

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

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 in August 1, 2000, Defendants,

Of whom Russell L. Bauknight is the Respondent.

RECORD ON APPEAL

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Hinton and Associates, PA
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235 East Main Street, Suite #110
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Attorney for the Appellant

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Attorney for the Respondent

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JUN 19 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JACQUELYNE HOLLANDER,
Plaintiff,

Civil Action No. 2012-CP-02-01059

vs.

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 in August 1,
2000,

Defendants.

ORDER DISMISSING COMPLAINT

~~FILED~~ 8.8.13
Liz Holland
CLERK
Anita Knoepfle 9:30
Deputy Clerk

Before this Court is the Defendants', The Irrevocable Trust Established by James Brown on August 1, 2000, and Russell L. Bauknight, as Special Trustee (collectively "the Defendants"), Rule 12(b)(6), SCRCPP, Motion to Dismiss the Complaint filed by Plaintiff Jacquelyne Hollander ("Plaintiff" or "Hollander") on April 30, 2012.¹

STANDARD OF REVIEW

When a party moves to dismiss a complaint pursuant to Rule 12(b)(6), the reviewing court is required to "construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (2009). The Plaintiff's Complaint alleges the existence of a partnership created by

¹ The undersigned takes judicial notice that James Brown passed away on December 25, 2006. Hollander has filed seven actions in Illinois, South Carolina, and California, and that this is the sixth such action.

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the Plaintiff and the late James Brown ("Brown"). The Complaint seeks a declaratory judgment establishing the legal existence of a partnership, and an accounting of that partnership. The question before the Court is whether the Plaintiff's allegations plead sufficient facts to show the existence of a partnership between Plaintiff and Brown.

BACKGROUND

The Plaintiff alleges that in 1983, while living in Atlanta, Georgia, she was presented with the idea of recording a song to be sung by the Atlanta Falcons. (Complaint, ¶ 9). The name of the song was "Atlanta be Rockin." (Complaint, ¶ 9). All proceeds from the song would be donated to the Georgia Alliance for Children, Inc. (Complaint, ¶ 9). The Plaintiff sought out Brown to serve as a headliner for the song. In 1984, Brown agreed to donate his time and record the song. (Complaint, ¶ 12-13). The song was not immediately released. Rather, it was shelved until such time that the Atlanta Falcons were in the midst of a winning season. (Complaint, ¶ 15). While waiting on a winning season, the Plaintiff and Brown continued to work together in "various other charitable events helping children with handicaps and other maladies." (Complaint, ¶ 14).

According to the Complaint, the Atlanta Falcons were in a winning season in 1986. (Complaint, ¶ 15). During an Atlanta Falcons home game against the Washington Redskins, the record was released to the public. (Complaint, ¶ 15). At the half-time show of that game, Brown performed the song "Atlanta be Rockin." (Complaint, ¶ 16). After the game, the Plaintiff and Brown were in his limousine and she suggested the idea that the two form a "formal partnership to raise money for children." (Complaint, ¶ 17). Thereafter, Plaintiff alleges that she and "Brown both used their notoriety and skills to accumulate money and contribute the money to various causes." (Complaint, ¶ 18). The causes listed by the Plaintiff were all charitable in

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nature.

LEGAL ANALYSIS

The Defendants contend that the Complaint fails to state a claim for relief because the above allegations demonstrate, at best, that the Plaintiff and Brown sought to create a "partnership" for non-profit and charitable purposes. The Defendants have directed this Court's attention to South Carolina authority that conclusively establishes that a partnership cannot exist unless it is a for profit endeavor. *Wyman v. Davis*, 223 S.C. 172, 74 S.E.2d 694 (1953) (noting that the test for whether a partnership exists is the sharing of profits); S.C. Code Ann. § 33-41-210 ("A "partnership" is an association of two or more persons to carry on as co-owners a business for profit.").

The only motive set forth in the Plaintiff's Complaint is a charitable one, and without alleging facts that Plaintiff and Mr. Brown associated for the purpose of making a profit, there can be no partnership. *Wyman*, 223 S.C. 172, 74 S.E.2d 694; S.C. Code Ann. § 33-41-210. Plaintiff's Complaint does not point to any endeavor that she and Mr. Brown undertook for profit. In fact, all the Complaint describes are the charitable services that she and Mr. Brown preformed. For example, Plaintiff and Brown's first adult interaction involved making music for a charitable event. (Complaint, ¶¶ 12-14). Plaintiff's discussion of a partnership involved donating time, money, and skill for the purpose of helping children. (Complaint, ¶¶ 12-14; 18). Plaintiff's most direct allegation of the existence of a partnership is that she "suggested to Brown that they form a more formal partnership to raise money for children." (Complaint, ¶ 17). Plaintiff unequivocally establishes that the purpose of this relationship was "to raise money for children," and not to make a profit. (Complaint, ¶ 17). Regardless of how plaintiff describes this relationship, an association between people for a non-profit purpose can never be a partnership.

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59A Am. Jur.2d PARTNERSHIP § 48, ("An essential element of a partnership as defined by the Uniform Partnership Act is the partnership enterprise must be intended to make a profit") (citing *Chocknok v. State, Commercial Fisheries Entry Comm'n*, 696 P.2d 669; *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979) ("Nonprofit Organizations may not be considered partnerships."))²

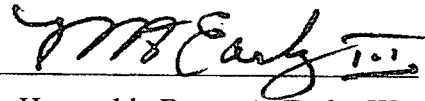
Furthermore, Defendant also argues that this action, Hollander's sixth lawsuit against the James Brown Estate and Trust, should be dismissed on the basis that the applicable three year statute of limitations has expired. S.C. Code Ann. § 15-3-530. It is well settled that a statute of limitations defense may properly be asserted in a Rule 12(b)(6) motion to dismiss if it appears on the face of the complaint that such a statute bars the claim. *Clearwater Trust v. Bunting*, 367 S.C. 340, 353, 626 S.E.2d 334, 340 (2006) (affirming dismissal of claims brought after limitation period pursuant to Rule 12(b)(6)); see also *Horton v. Carolina Medicorp*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996). Once a defendant raises a statute of limitations defense, the burden of showing that the action was instituted within the prescribed period rests with the plaintiff. Based upon the Plaintiffs sixth complaint, Hollander alleges she created a charitable partnership with James Brown between 1984 and 1988. (Complaint, ¶¶ 12-23). James Brown passed away on December 25, 2006. *Id.* This action was filed on March 13, 2012. Viewing the pleadings in the light most favorable to the Plaintiff, the three year statute of limitations expired on this action on December 25, 2009. Accordingly, it is untimely and subject to dismissal with prejudice.

CONCLUSION

Due to plaintiff's lack of any allegation demonstrating or implying any intention of either party to profit from the alleged relationship, a partnership could not have been created. Without

² South Carolina adopted the uniform partnership act, and in doing so kept the "for profit" requirement in the definition of a partnership. 1 UPA § 101(6); S.C. Code Ann. § 33-41-210.

a partnership, neither her declaratory judgment nor accounting actions can lie. Furthermore, based upon the face of plaintiff's complaint, the three year statute of limitations has run on this action. Therefore, the Plaintiff has failed to properly state a claim upon which relief could be granted, and her complaint is hereby dismissed with prejudice.



The Honorable Doyet A. Early, III

Aug 7, 2013
~~July 7, 2013~~

Bamberg, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201059

Jacquelyne Hollander

James Irrevocable T
Brown

Russell L As Trustee
Bauknight

PLAINTIFF(S)

DEFENDANT(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ 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

8/8/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on **8-8-13**, and a copy mailed first class or placed in the appropriate attorney's box on **8-8-13**, to attorneys of record or to parties (when appearing pro se) as follows:

Oshun Cyrus Hinton 235 E. Main St., Ste. 110 Suite 110
Rock Hill, SC 29730

J. David Black PO Drawer 2426 Columbia, SC 292022426

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Clerk of Court

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

JACQUELYNE HOLLANDER

Plaintiff.

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

2012 CP 03 01057

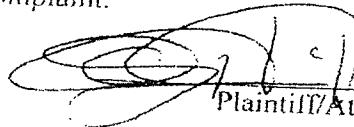
FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Aiken, South Carolina

Dated: April 13, 2012



Plaintiff/Attorney for Plaintiff

Address: O. Cyrus Hinton
Hinton and Associates, PA
Two Law Place
235 East Main Street
Suite #110,
Rock Hill, South Carolina 29730
(803) 980-7772

COPY
ORIGINAL FILED
APR 13 2012
CLERK OF COURT

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS
ON REMOVAL FROM PROBATE COURT)

JUN 17 2013

IN RE:

ADMINISTRATIVE ORDER

THE ESTATE OF JAMES BROWN
A/K/A: JAMES JOSEPH BROWN

Case No.: 2008-CP-02-1647 - original
Case No.: 2007-CP-02-0122
Case No.: 2008-CP-02-0872
Case No.: 2008-CP-02-0322
Case No.: 2010-CP-02-0721
Case No.: 2012-CP-02-1059
Case No.: 2008-CP-02-1426
Case No.: 2008-CP-02-1712
Case No.: 2008-CP-02-2127
Case No.: 2008-CP-02-1556
Case No.: 2008-CP-02-1557
Case No.: 2008-CP-02-1758
Case No.: 2008-CP-02-1759

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Lij Godard
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

On May 29, 2013 this Court held a status conference concerning *Wilson v. Dallas*, --- S.E.2d ---, 2013 WL 2005103 (2013), the South Carolina Supreme Court's May 8, 2013 Opinion (the "Opinion") affirming, reversing, and remanding this Court's May 26, 2009 order confirming the James Brown Estate and Trust Settlement Agreement.

At the beginning of the status conference, the Court informed all parties of the following:
(1) that the parties will follow standard motions practice protocol (i.e., motion cover sheet, motion, filing fee, etc.) and that a memorandum in support of each motion must be filed contemporaneous with the filing of the motion, motions not supported by a memorandum will not be set for hearing; (2) that the Court will impose time limits for motions arguments by following the time limits set by the South Carolina Appellate Court Rules, unless otherwise noted; (3) that due to the outdated Clerk of Court records for the following thirteen (13) James

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Brown related cases pending in Aiken County, the Court will issue administrative orders and/or scheduling orders addressing each case; and (4) that the Court intends to, and expects the parties to move all of the appropriate cases forward in an expeditious manner that provides for structured and efficient administration of the estate and trust.

At the status conference, the Court heard from the following attorneys: Louis Levenson, counsel for several of James Brown's children/grandchildren; Alan Medlin, counsel for Tommie Rae Hynie Brown; Adele Pope, former fiduciary; C. Havird Jones, Jr., Asst. Deputy South Carolina Attorney General; David Bell, counsel for Terry Brown; J. David Black and William Newsome, counsel to Mr. Bauknight, currently serving Special Administrator of the James Brown Estate and Special Trustee of the James Brown 2000 Irrevocable Trust Agreement. At the close of the conference, the Court informed the attorneys that administrative orders would be issued to ensure orderly administration of the litigation of all pending James Brown cases.

The Court has reviewed the Clerk of Court's case files for the above listed civil action numbers, and because several cases date back to 2007, the captions as well as the represented party records are no longer accurate. In order to create a proper record for the Clerk of Court as to each civil action, the Court hereby enters the following administrative orders in the following cases:

1. 2008-CP-02-1647: James Brown Will and Trust Challenges

On May 8, 2013, the Supreme Court of South Carolina handed down its Opinion; the Opinion remanded the will and trust challenges to this Court; hereafter Case 1647 will be used for the James Brown will and trust litigation. The will and trust litigation involves claims challenging the validity of the will and trust, spousal claims, and an omitted child claim; if the litigation of these separate types of claims proves cumbersome, the Court will entertain a motion to sever any of these claims, and assign it a separate civil action number. Pursuant to the South

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Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 1647:

- A. Adele Pope (former fiduciary, pro se)
- B. Robert Buchanan (former fiduciary, pro se)
- C. James Bailey (former counsel to Pope and Buchanan)
- D. James B. Richardson (appellate counsel to former fiduciaries Pope and Buchanan)
- E. Alfred A. Bradley (deceased)
- F. Albert H. Dallas (former fiduciary)
- G. Wayne R. Bird (former counsel to former fiduciary Albert H. Dallas)
- H. Eugene C. Covington (current counsel to former fiduciary Albert H. Dallas)
- I. David G. Cannon (former fiduciary)
- J. Jacquelyne Hollander (party to Case 1059)

The court will enter a separate scheduling order concerning the will and trust litigation.

In terms of reviewing fees paid in Case 1647, the Opinion directed that this Court undertake the following: "review the propriety of all fees, including attorneys' fees and trustees' fees, paid in relation to this action, and shall order all unearned fees or unapproved fees to be disgorged and returned to Brown's Estate." The Court further held that all other persons, firms, entities, or others who have been paid fees, including attorney's fees and Trustee fees, in relation to this action are likewise directed to submit their statement of fees paid in accordance with this Order. This Court directs the Clerk of Court to open a new civil action entitled: "*In re James Brown: Review of fees paid in Case 1647 appeal of May 26, 2009 settlement agreement.*" Once the new civil action is open, the Clerk of Court is directed to send notice of the new civil action to all current parties of record in Case 1647, and the above individuals, former parties and attorneys (see above: A-J), and direct that each submit to this Court an electronic and hard copy statement of the attorney's fees and trustees fees paid by the Estate in relation to this action. This must be done within 45 days of this order.

2. Will and Trust Contest Fiduciary Administration (Case 1647)

In the *Wilson v. Dallas*, --- S.E.2d ---, 2013 WL 2005103 (2013), May 8, 2013 Opinion, the majority of the South Carolina Supreme Court also directed this Court, upon proper application, to appoint fiduciaries to oversee these matters in accordance with the provisions for succession outlined in the estate and trust documents. The opinion allows this Court to consider Mr. Bauknight filling a fiduciary position. All "applications" for such appointment must be made within 45 days of this Order with supporting documentation. Until further Order of this



Court, Mr. Bauknight shall continue to conduct the orderly administrative duties of the estate and trust as Special Administrator and Special Trustee.

3. 2007-CP-02-0122: Dallas, Bradley, and Cannon Matters

Former fiduciaries Albert H. Dallas, Alford Bradley (now deceased), and David Cannon appealed their resignations/removal as fiduciaries under Case 122. On October 20, 2010, pursuant to Mr. Bauknight's Motion, the Supreme Court dismissed the Dallas and Bradley appeal wherein they sought to return to their prior fiduciary positions, leaving in place the April 8, 2008 Order confirming that the prior fiduciaries cannot return to any position of trust and confidence with respect to the Estate of James Brown or the Trust.

Other Matters concerning Case 122:

Pursuant to this Court's April 8, 2008 Order, a hearing will be scheduled to determine payment of costs and attorney fees by Cannon and Dallas. The April 8, 2008 Order provides for the payment of costs and attorney fees expended in the removal/resignations of Dallas, Bradley, and Cannon. The April 8, 2008 Order provided that the amounts owed will be "determined by affidavits and brief arguments (without testimony)."

