settlement agreement and creation of the Legacy Trust, the Legacy Trust has ceased to function as a court approved trust;
12. I understand that a Freedom of Information Act (FOIA) request has been filed seeking documents establishing the Legacy Trust;
13. It is my understanding that the Attorney General has provided all documents that would respond to this request, though I do not believe the Legacy Trust is properly subject to the FOIA;
14. It is my understanding that FOIA exists to allow a citizen to request documents and information related to public bodies and public documents. Accordingly, I do not believe that the Legacy Trust—a private trust—is the proper entity for a FOIA request;
15. Even if the Settlement Agreement creating the Legacy Trust had not been overturned, the Legacy Trust is not a public body as defined in the South Carolina FOIA statute. See S.C. Code Ann. § 30-4-20(a) (Attached as Exhibit A);
16. Of particular importance, at the briefing stage of the appeal of the settlement agreement, Ms. Adele Pope affirmatively stated that "[p]rivate foundations such as the 'I Feel Good' foundation/trust are not public charities." (Appellants' Brief, p. 5, attached as Exhibit B). Her position that the Trust is private can be found throughout her briefs. (E.g., *id.* at pp. 3, 4, 5, 6, 7; Appellants' Reply Brief, pp. 2, 5);
17. The private property of James Brown was to fund the Legacy Trust. Consequently, Ms. Adele Pope correctly referred to and admitted that the Trust is not subject to FOIA as it is "private" by her own admission;

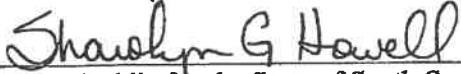
18. Because the Legacy Trust is not a public body, it does not possess public records as defined in the South Carolina FOIA statute. See S.C. Code Ann. § 30-40-20(c);
19. The Legacy Trust is not supported in whole or in part by public funds, nor does the Legacy Trust expend public funds. Accordingly, it is my understanding that the Legacy Trust documents are private trust documents;
20. The only funds that the Legacy Trust was ever designed to hold were the private funds of James Brown, and this functioning of the court approved Legacy Trust was overturned and struck down in *Wilson v. Dallas*. Therefore, the court approved Legacy Trust under the settlement agreement does not exist.

FURTHER AFFIANT SAYETH NAUGHT,



Russell L. Bauknight

Sworn and subscribed before me
this 2nd day of May, 2016

 L.S.
Notary Public for the State of South Carolina
My commission expires: 3-21-18

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-001727

Adele J. Pope..... Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and
James Brown Legacy Trust, by Russell Bauknight, its Trustee..... Respondents.

RECORD ON APPEAL
Volume II of II (pp. 262 - 523)

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esmith@scag.gov
*Counsel for Respondent Alan Wilson,
In his capacity as Attorney General*

RECEIVED

MAR 24 2017

SC Court of Appeals

Exhibit D

84533

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**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**Appeal from Richland County
Court of Common Pleas**

**The Honorable Doyet A. Early, III, Circuit Judge
The Honorable L. Casey Manning, Circuit Judge**

Case No. 2010-CP-40-4900

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; individually and on behalf of her minor child, JAMES B.; 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 L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Respondents,

v.

Adele J. Pope.....Appellant.

NOTICE OF APPEAL

RECEIVED

SEP 12 2017

Adele J. Pope appeals the following Orders issued in this action: **30 Court of Appeals**

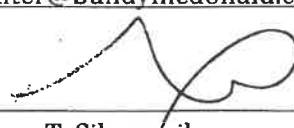
1. Order of the Honorable Doyet A. Early, III Denying Defendant's Motion to Alter or Amend Order Dropping Attorney General as a

Party, dated August 2, 2017 and received by Appellant on August 14, 2017, attached as Exhibit A.

2. Order of the Honorable Doyet A. Early, III Granting Attorney General's Motion to be Dropped as a Party, dated May 31, 2017, and received by Appellant on July 10, 2017, attached as Exhibit B.
3. Order of the Honorable Doyet A. Early, III Granting Motion for Protective Order as to Deposition of Attorney General, dated September 21, 2016, filed October 3, 2016 and received by Appellant on September 30, 2016, attached as Exhibit C.
4. Order of the Honorable L. Casey Manning Concerning Defendant Adele Pope's Motion to Disqualify Sweeny, Wingate and Barrow, P.A. from Representing the Office of the Attorney General of South Carolina, Enjoining Russell Bauknight from Purporting to Speak for the Office of the Attorney General, and Other Relief, dated and filed July 5, 2015, attached as Exhibit D.
5. Order of the Honorable L. Casey Manning Granting Plaintiffs' Motion to Set Aside Entry of Default, dated and filed October 13, 2012, attached as Exhibit E.

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
BUNDY McDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 843-712-7318
walter@bundymcdonald.com



Adam T. Silvernail
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Counsel for Appellant

September 12, 2017

Exhibit E

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

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Case No. 2010-CP-40-4900

DEC 17 2018

Appellate Case No. 2017-001899

SC 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 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. 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 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.

SUPPLEMENTAL NOTICE OF APPEAL

Adele J. Pope appeals the following Orders issued in this action.

1. ORDER DENYING DEFENDANT/COUNTERCLAIM PLAINTIFF'S MOTION TO ALTER, AMEND, RECONSIDER AND/OR VACATE ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT of the Honorable Doyet A. Early, III, signed November 25, 2018, and electronically filed and received by Appellant on November 26, 2018, attached hereto as Exhibit A.
2. ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS of the Honorable Doyet A. Early, III, dated June 23, 2017, filed July 8, 2017 and received by Appellant on or before July 18, 2017, attached hereto as Exhibit B.
3. ORDER DENYING DEFENDANT'S MOTION TO LIFT STAY WHILE ON APPEAL of the Honorable Doyet A. Early, III, dated December 6, 2017, filed December 8, 2017, and received by Appellant on or before December 18, 2017, attached hereto as Exhibit C.
4. FORM 4 ORDER of the Honorable Doyet A. Early, III, dated July 15, 2016, filed July 20, 2016, and received by Appellant on or before July 30, 2016 (Denying Motion to Consolidate this case [Richland 4900] with Aiken County Case 2013-CP-02-1337 [Aiken 1337]), attached hereto as Exhibit D.
5. ORDER of the Honorable Doyet A. Early, III, dated June 6, 2017, filed June 8, 2017 and received by Appellant on or before June 18, 2017 (Related to Depositions of Kenneth B. Wingate, Esq. and Everett A. Kendall, Esq., Richland 4900 and Aiken 1337), attached hereto as Exhibit E.
6. ORDER REGARDING MOTION FOR PROTECTIVE ORDER AS TO TOMMIE RAE BROWN'S DEPOSITION of the Honorable Doyet A. Early, III, dated March 9, 2017, filed March 21, 2017 and received by Appellant on or before March 31, 2017, attached hereto as Exhibit F.
7. ORDER CONCERNING PLAINTIFFS' MOTION TO STRIKE A JANUARY 17, 2017 AFFIDAVIT OF DEFENDANT of the Honorable Doyet A. Early, III, dated March 9, 2017, filed March 15, 2017, and received by Appellant on or before March 25, 2017, attached hereto as Exhibit G.
8. ORDER COMPELLING DEFENDANT'S PRODUCTION OF DOCUMENTS of the Honorable Doyet A. Early, III, dated March 7, 2017, filed March 13, 2017 and received by Appellant on or before

March 23, 2017, attached hereto as Exhibit H.

