RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

CHARLESTON 40 Calhoun St., Suite 220 • Charleston, SC 29401
P 843.805.6550 F 843.805.6599

www.richardsonplowden.com

May 23, 2014

Columbia
fcrawford@richardsonplowden.com
Direct Dial: 803-576-3711

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
MAY 23 2014
SC Court of Appeals

Re: *Adele J. Pope v. Estate of James Brown, et al.*
Appellate Case No.: 2014-000250
Our File No.: 101-2606

Dear Ms. Kitchings:

This letter is a follow-up to our March 3, 2014 letter to your office. I represent Russell L. Bauknight, Individually in Case No.: 2013-CP-02-1337 which is still pending in the lower court before Judge Doyet Early. The matter in the above referenced appellate case number is limited to the appeal of an Order of Dismissal against Russell L. Bauknight, in his fiduciary capacity as Trustee and Personal Representative of the Estate of James Brown. I have attached that Order, dated January 17, 2014, to this letter for the Court's convenience as Exhibit A. I have also attached as Exhibit B, Judge Early's subsequent Order, dated March 10, 2014, which is currently the subject of a pending Motion for Reconsideration (and not the Order related to the above referenced appeal) before Judge Early, which dismisses Russell L. Bauknight, Individually.

Given that the interests of Russell L. Bauknight Individually are not affected by the Order of Dismissal on appeal, we would respectfully request that he be not shown as a party in his Individual capacity to the appeal nor be required to participate in any appellate proceedings. Additionally, I would ask that my name be removed as counsel of record as I only represent Russell Bauknight in his Individual capacity.

Thank you in advance for your assistance, I am,

Sincerely,

Sheila Bias for
Frederick A. Crawford

FAC/dfb
Enclosures
cc: Adele J. Pope, Esquire (w/enclosures)
William G. Newsome, III, Esquire (w/enclosure)
Russell L. Bauknight, CPA (w/enclosures)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE CIRCUIT COURT

Adele J. Pope,

Plaintiff,

vs.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

C/A No. 2013-CP-02-1337

ORDER

RECEIVED
MAY 23 2014
SC Court of Appeals

1.17.2014
Liz Godard
C.C.P.&G.S.
12:20 am
Anita Knoepfle
Deputy Clerk

This matter came before the Court on the Motion to Dismiss or, in the Alternative, for a More Definite Statement of Defendant Russell L. Bauknight, as Special Administrator of the Estate of James Brown (the "Estate") and Special Trustee of the James Brown 2000 Irrevocable Trust (the "Trust"), pursuant to Rule 12(b)(6) and Rule 12(e) of the South Carolina Rules of Civil Procedure. A hearing in this matter was held on Tuesday, December 2, 2013. Present were Adele Pope, *pro se* Plaintiff, Russell Bauknight, Defendant, William G. Newsome III, attorney for the Defendant Russell L. Bauknight in his fiduciary capacities as general personal representative and special administrator of the Estate of James Brown and general trustee and special trustee of The James Brown 2000 Irrevocable Trust, and Frederick A. Crawford, attorney for Defendant Russell L. Bauknight in his individual capacity.

#1

ALL-STATE LEGAL®
EXHIBIT
A

PROCEDURAL HISTORY

Plaintiff filed a Complaint in this action on June 10, 2013. Attached to the Complaint as Exhibit 1 was a Petition for Allowance of Claim. Defendant Bauknight filed his motion to dismiss the Complaint pursuant to Rule 12(b)(6) and motion for more definite statement pursuant to Rule 12(e) in his fiduciary capacities as personal representative and special administrator of the Estate and trustee and special trustee of the Trust on July 10, 2013.