Pursuant to the South Carolina Supreme Court's Opinion, and the South Carolina Supreme Court's October 20, 2010 Order Dismissing the Dallas and Bradley Appeal, the following individuals, former parties and/ or attorneys are removed from Case 122:

- A. Adele Pope (former fiduciary, pro se)
- B. Robert Buchanan (former fiduciary, pro se)
- C. James Bailey (former counsel to Pope and Buchanan)
- D. James B. Richardson (appellate counsel to former fiduciaries Pope and Buchanan)
- E. Alfred A. Bradley (deceased)
- F. Ca Reid Sr. Memorial Funeral Home (claim resolved)
- G. Greenberg Taurig (claim withdrawn, defendant in case 322)
- H. Rita Udom (claim resolved)
- I. Peter John Nosal (claims counsel to Rita Udom)

For the limited purpose of the fee hearing noted above, Albert H. Dallas and David G. Cannon shall remain parties to this action in their individual capacities. Upon the conclusion of that proceeding, they will be removed as parties to Case 122.



All persons claiming the payment of fees and costs in Case 122 must submit their affidavits and briefs to this Court within 45 days of this Order. Those opposing will have 45 days to file their position.

4. 2008-CP-02-0872: Will, Trust, and Personal Property Matters

This action also concerns the will and trust challenges, but also includes personal property matters. Case 872 will be collapsed into Case 1647; the Clerk of Court is directed to close Case 872. Further, pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 872:

- A. Adele Pope (former fiduciary, pro se)
- B. Robert Buchanan (former fiduciary, pro se)
- C. James Bailey (former counsel to Pope and Buchanan)
- D. James B. Richardson (appellate counsel to former fiduciaries Pope and Buchanan)
- E. Alfred A. Bradley (deceased)
- F. Albert H. Dallas (former fiduciary)
- G. Eugene C. Covington (current counsel to former fiduciary Albert H. Dallas)

5. 2008-CP-02-322: State Law Case against former James Brown Advisors

This action was brought on behalf of the James Brown Estate and Trust by attorneys James R. Gilreath and Kendall J. Few. Mr. Bauknight has reached favorable settlements with both Morgan Stanley and Phil Farr.

Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 322:

- A. Adele Pope (former fiduciary, pro se)
- B. Robert Buchanan (former fiduciary, pro se)
- C. Phillip G. Farr, CPA (settled with Mr. Bauknight)
- D. Keith Emge (former counsel to Mr. Farr)
- E. Morgan Stanley (settled with Mr. Bauknight)
- F. Max Pickelsimer (former counsel to David Cannon)
- G. Arthur J. Davidson (former counsel to Mr. Dallas)
- H. Audra Byrd (former counsel to Mr. Dallas)

The Court will schedule Mr. Bauknight's Motion to Amend the Complaint during the next term of court.

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6. 2010-CP-02-0721: State Law Case: Severed case against Buddy Dallas post-bankruptcy

This matter is a companion case to Case 322. It was severed from Case 322 upon Mr. Bauknight learning that Dallas was contemplating bankruptcy protection. Until this court directs otherwise, this case will continue on parallel track to Case 322.

7. 2012-CP-02-1059: Jacquelyne Hollander VII

This is the seventh action filed by Jacque Hollander against the James Brown Estate and Trust. The previous actions were dismissed by courts in Illinois and California. However, Mr. Bauknight's motion for sanctions based upon vexatious litigation history is currently pending in the United States District Court for the Northern District of Illinois.

On June 14, 2012, Mr. Bauknight filed a motion to dismiss the seventh action with prejudice. The Court will schedule Mr. Bauknight's motion to dismiss during the next term of court.

7/2/12 Bauknight v. Hollander

8. 2010-GS-06-137; 139: David Cannon Restitution (General Sessions Proceeding)

Mr. Bauknight moved the circuit court to reconsider restitution from Mr. Cannon. The Honorable George C. James, Jr., granted Mr. Bauknight's Restitution motion, and issued an Order providing that any presiding Circuit Judge may hear the restitution matter. It is this Court's understanding that the parties are currently communicating with Judge James regarding possible hearing dates. In the event that Judge James is unavailable, Mr. Bauknight is granted leave to request that the restitution matter be heard by this Court.

9. 2008-CP-02-1426: Creditor's Claim of Albert H. Dallas

Former fiduciary Albert A. Dallas filed a creditor's claim in the amount of \$624,876 for alleged unpaid legal fees as of the date of Mr. Brown's death, plus claims for PR commissions and Trustee commissions and various percentages of revenue streams from Mr. Brown's intellectual property in an amount to be determined. The court will enter a separate scheduling order concerning this matter. Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 1426:

A. Adele Pope (former fiduciary, pro se)

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B. Robert Buchanan (former fiduciary, pro se)

10. 2008-CP-02-1712: Creditor's Claim of Rodney Peeples

Rodney Peeples filed a creditor's claim for legal services provided to former PRs and Trustees Dallas and Bradley in the amount of \$97,851.66. The court will enter a separate scheduling order concerning this matter. Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 1712:

- A. Adele Pope (former fiduciary, pro se)
- B. Robert Buchanan (former fiduciary, pro se)
- C. James Bailey (former counsel to Pope and Buchanan)

11. 2008-CP-02-2127: Creditor's Claim of Internal Revenue Service

The Internal Revenue Service filed a creditor's claim for income taxes owed by Mr. Brown for tax years 2004, 2005 and 2006 in the amount of \$177,814.85. The IRS has since acknowledged that there is no liability for 2006 and they have reduced their claim to approximately \$70,000. The court will enter a separate scheduling order concerning this matter. Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 2127:

- A. Adele Pope (former fiduciary, pro se)
- B. Robert Buchanan (former fiduciary, pro se)
- C. James Bailey (former counsel to Pope and Buchanan)

12. 2008-CP-02-1556: Creditor's Claim of Charles Bobbitt

Charles Bobbitt filed a creditor's claim based on an alleged agreement by Mr. Brown to pay Mr. Bobbitt \$200,000 from the proceeds of the refinance of the Pullman bond. The court will enter a separate scheduling order concerning this matter.

13. 2008-CP-02-1557: Creditor's Claim of Intrigue Music Management

Intrigue Music Management filed a creditor's claim for alleged commissions as Mr. Brown's business manager due as of Mr. Brown's death and afterwards in the amount of \$175,000+. The court will enter a separate scheduling order concerning this matter. Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 1557:

- A. James Bailey (former counsel to Pope and Buchanan)



14. 2008-CP-02-1758: Creditor's Claim of LaRhonda Pettit

LaRhonda Pettit filed a creditor's claim claiming to be a child of Mr. Brown and therefore owed support during her minority in an amount to be determined, and also for a share of the estate. The court will enter a separate scheduling order concerning this matter. Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 1758:

A. Adele Pope (former fiduciary, pro se)

15. 2008-CP-02-1759: Creditor's Claim of Nicole Paris

Nicole Parris filed a creditor's claim claiming to be a child of Mr. Brown and therefore owed support during her minority in an amount to be determined, and also for a share of the estate. The court will enter a separate scheduling order concerning this matter. Pursuant to the South Carolina Supreme Court's Opinion, the following individuals, former parties and/ or attorneys are removed from Case 1759:

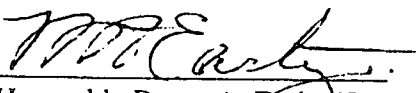
A. Adele Pope (former fiduciary, pro se)

B. James Bailey (former counsel to Pope and Buchanan)

16. Other Administrative Issues:

Mr. Bauknight is directed to coordinate with the Clerk of Court to ensure that all Aiken County civil actions comply with the Supreme Court's Opinion. To the extent that he is not already named as the currently serving court appointed Special Administrator of the James Brown Estate and Special Trustee of The James Brown 2000 Irrevocable Trust Agreement, this Court hereby directs the Aiken County Clerk of Court to list Mr. Bauknight as the responding party, in those current fiduciary capacities, until directed by further order of this court.

AND IT IS SO ORDERED.


The Honorable Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

Barnwell, South Carolina
June 13, 2013

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP0201647**

Henry Dargan McMaster	Daryl J Brown Janise Vanisha Brown Larry Brown Jason Brown Lewis Sydney Lumar	Lindsey Delores Brown Vanisha Brown Deanna J. brow Thomas Yamma N Brown
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ 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

6/13/2013

Date

For Clerk of Court Office Use Only

For Clerk of Court Office Use Only

This judgment was entered on 6-13-13, and a copy mailed first class or placed in the appropriate attorney's box on 6-13-13, to attorneys of record or to parties (when appearing pro se) as follows:

Probate

Louis Levenson 125 Broad St., SW Atlanta, GA 30303

Matthew Day Bodman 1500 Calhoun St. Columbia, SC 29201

Daryl L. Williams PO Box 7425 Columbia, SC 29202

James M. Griffin PO Box 11208, Columbia SC 29211

Robert N. Rosen 18 Broad St. Ste. 201 Charleston, SC 29401

J. David Black PO Drawer 2426 Columbia, SC 292022426

William W. Wilkins PO Drawer 10648 Greenville, SC 296030648

Max Nathan Pickelsimer PO Box 2628 Columbia, SC 29202

William George Newsome III PO Drawer 2426 Columbia, SC 292022426

Eugene C. Covington Jr. PO Box 2343 Greenville, SC 29602

Adele Pope, Robert Buchanan, James Bailey, James B Richardson, Alfred A Bradley, CA Reid Sr Memorial Funeral Home, Grenberg, Taurig, Rita Udom, Peter John Nosal

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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.

For Clerk of Court Office Use Only

This judgment was entered on 6-13-13, and a copy mailed first class or placed in the appropriate attorney's box on 6-13-13, to attorneys of record or to parties (when appearing pro se) as follows:

William H. Latham - PO Box 11070, Columbia SC 29211
J. Kendall Few 95 Stillhouse Ridge Greer, SC 29650
James R. Gilreath PO Box 2147 Greenville, SC 29602
Leland Malchow - PO Box 460, Augusta 30903

ATTORNEY(S) FOR THE PLAINTIFF(S)

Oshun C. Hinton, 235 E. Main St. Skelly, Rock Hill SC 29730
Stephen G. Morrison PO Box 11070 Columbia, SC 29211
David G Cannon P O Box 865 Barnwell, SC 29812
Eugene C. Covington Jr. PO Box 2343 Greenville, SC 29602
Adele Pope, Robert Buchanan, Phillip G Farr, Keith Emge,
Morgan Stanley, Max Pickelsimer, Arthur J Davidson, Audra
Byrd ~~Jacqueline Hollander~~ Wayne Byrd

ATTORNEY(S) FOR THE DEFENDANT(S)

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.

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Court Reporters

Aiken

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Receives

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1647

List all parties
& co-defendants.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2012-CP-02-01059
	)	ON REMOVAL FROM PROBATE COURT)
JACQUELYNE HOLLANDER,	)	
Plaintiff,	)	PROPOSED ORDER
	)	
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,	)	
Defendants.	)	

The Court, having reviewed the Complaint, Defendants' Motion to Dismiss, Plaintiff's Response to the Motion to Dismiss the Memorandum in Support of the Motion to Dismiss and the Memorandum in Opposition to the Motion to Dismiss, makes the following findings:

Rule 12(b)(1), SCRCP

This Court has jurisdiction over this action pursuant to the removal of litigation involving the estate and trust of James Brown from the Probate Court and pursuant to S.C. Code, Ann. § 62-7-201(c) that gives concurrent jurisdiction to the Circuit Court.

Rule 12(b)(6), SCRCP

PARTNERSHIP ALLEGATIONS

Upon review of the Complaint, viewed in the light most favorable to Plaintiff, *Carolina Park Associates, LLC, et al v. Benedict T. Marino, et al*, 400 S.C. 1; 732 S.E.2d 876 (2012), this Court finds that the Complaint, while alleging charitable work done by Plaintiff with James Brown, sufficiently pleads that they were involved in an enterprise in which they both raised money and gave money to charity.

Defendants would have the Court infer that this means there were no profits made by Plaintiff and James Brown and that therefore, by definition, there could have been no partnership under the South Carolina Uniform Partnership Act, S.C. Code Ann. § 33-41-210.

Plaintiff would have the Court infer from the pleading that she and James Brown were in a partnership enterprise wherein they raised money for charity in return for monetary compensation and other benefits.

The Complaint does not expressly state that there were no profits or that there was no intention that there would be profits in the future. The history and related activities of Plaintiff and James Brown are pled in sufficient detail so as to determine that they were involved in a charitable enterprise and that money was raised by that enterprise. Plaintiff seeks a declaratory judgment from this Court that this charitable enterprise was a legal partnership.

At this point in the litigation it is premature to dismiss the action based upon inferences that are not supported by the pleadings where the legal standard is to review those allegations in a light most favorable to Plaintiff. Perhaps if evidence is presented sufficiently that there were no profits made by that enterprise then Defendants can present that evidence in a motion for summary judgment, but the facts pled are not sufficient to justify dismissal on that basis.

STATUTE OF LIMITATIONS

The record indicates that Plaintiff first appeared pro se in this matter under case number 2008-CP-02-1647 on January 28, 2009. Plaintiff has filed a motion with the Court under Rule 42, SCRPC, to consolidate this action with that case.

The Court did recognize Plaintiff's interest in the litigation and her cause of action in Illinois in its Settlement Order of May 26, 2009 and entered the Settlement Order intending to effectively settle all matters before the Court, including Plaintiff's interest in the Trust.

Although this particular action was filed on March 13, 2012 after the three-year statute of limitations period expired, the continuity of this litigation related back to Plaintiff's initial appearance of January 28, 2009 which was not formally dismissed until June 17, 2013.

Plaintiff's Complaint is also replete with allegations that the conduct of the Attorney General created in Plaintiff the reasonable belief that she could not proceed with her litigation in this Court. This is further supported by her efforts in litigation through other jurisdictions based upon the same cause of action pled herein.

Taking the Complaint as true for purposes of the motion to dismiss and the facts pled in a light most favorable to Plaintiff, the Complaint alleges sufficient facts that would estop Defendants from their argument that Plaintiff commenced this action after her statutory period has run.

NOW, THEREFORE, IT IS ORDERED:

1. That Defendants' Motion to Dismiss under Rule 12(b)(1) and Rule 12(b)(6) is denied.
2. Defendants' alternative motion to transfer venue to Richland County under Rule 12(b)(3) is denied.

AND IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) C.A. NO. 2012-CP- 01057

JACQUELYNE HOLLANDER,
Plaintiff,

v.

) COMPLAINT
) (DECLARATORY JUDGMENT)
) (JURY DEMAND)

) 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.
) Defendants.