9. ORDER GRANTING MOTION TO STAY of the Honorable L. Casey Manning, dated and filed March 2, 2016, and received by Appellant on or before March 12, 2016, attached hereto as Exhibit I.

10. ORDER DENYING MOTION TO CONSOLIDATE DEPOSITIONS OF EXPERTS of the Honorable Doyet A. Early, III, dated February 6, 2017, filed February 13, 2017 (Richland 4900 and Aiken 1337), and received by Appellant on or before February 23, 2017, attached hereto as Exhibit J.

11. ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING DEPOSITION OF LARRY BROWN of the Honorable Doyet A. Early, III, dated January 23, 2017, filed February 1, 2017, and received by Appellant on or before February 11, 2017, attached hereto as Exhibit K.

12. SECOND AMENDED CONFIDENTIALITY ORDER of the Honorable Doyet A. Early, III, dated January 24, 2017, filed February 1, 2017, and received by Appellant on or before February 11, 2017, attached hereto as Exhibit L.

13. ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING DEPOSITION OF LARRY BROWN of the Honorable Doyet A. Early, III, dated December 27, 2016, filed January 5, 2017, and received by Appellant on or before January 15 2017, attached hereto as Exhibit M.

14. ORDER of the Honorable Doyet A. Early, III, dated November 22, 2016, filed November 30, 2016, and received by Appellant on or before December 10, 2016, (Denying Rule 59 Motion) attached hereto as Exhibit N.

15. ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER AS TO DARYL J. BROWN AND TONYA BROWN of the Honorable Doyet A. Early, III, dated September 21, 2016, filed September 27, 2016, and received by Appellant on or before October 7, 2016, attached hereto as Exhibit O.

16. ORDER DENYING DEFENDANT'S MOTION FOR SANCTIONS of the Honorable Doyet A. Early, III, dated September 13, 2016, filed September 20, 2016, and received by Appellant on or before September 30, 2016, attached hereto as Exhibit P

17. PROPOSED (sic) SCHEDULING ORDER of the Honorable Doyet A. Early, III, dated July 25, 2016, filed August 5, 2016, and received by Appellant on or before August 15, 2016, attached hereto as Exhibit Q.

18. ORDER CONCERNING PLAINTIFFS' MOTION FOR EXCEPTION TO THE PHYSICAL PRESENCE RULE AT MEDIATION of the Honorable L. Casey Manning, dated and filed October 13, 2015, and received by Appellant on or before October 22, 2015, attached hereto as Exhibit S.

19. ORDER LIFTING THE STAY, of the Honorable Doyet A. Early, III, dated April 8, 2016, filed April 13, 2016, and received by Appellant on or before April 23, 2016, attached hereto as Exhibit T.

20. ORDER CONCERNING PLAINTIFFS' MOTION FOR EXCEPTION TO THE PHYSICAL PRESENCE RULE AT MEDIATION of the Honorable L. Casey Manning, dated and filed October 5, 2012, and received by Appellant on or before October 12, 2015, attached hereto as Exhibit U.

21. ORDER OF DISMISSAL of the Honorable L. Casey Manning, dated and filed July 13, 2012, received by Appellant on or before July 23, 2012, attached hereto as Exhibit V.

22. ORDER CONCERNING PLAINTIFF'S MOTION FOR CONTINUANCE of the Honorable L. Casey Manning, dated and filed July 5, 2012, attached hereto as Exhibit W.

23. ORDER of the Honorable L. Casey Manning, dated January 7, 2011, filed January 12, 2011, and received by Appellant on or before January 22, 2011 (Denying Rule 59 motions related to Orders denying Motion to Dismiss and Motion to Change Venue), attached hereto as Exhibit X.

24. ORDER DENYING DEFENDANTS' MOTION TO CHANGE VENUE of the Honorable L. Casey Manning, dated November 8, 2010, filed November 9, 2010, and received by Appellant on or before November 19, 2010, attached hereto as Exhibit Y.

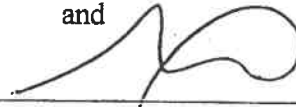
25. ORDER DENYING MOTION TO DISMISS of the Honorable L. Casey Manning, dated November 8, 2010, filed November 9, 2010, and received by Appellant on or before November 19, 2010, attached hereto to as Exhibit Z.

[Signatures on Following Page]

Respectfully submitted,

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M. Brent McDonald, Esq.
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1516 Old Trolley Road, 2nd Floor
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and



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Attorneys for the Appellant

December 17, 2018

Other Counsel of Record:

Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
Mark V. Gende, Esquire
PO Box 12129
Columbia, SC 29211
Counsel for Respondents

J. Emory Smith, Jr., Esquire
PO Box 11549
Columbia, SC 29211
Counsel for Respondent Attorney General

Exhibit F

1 STATE OF SOUTH CAROLINA) IN COMMONS PLEAS COURT

2 COUNTY OF RICHLAND)

3

4 RUSSELL L. BAUKNIGHT, ET AL.)
PLAINTIFFS.)

5

6 -V-)

7 ADELE J. POPE ,) TRANSCRIPT
DEFENDANT.)

8 2010-CP-40-8716

9

DECEMBER 17, 2012

10

RICHLAND, SOUTH CAROLINA

11

12 B-E-F-O-R-E:

13 HONORABLE CAYCE L. MANNING, JUDGE;

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

15

FOR THE PLAINTIFF:

16

EVERETTE KENDALL, ESQ.

17

EMORY SMITH, JR., ESQ.

18

ARIARIL KING, ESQ.

19

FOR THE DEFENDANT:

20

ADAM SILIVERNAIL, ESQ.

21

DARYL SMITH, ESQ.

22

23

24

25

1	I-N-D-E-X	
2		
3	MOTIONS	3
4	CERTIFICATE OF REPORTER:	43
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7	(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)	
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1 (The following proceedings were held on
2 December 17, 2012.)

