THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2012-CP-02-01059

JACQUELYNE HOLLANDER — Appellant/Plaintiff

v.

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

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INITIAL BRIEF OF APPELLANT

October 8, 2013

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TABLE OF CONTENTS

Table of Authorities 2

Statement of Issues on Appeal 3

Statement of the Case 4-8

Arguments

I. THE TRIAL COURT ERRED IN RULING THAT A PARTNERSHIP FOR CHARITABLE PURPOSES CAN NEVER BE A LEGAL PARTNERSHIP. 9-13

II. ANY STATUTE OF LIMITATIONS WAS ESTOPPED BY THE ACTIONS OF THE SPECIAL ASSISTANT ATTORNEY GENERAL AND THE SETTLEMENT AGREEMENT. 13-15

III. TRIAL COURT SHOULD HAVE ALLOWED AMENDMENT OF COMPLAIT... 15-16

Conclusion 16

TABLE OF AUTHORITIES*

CASES

Wilson v. Dallas, 403 S.C. 411; 2013 S.C. LEXIS 240 (2013) 4, 6

Carolina Park Associates, LLC, v. Benedict T. Marino, 400 S.C. 1; 732 S.E.2d 876; 2012 S.C. LEXIS 199 (2012) 9

Wyman v. Davis, 223 S.C. 172; 74 S.E.2d 694 (1953) 10, 11, 12

Trexler v. Mcintyre 216 S.C. 469; 58 S.E.2d 887 (1950) 12

Craig Moore v. Robert Moore, 360 S.C. 241, 260; 599 S.E.2d 467; 2004 S.C. App (2004) 12

Christopher Scott Black v. Lexington School District, 327 S.C. 55; 488 S.E.2d 327 (1997) . 13-14

STATUTES

S.C. Code. Ann. § 62-7-201 (2000) 5

12(b)(1), SCRCP 5

12(b)(6), SCRCP 6, 7, 15

12(b)(3), SCRCP 6

42, SCRCP 7

S.C. Code Ann. §33-41-210 ..... 7, 11

S.C. Code Ann. § 33-56-20 (1996) 10-11

S.C. Code Ann. § 33-41-220 11

15, SCRCP 16

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN DISMISSING ACTION BECAUSE PARTNERSHIP BETWEEN APPELLANT AND JAMES BROWN HAD CHARITABLE INTENT?

2. DID THE TRIAL COURT ERR IN DISMISSING ACTION BASED UPON STATUTE OF LIMITATIONS?

3. DID THE TRIAL COURT ERR IN ALLOWING RESPONDENT TO PRESENT THEIR MEMORANDUM IN SUPPORT OF THEIR UNFILED MOTION TO DISMISS ON THE DAY OF THE HEARING ON THE MOTION AND NOT ALLOWING APPELLANT TO AMEND HER PLEADING?

STATEMENT OF THE CASE

From the 1980s through the death of celebrated entertainer James Brown ("Brown") on Christmas Day of 2006, It is alleged in the Complaint in this action that Appellant was Brown's partner in the "I Feel Good Trust" ("the Trust"). The Trust was not actually formed as a legal trust until August of 2000. Prior to that time Brown and Appellant worked as partners to raise money and contribute money for children in need.

Upon Brown's death, it was found that he left most of his estate to the Trust. Appellant made inquiries and was informed to contact Sonny Jones, the Special Assistant Attorney General ("Jones") who was handling Brown's estate matters allegedly for the State of South Carolina through case number 2008-CP-01647 (Complaint, ¶ 24.) After several months Jones informed Appellant that she had no claim against the Trust or the estate (Complaint, ¶ 25.)

In fact, Jones initiated a plan to split the Trust up in a Settlement Agreement with disinherited family members that would have depleted half of the Trust assets and left the other half in the hands of the Attorney General through their chosen Trustee, the Respondent. In 2009 Appellant drove to South Carolina to participate in the proceedings (Complaint, ¶ 26.) Appellant filed an appearance under case number 08-CP-02-1647 (Hollander Appearance, 08-CP-02-1647) before which was the case under which most litigation was being heard.

Despite Appellant's Appearance and over her objection, Jones convinced the Trial Court to enter into a Settlement Agreement that failed to recognize Appellant's standing in the Trust and that gave fifty percent of the Trust to disinherited parties that had no interest in the Trust and whose claims to the Trust were tenuous at best (See Wilson v. Dallas, 403 S.C. 411; 2013 S.C. LEXIS 240 (2013).)

