

Exhibit I

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MAY 13 2014

SC Court of Appeals

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

William F. James Brown f/k/a
Forlando J. Brown,

Plaintiff,

vs.

Adele J. Pope, individually and As
Trustee of the Irrevocable Trust established
by James Brown in August 1, 2000, and

Robert L. Buchanan, Jr., individually and
As Trustee of the Irrevocable Trust
established by James Brown in August 1,
2000,

Defendants.

Civil Action No. 3:08-cv-00014-WOB-JGW

**MEMORANDUM IN SUPPORT OF
MOTION OF DEFENDANT ROBERT
L. BUCHANAN, JR., INDIVIDUALLY
TO ALTER, AMEND AND/OR
RECONSIDER THE MEMORANDUM
OPINION AND ORDER OF THE
HONORABLE WILLIAM O.
BERTELSMAN, ENTERED
MARCH 28, 2014**

Pursuant to Fed. R. Civ. P. 54(b), 59(e) and 60, Defendant Robert L. Buchanan, Jr., Individually, has moved this Court to reconsider its Memorandum Opinion and Order dated March 28, 2014 (ECF No. 344), which granted summary judgment to Plaintiff on all counterclaims. Adele J. Pope, in her individual capacity, has also moved for reconsideration by separate Motion (ECF No. 346). To the extent Pope's Memorandum seeks relief against Forlando Brown, Defendant Buchanan references and incorporates Pope's Motion and is entitled to reconsideration for the identical reasons.

In addition and specifically as a supplement, undersigned counsel hereby files this Memorandum in Support of Defendant Buchanan's Motion for Reconsideration in his individual capacity on the specific issue of Buchanan's counterclaim for abuse of process. For the reasons set forth below and in Pope's Motion for Reconsideration, this Motion should also be granted for all counterclaims and specifically Buchanan's counterclaim for abuse of process.

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that “every order short of a final decree is subject to reopening at the discretion of the district judge”). In short, “Rule 59(e) provides that a court may alter or amend the judgment if the movant shows . . . that there has been a clear error of law or a manifest injustice.” *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403 (4th Cir. 2010) Here, like Pope, Buchanan submits that the Court erred in misapprehending the facts or arguments on the counterclaims. Specifically, however, this Memorandum addresses the counterclaim for abuse of process.

FACTUAL BACKGROUND

The Court’s March 28, 2014 Order (“Order”) found and adopted certain facts:

1. On October 31, 2007, Forlando Brown praised Pope and Buchanan in his deposition, using (or agreeing with) descriptions such as “trustworthy,” “courageous,” “honest,” and “really tried to do the right thing.” (Order pp.3-4)
2. The Court specifically found that “he [Forlando Brown] testified without qualification that he believed Pope and Buchanan to be honest courageous, and trustworthy, and that he reposed confidence in their service as PRs and Trustees of his grandfather’s Estate.” (Order, p. 10)
3. In November 2007, Judge Early appointed Pope and Buchanan as PRs and Trustees with full authority over Brown’s Estate. (Order, p. 4)
4. Plaintiff filed this action on January 2, 2008, seeking the removal of Pope and Buchanan on various grounds, alleging that they were operating under a conflict of interest and had breached their fiduciary duties. (Order, pp. 4-5)
5. This Court specifically found that “there is sufficient circumstantial evidence from which one could reasonably infer that plaintiff brought this action to remove Pope and Buchanan for an improper purpose, either because they were obstacles to the destruction of James Brown’s Estate Plan or to plaintiff’s plans to attempt to obtain some of his grandfather’s music rights for himself.” (Order, p. 10)
6. This Court specifically found that “plaintiff never challenged Bauknight’s appointment, in which he served the same dual role, and it is undisputed that Judge Early ruled in April 2008 that it was “customary and appropriate” for the same persons to serve as PRs and Trustees under such circumstances.” (Order, p. 12)
7. This Court specifically found that “it is undisputed that, at the time this suit was filed, there were insufficient funds in the Trust to make such [education] payments and that funds did not become available until after the Christie’s sale in July 2008. And,

although Judge Early issued an order dated July 23, 2008, authorizing Pope and Buchanan to make such payments, plaintiff did not thereafter apply for education payments from the Trust.” (Order, p. 13)

- 8. This Court specifically found that while “plaintiff argues that he was concerned that Pope and Buchanan were not actively defending the will contest and pursuing discovery and depositions in that matter. . . it is undisputed that this federal case was filed only weeks after the will contest was filed, and thus it would not be reasonable to expect that discovery in the state action would have been actively underway at such an early juncture.” (Order, p. 13)
- 9. This Court specifically found that “when Bauknight participated in and approved the settlement in early 2009, which essentially dismantled the educational trust, plaintiff took no action against him.” (Order p. 13)
- 10. This Court specifically found that “there is sufficient evidence that the purported reasons that plaintiff filed this lawsuit were, in fact, pretextual, as evidenced by his inconsistent and conflicting conduct, and that the real purpose of the suit was to force Pope and Buchanan to resign or assist in removing them for other reasons.” (Order, pp. 13)

The Court overlooked, erred, and misapprehended the following facts:

- 1. During the eight weeks between Brown’s October 31, 2007 deposition and the filing of the initial Complaint filed on January 2, 2008, Forlando Brown formally acquired a 39% membership in The James Brown Legacy, LLC (“TJBL, LLC”), an entity formed to purchase the James Brown assets. TJBL, LLC filed its Articles of Organization with the Georgia Secretary of State on December 5, 2007 – less than one month before this suit was filed.¹
- 2. Forlando Brown paid nothing for the 39% membership in TJBL, LLC.²

ARGUMENT

During the period between October 31, 2007 and December 2, 2008, Forlando Brown formally acquired a 39% membership in an entity formed to purchase the James Brown assets *for*

¹ Deposition of Forlando Brown taken September 27, 2008, pp. 137-148 and Exhibit 9 are attached hereto as **Exhibit 1**; Deposition of Forlando Brown taken April 10, 2013, pp. 70-75, 182-184, Exhibits 10 and 58 are attached hereto as **Exhibit 2**.

² Deposition of Forlando Brown taken September 27, 2008, pp. 137-148 and Exhibit 9 are attached hereto as **Exhibit 1**; Deposition of Forlando Brown taken April 10, 2013, pp. 70-75, 182-184, Exhibits 10 and 58 are attached hereto as **Exhibit 2**.

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Columbia, South Carolina
April 25, 2014