STANDARD OF REVIEW

A claim may be dismissed pursuant to a Rule 12(b)(6) motion to dismiss if the defendant demonstrates that the plaintiff has failed to allege facts in the complaint sufficient to establish a cause of action. *Disbato v. S.C. Assoc. of School Administrators*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). A court must base its ruling on a Rule 12(b)(6) motion to dismiss solely on the allegations set forth in the complaint, and the court must consider all factual allegations as true. *Id.* A Rule 12(b)(6) motion may not be granted if the facts alleged in the Complaint and any inferences drawn therefrom would entitle the Plaintiff to any relief on any theory. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995). If the factual allegations and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief under any theory, then a Rule 12(b)(6) motion to dismiss should not be granted. *Id.* The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007).

DISCUSSION & ANALYSIS

1. First Cause of Action: Voiding Appointment, Settlement and Notice and Granting of Claims

TAE
#2

In the first cause of action, titled "Voiding Appointment, Settlement and Notice and Granting of Claims," Plaintiff appears to be requesting that the Court enter an order finding that Defendant Bauknight's appointment as special administrator of the Estate and special trustee of the Trust be found void. Plaintiff also requests that the Notice of Disallowance issued by Defendant Bauknight be declared void, the settlement entered into between Robert L. Buchanan, Jr., and the Estate and Trust be declared void, and that Plaintiff's Claim and related cases be granted. (Compl. ¶ 221.)

a. Voiding Appointment as Special Administrator or Special Trustee

In the complaint, the Plaintiff repeatedly alleges that Defendant Bauknight's appointment as a general or special fiduciary of the Estate or Trust became void upon the Supreme Court's issuance of its decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), on May 8, 2013. (Compl. ¶¶ 4, 194.) Plaintiff also requests that Defendant Bauknight's emergency appointment as special administrator of the Estate or special trustee of the trust be declared void. (Compl. ¶ 220.)

At the hearing, Plaintiff alleged that the appointment of Bauknight as special administrator and special trustee is void because it was issued after the Supreme Court issued its opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), on May 8, 2013, and prior to remittitur, which issued on May 24, 2013. The Court takes judicial notice of these two orders.

This Court also takes judicial notice of the Aiken County Probate Court's order dated June 13, 2013, in Case No. 2007-ES02-0056, 2008CP0201647, appointing Defendant Bauknight as special administrator of the Estate and confirming all prior appointments of Defendant Bauknight as special administrator. The Court further takes judicial notice of this Court's order dated June 13, 2013, appointing Defendant Bauknight as special trustee of the Trust and confirming all prior appointments of Defendant Bauknight as special trustee.

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is substantially similar to its counterpart in Rules 12(b)(6) and 12(d) of the Federal Rules of Civil Procedure. In the absence of prior state law on a particular issue, federal cases interpreting substantially similar federal rules are persuasive. *Unisun Insurance v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000).

When considering a Rule 12(b)(6) motion to dismiss, a court generally may not consider material outside of the complaint. *Baird*, 333 S.C. at 527, 511 S.E.2d at 73; *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. Federal courts addressing the issue, however, have held that a court may take judicial notice of matters of public record outside of the pleadings and consider them for purposes of a Rule 12(b)(6) motion to dismiss. *Henson v. CSC Credit Serv.*, 29 F.3d 280, 284 (7th Cir. 1994); *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991). In considering a Rule 12(b)(6) motion to dismiss, courts may take judicial notice of documents filed in such court or in other courts. *Reyn's Pasta Bella v. Visa USA*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006); *see also Henson*, 29 F.3d at 284; *Kramer*, 937 F.2d at 773-74. If factual allegations establishing a defense are certain and clear on the face of the complaint, or other matters of which a court may take judicial notice, then a court may grant a motion to dismiss based on an affirmative defense or for lack of standing. *See Santana-Castro v. Toledo-Davila*, 579 F.3d 109, 113-14 (1st Cir. 2000) (reviewing motion to dismiss based on statute of limitations); *Citibank Global Markets, Inc. v. Rodriguez Santana*, 573 F.3d 17, 23 (1st Cir. 2009) (reviewing motion to dismiss based on affirmative defense of release); *In re Ackerman*, 247 B.R. 336, 339 (Bankr. M.D. Fla. 2000) (granting motion to dismiss for lack of standing).