Plaintiff Jacquelyne Hollander ("Hollander"), by and through her attorney O. Cyrus Hinton and, if granted pro hac vice status, Donald P. Rosen, for his complaint in declaratory judgment against defendants respectfully alleges as follows:

PARTIES

1. Plaintiff Hollander is suing as an individual who resides in Illinois. She is the founder and partner in the "I Feel Good Trust" which was the enterprise that James Brown ("Brown") contributed his assets toward and converted to the Irrevocable Trust of James Brown in 2000.
2. Defendant The Irrevocable Trust Established by Brown in August 1, 2000 ("Trust" or "the Trust") is a trust established by James Brown to benefit needy children as an extension of the previous partnership began by the plaintiff and Brown.
3. Defendant Russell L. Bauknight is the court appointed trustee of the aforementioned Trust.

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CYS 2-24
CLERK OF COURT

JURISDICTION AND VENUE

4. This Honorable Court has jurisdiction over the subject matter of this complaint and of the parties. Venue is proper in this Court.

INTRODUCTION

5. In 1969 sixteen-year-old Hollander was diagnosed with cancer of the intestines. Her father was a naval officer who often, after chemotherapy, to get Hollander's mind off of her symptoms, took Hollander to the airport because she loved planes. On one occasion, Brown was arriving from a concert tour while she was at the airport. Hollander marveled at the legendary entertainer and was fortunate enough to approach him despite his omnipresent security.

6. Brown took Hollander's hand and greeted her. Hollander's father told Brown of Hollander's cancer and Brown felt profound sympathy for her. Hollander told him that she wanted to write songs when she grew up. Brown gave her a business card and wrote on the back of it, "Bring me back your first song". Brown then departed the airport with his security leaving an awestruck young girl behind.

7. Hollander later married Dean Daughtry, a successful musician who was previously the keyboard player with the band "The Classics 4" and at the time of their marriage was the keyboard player for "The Atlanta Rhythm Section" a popular band with several hit records. As Dean Daughtry's wife, Hollander hosted many charitable benefits and with her entertainment connections she persuaded many celebrities to participate. Hollander was exceptionally well known as a local philanthropist in the State of Georgia.

8. In 1982 Hollander was commissioned by the Marriott Hotel in Gwinett County, Georgia to write a theme song for Gwinett County that was recorded by Billy Joe Royal and presented to dignitaries at the opening of the hotel. It was a very large event and it increased

Hollander's notoriety. Her music career was becoming very successful to the point where Hollander received numerous honors for her work including, but not limited to, appointment as Lieutenant Colonel aid de camp for the Governor of the State of Georgia, receipt of the Georgia exemplary strength award, and being named "Songwriter of the Year" by her peers in the State of Georgia.

9. The Marriott recording called Hollander's attention to the management of the Atlanta Falcons football team. In or about 1983 Hollander collaborated with Bob Dickenson, Rankin Smith, Sr. and Jr., Carol Breeding, and Tommy Novis of the Atlanta Falcons with a unique [at the time] concept. She would teach the football team to sing a song of her composition entitled "Atlanta Be Rockin'"¹. The song would be recorded and sold and the proceeds would go to the Georgia Alliance for Children, Inc. Hollander worked tirelessly with the football players who for the most part had no natural singing talent.

10. Knowing Hollander's experience in recruiting talent for charity, Rankin Smith Sr. felt that a strong headliner was needed to add to the recording. Rankin said that the players wanted Hollander to try to engage Brown for this task. Hollander did not know if it was possible, but she said that she would try.

11. It was impossible to reach Brown directly. Hollander contacted Albert "Buddy" Dallas ("Dallas") who was Brown's attorney and representative to determine if Brown was available. At Dallas' advice, Hollander sent a recording of the song and a picture of herself to be forwarded to Brown.

12. In 1984 Brown called Hollander personally after he received the information. Brown had not previously done any meaningful charity work and scoffed at the idea of working for free. But Hollander convinced Brown to record the song and Brown loved the idea of singing

¹ Originally entitled "Falcon Fever" the title was changed because Brown had difficulty pronouncing "Falcon".

with the Atlanta Falcons. Brown insisted, however, that his "Living In America" band be used on the recording and that they be paid \$1,000.00 apiece.

13. When Brown came with his musicians to the studio, Hollander presented him with the card that Brown had given her at the airport when she was sixteen. Brown was moved to tears and when he realized who Hollander was he paid each of his musicians himself.

14. After that recording session, at Hollander's request, Brown participated with her in various other charitable events helping children with many different handicaps and other maladies. The two started a partnership and each contributed time and money to the enterprise.

15. The record "Atlanta Be Rockin'" was held by Rankin Smith Sr. until 1986 when the Atlanta Falcons were having a winning season. Hollander obtained sponsorship from Coca Cola to purchase enough recordings to provide one for free to many who attended the game against the Washington Redskins at Fulton County Stadium.

16. That game was themed around the record release. At Rankin Smith's request, Hollander received a commitment for James Brown to join her in a halftime show at that game in order to perform "Atlanta Be Rockin'" live with the Atlanta Rhythm Section and the Living in America Band.

17. After that halftime show Hollander and Brown were in his limousine together. It was there that Hollander suggested to Brown that they form a more formal partnership to raise money for children. She suggested that they call it "The I Feel Good Trust". James Brown loved the idea and they brought their plan to Dallas so that he could work out the details.

18. Dallas never actually formed a legal trust at that time. The enterprise continued as collaboration between only Hollander and Brown with Dallas serving as attorney and banker. 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.

19. In 1988 Hollander met Katina Bryant ("Katina") who was dying of Leukemia and had a year to live. Katina was also a girl with a dream to be a singer. Hollander introduced Katina to Brown and they wrote and recorded a song featuring Katina on vocals. They announced the release of that record at the Scottish Rites hospital. Brown, Dallas and Hollander also took that opportunity to publicly formally announce² their partnership as "The I Feel Good Trust" to help underprivileged children. Brown and Hollander did many benefits for Katina and eventually "Katina's Song" was recorded by various celebrities including John Schneider and became the theme for the Children's Miracle Network.

20. In 1988 when James Brown faced charges for assault with a deadly weapon and other felonies part of 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, 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.

² The public announcement followed several years of charitable partnership work between Hollander and Brown.

21. Plaintiff continued the enterprise while Brown was incarcerated holding benefits and working with Brown as she could. In 1989 plaintiff moved to Illinois and Brown continued the partnership giving turkeys to needy families and doing other charitable events.

22. In 2000, without notifying plaintiff, at Brown's request, Dallas, David Gannon and Alford A. Bradley formally created the Trust as an extension of the enterprise that was a partnership between Hollander and Brown. Brown gave most of his assets to that trust and created a will that would specifically exclude most of his family from most of the remainder of his estate.

23. On Christmas Day of 2006 Brown died, officially of congestive heart failure. In 2008 plaintiff discovered that Brown created the formal trust and that it was an extension of their partnership even keeping the name, "The I Feel Good Trust". Hollander drove to South Carolina with videos, photographs, documents and witnesses to demonstrate to the Probate Court the genesis of the Trust and her part in its formation and management.

24. Hollander contacted Sonny Jones ("Jones"), the Special Assistant Attorney General. Hollander fully explained to Jones her position with the Trust. Jones informed Hollander that he would represent her interests in the Probate Court and that she did not need to retain her own counsel or to participate in the proceedings.

25. After three to five months Jones ceased communications with Hollander and finally informed her, without reviewing her evidence, that she had no claim to the Trust or any right to participate in the proceedings. Jones and his staff eschewed any further communication.

26. On or about November of 2009 Hollander drove to South Carolina to participate directly in the proceedings. The courtroom was filled with potential disinherited claimants to Brown's fortune but none of them had any valid claim to the Trust.

27. Jones, as the alleged protector of the Trust beneficiaries, convinced the Probate Court that the trust formed by Hollander and Brown years before Brown's death for the benefit of needy children, was the subject of undue influence and those assets should be made part of Brown's estate and distributed to the disinherited claimants.

28. Jones eviscerated the Trust and settled with the disinherited adult children of whom James Brown who were specifically excluded from his estate giving them 25% of the Trust assets. Jones also settled with the alleged wife of James Brown who had specifically signed a pre-nuptial agreement that she would not claim the estate for 25% of the Trust assets. These claimants, among others, had almost no chance at inheriting anything from Brown but for the intervention of the Attorney General. The Jones settlement called for a new trust³ out of which all costs and attorney fees would be paid and that would be administered by Browns' family. That new trust would have a fraction of the assets of the original Trust.

(FOR A FIRST CAUSE OF ACTION)
(DECLARATORY JUDGMENT)

29. Plaintiff restates and incorporates by reference the allegations of paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. The purpose of a declaratory judgment action is to settle and afford relief from uncertainty and insecurity to a party with respect to that party's rights, status and other legal relations. S.C. Code Ann. §15-53-130 (1976).

31. A party whose rights, status or other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status or other legal relations thereunder. S.C. Code Ann. §15-53-130 (1976).

³ Called the "Legacy Trust"

32. Plaintiff has standing to obtain a declaration of whether: (1) plaintiff and Brown were legal partners under the South Carolina Uniform Partnership Act; (2) if so, whether the Trust was an extension of that partnership; and, (3) plaintiff's rights to the partnership assets.

33. "A "partnership" is an association of two or more persons to carry on as co-owners a business for profit." Uniform Partnership Act, §33-41-210. "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." Uniform Partnership Act, §33-41-220. In summary, a partnership exists as the statutory organization where two or more persons jointly engage in a common enterprise with no other business form.

34. "All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property." Uniform Partnership Act, §33-41-230. If it is determined that the Trust is an extension of the partnership between plaintiff and Brown then the UPA clearly provides that the assets in the Trust are partnership assets.

35. "When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will. A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership." Uniform Partnership Act, §33-41-560. In this case no formal or other termination of the partnership was made between Brown and the plaintiff prior to the formation of the Trust. The facts demonstrate a continuous partnership between plaintiff and Brown.

36. "A partner is a co-owner with his partners of specific partnership property, holding as a tenant in partnership. The incidents of his tenancy are such that a partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes but he has no right to possess such property for any other purpose without the consent of his partners, a partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property." Uniform Partnership Act, §33-41-720.

37. "A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership and when partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws on the death of a partner his right in specific partnership property vests in the surviving partner or partners, except when the deceased was the last surviving partner in which case his right in such property vests in his legal representative; but such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose" Uniform Partnership Act, §33-41-720. If it is determined that plaintiff is the last surviving partner, this Court should further determine that the partnership assets vest with her.

38. Plaintiff is entitled to a declaratory judgment that: (1) plaintiff is the surviving partner with James Brown; (2) that the Trust assets are part of that partnership; and, (3) that as the sole surviving partner she is solely entitled to the Trust assets.

(FOR A SECOND CAUSE OF ACTION)
(ACCOUNTING)

38. Plaintiff restates and incorporates by reference the allegations of paragraphs 1 through 38 of this Complaint as if fully set forth herein.

39. Section 33-41-550 of the Uniform Partnership Act provides for a right to accounting of partnership assets whenever circumstances render it just and reasonable.

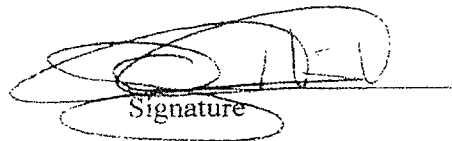
40. In this case, if the Court determines that a partnership exists between plaintiff and Brown, the partnership assets will have been removed from plaintiff's control for so long that an accounting is needed to determine the net worth of the assets and any unjust dissipation of the partnership assets by third parties.

41. Once it is determined that plaintiff is a partner with full rights to the partnership assets this Court should further determine that plaintiff has standing to demand an accounting of those partnership assets.

WHEREFORE, having fully stated its complaint against the defendants named herein, the plaintiff, Jacqueline Hollander, requests that this Honorable Court render its judicial determination of the issues presented by this Complaint, and render its declaratory judgment in favor of plaintiff, Jacqueline Hollander, in accordance with paragraphs 38 and 41 herein; and such other and further relief as this Honorable Court deems just and proper.

Dated this 11th day of April, 2012

Respectfully Submitted,



Signature

O. Cyrus Hinton
Hinton and Associates, PA
Two Law Place
235 East Main Street, Suite #110
Rock Hill, South Carolina 29730
(803) 980-7772

J. David Black
Member
Admitted in SC

June 12, 2012

The Honorable Liz Godard
Clerk of Court, Aiken County
109 Park Avenue, SE
Post Office Box 583
Aiken, South Carolina 29802-0583

Re: **Jacquelyne Hollander vs. 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 in August 1, 2000**
Case No. 2012-CP-02-01059

Dear Ms. Godard:

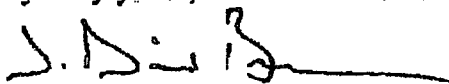
Enclosed for filing with the Court is an original and one copy of Defendant's **Motion To Dismiss Pursuant To Rule 12(b)(1) & (6) And, In The Alternative, Motion To Dismiss Or Transfer Venue Pursuant To Rule 12(b)(3)** in the above-referenced matter along with the Motion And Order Information Form And Cover Sheet. Please return the copy, clocked-in, to me in the envelope provided. My firm's check in the amount of \$25.00 for the filing fee is also enclosed.

By copy of this letter and as evidenced by the attached Certificate Of Service, we are serving counsel of record with a copy of the above Motion.

Thank you for your assistance in this matter.

With kind regards, I remain

Very truly yours,


J. David Black

JDB/hjr

Enclosure

cc w/encl.: O. Cyrus Hinton, Esquire

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

T 803.540.2072
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E DBlack@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

JACQUELYNE HOLLANDER

☐ Plaintiff

v.

The Irrevocable Trust Established By James Brown,
Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-02-01059

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: O. Cyrus Hinton, Bar No. Address: 235 E. Main Street, Suit 110, Rock Hill, SC 29730 phone: fax: e-mail: other:		Defendant's Attorney: J. David Black, Bar No. 68499 Address: 1230 Main Street, Suite 700 Columbia, SC phone: 803-771-8900 fax: 803-253-8277 e-mail: dblack@nexsenpruet.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss		Court Reporter Needed: ☒ YES / ☐ NO	
Estimated Time Needed: 30 minutes			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant			Date submitted: June 12, 2012
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE	
		CODE: Date:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JACQUELYNE HOLLANDER,
Plaintiff,

Case No. 2012-CP-02-01059

vs.

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 in August 1,
2000,

**MOTION TO DISMISS PURSUANT TO
RULE 12(b)(1) & (6) AND, IN THE
ALTERNATIVE, MOTION TO
DISMISS OR TRANSFER VENUE
PURSUANT TO RULE 12(b)(3)**

Defendants.

TO THE PLAINTIFF JACQUELYNE HOLLANDER, PLEASE TAKE NOTICE that pursuant to Rules 12(b)(1)(3) & (6), SCRCP, the undersigned counsel for Defendant, The Irrevocable Trust Established by James Brown on August 1, 2000, and Russell L. Bauknight, as Trustee (collectively "the Defendants"), hereby move this Honorable Court for an order dismissing the sixth version of this Complaint as follows:

Rule 12(b)(1), SCRCP:

The Complaint filed in this action named as its Defendant a Trust and its Trustee and involves questions pertaining to the administration and distribution of the Trust; pursuant to S.C. Code. Ann. § 62-7-201(a) (2000), the Probate Court has exclusive jurisdiction over this action. Accordingly, the Complaint must be dismissed.