3 THE COURT: Is everybody ready?

4 MR. KENDALL: Yes, Your Honor.

5 MR. WILLIAMS: Yes, Your Honor.

6 THE COURT: All right. I think your 59(e) Motion,
7 so let's start with that one.

8 MR. WILLIAMS: All right.

9 Your Honor, we seek the reconsideration of this
10 Court's --

11 Thank you.

12 Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. WILLIAMS: Daryl Williams for the defendant
15 Counterclaimant Adele J. Pope. We seek reconsideration of
16 this Court's Order Denying the Defendant's Pope's Motion to
17 Disqualify and Enjoin the law firm of -- et cetera, from
18 representing the South Carolina Attorney General's Office in
19 conjunction with the 12 or 13 private Plaintiffs altogether
20 in this case. This Court heard oral arguments. There was
21 extensive memoranda submitted on both sides when this Court
22 issued it's Order denying that Motion rather perfunctorily.
23 There are a number of arguments which were not specifically
24 addressed in that Order which we would appreciate the Court
25 considering. In fact, as we said in chambers last Thursday

1 take another step, I'm the messenger. I mean, we're --
2 we're raising it. I didn't arrest her. I didn't put her in
3 jail.

4 THE COURT: I understand.

5 MR. WILLIAMS: I'm just reporting some -- some
6 circumstances that my understanding of the law of South
7 Carolina requires of me to be raised --

8 THE COURT: Yes, sir.

9 MR. WILLIAMS: -- before this Court.

10 Moving beyond that, specifically the arguments
11 which -- and I've got a copy of the Order that we proposed
12 when we filed the Motion. We have asserted -- the Defendant
13 Pope has asserted that her due process rights have been
14 violated under the United States Constitution because the
15 power of the Attorney General, slash, State of South
16 Carolina has now been placed in the service of these dozen
17 or so private Plaintiffs in pursuing the damages claimed
18 against her.

19 We have asserted and argued that the Attorney
20 General, slash, State of South Carolina has no authority to
21 seek money damages for the benefit of private individuals,
22 which this lawsuit does.

23 We assert that the requirement of the State's
24 standard litigation retention agreement, including that it
25 is a public document and that the -- the State, the AG, and

1 the Plaintiffs' counsel must comply with the Freedom of
2 Information Act with regard to it and that special counsel
3 may not obtain compensation from others; that is, the AG
4 special counsel may not obtain compensation from other
5 clients while the persons have not been met in this case.

6 We assert that it is a violation of the South
7 Carolina Constitution for State Attorney General to share
8 private counsel with Plaintiffs whose interests are diverse
9 and not consistent with the public interest.

10 We assert that the Plaintiffs' counsel refusal to
11 have the private clients to produce a contract or
12 authorization for either the counsel or the Trustee
13 Bauknight to speak on behalf of the State and the Attorney
14 General is proof that such representation is improper and
15 should be enjoined.

16 We assert that the December 9, 2011 Motion for
17 Sanctions filed the by Plaintiff's counsel in this case
18 against the Defendant Pope in a -- on behalf of the private
19 Plaintiffs confirms that he cannot and will not represent
20 the public interest as opposed to the private interests of
21 his private clients.

22 We assert that the threats press of suits and
23 sanctions against Ms. Pope, if she exercises her foyer
24 rights, confirm that this law firm should be enjoined from
25 speaking on behalf of the State and the Attorney General.

1 We assert that it's either illegal, improper, or
2 both for Mr. Bauknight, with no written authority to do so,
3 to assert, as he does in the Complaint, that he speaks on
4 behalf of the Attorney General and the State of South
5 Carolina.

6 We assert that it's either illegal, improper, or
7 both for Plaintiffs' counsel, with no written authority, to
8 speak or file pleadings or continue in this suit on behalf
9 of the State and the Attorney General while representing the
10 private interests of more than a dozen individuals.

11 We assert that this tort suit for money damages
12 violates the separation of the powers doctrine of the South
13 Carolina Constitution.

14 We assert that Plaintiffs' counsel's contract with
15 the State is improper where one of the firm's partners made
16 a contribution to former Attorney General McMasters'
17 gubernatorial campaign in violation of the Campaign Finance
18 Act.

19 We assert that the public interest cannot be
20 served by an attorney who represents both the State and
21 persons who themselves are with joint venturers, have been
22 involved in perjury and/or fabrication of documents.

23 We assert that in all criminal indictments in
24 prosecution the State is the sole plaintiff. The State may
25 not join private plaintiffs in making false criminal

1 allegations against parties in a civil suit.

2 We assert that the Plaintiffs' counsel has
3 violated the AG's own policy and Defendant's due process
4 rights because the AG cannot control the litigation and no
5 AG has signed any pleading.

6 We assert that Plaintiffs' counsel has repeatedly
7 refused to produce any contract or litigation or retention
8 agreement with the State. In the law, such contracts are
9 public documents and have requested both in discovery and
10 under Foyer.

11 We assert that Plaintiffs' counsel has no ability
12 to bind the General Assembly of the State of South Carolina
13 to pay any damages that our client, Ms. Pope, may be awarded
14 with the counterclaims herein and that the Plaintiffs are
15 currently in default on those counterclaims.

16 We assert that the private Plaintiffs' evaluation
17 and opposed sale to a private Plaintiff of James Brown's
18 Worldwide Music Empire, that under \$4.7 million, less than
19 one-twelfth of the approximately \$85 million dollar value
20 placed all prior for this -- creates a substantial and
21 irreconcilable conflict with the AG's duties to enforce
22 charitable trusts, the tax laws, and other laws.

23 We assert that the Attorney General may not
24 provide the private Plaintiffs who have issued a fabricated
25 securities prospectus related to James Brown's assets.

1 And, finally, we assert that both Plaintiffs'
2 counsel and Mr. Bauknight should be enjoined from purporting
3 to speak on behalf of the attorney general because to do so
4 is unconstitutional under the United States and South
5 Carolina Constitutions, statutes regarding the duties and
6 limitations of the Office of Attorney General, ethical rules
7 regarding attorneys acting on behalf of the State and/or in
8 the public interest and the procedures and policies
9 established by the Attorney General.

10 Your Honor, those are the points we feel should be
11 specifically addressed in a proposed order and have
12 incorporated those, again, into this proposed order that we
13 submitted with the Motion. Happy to hand it up to you if
14 don't have the other one.