Because Defendant Bauknight was appointed as special administrator and special trustee after the issuance of remittitur by the South Carolina Supreme Court, the Court grants Defendant

Bauknight's motion to dismiss Plaintiff's action seeking to void the orders appointing Defendant Bauknight as special administrator and special trustee entered prior to remittitur as moot.

In addition, in seeking to have Defendant Bauknight's appointment as special administrator and special trustee be found void, Plaintiff alleges as follows:

> [I]n clear defiance of the *Wilson v. Dallas* mandate, [Defendant Bauknight] sought and may have obtained *ex parte* orders appointing him SA/ST without notice or hearing not for the proper purpose of emergency protection of assets – but to continue his plan, with Tommie Rae and other to dismantle the Estate Plan.

(Compl. ¶ 220.)

In the Complaint, Plaintiff appears to allege that the Probate Court's May 9, 2013 order appointing Defendant Bauknight as special administrator is void because Defendant Bauknight's intentions in seeking the order did not fall within the plain meaning of S.C. Code §§ 62-3-614 and 62-3-617, and the order was issued without notice or a hearing. Assuming this allegation is true, Plaintiff has not stated a viable cause of action.

As the Plaintiff is aware, it is the law of this case that, in accordance with *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E2d 184 (Ct. App. 1991), this Court does not have subject matter jurisdiction in connection with an appeal from a Probate Court order regarding the emergency appointment of a special administrator. The appointment of a special administrator is clearly temporary, and this Court does not have subject matter jurisdiction to hear an appeal challenging the appointment of a special administrator as an interlocutory order.

b. Voiding Settlement Agreement

To the extent that Plaintiff's first cause of action requests this Court to overturn a settlement agreement entered into between Defendant Bauknight, as personal representative or special administrator of the Estate or trustee or special trustee of the Trust, and Robert L.

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Buchanan, Jr. (the "Settlement Agreement"), the Court finds that Plaintiff does not have standing to bring this claim.

Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting *Black's Law Dictionary* 1413 (7th ed. 1999). Standing is a concept of justiciability concerning whether a particular person may raise legal arguments or claims. *Id.* (quoting 1A C.J.S. *Actions* § 101 (2005). It concerns whether an individual has a sufficient interest in the outcome of the litigation to warrant consideration of the person's position by a court. *Id.*

The proponent of a claim has the burden of proving the three elements of standing:

(1) That the person has suffered an injury in fact, a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;

(2) There is a causal connection between the injury and the conduct complained of – the injury must be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court; and

(3) It must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Smiley v. SCDEC, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007).

"As a general rule, to have standing a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). Standing requires that the person be a real party in interest, a person with a real, material or substantial interest in the subject matter of the litigation, as opposed to one who has only a nominal or technical interest in the action. *Id.*

#6

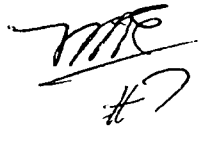
In the Complaint, Plaintiff seeks to have the Settlement Agreement declared void. (Compl. ¶ 221.) The Complaint alleges that the Settlement Agreement relates to Buchanan's claims against the Estate for attorney's fees and other matters that are the basis of Plaintiff's Petition for Allowance of Claim. (Compl. ¶ 5.) The Complaint appears to request that the Court declare the Settlement Agreement void so that Buchanan can proceed to collect under the Petition for Allowance of Claim filed by Plaintiff in this matter. (Compl. ¶ 269.)

Construing the factual allegations of the Complaint in the light most favorable to the Plaintiff, the Court finds that Plaintiff does not allege facts to show that she has standing to challenge the Settlement Agreement. Plaintiff has not alleged that she is a party to the Settlement Agreement or that she has any enforceable interest in or related to the Settlement Agreement. In addition, Plaintiff has not alleged that she has any legally protected interest that is injured by the Settlement Agreement or may be redressed by the Court's granting the remedy sought in the Complaint, in particular, voiding the Settlement Agreement.