Rule 12(b)(6), SCRCP:

The Complaint filed in this action fails to allege facts sufficient to constitute a cause of

FILED
L. J. Anderson
F.C.C.P. & G.S. 830
Charvyn J. Anderson
Deputy Clerk

action; Plaintiffs theory of civil liability is not supported by the laws of this State. Accordingly, the Complaint must be dismissed.

IN THE ALTERNATIVE, pursuant to Rule 12(b)(3), SCRCP, the undersigned counsel for the Defendants hereby moves this Honorable Court for an order dismissing or transferring venue in this civil action to Richland County, South Carolina.

Rule 12(b)(3), SCRCP:

The Complaint filed in this action named as its Defendant a Trust; the principal place of administration and place of business for the Defendant Trust is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201. Accordingly, the proper venue for a civil action filed against the Defendant Trust is the Richland County Probate Court in Richland County, South Carolina. S.C. Code. Ann. § 62-7-201, 204 (2005). Therefore, the Aiken County action should be dismissed.



J. David Black

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Burl F. Williams

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NEXSEN PRUET, LLC

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803.771.8900

Attorneys for The Defendants

June 12, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JACQUELYNE HOLLANDER,
Plaintiff,

Case No. 2012-CP-02-01059

vs.

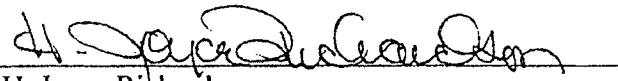
THE IRREVOCABLE TRUST
ESTABLISHED BY JAMES BROWN ON
AUGUST 1, 2000 and RUSSELL L.
BAUKNIGHT, as Trustee of the Irrevocable
Trust established by James Brown in August 1,
2000,

CERTIFICATE OF SERVICE

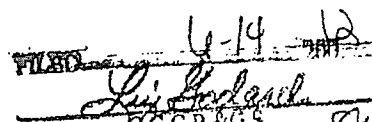
Defendants.

This is to certify that a copy of the foregoing **Motion To Dismiss Pursuant To Rule 12(b)(1) & (6) And, In The Alternative, Motion To Dismiss Or Transfer Venue Pursuant To Rule 12(b)(3)** has been served upon the following counsel of record by placing the same in the United States Mail, first-class postage prepaid, addressed to the following as shown below this 12th day of June, 2012.

O. Cyrus Hinton, Esquire
HINTON AND ASSOCIATES, PA
235 East Main Street, Suite 110
Rock Hill, South Carolina 29730


H. Joyce Richardson
NEXSEN PRUET, LLC
Post Office Drawer 2426
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Telephone: 803.771.8900

Columbia, South Carolina


6-14-12
C.C.P.S. 870
Charmin L. Davis
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
JACQUELYNE HOLLANDER)
)
Plaintiff,)
)
vs.)
)
THE Irrevocable Trust Established by James)
Brown, Et Al)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2012-CP-02-01059

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: O. Cyrus Hinton, Bar No. _____ Address: 235 E. Main St., #110, Rock Hill, SC 29730 Phone: 803-980-7772 Fax _____ E-mail: info@ochintonpa.com Other: _____		Defendant's Attorney: J. David Black, Bar No. 68499 Address: 1230 Main St., #700, Columbia, SC Phone: 803-771-8900 Fax 803-253-8277 E-mail: dblack@nexsenpruet.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Consolidate Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. June 26, 2013 Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: <u>7-1-13</u> ☒ MOTION FEE COLLECTED: \$ <u>mt 21161939370</u> ☐ CONTESTED - AMOUNT DUE: \$ <u>100k</u> <u>Liz Hodard</u> C.C.P. & G.S. <u>Anita Knoepfle</u> Deputy Clerk			

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
JACQUELYNE HOLLANDER,)
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,)
Defendants.)

IN THE COURT OF COMMON PLEAS
2012-CP-02-01059

RESPONSE TO MOTION TO DISMISS
PURSUANT TO RULE 12(b)(1) & (6)
AND, IN THE ALTERNATIVE, MOTION
TO DISMISS OR TRANSFER VENUE
PURSUANT TO RULE 12(b)(3)

7.1 200-13
Liz Holland
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

Plaintiff Jacquelyne Hollander ("Hollander"), by and through her Attorney O. Cyrus Hinton and, if granted pro hac vice status, Donald P. Rosen, in response to Defendant's Motion to Dismiss Pursuant to Rule 12(b)(1) & (6) and, in the Alternative, Motion to Dismiss or Transfer Venue Pursuant to Rule 12(b)(3), respectfully states as follows:

1. This Motion, filed before this Court's requirement to attach a legal memorandum, seeks dismissal of this action without any legal arguments to substantiate the assertions.

2. Filed contemporaneously with this Response is Plaintiff's Motion to Consolidate Matters Pursuant to Rule 42, SCRCPP that seeks to consolidate this action with case number 2008-CP-01647 pursuant to this Court's stated goals for expeditious handling of the James Brown litigation on March 29, 2013.

RULE 12(b)(1), SCRCPP

3. Under rule 12(b)(1), SCRCPP the Defendant challenges this Court's jurisdiction to hear this case based upon the fact that this case involves a trust. S.C. Code, Ann. § 62-7-201(a) states, in relevant part, "... the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts...".

4. This argument fails for several reasons. The trust in question is the Irrevocable Trust Established by James Brown on August 1, 2000 (hereinafter referred to as "the Trust"). The Probate Court in 2007 delegated its authority to this Court for purposes of all of the relevant estate and trust litigation in that action. It is by this Court's authority that the Defendant is even acting as the fiduciary to the Trust and is a party to this action. The argument, therefore, that this Court lacks authority to hear matters regarding the Trust is, at best, disingenuous.

5. Further, this action does not regard the "internal affairs" of the Trust. This action regards a determination of Plaintiff's rights in a previous partnership with James Brown and that partnership's relationship to the Trust as a successor entity.

6. Under section (c) of the same statute relied upon by the Defendant for this argument, S.C. Code, Ann. § 62-7-201(c), the statute provides:

The probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings:

- (1) Determine the existence or nonexistence of trusts created other than by will;
- (2) Actions by or against creditors or debtors of trusts; and
- (3) Other actions and proceedings involving trustees and third parties;

7. Therefore, based upon the facts alleged in the Complaint and the relief sought therein, this Court retains concurrent jurisdiction with the Probate Court. Further, as more completely stated in Plaintiff's Motion to Consolidate, this action needs to be heard along with the other James Brown litigation to avoid duplicate litigation and to prevent the rights of parties in either action from being adversely affected.

RULE 12(b)(3), SCRCP

8. Here the Defendant advances another disingenuous argument that the venue of the action is wrong because the Trust is administered through Defendant's office in Richland County. Based on that logic, every action in the James Brown litigation would have to be transferred to the Richland County venue. As previously stated, Plaintiff seeks to consolidate this action with the rest of the James Brown litigation under 2008-CP-01647 pursuant to this Court's Administrative Order of June 17, 2013 that states, "... hereafter, Case 1647 will be used for [all] the James Brown will and trust litigation." (Order, p.2, ¶ 1).

RULE 12(b)(6), SCRCP

9. Defendant's last argument is the non sequitur claim that Plaintiff's complaint fails to allege facts that constitute a cause of action under South Carolina law. Unfortunately, Defendant does not provide any basis for this bald assertion.

10. The first count of the Complaint seeks relief under S.C. Code Ann. §15-53-30 (1976) which provides that a party whose rights, status or other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status or other legal relations thereunder.

11. In this case Plaintiff seeks a judgment that under both South Carolina and Georgia partnership law; (1) Plaintiff and James Brown were a legal partnership entity; (2) that the Trust was a successor entity to that partnership; (3) that the partnership was dissolved upon the death of James Brown; and, (4) the Plaintiff is entitled to a winding up of the partnership affairs and a distribution of partnership income.

12. Alternatively, this Court can issue a declaratory judgment based upon S.C. Code Ann. §15-53-20 which provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

13. The second complaint count for accounting is derivative of the first. If this Court determines that there was a partnership between James Brown and issues a declaratory judgment accordingly, then under both the Georgia and South Carolina Uniform Partnership Acts (S.C. Code Ann. § 33-41-550) Plaintiff is entitled to an accounting.

14. This Court, having in rem jurisdiction of the Trust, can certainly determine the facts and apply the laws of both South Carolina and Georgia to determine Plaintiff's rights thereunder and has the authority to issue (or to not issue if the facts do not merit issuance) an Order of Declaratory Judgment regarding the matters alleged in Plaintiff's complaint.

WHEREFORE, Plaintiff moves this Honorable Court to; (1) deny defendant's Motion to Dismiss; (2) or, in the alternative, allow Plaintiff to amend the Complaint to correct any deficiencies; and, (3) such other relief as this Honorable Court deems reasonable and just.

Dated this 26th day of June, 2013

Respectfully Submitted,



Signature

O. Cyrus Hinton
Hinton and Associates, PA
Two Law Place
235 East Main Street, Suite #110
Rock Hill, South Carolina 29730
(803) 980-7772

IN THE COURT OF COMMON PLEAS

2012-CP-02-01059

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Response to Motion to Dismiss Pursuant to Rule 12(b)(1) & (6), and, In the Alternative, Motion To Dismiss or Transfer Venue Pursuant to Rule 12(b)(3) has been served upon the following counsel of record by placing the same in the United States Mail, overnight first-class postage prepaid, addressed to the following as shown below this 27th day of June, 2013.

J. David Black
1230 Main Street
Suite #700
Columbia, South Carolina 29202


Donald Rosen
96 N. Kennedy Drive
Suite #203
Carpentersville, Ill. 60110
Telephone: (847) 322-3806

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2012-CP-02-01059
	)	ON REMOVAL FROM PROBATE COURT)
JACQUELYNE HOLLANDER,	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION TO
	)	DEFENDANT'S MOTION TO DISMISS
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,	)	
Defendants.	)	

7-29-13
 [Signature]
 Deputy Clerk

On July 2, 2013, at the hearing set for oral arguments to Defendants' Motion to Dismiss, Defendants for the first time since the Motion to Dismiss was filed in on June 14, 2012 presented the Court and counsel for Plaintiff a Memorandum in Support of Defendants' Motion to Dismiss (hereinafter "Memorandum"). That Memorandum was never actually filed in this action, but in an abundance of caution Plaintiff files this Memorandum in opposition to the arguments therein.

VENUE AND JURISDICTIONAL ARGUMENTS

Defendants' Motion to Dismiss regarded three arguments: (1) That jurisdiction is improper under Rule 12(b)(1), SCRPC since, according to Defendants' Argument, only the Probate Court has jurisdiction to hear trust matters; (2) that venue is only proper in Richland County, South Carolina per Rule 12(b)(3), SCRPC because the Irrevocable Trust of James Brown that is the subject of this litigation is administered in Richland County, South Carolina; and, (3) that under Rule 12(b)(6), SCRPC the Complaint fails to provide facts which constitute a cause of action under South Carolina law. All of these issues were addressed in Plaintiff's Response to Motion to Dismiss.

The unfiled Memorandum fails to even mention Defendants' Arguments under Rule 12(b)(1), SCRPC and Rule 12(b)(3), SCRPC. Accordingly, Plaintiff will stand on her Response arguments to those issues.

SUFFICIENCY OF COMPLAINT ALLEGATIONS

The remaining arguments in Defendants' Memorandum only regard the legal sufficiency of the Complaint. The Motion to Dismiss did not offer the Court any actual arguments to substantiate their allegation that the Complaint failed to provide facts which constitute a cause of action under South Carolina law. Instead, Defendants have waited over a year, until after the Response was filed, to put forth their arguments in the Memorandum. As previously stated, the Memorandum has not been formally filed in this action.

A. Partnership Allegations

Defendants make mistakes of both law and fact in their reasoning that the Complaint cannot be legally sufficient to establish a partnership because it only describes the charitable work done by Plaintiff and James Brown ("Brown") and never alleges the profit motive allegedly required under South Carolina law to establish that a legal partnership existed.

The Complaint actually alleges:

... The enterprise [between Plaintiff and James Brown] continued as collaboration between only Hollander and Brown with Dallas serving as attorney and banker. 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.)

There is nothing in the Complaint that establishes that Plaintiff and Brown did not make a profit from raising money for charity. The Complaint clearly pleads that Plaintiff and Brown raised money, sold records, wrote and recorded music. Further, the Complaint alleges that Brown benefitted by reduced prison time as a direct result of the benefit produced by Plaintiff through their partnership (Complaint, ¶ 20).

Defendants make the false argument that, "... an association between people for a non-profit purpose can never be a partnership." (Memorandum, p. 2) Nothing can be further from the truth. The partnership between Plaintiff and Brown was that of that of "professional solicitors" and "commercial co-venturers", entities recognized and regulated by the South Carolina Secretary of State wherein for monetary consideration they raised money for charity. This activity is now governed by the Solicitation of Charitable Funds Act, Title 33 Chapter 56 and includes partnerships in its definitions S.C. Code Ann. §33-56-20.

The Complaint states that the partnership of Plaintiff and Brown both accumulated money and contributed money to various charitable causes. Nowhere in the Complaint is it alleged, or can it be reasonably inferred, that all of the money raised by Plaintiff and Brown was given to charity or that Plaintiff and Brown never received compensation for their contributions to the partnership.

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).

Defendants rely 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 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 element of “profit” in determining the role of profits in a partnership and (citing Chapman v. Lipscomb, 18 S.C. 222) the 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.

And 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.” It can 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.

Defendants would undoubtedly argue that these cases do not apply to a charitable enterprise as their reliance on cases out of Alaska and North Dakota (*Chocknok v. State, Commercial Fisheries, Entry Comm’n* 696 p.2d 669; *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979)) draws them to the unsupported conclusion that nonprofit organizations cannot be considered partnerships (Memorandum, p. 2)

There are no facts pled that Plaintiff and Brown operated as a nonprofit organization. In fact, the Complaint clearly states that they were going to form a legal trust, but never did (Complaint, ¶ 18.) Money never went to a trustee and all money raised went through their hands before it was contributed to charity.

It is strictly in Defendants interpretation of the complaint allegations by which Defendants seek to persuade this Court to misinterpret the charitable work done by Plaintiff and Brown as if they were a nonprofit organization rather than as a partnership that made money by raising money for charity.

According to a recent ruling of the South Carolina Supreme 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. 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. [emphasis added]”. Carolina Park Associates, LLC, et al v. Benedict T. Marino, et al, 400 S.C. 1; 732 S.E.2d 876 (2012).

