

# Exhibit H

**RECEIVED**  
MAY 13 2014  
SC Court of Appeals

IN THE DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

CASE NO. 3:08cv00014-WOB

FORLANDO J. BROWN

PLAINTIFF

VS.

MEMORANDUM OPINION AND ORDER

ADELE J. POPE, Individually and as  
Trustee of the Irrevocable Trust,  
ETC., ET AL.

DEFENDANTS

This matter is before the Court on defendant Adele Pope's motion for summary judgment (Doc. 307); defendant Robert Buchanan's motion for summary judgment (Doc. 308); and plaintiff Forlando Brown's motion for summary judgment (Doc. 311). All motions are directed at defendants' counterclaims against plaintiff.

The Court heard oral argument on these motions on Wednesday, March 19, 2014. See Doc. 342. Having done so, the Court now issues the following Memorandum Opinion and Order.

**Factual and Procedural Background<sup>1</sup>**

**A. James Brown's Death and the Probate of His Estate**

Legendary entertainer James Brown died on December 25, 2006. At his death, Brown had an estate plan, which had been prepared in 2000.

The essential terms of Brown's estate plan were: (1) the Will devised Brown's personal and household effects to six named children; (2) the remainder of the estate was left, via a pour-over provision, to the "James Brown Irrevocable Trust"; and (3) the Trust was subdivided into two parts: one for the education of Brown's grandchildren (the "Brown Family Education Trust," capped at \$2 million) and one for the education of disadvantaged youth in South Carolina and Georgia (the "I Feel Good" charitable Trust, with the remainder of Brown's assets). Thus, Brown's estate plan expressed his intent that "the bulk of his wealth" be used to support the Trust rather than pass to his heirs. *Wilson*, 743 S.E.2d at 750.

On January 18, 2007, pursuant to Brown's will, three individuals - Albert "Buddy" Dallas, Alfred Bradley, and David Cannon - were appointed co-Personal Representatives ("PRs") and Trustees of Brown's Estate and Trust. Shortly thereafter, Brown

---

<sup>1</sup> Many facts recited here are drawn from the opinion of the Supreme Court of South Carolina in *Wilson v. Dallas*, 743 S.E.2d 746 (S.C. 2013), of which this Court has taken judicial notice. See Doc. 257.

3:06-cv-00014-WOB-JGW Date Filed 03/20/14 Entry Number 344 Page 3 of 20

family members filed a petition in Probate Court to remove Dallas, Bradley, and Cannon. The Probate Court transferred these matters to Aiken County Circuit Court, where they were assigned to Judge Doyet Early.

On March 7, 2007, Judge Early appointed defendants-counterclaimants Adele Pope and Robert Buchanan as Special Administrators with limited duties to oversee Brown's estate while the challenge to Dallas, Bradley and Cannon was pending. Ultimately, the three original PRs resigned "amid allegations that that Cannon had misappropriated funds belonging to Brown." *Wilson*, 743 S.E.2d at 751 n.2.<sup>2</sup>

In October 2007, the South Carolina Attorney General was granted leave to intervene in the Circuit Court action on the grounds that it involved a charitable trust.

On October 31, 2007, plaintiff, one of Brown's recognized grandchildren, was deposed in the state court action and testified as follows:

Q. Do you repose confidence in Mr. Buchanan and Ms. Pope in their actions as appointees by the judge? Do you consider them to be trustworthy?

A. Yes.

Q. Courageous?

---

<sup>2</sup> In 2001, Cannon entered an *Alford* plea to charges of stealing money from Brown. *Id.*

A. I do.

Q. Honest?

A. I do. I've had a conversation with Ms. Pope in the courtroom and I told her how much I appreciated everything she's done. She has, you know, really tried to do the right thing thus far, from what I can tell. And Mr. Buchanan has spoken with my brother and myself as far as trying to really help facilitate and have the wherewithal to get our education paid for, which is the most important thing. . . . So yes, they're concerned and as much as they care about it, absolutely I trust them.

(Doc. 333-1 at 4-5) (Excerpt of Brown Depo. Of 10/31/07).

In November 2007, Judge Early appointed Pope and Buchanan as PRs and Trustees with full authority over Brown's Estate and Trust, over the objection of the South Carolina Attorney General.

In late December 2007, five of the six children named in Brown's will plus Brown's putative spouse, Tommie Rae Hynie, brought actions to set aside Brown's estate plan on the grounds of undue influence.<sup>3</sup>

**B. This Litigation**

Plaintiff filed this action on January 2, 2008, seeking the removal of Pope and Buchanan on various grounds, alleging that

---

<sup>3</sup> Plaintiff's father, Terry Brown, did not join that lawsuit, although he later joined in the ultimate settlement.

they were operating under a conflict of interest and had breached their fiduciary duties. (Doc. 1).

On January 7, 2008, plaintiff filed an Amended Complaint, adding claims for tortious interference with gift, prospective contractual, business, or economic relations, and failure to deliver gift and conversion thereof. (Doc. 7).

On February 20, 2008, Judge Early approved the sale of certain of James Brown's personal possessions through Christie's in order to raise money for the Trust.

On March 24, 2008, plaintiff filed a motion for preliminary injunction alleging that Pope and Buchanan were causing irreparable harm to the Irrevocable Trust and its beneficiaries and that they had refused plaintiff's requests for payment of his educational expenses out of the Trust. (Doc. 39). He further alleged that Pope and Buchanan had been appointed through "illegal" orders of the Aiken County Circuit Court, and that they were in "close alliance with the heirs and putative spouse of James Brown, who wish to attack the validity of the Irrevocable Trust." *Id.* at 3. Plaintiff sought an injunction to prevent Pope and Buchanan from taking any further action on behalf of the Trust. *Id.* at 6.

Subsequently, Pope and Buchanan filed counterclaims against plaintiff for abuse of process, civil conspiracy, intentional

**IT IS ORDERED** that: (1) defendant Adele Pope's motion for summary judgment (Doc. 307) and defendant Robert Buchanan's motion for summary judgment (Doc. 308) be, and are hereby, **DENIED**; and plaintiff Forlando Brown's motion for summary judgment (Doc. 311) be, and is hereby, **GRANTED**; and (2) the Trust is dismissed as a party hereto; and (3) a separate judgment in favor of plaintiff on defendants' counterclaims shall enter concurrently herewith.

This 28<sup>th</sup> day of March, 2014.



Signed By:

William O. Bertelsman WOB

United States District Judge