In contrast, the allegations in the Complaint show that Plaintiff is attempting to request this Court to overturn the Settlement Agreement on Buchanan's behalf, without any allegation that Plaintiff is authorized to act on behalf of Buchanan or legally entitled to represent his interests. As a result, the Court finds that, based on the allegations of the Complaint, Plaintiff does not have standing to bring this action seeking to void the Settlement Agreement, and the Court hereby grants Defendant's Rule 12(b)(6) motion to dismiss with respect to any action in the Complaint seeking to void the Settlement Agreement.

c. Voiding of Notice

Plaintiff also seeks to have the Notice of Disallowance issued by Defendant Bauknight declared void. (Compl. ¶ 221.) To the extent this cause of action reasonably is based on the allegedly void appointment of Defendant Bauknight as special administrator prior to the



Supreme Court's issuance of remittitur, the Court grants dismissal of the claim based on Defendant Bauknight's appointment as special administrator pursuant to the Probate Court's June 13, 2013 order as discussed above.

Even assuming, *arguendo*, that Defendant Bauknight's appointment as special administrator is void, Plaintiff's request to void the Notice of Disallowance is moot because Plaintiff has filed a Petition for Allowance of Claim and requested the court to consider her claim. S.C. Code Ann. § 62-3-806(a), (b) (providing procedure for filing petitions for allowance of claim before or after personal representative mails notice of disallowance.).

d. Granting of Claim

To the extent that Plaintiff alleges that her claim should not be denied and requests an order of this Court granting payment of the claim, the Court presumes that this request for relief is subsumed by the Petition for Allowance of Claim simultaneously filed by the Plaintiff with the Complaint. The Court, therefore, denies Defendant Bauknight's motion to dismiss to the extent it requests dismissal of Plaintiff's claim for payment pursuant to her Petition for Allowance of Claim.

2. Second Cause of Action: Removal and Accounting of Bauknight; Appointment of SA/ST for Litigation on Behalf of Will/2000 Trust & SA/ST for Management under Will/200 Trust

The Second Cause of Action in Plaintiff's Complaint appears to request a general removal of Defendant Bauknight as special administrator of the Estate and as special trustee of the Trust, an accounting by Defendant Bauknight, and appointment of a special administrator and trustee. (Compl. ¶ 282.)

a. Removal of Special Administrator, Accounting with respect to the Estate, and Appointment of a Special Administrator

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A general personal representative may be removed for cause on the petition of a person interested in the estate. S.C. Code Ann. § 62-3-611. A special administrator may be removed for cause by the same procedure. S.C. Code Ann. § 62-3-618.

An interested person with respect to an estate includes heirs, devisees, children, spouses, creditors, beneficiaries, and any other having a property right in or claim against a trust or estate of a decedent that may be affected by the proceeding. S.C. Code Ann. § 62-1-201(20).

In relevant part, Plaintiff's claim for removal of Defendant Bauknight as special administrator of the Estate will survive dismissal if the allegations in the Complaint establish that she is a creditor with a claim against the Estate which may be affected by the proceeding. S.C. Code Ann. § 62-1-201(20). The Court finds that the well-pled allegations of the Complaint, which are presumed to be true, fail to establish that the Plaintiff is an interested person entitled to seek removal of Defendant Bauknight as special administrator of the Estate.

Plaintiff's Complaint does not contain any allegation, nor any reasonable inference therefrom, that Defendant Bauknight's actions as special administrator jeopardize or will cause the Estate to be unable to make payment on Plaintiff's claim against the Estate. Other than the mere fact of denial of her claim, nowhere in the Complaint does Plaintiff allege that Defendant Bauknight is wasting or administering the Estate in any manner that will cause assets to be unavailable for payment of her claim in the ordinary course of administration of the Estate. To hold otherwise would be to find that any alleged creditor of an Estate could bring an action for removal of a personal representative for no reason other than preliminary denial of the alleged creditor's claim.