The Complaint allegations and reasonable inferences therefrom, viewed most favorably to the Plaintiff demonstrate that Plaintiff and Brown were partners who, as co-owners in a commercial enterprise, raised money for charity and shared in the management, assets, profits, expenses and losses.

B. Statute of Limitations

Defendants also argue that Plaintiff has exceeded the three-year statute of limitations in her filing of this action. Their simple claim is that, since Brown died on December 25, 2006 Plaintiff had until December 25, 2009 to file this action. Since this case was filed on March 13, 2012 Plaintiff is time barred from proceeding. Defendants' argument here is without merit as it fails to recognize the full spectrum of proceedings engaged in by the Plaintiff.

Plaintiff first filed her appearance pro se on January 28, 2009 in related case number 08-CP-08-1647. A copy of that appearance is attached hereto as Exhibit "A". 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.

In August of 2009 Plaintiff sought relief in the U.S. District Court for the Northern District of Illinois (case number 09 C 2147) for this same cause of action ("Illinois Action") as she was excluded by the Attorney General as a party in the South Carolina proceedings.

This Court recognized Plaintiff'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." (Settlement Order, p. 13). A copy of that Order is attached hereto as Exhibit "B".

The Northern District of Illinois ruled that they lacked personal jurisdiction and, as argued by both the previous Trustees and Defendants, the case should be heard by this Court.

Defendants, in each subsequent jurisdiction sought through other counsel, argued that Plaintiff should bring her claims to this Court. Defendants never advised any of the other courts their theory that Plaintiff was beyond the Statute of Limitations in the court that they claimed was the only jurisdiction qualified to hear Plaintiff's claims.

Plaintiff brought this action during the pendency of the South Carolina Supreme Court's deliberations over the Settlement Order. In retrospect, Plaintiff could have filed this Complaint under the original action in which she filed her appearance, but this case has been unusually complex and, assisted by the Aiken County Clerk, counsel instead filed with this Court under a new case number.

Since Plaintiff 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, Plaintiff commenced this action before the three-year statutory period and the Rule 12(b)(6) argument for dismissal on this basis should be denied.

The statute of limitations argument raised by Defendants should also be denied based upon estoppel. The Complaint alleges that Sonny Jones of the South Carolina Attorney General misrepresented to Plaintiff that he would represent her interest before this Court and that she did not need to hire counsel to participate in the proceedings (Complaint, ¶¶ 24-25). The Complaint further alleges that Sonny Jones disenfranchised Plaintiff in the litigation through his representations to the Court and his part in negotiating the Settlement Agreement (Complaint, ¶¶ 27-28). The conduct of the Attorney General's office through Sonny Jones which culminated in

the Settlement Order convinced Plaintiff that she could not litigate the matter before this 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.

In this case, taking the facts pled in a light most favorable to Plaintiff, the conduct of the Attorney General's office through Sonny Jones and, by extension, the Defendants in this action, induced delays in the Plaintiff to proceed in this Court. Plaintiff filed this action before the ruling of the South Carolina Supreme Court that voided the Settlement Order and allowed this Court to finally hear her allegations and render a declaratory judgment.

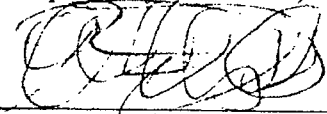
CONCLUSION

Because the Complaint states facts that, in a light most favorable to Plaintiff, plead that she and James Brown were legal partners, and because Plaintiff has met her burden under the statute of limitations, Defendants' Motion to Dismiss should be denied.

WHEREFORE, Plaintiff respectfully requests that this Court deny Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure; or, in the alternative, allow Plaintiff to amend her pleading accordingly; and, such further relief as this Court deems reasonable and just.

Dated this 19th day of July, 2013

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'O. Cyrus Hinton', written over a horizontal line.

Signature

O. Cyrus Hinton
Hinton and Associates, PA
Two Law Place
235 East Main Street, Suite #110
Rock Hill, South Carolina 29730
(803) 980-7772

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2012-CP-02-01059
	)	ON REMOVAL FROM PROBATE COURT)
JACQUELYNE HOLLANDER,	)	
Plaintiff,	)	PROPOSED ORDER
	)	
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,	)	
Defendants.	)	

The Court, having reviewed the Complaint, Defendants' Motion to Dismiss, Plaintiff's Response to the Motion to Dismiss the Memorandum in Support of the Motion to Dismiss and the Memorandum in Opposition to the Motion to Dismiss, makes the following findings:

Rule 12(b)(1), SCRPC

This Court has jurisdiction over this action pursuant to the removal of litigation involving the estate and trust of James Brown from the Probate Court and pursuant to S.C. Code, Ann. § 62-7-201(c) that gives concurrent jurisdiction to the Circuit Court.

Rule 12(b)(6), SCRPC

PARTNERSHIP ALLEGATIONS

Upon review of the Complaint, viewed in the light most favorable to Plaintiff, *Carolina Park Associates, LLC, et al v. Benedict T. Marino, et al*, 400 S.C. 1; 732 S.E.2d 876 (2012), this Court finds that the Complaint, while alleging charitable work done by Plaintiff with James Brown, sufficiently pleads that they were involved in an enterprise in which they both raised money and gave money to charity.

Defendants would have the Court infer that this means there were no profits made by Plaintiff and James Brown and that therefore, by definition, there could have been no partnership under the South Carolina Uniform Partnership Act, S.C. Code Ann. § 33-41-210.

Plaintiff would have the Court infer from the pleading that she and James Brown were in a partnership enterprise wherein they raised money for charity in return for monetary compensation and other benefits.

The Complaint does not expressly state that there were no profits or that there was no intention that there would be profits in the future. The history and related activities of Plaintiff and James Brown are pled in sufficient detail so as to determine that they were involved in a charitable enterprise and that money was raised by that enterprise. Plaintiff seeks a declaratory judgment from this Court that this charitable enterprise was a legal partnership.

At this point in the litigation it is premature to dismiss the action based upon inferences that are not supported by the pleadings where the legal standard is to review those allegations in a light most favorable to Plaintiff. Perhaps if evidence is presented sufficiently that there were no profits made by that enterprise then Defendants can present that evidence in a motion for summary judgment, but the facts pled are not sufficient to justify dismissal on that basis.

STATUTE OF LIMITATIONS

The record indicates that Plaintiff first appeared pro se in this matter under case number 2008-CP-02-1647 on January 28, 2009. Plaintiff has filed a motion with the Court under Rule 42, SCRCF, to consolidate this action with that case.

The Court did recognize Plaintiff's interest in the litigation and her cause of action in Illinois in its Settlement Order of May 26, 2009 and entered the Settlement Order intending to effectively settle all matters before the Court, including Plaintiff's interest in the Trust.

Although this particular action was filed on March 13, 2012 after the three-year statute of limitations period expired, the continuity of this litigation related back to Plaintiff's initial appearance of January 28, 2009 which was not formally dismissed until June 17, 2013.

Plaintiff's Complaint is also replete with allegations that the conduct of the Attorney General created in Plaintiff the reasonable belief that she could not proceed with her litigation in this Court. This is further supported by her efforts in litigation through other jurisdictions based upon the same cause of action pled herein.

Taking the Complaint as true for purposes of the motion to dismiss and the facts pled in a light most favorable to Plaintiff, the Complaint alleges sufficient facts that would estop Defendants from their argument that Plaintiff commenced this action after her statutory period has run.

NOW, THEREFORE, IT IS ORDERED:

1. That Defendants' Motion to Dismiss under Rule 12(b)(1) and Rule 12(b)(6) is denied.
2. Defendants' alternative motion to transfer venue to Richland County under Rule 12(b)(3) is denied.

AND IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JACQUELYNE HOLLANDER,
Plaintiff,

Civil Action No. 2012-CP-02-01059

vs.

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 in August 1,
2000,

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

Defendants.

Pursuant to Rule 12, SCRPC, on June 14, 2012 Defendant The Irrevocable Trust Established by James Brown on August 1, 2000, and Russell L. Bauknight, as Special Trustee (collectively "the Defendants"), moved this Honorable Court for an order dismissing the Complaint. The Defendants submit this memorandum in support of that motion.

BACKGROUND/LEGAL ANALYSIS

A. Partnership Allegations

The grounds for this motion is that the Plaintiff Jacquelyne Hollander's ("Plaintiff" or "Hollander") Complaint fails to plead any facts demonstrating any profit motive necessary for forming a partnership under the South Carolina Uniform Partnership Act (SCUPA). S.C. Code Ann. § 33-41-210 ("A "partnership" is an association of two or more persons to carry on as co-owners a business for profit."). Accordingly, Plaintiff's cause of action for a declaratory judgment establishing a partnership between James Brown and Plaintiff fails to allege sufficient

facts to set forth a cause of action. Furthermore, Hollander's accounting action under the SCUPA fails for that reason, as well.

The only motive set forth in the Plaintiff's Complaint is a charitable one, and without alleging facts that Plaintiff and Mr. Brown associated for the purpose of making a profit, there can be no partnership. See *Wyman v. Davis*, 223 S.C. 172, 74 S.E.2d 694 (1953) (noting that the test for whether a partnership exists is the sharing of profits); S.C. Code Ann. § 33-41-210. Plaintiff's Complaint does not point to any endeavor that she and Mr. Brown undertook for profit. In fact, all the Complaint describes are the charitable services that she and Mr. Brown preformed. For example, Plaintiff and Brown's first adult interaction involved making music for a charitable event. (Complaint, ¶¶ 12-14). Plaintiff's first mention of a partnership involved donating time, money, and skill for the purpose of helping children. (Complaint, ¶¶ 12-14; 18). Plaintiff's most direct allegation of the existence of a partnership is that she "suggested to Brown that they form a more formal partnership to raise money for children." (Complaint, ¶ 17). Plaintiff unequivocally establishes that the purpose of this relationship was "to raise money for children," and not to make a profit. (Complaint, ¶ 17). Regardless of how plaintiff describes this relationship, an association between people for a non-profit purpose can never be a partnership. 59A Am. Jur.2d Partnership § 48, ("An essential element of a partnership as defined by the Uniform Partnership Act is the partnership enterprise must be intended to make a profit") (citing *Chocknok v. State, Commercial Fisheries Entry Comm'n*, 696 P.2d 669; *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979) ("Nonprofit Organizations may not be considered partnerships.").¹

¹ South Carolina adopted the uniform partnership act, and in doing so kept the "for profit" requirement in the definition of a partnership. 1 UPA § 101(6); S.C. Code Ann. § 33-41-210.

B. Statute of Limitations

Hollander's sixth lawsuit against the James Brown Estate and Trust should also be dismissed on the basis that the applicable three year statute of limitations has expired. S.C. Code Ann. § 15-3-530.

It is well settled that a statute of limitations defense may properly be asserted in a Rule 12(b)(6) motion to dismiss if it appears on the face of the complaint that such a statute bars the claim. *Clearwater Trust v. Bunting*, 367 S.C. 340, 353, 626 S.E.2d 334, 340 (2006) (affirming dismissal of claims brought after limitation period pursuant to Rule 12(b)(6)); *see also Horton v. Carolina Medicorp*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996). Once a defendant raises a statute of limitations defense, the plaintiff bears the burden of showing that the action was instituted within the prescribed period.

Based upon the Plaintiffs sixth complaint, Hollander alleges she created a charitable partnership with ~~James Brown between 1984 and 1988. (Complaint, ¶¶ 12-23). James Brown~~ passed away on December 25, 2006. *Id.* This action was filed on March 13, 2012. Viewing the pleadings in the light most favorable to the Plaintiff, the three year statute of limitations expired on this action on December 25, 2009. Accordingly, it is untimely and subject to dismissal with prejudice.

CONCLUSION

Due to the three year statute of limitations running and plaintiff's lack of any allegation demonstrating or implying any intention of either party to profit from the alleged relationship, a partnership could not have been created. Without a partnership, neither her declaratory judgment nor accounting actions can lie. Therefore, the plaintiff has failed to properly state a claim upon

which relief could be granted, and her complaint should be dismissed with prejudice.

WHEREFORE, defendants respectfully requests that this Court dismiss Jacquelyne Hollander's complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure with prejudice.



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Counsel for The Defendants

July 2, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JACQUELYNE HOLLANDER,
Plaintiff,

Civil Action No. 2012-CP-02-01059

vs.

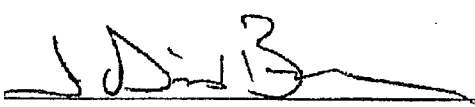
THE IRREVOCABLE TRUST
ESTABLISHED BY JAMES BROWN ON
AUGUST 1, 2000 and RUSSELL L.
BAUKNIGHT, as Trustee of the Irrevocable
Trust established by James Brown in August 1,
2000,

CERTIFICATE OF SERVICE

Defendants.

This is to certify that a copy of the foregoing **Memorandum in Support of Motion to Dismiss** has been served upon the following counsel of record by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown below this 1st day of July, 2013.

O. Cyrus Hinton, Esquire
Hinton and Associates, PA
235 East Main Street, Suite 110
Rock Hill, South Carolina 29730


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1230 Main Street Suite 700 (29201)
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803-771-8900

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

2007-CP-02-00122

2008-CP-02-00322, -1647, -872,

-1426, -2127, -1556, -1557, -1758

2010-CP-02-00721

2012-CP-02-01059

3
4
5 COUNTY OF BARNWELL

2010-GS-06-00139

6
7 IN RE:

8 JAMES BROWN ESTATE CASES

TRANSCRIPT OF RECORD

9
10 Heard on July 2, 2013

11 Bamberg, South Carolina

12
13 BEFORE:

14 THE HONORABLE DOYET A. EARLY, III

15 APPEARANCES:

16 Adele J. Pope, Esq.

J. David Black, Esq,

17 Russell L. Bauknight, Esq.

Mary Frances G. Jowers, Esq.

James R. Gilreath, Esq.

J. Kendall Few, Esq.

18 Stephen G. Morrison, Esq.

Erin Richardson Stuckey, Esq.

Eugene Covington, Esq.

Fred L. Kingsmore, Jr., Esq.

19 O. Cyrus Hinton, Esq.

S. Creighton Waters, Esq.

Brian Petrano, Esq.

Gregory P. Harris, Esq.

20 Sherri A. Lydon, Esq.

Norma Anne Turner Jett, Esq.

21 H. Brent Fortson, Esq.

22 CR NOTE: NOT ALL ATTORNEYS GAVE THEIR APPEARANCE TO COURT
23 REPORTER, SO LISTING MAY BE INCOMPLETE.

24 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 3252
25 Aiken, SC 29804-5232

1 THE COURT: Next case I have is 12-1059. That's the
2 Jacquelyne Hollander. The seventh case, is a motion to
3 dismiss.

4 Have a seat.

5 (Off-the-record discussion.)