Because Appellant was disenfranchised in the Trial Court by the Settlement Agreement, Appellant next sought recognition of her rights in the Trust under the Federal District Court for the Northern District of Illinois where she is a resident. The Trial Court recognized this pending action in its Settlement Agreement (08-CP-02-1647 (Settlement Order, p. 13)).

Respondent successfully argued in the Federal District Court for the Northern District of Illinois that there was no personal jurisdiction in Illinois and the action in Illinois was dismissed.

While the Settlement Agreement was being argued through the Appellate and Supreme Courts of South Carolina by other parties, and was in hiatus before the Trial Court, in July of 2010 Appellant sought jurisdiction in the Federal District Court for the Central District of California where the intellectual property for Brown is managed.

That Court failed to grant subject matter jurisdiction because of the Probate Doctrine against federal court intervention. Appellant next attempted to have the matter heard in the Federal District Court for South Carolina which also denied jurisdiction because of the probate doctrine. In each of those cases, except for the Federal District Court for South Carolina, Respondent was served with process and successfully argued that the only applicable jurisdiction was before the Trial Court in South Carolina.

On April 30, 2012, while the action under case number 1647 was still pending in the Supreme Court for South Carolina, Appellant filed a Complaint for Declaratory Judgment with the Trial Court to determine her rights under the Trust under case number 2012-CP-02-01059.

On June 12, 2012 Respondent filed its Motion to Dismiss. That motion sought dismissal under 12(b)(1), SCRCP based on S.C. Code. Ann. § 62-7-201 (2000) that the probate laws in South Carolina only allow jurisdiction for estate actions in the Probate Court (Motion to Dismiss;

p.1); based upon 12(b)(6), SCRCP in which Respondent made no specific argument under 12(b)(6) other than the single statement that there were insufficient facts to constitute a cause of action under South Carolina law (Motion to Dismiss; pp.1-2); and in the alternative that venue should be transferred under 12(b)(3), SCRCP as venue was alleged improper in Aiken County (Motion to Dismiss; p.2) since the Trust was being administered in Richland County.

On May 8, 2013 the Supreme Court of South Carolina in Wilson v. Dallas, ordered that the Settlement Agreement brokered by Jones was void and that Jones had overreached his authority under the Attorney General in this matter. As a result, Jones agreed to not actively participate in the subsequent proceedings except as an observer.

After the Supreme Court Decision in Wilson v. Dallas, the Trial Court on May 29, 2013 held a status conference to determine how it would proceed in the Brown litigation. This included the following orders relevant to this action; 1) "... that a memorandum in support of each motion must be filed contemporaneous with the filing of the motion, motions not supported by memorandum will not be set for hearing...." (June 13, 2013 Administrative Order, p.1); 2) that case number 1647 will be used for any challenges to the Brown will and trust litigation (Motion to Dismiss; p.2); 3) that, [allegedly] pursuant to the Wilson v. Dallas opinion of the Supreme Court, Appellant is separated from case number 1647[1] (Motion to Dismiss; p.3); and, 4) that Respondent's Motion to Dismiss the instant action was to be heard at the next session of the Trial Court (Motion to Dismiss; p.6).

The Wilson v. Dallas decision never addressed the Appellant who was not a party to that action. On July 1, 2013 Appellant filed a Motion to Consolidate this action back into case

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1 APPELLANT WAS NOT A PARTY TO THE ACTION AND SO THE SUPREME COURT OF SOUTH

number 1647 based upon Rule 42, SCRCP. That Motion was never ruled on.

On or about June 27, 2013 Appellant filed her Response to Respondent's Motion to Dismiss. Because no argument was made in support of Respondent's assertion that the Complaint should be dismissed under 12(b)(6), SCRCP, the Response generally addressed Appellant's rights to a declaratory judgment and accounting of the Trust from the Trial Court (Response to Motion to Dismiss; ¶¶ 9-14).

The Motion to Dismiss was heard on July 2, 2013. The Respondent, for the first time, provided the Court and counsel for Appellant with a Memorandum in Support of their Motion to Dismiss (Transcript, July 2, 2013; p.48, 6-20)[2]. For the first time, in oral argument, Respondent argued that the South Carolina Partnership Statute S.C. Code Ann. §33-41-210 required a profit motive that was not present in the Complaint. Respondent argued that the purpose of the partnership, as pled by the Appellant, was charitable to help children and that the charitable entity could not, therefore, be a partnership (Transcript, July 2, 2013; p.50, 22 – p.52, 14).