Plaintiff's Complaint contains numerous allegations questioning the date of death value Defendant Bauknight established for the Estate. (Compl. ¶ 232-33, 240, 243, 270, 274.) In the

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Complaint, Plaintiff alleges that the date of death value of the Estate was far more than the value purportedly established by Defendant Bauknight, and also that after the decedent's death the Estate has generated funds to pay down substantial debts associated with the Estate. (Compl. ¶ 17, 113, 228.) The Complaint, however, contains no allegations reasonably establishing how the date of death value claimed by Defendant Bauknight, or any other action other than his mere denial of Petition's alleged claim against the Estate, jeopardizes payment of her claim from the current assets of the Estate.

Based on the foregoing, the Court grants Defendant Bauknight's motion to dismiss Plaintiff's claim for removal of Defendant Bauknight as special administrator for lack of standing. As such, the Court additionally grants Defendant Bauknight's motion to dismiss Plaintiff's claims for an accounting with respect to the Estate and appointment of another special administrator as moot.

b. Removal of Special Trust, Accounting with respect to the Trust, and Appointment of a Special Trustee

Plaintiff also seeks to have Defendant Bauknight removed as special trustee of the Trust. (Compl. ¶ 282.) Plaintiff alleges that she is an "other" entitled to enforce the Trust. (Compl. ¶ 1.c.)

A beneficiary may request the court to remove a trustee for any of the reasons set forth in subsection (b) of § 62-7-706 of the South Carolina Trust Code. S.C. Code Ann. § 62-7-706(a). With respect to a charitable trust, a beneficiary includes any person entitled to enforce the trust. S.C. Code Ann. § 62-1-201(2). With respect to a person entitled to enforce a charitable trust, the South Carolina Trust Code provides as follows:

> The settlor of a charitable trust, the trustee, and the Attorney General, *among others*, may maintain a proceeding to enforce the trust.

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S.C. Code Ann. § 62-7-405(c) (emphasis added).

The comments to S.C. Code Ann. § 62-7-405(c) cite to Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. Hawaii L. Rev. 593 (1991) for the law on the enforcement of charitable trusts. In relevant part, that article discusses how courts have occasionally permitted private persons with a "special interest" in a charitable organization to sue that organization. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. Hawaii L. Rev. 593, 627 (1991). Persons with a special interest in the charity include persons who are members of an identifiable class of beneficiary of the charity, and not merely a member of the general public who is concerned that the charity be run properly. *Id.* The article cites to a study highlighting factors most likely to induce a court to grant standing to sue a charity to private persons: (1) the extraordinary acts complained of and the remedy sought by the plaintiff; (b) the presence of fraud or misconduct on the part of the charity or its directors; (c) the attorney general's availability or effectiveness; and (d) the nature of the benefitted class and its relationship to the charity. *Id.*

In construing the factual allegations in the Complaint in the light most favorable to the Plaintiff, the Court finds that Plaintiff has not alleged that she is reasonably included amongst those persons statutorily listed to maintain a proceeding to enforce the Trust. The factual allegations of the Complaint allege that the Trust was intended to provide private scholarships to needy students. (Compl. ¶¶ 3, 12, 21, 43, 71.) Plaintiff makes no allegations that she is a member of this class, or in a position to represent a member of this class.

To support her claim that Plaintiff is an "other" entitled to enforce the Trust, Plaintiff relies solely on allegations related to her previous fiduciary relationship with the Trust and her alleged continuing duty to protect the Estate and Trust. (Compl. ¶¶ 155, 157, 166-67, 215, 218.)

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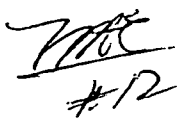
The Court takes judicial notice of the South Carolina Supreme Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), which is relied on heavily by the Plaintiff in the Complaint. (*See* Compl. ¶¶ 3, 169, 269.) In that decision, the Supreme Court stated as follows with respect to Plaintiff's removal as a co-fiduciary of the Estate:

> We are also aware that Appellants have sought $5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.