6 MR. BLACK: Your Honor, permission to approach. I've
7 got the --

8 THE COURT: Hold on a second. Let me have everyone
9 seated, please. Thank you.

10 This is 12-CP-02-1059. This is an action filed by
11 Ms. Jackie, is that how you say it, or Jacque,
12 Ms. Hollander?

13 MR. HINTON: Yes, sir.

14 THE COURT: As I understand, there's a motion to
15 dismiss with prejudice. Sir, you are?

16 MR. HINTON: Cyrus Hinton, Your Honor.

17 THE COURT: Hinson?

18 MR. HINTON: Hinton.

19 THE COURT: Hinton?

20 MR. HINTON: Yes, sir.

21 THE COURT: From where, Mr. Hinton?

22 MR. HINTON: From Rock Hill, Your Honor.

23 THE COURT: Nice to have you with us.

24 MR. HINTON: Yes, sir. It's a pleasure to be here.

25 THE COURT: Are you ready to hear the motion to

1 dismiss?

2 MR. HINTON: Yes, sir, Your Honor.

3 THE COURT: Mr. Hinton?

4 MR. BLACK: Your Honor, David Black on behalf of the
5 SAST, Mr. Bauknight.

6 Your Honor, we were served yesterday. This motion was
7 filed prior to Your Honor's June 13th order directing that
8 memos, responses all be filed pursuant to an
9 administrative order.

10 I have a response, bench memorandum as well as some
11 other materials I'd like the Court to review as I go
12 through the 12(b)(6) analysis. I can hand a copy up to
13 your law clerk.

14 THE COURT: All right.

15 (Documents handed to the Judge.)

16 THE COURT: Mr. Black?

17 MR. BLACK: I'm making sure Mr. Hinton has copies of
18 the same materials I've handed up to the Court, Your
19 Honor.

20 (Documents handed to Mr. Hinton.)

21 MR. BLACK: May it please the Court.

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

1 Aiken.

2 THE COURT: Where were the other actions filed?

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

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

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

19 That wasn't the end. She then filed an action in
20 federal court in Aiken against the attorney general. And
21 that was dismissed and then she's filed the action that
22 we're here for today, Your Honor.

23 So the only actions that we have currently pending
24 involving Ms. Hollander are the lawsuit that was filed
25 here in Aiken on the 13th of April of 2012. And then we

1 have a motion for sanctions pending in the Illinois Court
2 of Appeals against Ms. Hollander for frivolous litigation.

3 THE COURT: And you're moving under 12(b)(6)?

4 MR. BLACK: Yes, sir, Your Honor. We're moving under
5 12(b)(6) under the face of the complaint. And if Your
6 Honor deems necessary, we're happy to convert it to a
7 summary judgment motion.

8 THE COURT: I'll be glad to hear from you.

9 MR. BLACK: Your Honor, looking at the body of
10 Ms. Hollander's complaint -- I've handed a copy up to the
11 Court -- it's signed at the top 5-14-12 and then it says
12 Cyrus at the bottom of the cover page.

13 This complaint is the same basic complaint that dates
14 all the way back to Illinois alleging an oral partnership
15 that Ms. Hollander alleges took place back in 1988 between
16 Mr. Brown and Ms. Hollander.

17 They've since moved -- now in South Carolina what's
18 unique about this, everywhere else they've never pursued
19 whether it's proper personal jurisdiction. They've now
20 sued Mr. Bauknight here in South Carolina and they've sued
21 him pursuant to the South Carolina Partnership Statute.

22 The South Carolina Partnership Statute stems from the
23 UPA. It's the same model statute as the Uniform
24 Partnership Act. What's unique about a partnership, Your
25 Honor, and it's black letter law, is that a partnership is

1 an association of two or more persons to carry on as
2 co-owners of a business for profit.

3 The for-profit element's very important because when
4 we turn to Ms. Hollander's complaint, there is not a
5 single allegation in her complaint where she alleges that
6 this oral partnership was for any reason other than
7 charity.

8 In fact, when you look at the first -- the paragraphs
9 12 through 14, Your Honor, she alleges that the first
10 adult interaction involving making music for a charitable
11 event. That was between Ms. Hollander and Mr. Brown.
12 That's the complaint at 12-14, talking about a charitable
13 event. Her first mention of a partnership involved
14 donating time, money and skill for the purpose of helping
15 children. That's the complaint at 12 through 14 and
16 paragraph 18.

17 Next, Your Honor, in paragraph 17 she suggests that
18 they have more formal partnership to raise money for
19 children.

20 Also, Your Honor, she talks about at the very
21 conclusion that it's really for, the element of purposes,
22 Your Honor, it's for charity. There is no element for
23 profit anywhere on the face of the complaint. So when we
24 look at South Carolina law, interpreting that section of
25 the code, the Wyman Davis case heard by our Supreme Court,

1 been sound South Carolina law ever since 1953, they note
2 that the test for whether a partnership exists is the
3 sharing of profits.

4 On the face of that complaint, Your Honor, profits are
5 not mentioned anywhere throughout there.

6 Now Mr. Hinton in his materials that were sent
7 yesterday has since appeared to have alleged that somehow
8 this was a Georgia partnership. That's not in the
9 complaint, Your Honor. They're citing South Carolina
10 statute.

11 So it fails on its face to assert a proper partnership
12 action because there is no element of profit. Pursuant to
13 our code, a partnership in itself has to be for a purpose
14 of profit.

15 Next, Your Honor, though, there's a more troubling
16 issue and it's our statute of limitations. Going through
17 the time line that I've gone through with the Court
18 looking at the complaint, Ms. Hollander first alleges that
19 she met Mr. Brown in 1988. And then she jumps to 2000 and
20 she talks about unbeknownst to her she became aware of a
21 trust and then she alleges that perhaps her oral agreement
22 became part of that trust.

23 Well, Your Honor, James Brown passed away back on
24 Christmas Day of 2006.

25 Under the Rule 12 (b)(6) standard giving Ms. Hollander

1 the light most favorable to the non-moving party, she was
2 on notice of his date of death. Under the probate code
3 she'd come in in 90 days. Giving her the benefit of the
4 doubt though and applying the three-year statute of
5 limitations, this statute would have run on 2012 of
6 Christmas.

7 So we look at when when she actually filed -- I'm
8 sorry. It would have run from the date of 2006, which
9 would have been 2009 Christmas Day.

10 THE COURT: And she filed April 13, 2012.

11 MR. BLACK: Of 2012, Your Honor. Of 2012. So she's
12 clearly missed the statute of limitations.

13 This argument, we haven't been able to dismiss it with
14 prejudice on these arguments in other jurisdictions
15 because she's never sued the trust and estate where
16 there's proper jurisdiction. So now, Your Honor, this is
17 the time. It's been seven lawsuits. It's time for
18 closure. Ms. Hollander had her opportunity. She didn't
19 do that. And it's time to dismiss it with prejudice, Your
20 Honor.

21 THE COURT: Thank you. All right, sir. Mr. Hinton?

22 MR. HINTON: Yes, sir, Your Honor. If it pleases the
23 Court.

24 THE COURT: From the Rock Hill Bar, York County.

25 MR. HINTON: Yes, sir, Your Honor.

1 As it relates to the issue of profits, Your Honor, we
2 believe that in our complaint Ms. Hollander does correctly
3 set out that her partnership with Mr. Brown was for the
4 purpose of raising money for disadvantaged children. And
5 in that respect was for the purpose of raising profit.

6 Mrs. Hollander believes that at some point an I Feel
7 Good Trust was created. However, in the beginning it --
8 the partnership she had with Mr. Brown was solely for the
9 purpose of raising money to assist disadvantaged children.

10 And therefore we believe that she was involved from
11 the beginning for the purpose of making profit so that she
12 could help disadvantaged children. It was not simply a
13 charity but an effort to raise money by having concerts,
14 having events that would in turn raise money so that
15 disadvantaged children and others could be assisted by her
16 efforts to raise the money.

17 Therefore we believe that we set out in the complaint
18 that there was some profit to be made by the partnership
19 Ms. Hollander believes she established with Mr. Brown
20 orally back in the 1980s. She also believes then that as
21 a result of Mr. Brown's death, and she was not aware that
22 the partnership she had with Mr. Brown was changed into a
23 trust until around 2008 and that is when she began making
24 claims as it relates to the partnership and her believing
25 that she had property in the partnership and the

1 partnership was ultimately made into the I Feel Good
2 Trust.

3 We believe that our complaint, Your Honor, require --
4 ask the Court to set out declaratory judgment, that there
5 was a partnership existing between Mrs. Hollander and
6 Mr. Brown, and that there be an accounting of that
7 partnership. We believe that our complaint sets out
8 perfectly per South Carolina law that there were profits
9 to be made from the partnership Mrs. Hollander believes
10 she established with Mr. Brown and that those profits
11 require an accountant.

12 We believe that our complaint sets out that at the
13 time that Mrs. Hollander became aware that her partnership
14 had been commuted into a trust, she then filed a complaint
15 within the statute of limitations allowing her to arrive
16 in this court in time to assert her rights and request a
17 declaratory judgment, Your Honor.

18 We believe that it is set out in our complaint and we
19 would ask the Court to declare that there was a
20 partnership and allow for an accounting.

21 THE COURT: Thank you.

22 MR. HINTON: Yes, sir.

23 THE COURT: Anything in reply, Mr. Black?

24 MR. BLACK: Nothing, Your Honor.

25 THE COURT: Proposed orders by August 1. Thank you.

1 MR. HINTON: Thank you, Your Honor. Your Honor, may I
2 be excused?

3 THE COURT: You may; yes, sir. Thank you, Mr. Hinton.
4 Let's take a short 10-minute break. Is that okay with
5 everybody?

6 (Recess taken from 11:21 a.m., until 11:38 A.M.)

7 * * * * *

8 THE COURT: Next on the list is 10-GS-06-139.
9 That's the restitution. I have with me this morning?
10 Gentlemen, y'all announce yourselves to the court
11 reporter.

12 MR. WATERS: Your Honor, Creighton Waters from the
13 attorney general's office. Along with me is Brian Petrano
14 also from this office.

15 THE COURT: Spell that last name.

16 MS. PETRANO: Petrano, P-E-T-R-A-N-O.

17 MR. HARRIS: If it please the Court, Your Honor, I'm
18 Greg Harris and this is Sherri Lydon on behalf of
19 Mr. Cannon.

20 THE COURT: All right. Mr. Waters, how about telling
21 me where we are with this.

22 MR. WATERS: Yes, sir, Your Honor.

23 Obviously, just briefly, Mr. Cannon was indicted in
24 February of 2010 for eight charges, seven of which were
25 breach of trust over 5,000 and then one count of forgery.

1 will be off for a couple weeks and then we'll be back.
2 I'll have a new law clerk by then, starting August 1.
3 We'll miss Adam. Thank you all very much.

4 MR. BLACK: Thank you, Judge.

5 END OF CASE: 12:10 P.M.

6 ***

7 CERTIFICATE OF REPORTER

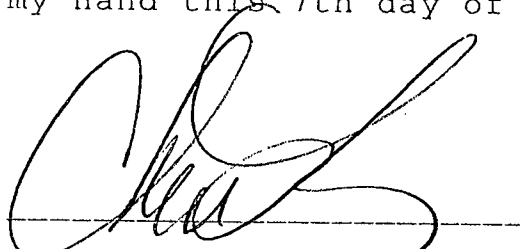
8
9 STATE OF SOUTH CAROLINA)

10 COUNTY OF AIKEN)
11

12 I, Cheri L. Young, Registered Professional Reporter
13 and Official Court Reporter for the State of South
14 Carolina, Second Circuit-At Large, do hereby certify that
15 the above proceedings were taken down and transcribed by
16 me to the best of my ability using computer-aided
17 translation; further, that the foregoing is a true,
18 accurate and complete transcript of record of the
19 proceedings had and evidence introduced in the hearing of
20 the captioned case, relative to appeal, in the Court of
21 Common Pleas for Bamberg County, on the 2nd day of July,
22 2013.

23 I do further certify that I am neither of kin,
24 counsel, nor interest to any party hereto.

25 I have hereunder set my hand this 7th day of
September, 2013.



Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

HENRY DARGAN MCMASTER, in his)
capacity as Attorney General of the State)
of South Carolina; DARYL J. BROWN,)
on behalf of his minor children, LINDSEY)
DELORES BROWN and JANISE)
VANISHA BROWN; DEANNA J.)
BROWN THOMAS, on behalf of her minor)
children, JASON BROWN LEWIS;)
YAMMA N. BROWN, on behalf of her)
minor children, SYDNEY LUMAR,)
CARRINGTON LUMAR, and TONYA)
BROWN; VANISHA BROWN; and)
LARRY BROWN; TOMMIE RAE)
HYNIE BROWN)

Petitioners,)

- vs-)

RUSSELL L. BAUKNIGHT,)
as Special Administrator and Special)
Trustee for The Estate of James Brown)
and The James Brown 2000 Irrevocable)
Trust, TERRY BROWN, ROMUNZO)
BROWN; FORLANDO BROWN;)
CINNAMON N.M. PARIS; LARHONDA)
PETITT; and JEANNETTE MITCHELL)

Respondents.)

In Re:)

The Estate of James Brown and The James)
Brown 2000 Irrevocable Trust u/a/d)
August 1, 2000)

Case No.: 08-CP-02-1647

(Case No.: 07-CP-02-0122)
(Estate of James Brown)

(Case No.: 08-CP-02-00872)
(Wills/Trust/Heirs Matter)

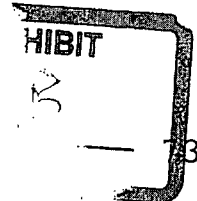
**ORDER APPROVING
SETTLEMENT AGREEMENT**

FILED 5-26-09
J. L. Lindsey
J.C.P. & G.S.
Arita Knepper 945
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement.

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

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on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. The following counsel appeared at the hearing related to the Motion for Settlement Approval: (1) Louis Levenson, counsel for Deanna J. Brown, Larry Brown, Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, Vanisha Brown, Daryl J. Brown, individually and on behalf of his minor children child Janise Vanisha Brown, Lindsey Delores Brown, Jason Brown Lewis, and Tonya Brown; (2) Robert N. Rosen, S. Alan Medlin, T. Heyward Carter, David L. Michel, M. Jean Lee, Andrew W. Chandler, and F. Patricia Scarborough, counsel for Tommie Rae Hynie Brown; (3) Tressa Hayes and James D. Bailey, counsel for Adele J. Pope and Robert L. Buchanan, Jr., (4) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (5) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (6) David B. Bell and Matt Bodman, counsel for Terry Brown, Forlando Brown, and Romunzo Brown; (7) C. Havird Jones, Jr., J.C. Nicholson, III, and Mary Frances Jowers, on behalf of the South Carolina Attorney General; (8) R. Wayne Byrd, counsel for Albert Dallas and Alfred Bradley; (9) James M. Griffin, counsel for LaRhonda Pettit and Cinnamon Paris; (10) Fred L. Kingsmore, Jr., counsel for Russell Bauknight; (11) Jan L. Warner and Max Pickelsimer, counsel for David Cannon; (12) William Barr, counsel for Jeanette Mitchell; (13) Sonja R. Tate, counsel for Albert Dallas; and (14) Kaymani D. West, counsel for Greenberg Traurig and Joel Katz.