15 THE COURT: This is part of the file I do believe.
16 It is.

17 MR. WILLIAMS: Okay.

18 THE COURT: Thank you.

19 MR. WILLIAMS: That's our argument.

20 THE COURT: All right. Thank you.

21 MR. WILLIAMS: Appreciate it.

22

23 THE COURT: Mr. Kendall.

24 MR. KENDALL: May it please the Court?

25 THE COURT: Yes, sir.

1 particularly difficult situation before the Court. I am as
2 uncomfortable seeking default against another attorney as
3 this Court might be were it to grant or to deny this Motion
4 and allow the default. I understand that. All I can say
5 with regard --

6 THE COURT: Mr -- you're the messenger, Mr.
7 Williams. Go ahead.

8 MR. WILLIAMS: Okay. Let's go to the Wham
9 factories real quickly and talk about what we've got here.
10 In support of the Motion to Set Aside the Default affidavit,
11 counsel submitted the affidavit of Kenneth -- who, in
12 Paragraphs 7 and 8 acknowledge that he had no specific
13 recollection of having received the document itself in the
14 Answer and Counterclaims but that his handwriting was on it
15 which he took to -- to mean that it has passed through his
16 hands. Then he goes forward with the explanation of the
17 timing of the service of the Answer and Counterclaim with
18 relation to the pending Motion to Dismiss as a -- an excuse
19 for not recognizing the Answer and Counterclaim for what it
20 was. Well, let me state that if the Court will refer to the
21 document itself, that in bold it sets out what it is in the
22 caption. It does not mislead that there is no counterclaim
23 included. It says, Answer and Counterclaim, in bold, of
24 Robert L. Buchanan, Jr. and Adele J. Pope.

25 The reservation of a rights under a pending Motion

1 with this as quickly as Your Honor would like. And --
2 and -- and we'll get that letter to you with the -- the list
3 of pending Motions this week.

4 THE COURT: All right. Thank you, Mr. Smith.
5 Is that basically correct, Mr. Silvernail?

6 MR. SIVERNAIL: Yes, Your Honor.

7 THE COURT: All right. So we're -- at least the
8 Foyer we're on the same page with that.

9 We just a definitive list of what's out there what
10 we -- needs to be resolved.

11 MR. SIVERNAIL: Yes, Your Honor.

12
13 THE COURT: Thank you, sir.

14 Now, Mr. Kennedy, Mr. Williams, there is, along
15 the same line, there's some additional Motions that need to
16 be heard I do believe that y'all, you and Mr. Williams sort
17 of agree on a list of what's outstanding and what needs to
18 be addressed?

19 MR. KENDALL: Yes, Your Honor. Mr. Silvernail and
20 myself and other attorneys from my office have met, and we
21 have pared out some of them. And we'll make an effort to
22 meet again and pare out others and then determine what still
23 needs to be heard and what will be the best order for them
24 be heard.

25

1 THE COURT: All right. Is that correct,
2 Mr. Williams? Is that fair enough?

3 MR. WILLIAMS: That's fair enough, Your Honor.
4 Thank you.

5 THE COURT: All right. Well, you know, I know
6 this is not easy for anybody, but that's the nature, the job
7 that everybody has.

8 But I take this opportunity to wish you all happy
9 holidays. And we'll see some time after first of the year.
10 Good luck everybody.

11 END OF PROCEEDINGS

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Exhibit G

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO. 2010-CP-40-4900.

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, Carrington)
Lumar, and 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, CARRINGTON LUMAR, and TONYA)
BROWN; VENISHA BROWN; LARRY BROWN; and)
TERRY BROWN,)

Plaintiffs,)

vs.)

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

Defendants.)

SWORN STATEMENT OF

ALBERT H. DALLAS, ESQ.

EXHIBIT

A

2

1 SWORN STATEMENT OF
2
3 ALBERT H. DALLAS, ESQ.
4

5 July 20, 2012

6 9:55 a.m.
7

8 304 Black Street
9 Thomson, Georgia
10

11 Jan Alderfer Russell, CCR-B-2438, RPR
12
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1 business, and his response was, "Well, that's tough."

2 As you know, Ms. Pope can be a hard taskmaster.

3 Q. Well, you mentioned Mr. Buchanan's
4 service. As to Ms. Pope's service as personal
5 representative and trustee, are you aware of anything
6 or do you have any criticism of her performance?

7 A. My observation is that we missed a lot of
8 opportunity during the first 12 months after
9 Mr. Brown's death. I think that is attributable to a
10 simple lack of understanding that the James Brown
11 operation required daily management. And to the
12 extent that Mrs. Pope was too cautious, the attorneys
13 for the children, Mr. Levenson, and for Tomi Rae,
14 Mr. Medlin and Mr. Rosen, was equally intrusive and
15 obtrusive in what was in the best interest of the
16 estate and trust. I said to Mr. Rosen and to
17 Mr. Levenson in Aiken, South Carolina at one of the
18 hearings, please don't cause us to lose the aura
19 associated with the passing of Mr. Brown, less we
20 will miss many millions of dollars that literally
21 will be like picking it up off of the street.

22 The euphoria of Mr. Brown's passing -- for
23 example, the most recent example would be Whitney
24 Houston. Her estate will generate more millions this
25 year than probably she accumulated in the prior ten

36

1 years. Because everybody is nostalgic and
2 sentimental and remember when a particular song was a
3 part of their life and almost out of homage or
4 respect, people buy recordings.

5 For the most part, we missed that with
6 Mr. Brown. We just missed it. And I couldn't get
7 anybody to understand it. I even said, everything
8 will be accounted for, just back off for awhile, just
9 back off. And particularly when we started dealing
10 with a potential sale for the 100 million. I don't
11 know that it would have been 100 million. There is
12 always adjustments. There's always allowances that
13 have to be made in a final negotiation, but it would
14 have been somewhere approaching that number. Of
15 course there was about 15 million owed to TIAA-CREF
16 on the bond issue. Of course after that you're still
17 talking 80, \$85 million. Maybe we were only talking
18 \$75 million. Elvis, the year prior, sold for 115
19 million. And Mr. Brown is a world artist. As much
20 as we love Elvis, he was a national artist.
21 Mr. Brown was an international artist.

22 But it requires -- it's a business that
23 requires day-to-day management and day-to-day
24 promotion. Mr. Brown never ever failed to tell me,
25 when I would caution him about getting his name in

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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 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

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 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

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

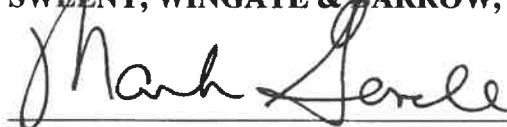
SUPPLEMENT TO PLAINTIFFS'
MOTION TO SET ASIDE THE ENTRY
OF DEFAULT

2012 DEC 17 PM 4:29
FILED
C.C.P. & G.S.

Plaintiffs hereby submit the following supplement to Plaintiffs' Motion to Set Aside the Entry of Default stemming from Defendant Pope's counterclaims against Plaintiffs. As additional evidence of their meritorious defenses against the counterclaims, Plaintiffs submit the sworn testimony of Albert "Buddy" Dallas, Esq. (attached hereto as **Exhibit A**), wherein he finds fault with the management of the Estate of James Brown, resulting in millions of dollars of damages. Plaintiffs direct the Court's attention to pp. 35:3-21, 35:19-21, and 36:5-6. James Brown died on December 25, 2006, and Ms. Pope was appointed special administrator on March 7, 2007, less than three months after Brown's death. Therefore, Ms. Pope was actively involved in the Estate during the 12-month period—and beyond—to which Mr. Dallas attributes the millions in losses.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

December 17, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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 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

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 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**,

Plaintiff

v.

