

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APR 14 2014

**SC Court of Appeals**

APPEAL FROM AIKEN COUNTY  
COURT OF COMMON PLEAS

HONORABLE DOYET A. EARLY, III, CIRCUIT COURT JUDGE

APPELLATE CASE No. 2013-001856

JACQUELYNE HOLLANDER,.....APPELLANT,

v.

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 ON AUGUST 1, 2000,.....DEFENDANTS,

OF WHOM RUSSELL L. BAUKNIGHT IS THE.....RESPONDENT.

**RETURN TO APPELLANT'S MOTION  
TO AMEND RESPONDENT'S DESIGNATION  
OF RECORD ON APPEAL**

Appellant has moved this Court for an order requiring Respondent to amend its designation of matter to be included in the record on appeal. Respondent opposes the subject motion, and for the reasons discussed below, respectfully requests that the Court deny Appellant's motion.

**BACKGROUND**

For several years preceding the filing of the subject complaint in the Aiken County Court of Common Pleas, the Appellant extensively sought to litigate the same issues that are the subject of her complaint in the United States District Courts of Illinois and California. At the

motions hearing, for purposes of background information, Respondent discussed this previous litigation.

Counsel for the Trust:

Your Honor, this action was filed, it's the sixth action that Ms. Hollander has filed against the trust and estate. There are seven actions that have been filed to date. This action was filed on April 13th of 2012 in Aiken.

The Court:

Where were the other actions filed?

Counsel for the Trust:

By brief way of background, Your Honor, her first action was filed in Illinois on April 6 of 2009. That was against Mr. Buchanan as well as Ms. Pope, trust and estate, in Illinois. That was dismissed for jurisdictional reasons.

She then re-filed on September 8th of 2009 in Illinois, named Mr. Bauknight in his official capacities. That was again dismissed for jurisdiction.

She re-filed again. This time, Your Honor, she went out to California, sued us in federal court in California. That was dismissed. She then filed the same complaint, brought in the music labels of Universal Records, tried to claim that she was entitled to copyright royalties, et cetera. That was dismissed for improper jurisdiction. That went up to the appellate court. Again dismissed.

. . . .

So the only actions that we have currently pending involving Ms. Hollander are the lawsuit that was filed here in Aiken on the 13th of April of 2012. And then we have a motion for sanctions pending in the Illinois Court of Appeals against Ms. Hollander for frivolous litigation.

(July 2, 2013 Transcript of Motion Hearing, pp. 41-42).

In Appellant's opening brief, she also discussed her prior litigation history in the United States District Courts of Illinois and California. (Appellant's Initial Brief, p.5). In order to provide this Court with a complete history of the background of this case, Respondent set forth a list of all previous litigation in its Initial Brief. (Respondent's Initial Brief, p.3-5). Moreover,

because the previous litigation was discussed at the motion hearing, Respondent designated the legal orders from each case for inclusion in the record on appeal.

I. Legal Orders were Discussed in the Lower Court

Rule 210(c), SCACR, provides that the record on appeal shall not include “matter which was not presented to the lower court.” As discussed above, the fact of Appellant’s previous litigation was presented to the circuit court. It was provided to the circuit court for background information—the same reason Appellant discussed these cases in her brief to this Court.

II. Legal Orders are Relevant to her Appellate Issues

Rule 209(b), SCACR, provides that a “party shall not include any matter in his Designation which is not relevant to the appeal.” The circuit court dismissed Appellant’s claims on the following legal grounds: (1) Rule 12(b)(6) failure to state a claim, and (2) the statute of limitations.

In her opening brief, Appellant argues that the circuit court should have applied the doctrine of estoppel to bar Respondent’s statute of limitations argument. (Appellant’s Brief, pp.13-14). The application of estoppel with regard to a statute of limitations defense provides that, “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.” *Kleckley v. Northwestern Nat. Ca. Co.*, 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000). In Respondent’s brief, it notes that estoppel would not apply here (among other reasons<sup>1</sup>) because Appellant’s conduct in litigating these precise issues in the United States District Courts precludes any argument that she was delayed in filing her complaint.

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<sup>1</sup> Appellant’s estoppel argument is not preserved for appellate review, and Appellant’s application of the doctrine is flawed because she asserts the actions of the Attorney General caused her alleged delay, *not* the actions of the Trustee. *See* Respondents’ Initial Brief, pp. 14-15.

Accordingly, the previous legal orders of the district courts are relevant to this appeal, and were properly designated.

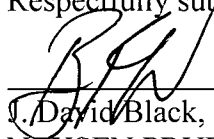
III. This Court May take Judicial Notice of the Legal Orders

The designated legal orders establish background information that is relevant to this appeal. To the extent this Court has concern (which it should not) that these legal orders were not properly designated (which they were), the concern should be of no moment for the Court is empowered to take judicial notice of these legal orders. *See Ins. Comm'n of S.C. v. New S. Life Ins. Co.*, 270 S.C. 612, 635, 244 S.E.2d 289, 301 (1978) (taking judicial notice of related judicial proceedings); *see also Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239-40 (4th Cir. 1989) (taking judicial notice of related judicial proceeding); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”).

**CONCLUSION**

Appellant’s previous litigation history is a matter that was squarely presented to the lower court. Appellant’s previous litigation history is a matter that is relevant to her issues in this appeal. This Court is empowered to take judicial notice of the fact of this previous litigation. Appellant’s motion should be denied.

Respectfully submitted,



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*Attorneys for Respondent Russell L. Bauknight  
In His Capacity as Trustee*

April 10, 2014

Greenville, South Carolina

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IN THE COURT OF APPEALS

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APPEAL FROM AIKEN COUNTY  
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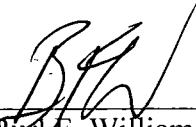
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**PROOF OF SERVICE**

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I certify that I have served the Return to Appellant's Motion to Amend Respondent's Designation of Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid addressed to Appellant's attorney of record, O. Cyrus Hinton, Esquire, Hinton and Associates, PA, Two Law Place, 235 East Main Street, Suite 110, Rock Hill, South Carolina 29730.

April 10, 2014

  
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**SC Court of Appeals**

**Burl F. Williams**  
Associate

April 10, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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Columbia, South Carolina 29211

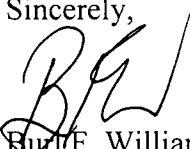
**Re: *Jacquelyne Hollander v. The Irrevocable Trust Established by James Brown - Appellate Case No. 2013-001856***

Dear Ms. Kitchings:

Charleston  
Charlotte  
Columbia  
Greensboro  
**Greenville**  
Hilton Head  
Myrtle Beach  
Raleigh

Enclosed for filing please find the original and seven (7) copies of the Return to Appellant's Motion to Amend Respondent's Designation of Record on Appeal in the above-referenced matter. Please file the enclosed and return a stamped copy in the enclosed, self-addressed, stamped envelope.

By copy of this letter, I am serving Appellant's counsel with a copy of same.

Sincerely,  
  
Burl F. Williams

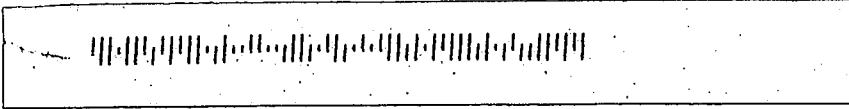
BFW/gb  
Enclosures

cc: O. Cyrus Hinton, Esquire - w/encls.

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The Honorable Jenny Abbott Kitchings  
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