Wilson, 403 S.C. at 448-49, 743 S.E.2d 766-67.

The Court finds that, taken together with the factual allegations contained in Plaintiff's Complaint, Plaintiff cannot reasonably be included in the category of the settlor, trustee, Attorney General, or others with an interest in enforcing the Trust. To rule otherwise would be to allow Plaintiff to attempt to enforce the Trust in an individual capacity where she has previously been removed from a position to enforce the Trust in a fiduciary capacity. Because the statute cannot reasonably be read to allow Petitioner to enforce the Trust in an individual capacity, after the removal of Plaintiff in a fiduciary capacity, the Court grants Defendant Bauknight's motion to dismiss Plaintiff's claim to remove Defendant Bauknight as special trustee, for an accounting, and for appointment of another special trustee.

3. Third Cause of Action: Leave to Amend After Removal and/or Appointment of SA/ST



In her third cause of action, Plaintiff requests leave to amend after the Court considers issues related to the appointment of a special administrator or special trustee. (Compl. ¶ 286.)

Because the Court grants Defendant Bauknight's motion to dismiss with respect to any claims in the Complaint relating to removal of Defendant Bauknight as special administrator or special trustee and appointment of another special administrator or special trustee, the Court dismisses Plaintiff's Third Cause of Action as moot.

4. Fourth Cause of Action: Attorney's Fees

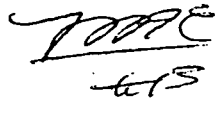
Because the Court grants Defendant Bauknight's motion to dismiss with respect to any claims in the Complaint other than Plaintiff's Petition for Allowance of Claim, the Court dismisses Plaintiff's Fourth Cause of Action as moot with respect to any claim for attorney's fees other than those related to Plaintiff's Petition for Allowance of Claim.

CONCLUSION

Viewing the facts alleged in the complaint, and any inferences drawn therefrom in the light most favorable to the Plaintiff, it is clear that Plaintiff, in large part, has not stated claims upon which relief may be granted. For that reason, Defendant Bauknight's Motion to Dismiss is **DENIED** to the extent that it seeks to dismiss Plaintiff's request for payment of her claim in accordance with the Petition for Allowance of Claim, and is **GRANTED** to the extent of all other claims set forth in the Complaint.

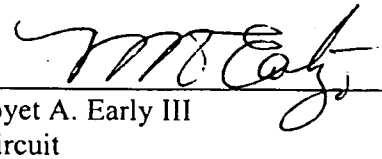
The Court notes that the Complaint contains no allegations bringing causes of action against Defendant Bauknight as general personal representative of the Estate or general trustee of the Trust, and as such the Court grant's Defendant's Bauknight's motion to be dismissed as a party to the action in those capacities.

In light of this ruling on Defendant Bauknight's Motion to Dismiss, Defendant's Rule 12(e) Motion for More Definite statement is not considered at this time.



Defendant Bauknight has fifteen (15) days from receipt of this order to respond to Plaintiff's Petition for Allowance of Claim.

IT IS SO ORDERED.



The Honorable Doyet A. Early III
Second Judicial Circuit

Aiken, South Carolina

, 2014.

NEXSEN|PRUET

Kaye K. Mullinax, AACP, RP®
Paralegal

January 15, 2014

Aiken County Clerk of Court
Attn: Anita Knoepfle
109 Park Avenue SE
P.O. Box 583
Aiken, South Carolina 29802-0583

Re: Adele J. Pope v. Estate of James Brown
Civil Action No. 2013-CP02-1337
Estate No.: 2007 ES02 00056

Dear Anita:

Enclosed please find the original and one copy of Judge Early's Order dated January 7, 2014, in the above-referenced matter. Please file the original and return the clocked copy in the enclosed, self-addressed envelope.

Also enclosed is our client's Answer to the Petition for Allowance of Claim in this matter. Likewise, please file the original and return the clocked copy in the enclosed, self-addressed envelope.