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

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-04900

RECEIVED

SEP 12 2017

SC Court of Appeals

ORDER CONCERNING DEFENDANT
**ALELE POPE'S MOTION TO
DISQUALIFY SWEENEY, WINGATE
AND BARROW, P.A. FROM
REPRESENTING THE OFFICE OF
THE ATTORNEY GENERAL OF
SOUTH CAROLINA, ENJOINED
RUSSELL BAUKNIGHT FROM
PROPORTIONING TO SPEAK FOR THE
OFFICE OF THE ATTORNEY
GENERAL, AND OTHER RELIEF**

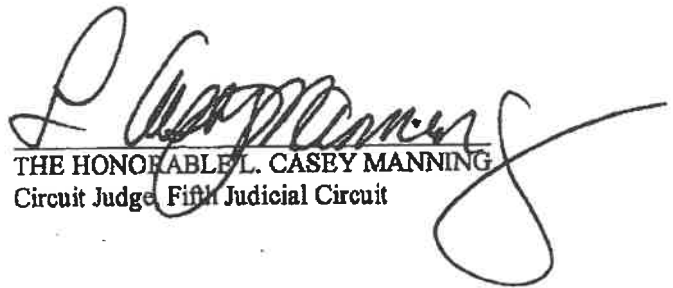
RICHLAND COUNTY
FILED

2017 JUL 5 AM 10:58
JAMES M. BRIDGE

At a Hearing before The Honorable L. Casey Manning on April 12, 2012, the Court heard Defendant Pope's Motion to Disqualify Sweeny Wingate and Barrow, PA from representing the Office of the Attorney General of South Carolina, enjoining Russell Bauknight from purporting to speak on behalf of the Office of the Attorney General of South Carolina, and for other miscellaneous relief.

Having considered the Memoranda of Law from Defendant Pope and Plaintiffs, hearing oral argument from both parties, and carefully considering the merits of the arguments of each party, this Court denies the relief sought by Defendant Pope in her Motion.

IT IS SO ORDERED.


THE HONORABLE L. CASEY MANNING
Circuit Judge, Fifth Judicial Circuit

Dated this 5 day of July, 2012
Columbia, South Carolina

Exhibit H

The Supreme Court of South Carolina

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, Respondents,

v.

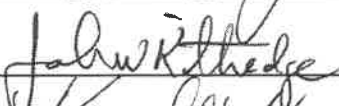
Adele J. Pope and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is Petitioner.

Appellate Case No. 2020-001383

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied. The motions currently pending before the Honorable Clifton B. Newman in the circuit court may now be resolved so that the extensive litigation in this matter may be promptly concluded.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
April 21, 2021

cc: Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Adam Tremaine Silvernail, Esquire
Charles E. Carpenter, Jr., Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
J. Emory Smith, Jr., Esquire
Alan McCrory Wilson, Esquire
Robert D. Cook, Esquire
Aaron Jameson Hayes, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Clifton B. Newman

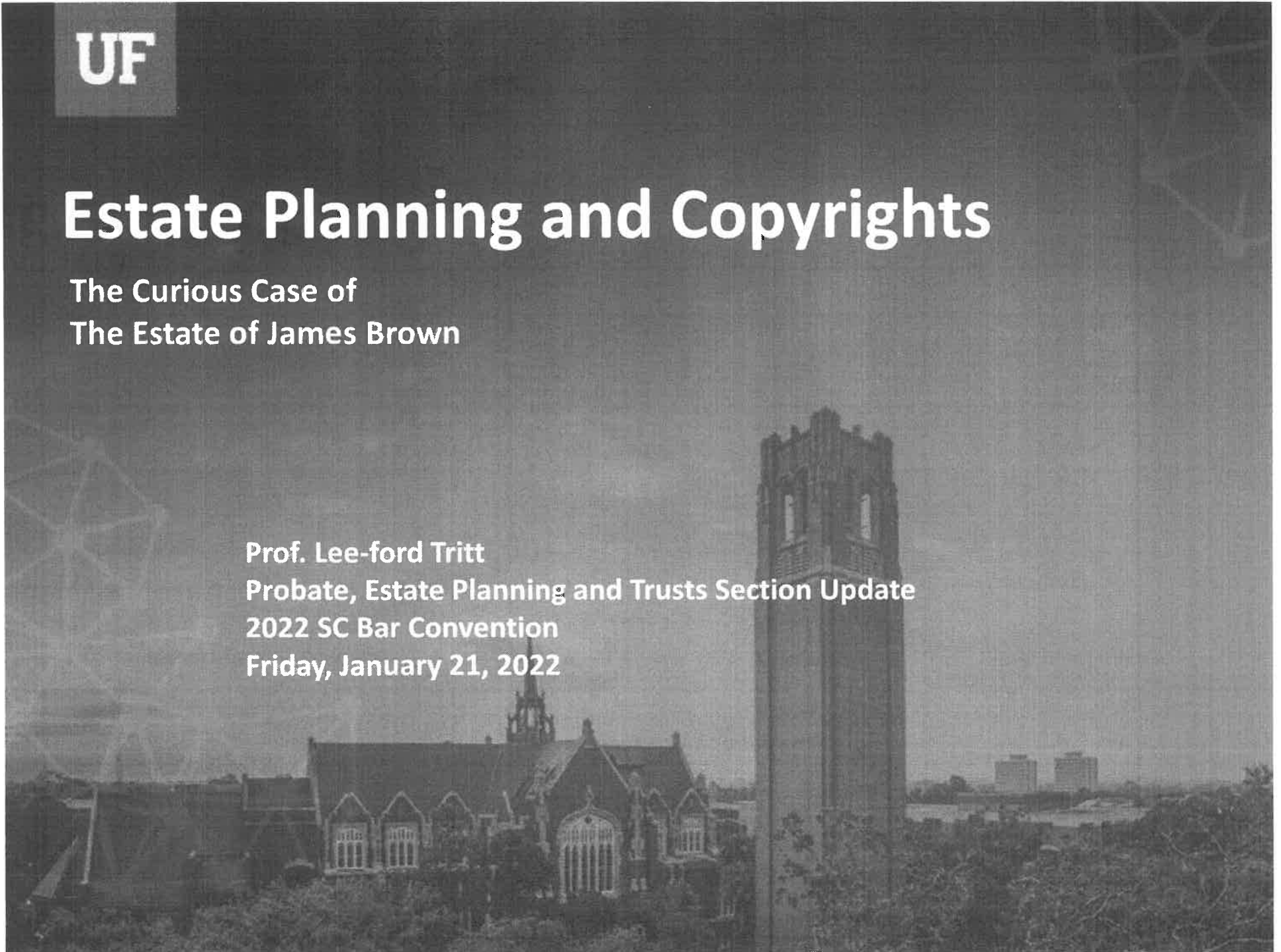
Exhibit I

UF

Estate Planning and Copyrights

The Curious Case of
The Estate of James Brown

Prof. Lee-ford Tritt
Probate, Estate Planning and Trusts Section Update
2022 SC Bar Convention
Friday, January 21, 2022



Road Map ...