I. Statement and History of the Case

A. Facts and Procedural History

This matter arises out of the Estate of James Joseph Brown, Jr. Mr. Brown died on December 25, 2006, a resident of Aiken County, South Carolina. Mr. Brown's will, dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. His will

DAE
#2

nominated three individuals as Personal Representatives, and they were appointed by the Probate Court by Order dated January 18, 2007: Albert H. Dallas, David G. Cannon, and Alfred A. Bradley. These same individuals were appointed Trustees of the Trust by the express terms of the Trust.

Mr. Brown's will named six children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Daryl J. Brown, Larry Brown, and Terry Brown (collectively "named children"). Mr. Brown left "all [his] personal and household effects of every kind . . ." to these named children in equal shares per stirpes. All of the named children were alive at the time of Mr. Brown's death. Mr. Brown left the remainder of his Estate to the Trust created under his Irrevocable Trust Agreement dated August 1, 2000. The will provided that the remainder of his Estate would go to the Trust as a pour-over devise.

Mr. Brown's Irrevocable Trust Agreement created two trusts: the Brown Family Educational Trust and the James Brown "I Feel Good" Trust. The Brown Family Educational Trust provides for income to be paid for the benefit of each then-living grandchild who has not reached the age of thirty-five (35) for his education and related expenses. Upon termination of the Family Trust, the balance would be added to the "I Feel Good" Trust. The "I Feel Good" Trust is for the "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions in the State of South Carolina and Georgia." In addition to the three appointed Trustees, the Trust created an Advisory Board of three initial members. The Trust describes the powers of the Trustees, including the power to allocate up to 50% of the gross income from the Trust for the payment of administrative and managerial expenses. The

Trust provides for Trustee Succession. If the Trustee resigns, the Trust provides that he appoint a successor, or upon failure of that, the successor shall be determined by unanimous vote of the advisory board then existing. Failing this, the Court having jurisdiction shall select the successor Trustee. The Trust included a Schedule A listing initial funding of the following: (1) Fifty Dollars (\$50.00); (2) all ownership in James Brown Enterprises, Inc.; and (3) ownership of Mr. Brown's primary residence at 430 Douglas Drive, Beech Island, South Carolina.

Mr. Brown's will was admitted to informal probate on January 18, 2007. On January 26, 2007, the Aiken County Probate Court removed the matter to the Court of Common Pleas. From this time forward, the Aiken County Probate Court continued to remove all matters filed in this Estate to the Court of Common Pleas.

On February 1, 2007, Tommie Rae Hynie Brown filed a Petition for Elective Share or Omitted Spouse's Share, asserting she is the widow of Mr. Brown. She and Mr. Brown were married on December 14, 2001, in Beech Island. She had previously been involved in a putative marriage ceremony with Javed Ahmed on February 17, 1997, in Texas. Mrs. Brown subsequently brought an action to annul her marriage to Ahmed, and the Charleston County Family Court found her marriage to Ahmed void *ab initio* by Order dated April 15, 2004. Among other conclusions, the Court found that Mr. Ahmed was married at the time he entered into his marriage with Mrs. Brown, and therefore he lacked capacity to marry her.

The six named children filed an Emergency Petition for Termination of Appointment of and Removal of Personal Representatives on January 24, 2007. On February 1, 2007, Tommie Ray Hynie Brown filed an Emergency Petition for Appointment of Special Administrator. The Court held a hearing on these Petitions on February 9, 2007. By Order dated February 20, 2007, the Court denied the Petition for Removal of the Personal Representatives and granted the

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Petition for Special Administrator. By Order filed March 12, 2007, the Court appointed Adele J. Pope and Robert L. Buchanan, Jr., as Special Administrators. At that time, the Special Administrators' duties were limited and included the power to "monitor, investigate, and oversee the performance by the general Personal Representatives of their duties, and present to the Court any appropriate issues regarding same." By Order filed June 25, 2007, the Court granted the Special Administrators "complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable Trust and all trusts created thereunder, and all Brown Entities or Interest, however titled."

In addition to the six named children, several other individuals have appeared and claimed rights as children of Mr. Brown: (1) James Joseph Brown, II; (2) Cinnamon Nicole Parris; (3) LaRhonda Pettit; and (4) Jeannette Mitchell. James Joseph Brown, II seeks his rights as a pretermitted child, having been born on June 11, 2001, after Mr. Brown wrote his will. Steven Slotchiver was appointed Guardian ad Litem for James Joseph Brown, II, by Order filed June 13, 2007. James Joseph Brown, II filed a Petition for Adjudication of Paternity on August 24, 2007. LaRhonda Pettit filed an action on August 23, 2007. Cinnamon Nicole Parris filed an action on September 21, 2007. Jeannette Mitchell filed a motion on April 21, 2008.

On July 27, 2007, the Special Administrators filed a Motion and Recommendation of Special Administrators requesting the Court to remove one or more of the Personal Representatives and one or more of the Trustees. A hearing was held on this Motion on August 10, 2007. At the hearing, David G. Cannon resigned as Personal Representative of the Estate, Trustee of the Brown Trusts, and as director, officer, agent, and/or fiduciary of any kind as to

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Mr. Brown, the Estate, the Brown Trusts, and all Brown Entities (except Seventh Decade Productions). Dallas and Bradley remained Personal Representatives and Trustees.

The Court held a hearing on September 24, 2007. At the hearing, the Court heard issues related to David Cannon's obligation to account to the Court. The Court found Cannon in contempt by Order filed October 2, 2007. A hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007. By Order dated December 18, 2007, the Court found Cannon in willful contempt for failing to pay \$373,000.00 as ordered, and for amending tax returns on behalf of Brown entities after being ordered to give up authority in regard to the Brown entities and for deliberately disobeying the order of this Court. The Court ordered him to confinement with the South Carolina Department of Corrections for six months, though he could purge himself of the confinement by payment of the \$373,000.00, payment to the court of \$50,000.00 to be applied towards various parties' attorney fees, and a fine of \$10,000.00. Cannon appealed this Order, and as of the date of the present Order, the appeal is still pending.

The South Carolina Attorney General appeared at the hearing on September 24, 2007, and requested to intervene to enforce and protect the funds given or appropriated to any charitable trust created by the will or Trust of Mr. Brown, or any other assets of the Estate which may be impressed with a charitable trust. The Georgia Attorney General also appeared and requested to intervene. By Order filed October 11, 2007, the Court granted the Motions to Intervene. The South Carolina Attorney General continues to remain involved in the case. The Georgia Attorney General is no longer participating in the action, as discussed below.

At the hearing on November 20, 2007, Alfred Bradley and Albert Dallas submitted their resignation as Personal Representatives of the Estate and Trustees. By Order dated November

20, 2007, the Court accepted their resignations, and immediately appointed Buchanan and Pope to serve as Personal Representatives and Trustees. The Court did not consult the Advisory Board regarding their appointment. By Motion dated November 30, 2007, Dallas and Bradley moved the Court to vacate its Order accepting their resignations, arguing the Court did not have authority to accept the resignations or authority to appoint Pope and Buchanan as Trustees. The Court heard this matter on February 20, 2008, and denied Dallas and Bradley's Motion by Order filed March 7, 2008. Dallas and Bradley appealed, and as of the date of the present Order, the appeal is still pending.

On December 20, 2007, Tommie Rae Brown filed Petitions to Set Aside the Will and Trust, alleging causes of action for undue influence, fraud, lack of intent, and illusory trust. On December 26, 2007, five of the six named children (all but Terry Brown)¹ filed Petitions to Set Aside the Will and Trust, alleging the same four causes of action.

On January 4, 2008, the Court held a hearing on the Motion for Recusal filed by Dallas and Bradley. By Order filed February 20, 2008, the Court denied this Motion.

The Court held a hearing on February 7, 2008. At that hearing, the Court granted the motion of the Levenson clients to revoke the pro hac vice admission of the Georgia Attorney General, though no written Order has been issued on this matter. The Georgia Attorney General became involved in this matter based on an understanding of the Trust that only students in South Carolina and Georgia qualify for benefits under the "I Feel Good" Trust. However, a careful reading revealed that students can be from anywhere; the only limitation is that they desire to attend a school in South Carolina or Georgia. The Court found that the South Carolina

¹ The six named children, and their children who are Mr. Brown's grandchildren, were all originally represented by Louis Levenson. David Bell was substituted as counsel for Terry Brown, Forlando Brown, and Romunzo Brown.

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Attorney General was the appropriate party to adequately protect the interests of the charitable beneficiaries because the trust situs is in South Carolina.

Also arising out of the hearing on February 7, 2008, the Court issued an Order filed February 25, 2008, allowing the PR/Trustees to sell Mr. Brown's tangible personal property and his home in Beech Island. The PR/Trustees desired to sell the personal property through an auction, and hired Christie's Auction House to conduct the sale. Over objection by other counsel, the Court allowed the sale of personal property.

The Court held a hearing on March 7, 2008. At the hearing, the Court heard arguments on the Attorney General's Objection to the Appointment of Pope and Buchanan as Personal Representatives and Trustees, filed December 14, 2007. The Court heard testimony from Pope, Dallas, and Bradley in connection with the Objection. The Court overruled the objection by Order filed April 10, 2008. The Attorney General filed a Motion to Alter or Amend this Order on April 24, 2008, and subsequently, by Motion dated June 18, 2008, asked the Court to hold the Motion to Alter or Amend in abeyance. This request was based on the fact that the Motion relates to the appointment of successor Trustees, and the pending appeal of Dallas and Bradley also relates to the appointment of Trustees and its outcome may make the Motion moot. Because of the request to hold the matter in abeyance, the Court has not ruled on the Motion to Reconsider.

By Order filed March 10, 2008, the Court required service by publication of the Summons and Order in the case caption 07-CP-02-1222. The Notice was published in the Aiken Standard on April 19 and 26, 2008, and May 3, 2008. The published notice stated that it was "to determine all lawful heirs of James Brown, including lawful heirs at law who may be entitled to

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rights under state and federal laws." No additional parties have appeared as a result of the publication.

On August 10, 2008, the following parties participated in an informal mediation: Tommie Raye Hynie Brown; the named children and grandchildren represented by Louis Levenson; and the South Carolina Attorney General. The parties reached a settlement which was reduced to writing and signed by all of the participating parties.

At the hearing on August 19, 2008, the parties reported the partial settlement to the Court during an in-chambers conference. The parties also reported in open court that they had reached a resolution among themselves. At that time, the parties did not disclose their signed settlement document.

On September 29, 2008, the South Carolina Attorney General filed a Petition for Removal and Restraint of Trustees, asking that Dallas and Bradley be removed as Trustees, in the event they are Trustees. On November 7, 2008, the Attorney General and the other settling parties filed an Amended Petition for Removal and Restraint of Trustees Dallas, Bradley, and Cannon, and PR/Trustees Pope and Buchanan. The Court has not heard this matter pending the settlement approval. Also on November 7, 2008, the settling parties filed an Emergency Petition for Appointment of Special Administrator and Special Trustee.

During the pending settlement, Pope and Buchanan have filed numerous pleadings in the matter, including the following which were filed in addition to their Responses and Returns to other matters: (1) Motion for Partial Summary Judgment, dated September 12, 2008; (2) Supplemental Motion to Dismiss All "Spousal" Claims of Tommie Rae Hynie Brown, dated September 12, 2008; (3) Motion to Dismiss all Causes of Action to Set Aside the James Brown 2000 Irrevocable Trust, dated September 15, 2008; (4) Motion to Dismiss, dated October 9,

2008; (5) Motion to Intervene and Dismiss, dated October 24, 2008; (6) Motion to Dismiss Robert L. Buchanan, Jr. and Adele J. Pope as Individual Parties, dated November 14, 2008; (7) Motion to Disqualify C. Havird Jones, Jr. and Mary Frances Jowers as Counsel and Related Relief, dated November 14, 2008; (8) Emergency Motion to Quash Subpoena and Protect Evidence, dated November 14, 2008; (9) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery, dated January 9, 2009; (10) Motion to Alter or Amend Judgment, dated January 14, 2009; (11) Motion for Partial Summary Judgment, dated January 20, 2009; (12) Motion and Memorandum of PR/Trustees for Partial Summary Judgment that the AG and PR/Trustees have a Duty to Defend and Uphold the James Brown 2000 Irrevocable Trust; the Trust and Transfer to the Irrevocable Trust of Beech Island are Valid; and all Challenges to the Irrevocable Trust and the Deed of Beech Island to the Trust are Barred by Statutes of Limitation and Estoppel; and Petition for Mandatory Guidance under section 62-7-932(D), dated February 23, 2009; (13) Emergency Motion for Appointment of Special Administrator and Special Trustee, dated February 27, 2009; (14) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dated March 12, 2009; and (15) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009.

In addition, they also filed numerous affidavits after the settlement was announced to the Court, including the following: (1) Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope Supporting Demand for Due Process Hearing and Related Relief, dated November 24, 2008; (2) Joint Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated January 20, 2009; (3) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in Support of Injunction and Damages for Intentional Interference, dated February 17, 2009; (4) Joint Affidavit of Robert L. Buchanan, Jr.

and Adele J. Pope, dated February 19, 2009; (5) Affidavit of Adele J. Pope Opposing Removal of PR/Trustees Buchanan & Pope; Denying Emergency; Supporting Stay and Proper Joinder Supporting Proper Notice of Hearings; Supporting Order Compelling parties to Appeal with records to Testify; and Seeking Ruling Under S.C. Trust Code section 62-7-932(D) Related to Principal and Income Charges Under Will/Trust *In Terrorem* Clauses, dated February 23, 2009; and (6) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope as PR/Trustees Supporting Emergency Motion for Appointment of Special Administrator and Special Trustee with Full Authority to Manage, Preserve and Protect Assets of the Estate of James Brown, the James Brown 2000 Trust, James Brown Enterprises, Inc. and other Brown Entities pending final resolution of all formal testacy/resignation/removal/appointment matters and challenges to the validity of the James Brown 2000 Trust.

The Court held a hearing on November 25, 2008, and at that time the settling parties disclosed the terms of the settlement on the record and reported they were ready to move forward with a hearing to approve the settlement. The Court scheduled a hearing for settlement approval on January 30, 2009. The Court continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009.

By Order filed January 7, 2009, the Court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case." Ms. Pope and Messrs. Buchanan, Dallas, and Bradley appealed the Court's January 7, 2009 order to the Court of Appeals. The appeals were dismissed.

At the hearing on January 30, 2009, the settling parties reported that Terry Brown had joined the settlement. Thus, all beneficiaries of the Brown Estate/Trust were part of the

settlement agreement. The settlement agreement does not include Cinnamon Parris, LaRhonda Pettitt, or Jeannette Mitchell. However, those parties each stated they have no objection to the settlement, pursuant to a stipulation with the settling parties that the settling parties do not intend for the settlement to in any way impact or affect their rights.