By copy of this letter, I am serving a copy of both Judge Early's 1/7/14 Order and our Answer to the Plaintiff by mail.

Thank you for your assistance in this matter.

Very truly yours,

Kaye K. Mullinax, AACP, RP®

Enclosures

cc: Russell Bauknight (via email)
Beth Bauknight (via email)
Adele J. Pope, Esq. via US Mail

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2178
F 803.727.1488
E KMullinax@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0201337

PLAINTIFF(S)	DEFENDANT(S)
Adele Pope	James Estate Of Brown Russell L Indiv Bauknight

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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 | Date 1/17/2014

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **1-17-14**, and a copy mailed first class or placed in the appropriate attorney's box on **1-17-14**, to attorneys of record or to parties (when appearing pro se) as follows:

Adele Pope ,

ATTORNEY(S) FOR THE PLAINTIFF(S)

Williams G Newsome
Frederick A. Crawford PO Box 7788 Columbia, SC 29202
J. David Black PO Drawer 2426 Columbia, SC 29202-2426

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [illegible]

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 PROBATE COURT

Adele J. Pope,

Plaintiff,

vs.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

Estate File No. 2007-ES-02-0056

2013-CP-02-1337

ORDER DISMISSING CASE WITH PREJUDICE

FILED 3.10.14
Liz Godard
C.C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

THIS MATTER came before the Court on December 3, 2013 upon Defendant Russell L. Bauknight's July 10, 2013 Notice of Motion and Rule 12 Motion to Dismiss (the "Motion"), filed in his **individual** capacity. The Court, having reviewed the Complaint and considered the arguments presented by counsel, grants the Motion to Dismiss Russell L. Bauknight, **individually**, with prejudice, and finds as follows:

FINDINGS OF FACT

1. The Plaintiff filed this action on June 10, 2013.

2. In her Complaint spanning sixty-three (63) pages, the Plaintiff makes numerous allegations against Defendant Bauknight as a fiduciary of the Estate of James Brown (the "Estate") and The James Brown 2000 Irrevocable Trust (the "Trust).

EXHIBIT B

3. The only allegations against Defendant Bauknight, in his **individual** capacity, deal with the Plaintiff's desire for Mr. Bauknight to pay both his and Plaintiff's attorney's fees, incurred in the defense of this action, from his personal assets and not from the assets of the Estate or the Trust. See, e.g., Complaint ¶ 289 ("Russell, **individually**, should pay all costs of the Notice, his **Individual** Defense of this Case, and the Estate's defense . . . ."); Complaint Prayer ¶ 6 ("Directing Russell, **Individually**, to pay all costs and attorneys' fees of this action, with the Estate/2000 Trust to pay no portion of Russell's fees and costs . . . .").

CONCLUSIONS OF LAW

4. As an initial matter, the Court finds that, even giving the Plaintiff every benefit of the doubt as a pro se litigant and taking all matters pled by the Plaintiff as being true, the Complaint, on its face, fails to meet the minimum pleading requirements of the South Carolina Rules of Civil Procedure. Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). A Complaint must contain "a short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a), SCRCP. Here, the Compliant does not contain "a short and plain statement of the facts" and fails to show that the Plaintiff "is entitled to relief" against Defendant Bauknight, in his **individual** capacity. Id. Instead, the Complaint is mostly comprised of allegations against Defendant Bauknight in his fiduciary capacity. More specifically, Plaintiff's Complaint does not sufficiently plead any single cause of action against Defendant Bauknight, in his **individual** capacity, but rather relates to, references, and cites actions taken by Defendant Bauknight as a fiduciary of the Estate and the Trust. As a result, dismissal is proper under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a claim against Defendant Bauknight in his **individual** capacity.

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IT IS HEREBY ORDERED that the Complaint against Defendant Russell L. Bauknight, **individually**, be dismissed, with prejudice.

AND IT IS SO ORDERED.

Doyet A. Early, III
Judge, Second Judicial Circuit

Aiken, South Carolina
March 4, 2014.