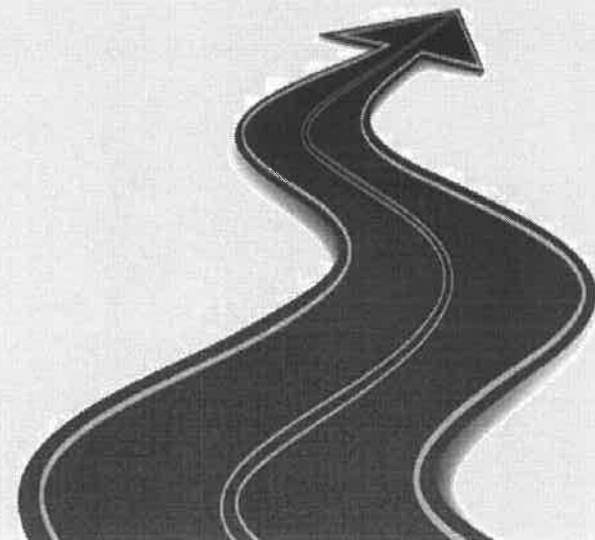
First, I will provide a brief over of the Estate of James Brown;

Second, I will talk about U.S. copyright law in general;

Third, I will explain copyright recapture and its impact on estate bumping; and

Finally, I will conclude with some extrapolations.

SO LET'S PLAY . . .



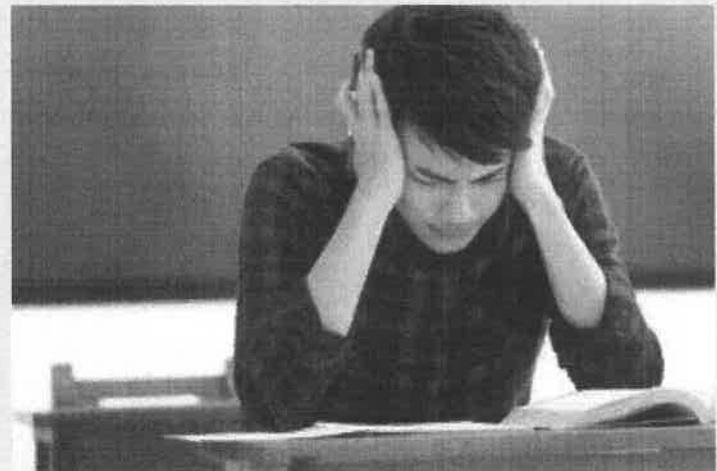
Estate Planning and Copyrights

The Estate of James Brown

This case demonstrates the complexity of estate planning for (i) modern families and (ii) intellectual property holders.

Family issues concerned whether Ms. Hynie (who married Mr. Brown after his will was executed but while she was still married to another man) should be deemed a surviving spouse and the fact that Ms. Hynie had a son with Mr. Brown who was born after Mr. Brown's will was executed. (omitted child laws).

These are perfect facts for a law school exam.



Estate Planning and Copyrights

The Estate of James Brown

Among the collateral damage as the litigation dragged on — in state and federal courts in both South Carolina and California — was a delay in implementing a charitable plan so dear to Mr. Brown that he made it the centerpiece of his will: the distribution of millions of dollars in scholarships for underprivileged children.

Despite his clear intent that his estate goes for the benefit of underprivileged children in South Carolina and Georgia, no scholarships have been granted to date.

The only real beneficiaries of the estate have been the lawyers.

Some major issues arose concerning the tricky nature of transferring copyrights at death.

Estate Planning and Copyrights

The Estate of James Brown

Mr. Brown died on Christmas Day in 2006, at the age 73.

In his will, Mr. Brown left the bulk of his assets to a trust to provide scholarships to poor children in South Carolina and Georgia (The “I Feel Good Trust”).

He largely excluded his own family from the inheritance, aside from bequeathing his costumes and personal effects to some of his children and providing \$2 million to underwrite scholarships for his grandchildren.

He also left nothing to Tommie Rae Hynie, a former backup singer whose relationship with Mr. Brown complicated her status as a potential heir. He married Ms. Hynie in 2001, though he later began annulment proceedings — yet did not complete them — after he learned that Ms. Hynie was still married to another man at the time that Mr. Brown wedded her.

At the time of Mr. Brown’s death, the annulment proceedings had not been completed.

Estate Planning and Copyrights

The Estate of James Brown

Ms. Hynie nonetheless became a key player in Mr. Brown's estate negotiations, participating in a deal with his children and grandchildren to work around his will and financially benefit herself and the other heirs. She acted as Mr. Brown's widow — among other things, striking copyright deals worth millions of dollars — until the Supreme Court of South Carolina last year ruled that she was never the singer's legal spouse.



Estate Planning and Copyrights

The Estate of James Brown

Like most songwriters, Mr. Brown during his life signed deals that transferred ownership of his compositions — some 900 songs — to various music publishers in exchange for fees.

But federal law gives composers, or their heirs, the right to “terminate” those transfers decades after their initial deals, and regain full ownership.

Mr. Brown’s termination rights are worth “tens of millions of dollars,” estate lawyers said in court documents in 2017. With full control over the songs, Mr. Brown’s heirs would stand to benefit from music streaming, radio play and the licensing of songs for movies and TV commercials.



Estate Panning and Copyrights

The Estate of James Brown

Ms. Hynie has already received income associated with selling back copyrights to songs when their ownership became eligible for reversion. In 2015, well before her status as Mr. Brown's spouse was struck down by the court, she exercised termination rights for five of Mr. Brown's songs; she and her son, James Brown II, then sold them back to Mr. Brown's primary music publisher, Warner Chappell, for \$1.875 million, according to court papers.

However, the South Carolina court recently ruled she was not a legal spouse because she was married to another man at the time of her marriage to Mr. Brown. Therefore, she may well have not had the right to exercise the termination rights needed to enter into that deal.

Estate Planning and Copyrights

UF

The Estate of James Brown

After nearly 15 years of litigation, a settlement was reached last month.

Will James Brown's testamentary intent finally be effectuated though? Not so fast ...

Years of contentious litigation likely drained much of the liquidity out of the estate, to pay the fees and costs for the administrators and their attorneys. The remaining assets in Brown's estate likely consist largely of intellectual property, which ultimately may be controlled by James Brown's heirs (not the charitable trust) through Federal copyright law's termination rights--not James Brown's will.