Respondent also argued that the statute of limitations had run on the Appellant (Transcript, July 2, 2013; p.52, 15 – p.53, 20). At the end of oral arguments the Trial Court asked for proposed orders by August 1, 2013 (Transcript, July 2, 2013; p.55, 25).

On July 29, 2013 Appellant filed a Memorandum in Opposition to Respondent's Motion to Dismiss specifically addressing the arguments of profit motive and statute of limitations [3]. On August 8, 2013 the Trial Court issued an Order (chosen from the Order drafted by Respondent) granting Respondent's Motion to Dismiss based upon Appellant's alleged lack of profit motive

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CAROLINA NEVER ADDRESSED HER CLAIMS TO THE TRUST OR SEPARATED HER CLAIM.
2 THE MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS WAS NEVER ACTUALLY FILED IN THIS ACTION.

and based upon statute of limitations.

On August 29, 2013 Appellant filed a Notice of Appeal. On September 9, 2013 Appellant ordered the July 2, 2013 transcript. That transcript was delivered on September 14, 2013.

3 APPELLANT BELIEVES THAT THIS MEMORANDUM WAS NEVER CONSIDERED BY THE TRIAL COURT.

ARGUMENTS

I. THE TRIAL COURT ERRED IN RULING THAT A PARTNERSHIP FOR CHARITABLE PURPOSES CAN NEVER BE A LEGAL PARTNERSHIP.

A. Standard of review

In Carolina Park Associates, LLC, v. Benedict T. Marino, 400 S.C. 1; 732 S.E.2d 876; 2012 S.C. LEXIS 199 (2012) the South Carolina Supreme Court ruled that, "In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court. A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. Id. "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory," dismissal is improper [citations omitted].

B. Complaint alleged all elements of partnership

The Complaint alleges:

> ... The enterprise [between Brown and Appellant] continued as collaboration between only Hollander and Brown.... Hollander and Brown both used their notoriety and skills to **accumulate money** and **contribute money** to various causes. They **sold copies** of their recording of "Atlanta Be Rockin'" **and** raised money for the Georgia Children's Alliance and The Leukemia Foundation. They raised money in benefits for charities to aid victims of Leukemia, Muscular Dystrophy, The Spring Games, and aid for various underprivileged children both formally and informally. They participated in a Leukemia telethon with national coverage. Hollander and Brown together continued their charitable crusade and benefitted many organizations. Hollander and Brown also became involved with the American Wrestling Association to write and record a song for charity similar to what they did for the Atlanta Falcons [emphasis added]. (Complaint, ¶ 18.)
>
> They [Appellant and Brown] announced the release of that record at the Scottish Rites hospital. [Appellant and Brown] also took that opportunity to publicly formally announce their partnership as "The I Feel Good Trust" to help underprivileged children. Brown and Hollander did many benefits for Katina [a child dying of cancer] and

eventually "Katina's Song" was recorded by various celebrities including John Schneider and became the theme for the Children's Miracle Network. (Complaint, ¶ 19).

...the Court's order was that Brown had to perform a benefit concert for the Fraternal Order of Police. Brown immediately tasked that to Hollander [as his partner], who created "Wrestle Rock" an amalgam of professional wrestling and rock and roll acts, including Brown, to be held at the Atlanta Civic Center. Hollander carried out the Court's order for Brown while Brown was waiting to be incarcerated and despite many threats of personal injury to her. (Complaint, ¶20.)

The Complaint is replete with the history of the partnership between Appellant and Brown. They worked together to raise money through concerts and songwriting and they jointly contributed money to charitable causes for children.

C. Profit as a legal requirement of partnership formation is liberally defined.

The Trial Court ruled, based on the decision in Wyman v. Davis, 223 S.C. 172; 74 S.E.2d 694 (1953) that, "... an association between people for non-profit purpose can never be a partnership." (Order to Dismiss, p.p. 3-4).

The work between Plaintiff and Brown, as pled in the Complaint, was that of "professional solicitors" and "commercial co-venturers", entities now recognized under the Solicitation of Charitable Funds Act, Title 33 Chapter 56 ("the Act") and now regulated by the South Carolina Secretary of State.

The definition of a commercial co-venturer under the Act is, "... a person that regularly and primarily engages in trade or commerce for profit that, for the benefit of a charitable organization, may raise funds by advertising that the purchase or use of goods, services, entertainment, or other thing of value benefits the charitable organization, if it is offered at a price comparable to similar goods or services in the market." §33-56-20(3).

