

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201059**

Jacquelyne Hollander	James Irrevocable T Brown	Russell L As Trustee Bauknight
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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: _____

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 (List amount(s) below)

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	8/8/2013 Date
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For Clerk of Court Office Use Only

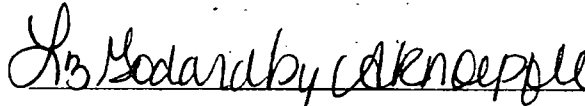
This judgment was entered on **8-8-13**, and a copy mailed first class or placed in the appropriate attorney's box on **8-8-13**, to attorneys of record or to parties (when appearing pro se) as follows:

Oshun Cyrus Hinton 235 E. Main St., Ste. 110 Suite 110
Rock Hill, SC 29730

J. David Black PO Drawer 2426 Columbia, SC 292022426

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JACQUELYNE HOLLANDER,
Plaintiff,

Civil Action No. 2012-CP-02-01059

vs.

THE IRREVOCABLE TRUST
ESTABLISHED BY JAMES BROWN ON
AUGUST 1, 2000 and RUSSELL L.
BAUKNIGHT, as Trustee of the Irrevocable
Trust established by James Brown in August 1,
2000,

ORDER DISMISSING COMPLAINT

Defendants.

FILED 8.8 2013
Liz Holland
C.C.P. & G.S.
Anita Knoepfle Galb
Deputy Clerk

Before this Court is the Defendants', The Irrevocable Trust Established by James Brown on August 1, 2000, and Russell L. Bauknight, as Special Trustee (collectively "the Defendants"), Rule 12(b)(6), SCRCP, Motion to Dismiss the Complaint filed by Plaintiff Jacquelyne Hollander ("Plaintiff" or "Hollander") on April 30, 2012.¹

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AUG 30 2013

STANDARD OF REVIEW

SC Court of Appeals

When a party moves to dismiss a complaint pursuant to Rule 12(b)(6), the reviewing court is required to "construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (2009). The Plaintiff's Complaint alleges the existence of a partnership created by

¹ The undersigned takes judicial notice that James Brown passed away on December 25, 2006. Hollander has filed seven actions in Illinois, South Carolina, and California, and that this is the sixth such action.

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nature.

LEGAL ANALYSIS

The Defendants contend that the Complaint fails to state a claim for relief because the above allegations demonstrate, at best, that the Plaintiff and Brown sought to create a “partnership” for non-profit and charitable purposes. The Defendants have directed this Court’s attention to South Carolina authority that conclusively establishes that a partnership cannot exist unless it is a for profit endeavor. *Wyman v. Davis*, 223 S.C. 172, 74 S.E.2d 694 (1953) (noting that the test for whether a partnership exists is the sharing of profits); S.C. Code Ann. § 33-41-210 (“A “partnership” is an association of two or more persons to carry on as co-owners a business for profit.”).

The only motive set forth in the Plaintiff’s Complaint is a charitable one, and without alleging facts that Plaintiff and Mr. Brown associated for the purpose of making a profit, there can be no partnership. *Wyman*, 223 S.C. 172, 74 S.E.2d 694; S.C. Code Ann. § 33-41-210. Plaintiff’s Complaint does not point to any endeavor that she and Mr. Brown undertook for profit. In fact, all the Complaint describes are the charitable services that she and Mr. Brown performed. For example, Plaintiff and Brown’s first adult interaction involved making music for a charitable event. (Complaint, ¶¶ 12-14). Plaintiff’s discussion of a partnership involved donating time, money, and skill for the purpose of helping children. (Complaint, ¶¶ 12-14; 18). Plaintiff’s most direct allegation of the existence of a partnership is that she “suggested to Brown that they form a more formal partnership to raise money for children.” (Complaint, ¶ 17). Plaintiff unequivocally establishes that the purpose of this relationship was “to raise money for children,” and not to make a profit. (Complaint, ¶ 17). Regardless of how plaintiff describes this relationship, an association between people for a non-profit purpose can never be a partnership.

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59A Am. Jur.2d PARTNERSHIP § 48, (“An essential element of a partnership as defined by the Uniform Partnership Act is the partnership enterprise must be intended to make a profit”) (citing *Chocknok v. State, Commercial Fisheries Entry Comm’n*, 696 P.2d 669; *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979) (“Nonprofit Organizations may not be considered partnerships.”).²

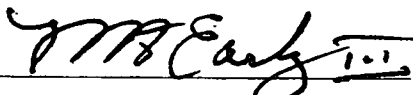
Furthermore, Defendant also argues that this action, Hollander’s sixth lawsuit against the James Brown Estate and Trust, should be dismissed on the basis that the applicable three year statute of limitations has expired. S.C. Code Ann. § 15-3-530. It is well settled that a statute of limitations defense may properly be asserted in a Rule 12(b)(6) motion to dismiss if it appears on the face of the complaint that such a statute bars the claim. *Clearwater Trust v. Bunting*, 367 S.C. 340, 353, 626 S.E.2d 334, 340 (2006) (affirming dismissal of claims brought after limitation period pursuant to Rule 12(b)(6)); *see also Horton v. Carolina Medicorp*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996). Once a defendant raises a statute of limitations defense, the burden of showing that the action was instituted within the prescribed period rests with the plaintiff. Based upon the Plaintiffs sixth complaint, Hollander alleges she created a charitable partnership with James Brown between 1984 and 1988. (Complaint, ¶¶ 12-23). James Brown passed away on December 25, 2006. *Id.* This action was filed on March 13, 2012. Viewing the pleadings in the light most favorable to the Plaintiff, the three year statute of limitations expired on this action on December 25, 2009. Accordingly, it is untimely and subject to dismissal with prejudice.

CONCLUSION

Due to plaintiff’s lack of any allegation demonstrating or implying any intention of either party to profit from the alleged relationship, a partnership could not have been created. Without

² South Carolina adopted the uniform partnership act, and in doing so kept the “for profit” requirement in the definition of a partnership. 1 UPA § 101(6); S.C. Code Ann. § 33-41-210.

a partnership, neither her declaratory judgment nor accounting actions can lie. Furthermore, based upon the face of plaintiff's complaint, the three year statute of limitations has run on this action. Therefore, the Plaintiff has failed to properly state a claim upon which relief could be granted, and her complaint is hereby dismissed with prejudice.



The Honorable Doyet A. Early, III

Aug 7, 2013
~~July 7, 2013~~

Bamberg, South Carolina