Exhibit J

C
S·W·B

RECEIVED

JAN 20 2012

S.C. Attorney General's Office
Civil Section
SWEENEY WINGATE & BARROW P.A.

Referred to Victoria, Cook
Answered McIntosh, [unclear]
Towers, T. Meyer
C1

January 20, 2012

JAN 23 2012

Received by: [signature]
Reviewed by/Date: _____
Referred to/Date: _____
Notes: _____

Reply to: Main Office
Mark V. Gonde
(803) 256-2233 x121
mvg@swblaw.com

URGENT - PRIVILEGED ATTORNEY/CLIENT COMMUNICATION

VIA HAND DELIVERY

Alan Wilson
South Carolina Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. Attorney General:

It is my understanding that you have decided to release what you deem the public portion of the fee agreement in the above-referenced matter. As your attorney in this matter, I am writing to advise you against releasing any portion of the agreement until the Court rules on this matter.

Releasing these documents at this time will have the following detrimental impact on this litigation.

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed the public portions, the Defendants will certainly argue that your actions waive your co-litigants claim to privilege for the remainder of the agreement.

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with

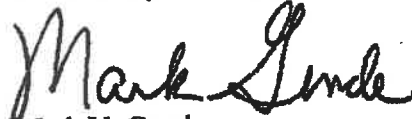
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both the spirit and letter of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged.

I trust that you will reconsider your decision. I am available throughout the day to discuss this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Mark V. Gende

MVG/smt

cc: C. Havird Jones, Jr., Esquire – via electronic mail
Mary Frances Jowers, Esquire – via electronic mail
Tracy Meyers, Esquire – via electronic mail
Russell Bauknight – via electronic mail

Exhibit K

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

FORM 4

CASE No. 2013 CP 02 1537
Pending in Aiken Court
JUDGMENT IN A CIVIL CASE

CASE NUMBER:

In re: Motion of Kenneth B. Wingate and Everett A. Kendall
Adele Pope
v. Estate of James Brown on
The James Brown 2000 Trust

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

Motion of Kenneth B. Wingate and
Everett A. Kendall to quash their
Deposition Supremas Denied.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2759

Date 3-1-12

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

*Plaintiff will be permitted to answer each of these attorneys on their authorization to file

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT

Court Reporter

Clerk of Court

SCRPC Form 4C (10/2011)

and continue the lawsuit of the Attorney General
and others against Robert Buchanan and
Adele Pope, filed May 19, 2010 and continuing today.

Exhibit L

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850

Appellate Case No. 2015-002417 (Court of Appeals)

Appellate Case No. 2018-001990 (Supreme Court)

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited

Special Administrator and Limited Special Trustee,

Deanna Brown-Thomas, Yamma Brown, Venisha Brown,

Larry Brown, Terry Brown, and Daryl Brown Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and
Venisha Brown are the Appellants.

Affidavit of Peter Afterman

PERSONALLY APPEARED BEFORE ME, PETER AFTERMAN, who being duly sworn, deposes and says:

1. My name is Peter Afterman. I am a resident of Los Angeles, California. I have been the music manager for the James Brown Estate since 2009. I am a multi Grammy and Peabody Award winning music manager. I am an expert in music copyright law. I have worked in the music business for over 40 years.
2. If Tommie Rae Brown is not James Brown's surviving spouse, the Charitable Trust will substantially lose its funding within the next six years because the ownership of James Brown's songs will revert to the heirs per U.S. Copyright Law. Copyright law provides that 50% of termination rights, and control, passes to the surviving spouse, and the rest passes to the children (or children of a deceased child). If Mrs. Brown is not the surviving spouse, all of the termination rights will pass to the children.
3. The primary asset of the Estate and Charitable Trust is the income stream the Charitable Trust currently receives from the exploitation of James Brown's songs, whose copyrights he assigned to music publishers, as is typical in the industry. Other than these copyright royalties, the Estate does not own significant other assets. As I understand it, it is this copyright income stream that would serve as the primary source for the funding of any scholarships.
4. Federal law allows, after a certain time, for the owners of copyright termination rights (the intestate heirs) to claw back the copyright assignments from publishers. The song termination rights are not part of the Estate or Trust, nor can they be, according to federal law. Federal law requires that these termination rights are owned by the writer's intestate heirs, regardless of the writer's intent.
5. The only way the Charitable Trust can benefit from these termination rights is for an intestate heir to contribute the proceeds from her termination rights to the Charitable Trust. Mrs. Brown has agreed (in accordance with the Settlement Agreement attached to the Limited Special Administrator's Notice of Withdrawal in the Court of Appeals) to contribute 65% of her proceeds from the song terminations to the Charitable Trust. Because Mrs. Brown as the surviving spouse would be entitled to a 50%, and controlling share, of the termination rights, the Charitable Trust will receive 32.5% of the total song termination proceeds, but only if she is the surviving spouse. If Tommie Rae Brown is not the surviving spouse, 100% of the song termination proceeds will go to the children. While Mrs. Brown has agreed to contribute 65% of her share of the termination rights proceeds to the Charitable Trust, the children have not agreed to contribute anything. If Mrs. Brown is not the surviving spouse, the Charitable Trust will receive nothing.
6. I agree with the projection in the Settlement Agreement that the termination rights for James Brown are worth tens of millions of dollars. The proceeds from these terminated copyrights will arise when the heirs sell (re-assign) these rights to a publisher, with the

primary valuable sales opportunities arising over the next six years. If Mrs. Brown is not the surviving spouse, the Charitable Trust will lose out on receiving 32.5 percent of the expected tens of millions of dollars.

7. With that basic background about termination rights, here is why the Charitable Trust will substantially lose its funding over the next six years if Mrs. Brown is not the surviving spouse:
- a. As noted above, the Charitable Trust will never receive any proceeds from the valuable termination rights.
 - b. Also, as the copyrights are terminated, the royalty income stream to the Charitable Trust will substantially terminate as well.
 - c. Thus, if Mrs. Brown is not the surviving spouse, the Charitable Trust will suffer a two-fold financial blow: the Charitable Trust will not receive a penny of termination proceeds and the Charitable Trust income stream will lose a substantial portion of its income as the termination rights are exercised.
8. I am over the age of twenty-one (21) years and am competent to testify to the matters stated herein. I have read the foregoing paragraphs, and all matters stated therein are correct and true and based on my personal knowledge and belief, except as to those matters stated on information and belief and as to those matters I believe them to be true.

FURTHER AFFIANT SAYETH NOT:



Peter Aferman

Sworn to before me this

27 day of October, 2019.

 (L.S.)