"Professional solicitor" means a person that, for monetary consideration, solicits

contributions for or on behalf of a charitable organization, either personally or through its agents, servants, or employees who are specially employed by or for a charitable organization and who are engaged in the solicitation of contributions under the direction of that person. "Professional solicitor" also means a person that plans, conducts, manages, carries on, advises, or acts as a consultant to a charitable organization in connection with the solicitation of contributions...." §33-56-20(9)

"Person" is defined as "an individual, an organization, a trust, a foundation, a group, an association, **a partnership**, a corporation, a society, or a combination of them. [emphasis added]"§33-56-20(7).

While the South Carolina Uniform Partnership Act, S.C. Code Ann. § 33-41-210 defines a partnership as, "... an association of two or more persons to carry on as co-owners a business for profit" S.C. Code Ann. § 33-41-220 is where the statute determines the existence of a partnership. In that section, while receipt of profits is automatically evidence of a partnership, lack of profits does not infer that no partnership exists. "The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business...." S.C. Code Ann. § 33-41-220(4).

Respondent relied exclusively upon the 1953 case of Wyman v. Davis, 223 S.C. 172; 74 S.E.2d 694 (1953) in their determination that, according to Defendants' reasoning, there can be no partnership without profit.

The Wyman case regarded two printers who at one time were competitors and later combined resources into a partnership. The question was whether the Appellant was an employee or a partner in the subsequent enterprise. The Wyman Court ruled that there was a partnership,

but made that determination based upon the lower court's three-part test: "(1) Sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management." Id. at 699 There was never any determination in Wyman, nor in any other precedent, that a partnership could not exist without profits and it certainly did not define what profits are.

In fact, three years before Wyman, the South Carolina Supreme Court in Trexler v. Mcintyre 216 S.C. 469; 58 S.E.2d 887 (1950) considered carefully the role of profits in determining the role of in a partnership and (citing Chapman v. Lipscomb, 18 S.C. 222) the South Carolina Supreme Court ruled that, "... the true test of a copartnership is that there must be a communion of profits and losses." Clearly the Complaint alleges that such a communion existed between Plaintiff and Brown in that they combined their resources and talents for a common goal.

One of the most important tests as to the existence of a partnership is the intention of the parties. In the progeny of the Wyman case, the Court of Appeals for South Carolina in Craig Moore v. Robert Moore, 360 S.C. 241, 260; 599 S.E.2d 467; 2004 S.C. App (2004) ruled that, "Where the parties to a contract, by their acts, conduct, or agreement show that they intended to combine their property, labor, skill and experience, or some of these elements on one side, and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners."

In this case the partnership between Appellant and Brown was historical and publicly announced. The intention between them to be partners was clearly pled. It can also be

reasonably inferred from the Complaint allegations that the work done by Hollander and Brown involved profits, losses and expenses as "profits" is currently interpreted by the South Carolina courts.

II. ANY STATUTE OF LIMITATIONS WAS ESTOPPED BY THE ACTIONS OF THE SPECIAL ASSISTANT ATTORNEY GENERAL AND THE SETTLEMENT AGREEMENT.

A. Complaint alleges estoppel facts by actions of the Attorney General's office.

The statute of limitations argument raised by Respondent should be denied based upon estoppel. The Complaint alleges that Jones misrepresented to Plaintiff that he would represent her interest before the Trial Court and that Appellant did not need to hire counsel to participate in the proceedings and then months later Jones informed Appellant that she did not have a claim (Complaint, ¶¶ 24-25). The Complaint further alleges that Jones disenfranchised Plaintiff in the litigation through his representations to the Court in negotiating the Settlement Agreement (Complaint, ¶¶ 27-28).

The conduct of the Attorney General's office through Jones which culminated in Appellant's good faith belief that her claims were being represented, and the eventual Settlement Order that did not include Appellant's interest in the Trust, convinced Plaintiff that she could not litigate the matter before the Trial Court and sent her to other jurisdictions for relief.