Notary Public for California

My commission expires: Dec 8, 2021

max Sayah (Notary Public)

The certificate Attached

RECEIVED

OCT 28 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown, and Daryl Brown Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and
Venisha Brown are the Appellants.

**TOMMIE RAE BROWN'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE
TO SUPPLEMENT PURSUANT TO RULES 212 AND 240, SCACR**

Appellee Tommie Rae Brown ("Mrs. Brown") moves to obtain the Court's leave to file this supplemental memorandum and affidavit to clarify and provide a more complete answer to the Court's question about charitable scholarships at the beginning of the oral argument on October 16, 2019, which had not been briefed. See at 3:24 in the archived video (<http://media.sccourts.org/videos/2018-001990.mp4>).

The points set forth in the motion that accompanies this memorandum are more fully

explained and supported by the following clarification.

1. If Mrs. Brown is not the surviving spouse, the charitable trust will substantially lose the funding to provide scholarships within six years. This is because:

- a. The federal copyright termination rights are controlled solely by federal law.¹ These termination rights are estimated to be worth tens of millions of dollars.² By federal law, these termination rights do not pass to the charitable trust but instead pass to the intestate heirs—half to the surviving spouse and the rest to the children, regardless of a decedent's intent. The termination rights allow the heirs to obtain ownership of the copyrights previously assigned to publishers/assignees. Virtually all of James Brown's most popular and valuable songs will be terminable within the next six years.³

- b. However, Mrs. Brown has settled with the Estate (and charitable trust) and has agreed to contribute 65 percent of her share of these extremely valuable termination rights to the charitable trust.⁴

¹ See 17 U.S.C. §§ 203, 304.

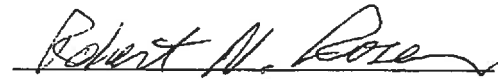
² See settlement agreement between Mrs. Brown and the Estate, footnote 4, *infra*; see also the affidavit of Peter Afterman attached as Exhibit B.

³ See affidavit of Peter Afterman attached as Exhibit B. The federal copyright termination rights may be exercised directly by the intestate heirs within specified time periods. *See* 17 U.S.C. §§ 203, 304. After termination rights are exercised, not only may the heirs re-assign the copyrights, which rights are estimated to be worth tens of millions of dollars in this case, but the federal law directs the royalty income from the terminated copyrights to be transferred outside of probate to the intestate heirs, or their re-assignees. When termination rights are exercised, the royalty income stream to the Estate and charitable trust will be concurrently reduced. The rights to income from most of James Brown's valuable songs can be terminated within six years, which will redirect most of the annual royalty income from the Estate and the charitable trust to the intestate heirs over the next six years.

⁴ See Respondent's Brief at 3-6. After the Record on Appeal was filed, the Estate and charitable trust settled with Mrs. Brown. That settlement agreement was filed with the court of appeals in this matter. See Limited Special Administrator's Notice of Withdrawal from Appeal filed August 4, 2017 (attached as Exhibit A), including the settlement agreement between the Estate and Mrs. Brown dated March 8, 2017. The Court may take judicial notice of this settlement agreement and its terms because it has been publicly filed in this appeal with the court

This is why the Estate and charitable trust support Mrs. Brown in this appeal.

Respectfully Submitted,



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Summerville, SC 29484-2350

ATTORNEYS FOR RESPONDENT
TOMMIE RAE BROWN

EXHIBIT D



Adam Silvernail <adam@silvernaillawfirm.com>

Bauknight, et al vs. Pope, Case No. 2010-CP-40-4900, Appellate Case No. 2018-2229

Adam Silvernail <adam@silvernaillawfirm.com>

Wed, Nov 2, 2022 at 1:11 PM

To: "Newman, Clifton Law Clerk (Sutania Radlein)" <CNewmanLC@sccourts.org>, "Newman, Clifton" <cnewmanj@sccourts.org>

Cc: "Mark V. Gende" <MVG@swblaw.com>, "Ken B. Wingate" <kbw@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, Daryl Williams <dwilliams@gertzandmoore.com>, Jeff Smith <wjstv@mindspring.com>, Charles Carpenter <charlie@carpenterappeals.com>

Dear Judge Newman:

I am one of the counsel for Appellant Adele J. Pope in the above-captioned case which is currently on appeal, but which has been assigned to your Honor in the Circuit Court.

Attached please find a file-stamped copy of our Petition for Expedited Lifting of Stay and Consideration by the Circuit Court of Issues Remanded by the Court of Appeals, along with the exhibits thereto.

We would ask that this matter be set for an expedited hearing at the Court's earliest convenience. I will be happy to coordinate with counsel if the Court would like to offer potential dates for the hearing. I am copying all counsel of record with this correspondence.

Thank you for your consideration.

Adam Silvernail

--

Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)

Post Office Box 7995

Columbia, South Carolina 29202-7995

803/779-1770

2 attachments**Bauknight v. Pope Petition for Expedited Lifting of Stay.pdf**

377K

**Bauknight v. Pope Exhibits to Petition for Expedited Lifting of Stay.pdf**

3617K

EXHIBIT E



Adam Silvernail <adam@silvernaillawfirm.com>

Bauknight, et al vs. Pope, Case No. 2010-CP-40-4900, Appellate Case No. 2018-2229

Mark V. Gende <MVG@swblaw.com>

Thu, Nov 3, 2022 at 4:59 PM

To: Adam Silvernail <adam@silvernaillawfirm.com>, "Newman, Clifton Law Clerk (Sutania Radlein)" <CNewmanLC@sccourts.org>, "Newman, Clifton" <cnewmanj@sccourts.org>
Cc: "Ken B. Wingate" <KBW@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, Daryl Williams <dwilliams@gertzandmoore.com>, Jeff Smith <wjstv@mindspring.com>, Charles Carpenter <charlie@carpenterappeals.com>

Judge Newman.

On behalf of the Case 4900 Plaintiffs, we oppose Defendant Pope's Petition for Expedited Lifting of Stay. The Petition is wholly unnecessary.

You already have the ability to take action on the remanded issues and have started the process. Via order dated August 21, 2021, your referred the remanded issues to Judge Manning for disposition. On the cusp of Judge Manning's ruling, Ms. Pope filed a motion to reconsider your August 21, 2021 referral order.

Plaintiffs, therefore, request that your Honor deny the "Petition for Expedited Lifting of Stay," deny Ms. Pope's motion to Reconsider your August 21, 2021 Order, and allow Judge Manning to dispose of the remanded issues, as was this Court's plan all along. These items could be accomplished quickly with Form 4 Orders, as no more hearings are required on these well-briefed, decade-old procedural issues.

Plaintiffs will be filing a memorandum in support of their position in the near future.

Thank you,

Mark V. Gende, Esq.

Sweeny, Wingate & Barrow, PA

[1515 Lady Street](#)

[Columbia, South Carolina 29201](#)

T 803.256.2233

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