In the much cited case of Christopher Scott Black v. Lexington School District No. 2, 327 S.C. 55; 488 S.E.2d 327 (1997) the South Carolina Supreme Court ruled that:

> Under South Carolina law, " a defendant may be estopped from claiming the statute of limitations as a defense if 'the delay that otherwise would give operation to the statute had been induced by the defendant's conduct.'" Wiggins v. Edwards, 314 S.C. 126, 130, 442 S.E.2d 169, 171 (1994)(quoting Dillon County School Dist. Two v. Lewis Sheet Metal, 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), cert. dismissed, 288 S.C. 468, 343 S.E.2d 613 (1986), overruled on other grounds by Atlas Food Sys. & Servs. v. Crane Nat'l Vendors, 319 S.C. 556, 462 S.E.2d 858 (1995)). Such inducement may consist

either "of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary." Id.

Taking the facts pled in a light most favorable to Appellant, the conduct of the Attorney General's office through Jones and, by extension, the Defendants in this action who were selected by Jones as Trustees, induced delays in the Appellant to proceed in the Trial Court and it was unjust of the Trial Court to not recognize those delays and estop the Statute of Limitations.

B. The Settlement Order estopped the proceedings.

The Settlement Order of the Trial Court, recognizing the Appellant's interest in the Trust, was also an estoppel to any further action before the Trial Court. By Order filed March 10, 2008, over a year after Brown's death, the Trial Court served notice by publication to determine all lawful heirs of Brown and parties who might be entitled to rights under State and Federal law (Settlement Order, p.p. 8-9).

The Complaint alleges, and the record demonstrates, that Appellant filed an appearance in this litigation pro se on January 28, 2009 in related case number 08-CP-08-1647. As the Attorney General negotiated the settlement between the parties, they deliberately left Plaintiff out of those negotiations and failed to even provide her with notice that the negotiations were being held.

The Trial Court recognized Appellant's Illinois Action in the Settlement Agreement in which it accepted and recognized Plaintiff as a party in interest to the settlement. "On April 6, 2009, Jacqueline Hollander filed an action in the Northern District of Illinois against Pope, Buchanan and the State of South Carolina. She seeks a finding that she and Mr. Brown were partners and the "I Feel Good" Trust was an extension of the partnership, which she owns as the surviving partner." (08-CP-08-1647 (Settlement Order, p. 13)).

It appears from the Settlement Order that no actual pleadings were filed by any of the

parties to the litigation before the Settlement Agreement was adopted by the Trial Court (Settlement Order, p.p. 10-12). The Settlement Agreement was to resolve all differences between the parties (Settlement Order, p. 13). The Settlement Order completely disposed of the entire Trust assets leaving nothing for Appellant to litigate (Settlement Order, p.p. 13-16). The Trial Court found that the Settlement Agreement was in good faith, just and reasonable even though it did not resolve issues of all claimants (Settlement Order, p.p. 23-38).

Appellant filed the Complaint in this action during the pendency of the South Carolina Supreme Court's deliberations over the Settlement Order as a continuation of her original case. In retrospect, Plaintiff should have filed this Complaint under the original case number in which she filed her appearance, but this case has been unusually complex and, assisted by the Aiken County Clerk, counsel for Appellant instead filed with this Court under a new case number with a request that it be consolidated into the original case.

Since Appellant first entered the litigation before this Court within the three-year statute of limitation and since she was recognized by this Court as a party in interest in its Order of Settlement executed before the three-year statute of limitations, and because the Settlement Agreement and the actions of Jones were an estoppel to Appellant's filing a Complaint in the Trial Court, Appellant commenced this action before the three-year statutory period and the Rule 12(b)(6) ruling for dismissal on this basis should be reversed.

III. TRIAL COURT SHOULD HAVE ALLOWED AMENDMENT OF COMPLAINT.

As previously stated, the Motion to Dismiss did not include any specific arguments related to 12(b)(6), SCRCP. The Trial Court's own Administrative Order of June 13, 2013 stated that no hearing would be held on a motion filed without a Memorandum in Support of that

motion filed contemporaneously with the motion.

In this case, the arguments upon which Respondent sought to dismiss the Complaint were not introduced until the actual hearing when they were for the first time given to counsel for Appellant at oral arguments leaving no opportunity for Appellant to review those arguments or to brief the cases (Transcript, July 2, 2013; p.48, 6-20). In fact, the document relied upon by the Trial Court to dismiss the Complaint is not even a part of the court record.

The liberal pleading standards of 15, SCRCP should have allowed an opportunity for Appellant to amend her Complaint and address the issues, particularly regarding the assertion that the Complaint did not sufficiently state that there were profits.

Instead, the Trial Court dismissed the action with prejudice without any formal response or attempt at amendment. The Trial Court essentially failed to provide Appellant with a fair hearing on the merits of her Complaint.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

October 11, 2013

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