B. Related Litigation

While the above actions have been pending, there are numerous collateral matters pending in other jurisdictions. Forlando Brown sued Pope and Buchanan in South Carolina District Court on January 2, 2008. As a grandchild and beneficiary of the Family Educational Trust, Forlando Brown contends in the action that he has not received the scholarship money he is entitled to. His allegations against Pope and Buchanan include the following: (1) that they have irreconcilable conflicts of interest; (2) that they have breached their fiduciary duties; and (3) that they have disregarded the terms of the Trust. He seeks removal of Pope and Buchanan and injunctive relief. This action remains pending in the district court.

The CORBIS litigation is pending in Illinois. This action involves claims brought by Mr. Brown during his life for violation of rights of publicity, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, and a claim for profiteering on the name and likeness of Mr. Brown without his consent based on CORBIS' sale and offering for sale over the internet of Mr. Brown's photographs for commercial purposes. There is a pending settlement in the CORBIS litigation, and on March 24, 2008, Buchanan and Pope brought an action against the South Carolina Attorney General in Aiken County, asking the Court to approve the terms of the CORBIS settlement agreement.

The Pullman litigation is pending in New York. During his life, Mr. Brown sued the Pullman Group when he was unable to secure a loan from the Royal Bank of Scotland using

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future song royalties as collateral because Pullman Group claimed it had exclusive authority to broker the transaction. The Pullman Group filed a counterclaim, and this action remains pending against the Estate.

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.

C. Synopsis of Settlement Agreement

The settlement agreement dated August 10, 2008, and amended and restated on March 3, 2009, was entered into by and among Henry D. McMaster, Attorney General of South Carolina (the "Attorney General"), Tommie Rae Brown, individually and on behalf of her minor child, James Joseph Brown, II, Larry Brown, individually and on behalf of his minor child Janise Vanisha Brown, Lindsey Delores Brown, Venisha Brown, Deanna J. Brown, Jason Brown-Lewis, Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar, Daryl J. Brown, and Tonya Brown, and Terry Brown (the "Settling Parties"). The salient points of the settlement agreement are as follows:

1. The purpose of the agreement was to settle any and all differences among the settling parties concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and of substantial significance, to come together as a family to honor the legacy of Mr. Brown.
2. The settling parties intend for the agreement to be a binding private settlement agreement but also are seeking court approval of the settlement.

3. Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse.

4. The children and grandchildren who are parties to the agreement were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life and at the time of his death, and qualify as his surviving issue. No DNA testing will be required of any child or grandchild who is a party to the agreement.

5. A professional fiduciary will replace Robert Buchanan and Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown.

6. A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable. The South Carolina Attorney General will have sole authority to select, remove, and replace the Trustee who will manage the Charitable Trust. The children and Tommie Rae shall each be empowered to select a trustee from whom the managing trustee will seek input and advice.

7. The settling parties will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust and the charitable trust created thereunder, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination.

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rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to royalty, persona, image, likeness, royalties etc. (collectively, the "James Brown Assets"). The parties will divide any and all such assets and/or proceeds, and maintain beneficial ownership interests in the settlement entity, in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) a net 47.5% to the Charitable Trust; (2) a net 23.75% to Tommie Rae, which includes any share attributable to James Joseph Brown, II (by agreement between Tommie Rae and the Guardian ad Litem for James Joseph Brown, II, he will receive a 4.79% interest in the settlement entity to be held in trust and the remainder interest in another 4.79% interest in the settlement entity to be held in trust); and (3) a net 4.79% interest in the settlement entity to each of the children who are settling parties (with the exception of James Joseph Brown, II, who is provided for as discussed above). The Charitable Trust retains a 50% voting and control interest in the Settlement Entity, and the named children and Tommie Rae Brown (including any share attributable to James Joseph Brown, II) shall each retain a 25% voting and control interest. Tommie Rae waives any spousal right she may have to such assets to the extent that they might otherwise exceed her interest in the settlement entity. The children waive any rights to the Brown Assets to the extent that they might otherwise exceed their interests in the settlement entity.

8. All settling parties waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were in good faith and with probable cause.

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9. The promissory note and security deed currently due from the parties represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

10. Terry Brown will receive an exclusive due diligence period of six months during which he can market the assets of the Estate and a Right of First Refusal that terminates in 10 years. However, the settling parties do not have to agree to sell any or all of the assets and a 2/3 majority is required to do so.

11. A trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the Charitable Trust.

12. Any and all will and trust contests will be dismissed.

13. The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from the date of the agreement, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying expenses of relocation. The settling parties shall all have reasonable opportunities to visit privately the

gravesite upon reasonable notice. The parties waived any right to otherwise direct the location of the gravesite as a result of their status under law.

II. Findings of Fact and Conclusions of Law

A. Parties, Notice, and Jurisdiction

For several reasons, I find that the interested parties have been properly notified, given an opportunity to be heard, afforded all appropriate due process rights, and thus appropriately represented at the hearing to approve the settlement. Ms. Pope and Mr. Buchanan claim a lack of notice. The notice for the hearing commenced on January 30, 2009, was provided on December 5, 2008, in advance of the time required under any applicable rule. The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. Because these dates involved the conduct of the same hearing commenced on January 30, 2009, notice was proper.

1. The settling parties' agreement does not impact rights other than their own. Thus, assuming *arguendo* that there were interested persons in the Estate of James Brown who were not properly notified and given an opportunity to be heard (although there are none), their lack of participation in the hearing, assumed for the sake of argument, would not affect the ability of this Court to approve the settlement.

South Carolina Probate Code (SCPC) section 62-3-912 recognizes that parties may enter into a private settlement agreement without court approval. The agreement may be among fewer than all persons interested in an estate. Moreover, that section requires personal representatives to honor the terms of the private settlement and to continue the administration of the estate for the benefit of those who are not parties to the settlement. By requiring the personal representatives to both honor the settlement and to continue administering the estate for those

successors who are not parties to the agreement, section 62-3-912 evidences the legislative intent to recognize as valid settlements among some but not all of the successors to an estate. Moreover, the parties to the settlement agreement are all successors to the Estate. SCPC section 62-1-201(42) broadly defines "successors" to include "those persons, other than creditors, who are entitled to property of a decedent under his will or this Code." The charitable successors are properly represented by the Attorney General of South Carolina, as discussed below.

SCPC sections 62-3-1101 and 62-3-1102, authorizing a court to approve a settlement agreement, also recognize the validity of a settlement by fewer than all parties. Section 62-3-1102 requires that the settlement be signed by all competent persons whose beneficial interests or claims will or may be affected by the settlement. As with section 62-3-912 discussed above, section 62-3-1102 thus recognizes that a settlement agreement may be effectuated by fewer than all the interested persons in an estate; only those whose interests will or may be affected by the settlement must be signatories.

Section 62-3-1102 also provides that fiduciaries have an opportunity to be heard at a settlement approval hearing but do not have the authority to veto a settlement presented to the court for approval. Although section 62-3-1102 recognizes that a fiduciary may be a party to a settlement and even propose its approval to the court,² it provides that a fiduciary who is not a

² The ability of a fiduciary to agree to be a party to a settlement is recognized in *University of Southern California v. Moran*, 365 S.C. 270, 617 S.E.2d 135, (Ct. App. 2005), providing that when a trustee joins in the execution of a settlement agreement, a trust beneficiary, although given the opportunity to notice and to be heard, cannot veto the settlement. *Moran* does not apply to the matter *sub judice*, which deals with a different situation: the fiduciary did not join in the execution of this settlement agreement. In the case *sub judice*, section 62-3-1102 clearly provides that, because the fiduciaries did not join in the settlement agreement, this Court can nevertheless approve the settlement and direct the fiduciaries to join in the execution of the approved agreement.

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party to the settlement can be directed by the court to execute the agreement after it is approved by the court.

2. Even though fewer than all interested persons can enter into a private settlement agreement and a court can approve such an agreement, all necessary parties are represented in this matter.

The SCPC provides that personal representatives and trustees represent and bind their beneficiaries for purpose of notice and hearing. See SCPC sections 62-1-403, 62-7-301, and 62-7-303.

Ms. Pope and Mr. Buchanan, the personal representatives of the Estate, were appointed to represent any successor of the Estate, whether by any valid will of Mr. Brown or by intestate distribution. Thus, any successor who would take from the probate estate of Mr. Brown would be properly represented by Ms. Pope and Mr. Buchanan, who do not have a conflict of interest with any of the successors.

Similarly, any beneficiaries of the 2000 Irrevocable Trust, if valid, would be represented by Ms. Pope and Mr. Buchanan as trustees of that trust. Any beneficiaries of the 1999 Revocable Trust, if valid, would be represented by Messrs. Bradley, Cannon, and Dallas as trustees of that trust who participated in the settlement hearing.

There can be no other successor or beneficiary with an interest in the Estate of James Brown or in the 2000 Irrevocable Trust or the 1999 Revocable Trust. Any successor or beneficiary of the Estate or those trusts were represented by the appropriate fiduciaries. Moreover, minor children of the settling parties were also properly represented by their parents

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who executed the agreement, and any charitable beneficiaries of the Estate and trusts were also properly represented by the South Carolina Attorney General.³

3. In addition to the notice and opportunity to be heard afforded by the representation discussed above, I find that any interested person also received notice and an opportunity to be heard pursuant to the publication of notice directed by order of this Court filed on March 10, 2008, as discussed above.

4. It is clear that the Attorney General in his *parens patriae* capacity has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. See *South Carolina Dep't of Mental Health v. McMaster, et al.*, 372 S.C. 175, 642 S.E.2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities); *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); and *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); also see S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

³ Ms. Pope and Mr. Buchanan contend that notice and hearing opportunities should have been afforded Salkehatchie, Voorhees, and USC Aiken as beneficiaries of the 1999 Revocable Trust and to the members of the advisory board they attempted to appoint in their capacities as trustees. If these parties were interested, they were represented as discussed above. However, none of these three institutions of higher learning nor the advisory board members are interested persons. The colleges are not the beneficiaries of any trust; as noted by Mr. Buchanan in his testimony, it is the students who would attend those schools who are the beneficiaries, and they are already represented as discussed above. (If those three colleges would have to be parties to any action involving the 1999 trust, then by extension every educational institution in South Carolina and Georgia would have to be parties to any action involving the 2000 trust.) The advisory board members have no beneficial interest in the trust.

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It is noted that section 62-7-405(c) also allows the settlor, trustee, and among others [i.e. parties with "special interests"] to enforce a charitable trust. The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office's lack of resources to be in all charitable trust cases. See *Bogert Trusts and Trustees* § 411 - "The attorney general as the protector, supervisor and enforcer of charitable trusts." However, when the Attorney General does appear in litigation involving a charitable trust either by motion for intervention or being brought in by an amendment to the pleadings, he has the right to take charge and control that portion of the litigation which relates to the charitable trust. *Kolin, et al. v. Leitch, et al.*, 99 N.E.2d 685, 687 (Ill. 1951). As previously stated, the South Carolina Attorney General's Motion to Intervene in this matter was granted by Order filed October 11, 2007.

This authority that allows the Attorney General to control the litigation also provides that the Attorney General has exclusive authority, in order to protect the public interest, to settle or compromise litigation.⁴ See *Sarkeys v. Independent School Dist.*, 592 P.2d 529 (Okla. 1979).

In *Sarkeys*, the Court approved a settlement involving a charitable trust entered into by the parties and the Attorney General. Settlor's descendants appealed. The Court found that they did not have standing to appeal in the absence of an appeal by the Attorney General because the Attorney General was in control of the case. Similarly in *Application of Schluskel*, 89 N.Y.S.2d

⁴ See 81 A.L.R. 124 (with updates, originally published in 1932), citing *Cooley v. South Carolina Tax Comm'n*, 204 S.C. 10, 28 S.E.2d 445 (1943) and *State v. Southern R. Co.*, 82 S.C. 12, 62 S.E.2d 116 (1908), at page 7: The general authority of the attorney general, at common law under the various constitutional and statutory provisions, to compromise or settle disputes in litigation in which the state is an interested party, and to direct dismissal of the proceedings, so far at least as the public interest is concerned, provided there is doubt and an honest dispute as to the state's rights and the compromise or settlement is a bona fide one, is well settled.

47 (1949), the Court stated as follows in regards to the Attorney General's authority to enter a settlement agreement: "Under the authorities, it is, therefore, within the competence of the Attorney General to bind the uncertain charitable beneficiaries by [a compromise]." Also see *In Re Estate of Smith*, 349 N.Y.S.2d 281 (N.Y. Surr. Ct. 1973), appeal dismissed, 355 N.Y.S.2d 994 (N.Y. App. Div. 1974), appeal denied, 321 N.E.2d 555 (N.Y.) (allowing Attorney General to enter into settlement agreement on behalf of charitable beneficiaries and over executor's objection; rejecting executor's contention that Attorney General did not have authority to compromise on behalf of charitable beneficiaries; observing that to delve too deeply into Attorney General's reasons to compromise could jeopardize charitable beneficiaries' ultimate case if not settled; nevertheless finding that the Attorney General had sufficient reason to enter settlement and was not making "gift"; noting that failure to settle risked charities ending up with nothing; observing that settlement of cases is desirable; holding that the Attorney General has the right and the power to enter into compromise on behalf of charitable beneficiaries, subject only to an abuse of discretion standard, which was not abused in this case.).

Therefore it is for the Attorney General, as the officer charged with the duty of protecting charitable beneficiaries, to exercise his discretion as to the appropriateness of a settlement. It is the responsibility of this Court in reviewing the record to determine if the Attorney General acted in good faith entering into this compromise agreement. Factors to be considered by the Court include whether the Attorney General has given careful consideration to his decision with relation to the compromise and whether the Attorney General's decision is based upon solid legal judgment and a full consideration of all the facts and circumstances available. It would be appropriate for the Attorney General to include in his review whether there was a possibility that the final outcome of this litigation was in doubt and the continued expense to the charitable trust

by additional litigation. See *In Re Estate of Smith*, supra at 283-4. These factors for my consideration are subsumed in the requirements of section 62-3-1102 that the settlement be in good faith and that it is just and reasonable. Therefore I find that the Attorney General has the power pursuant to his common law and statutory authority to protect the charitable beneficiaries, to control such litigation as to the charitable interests when he is a party, and to compromise and settle such interests where appropriate.

B. Standard for Approving Settlement

South Carolina Probate Code section 62-3-1102 provides that the Court shall approve the settlement and direct the fiduciaries to execute the agreement if it: (1) finds the contest or controversy is in good faith, and (2) the effect of the agreement on interested persons is just and reasonable.

1. Good faith controversy

Based on the history of matters involving the Estate and other issues related to James Brown, I find that it is incontrovertible that a good faith controversy exists. Any of the factors discussed hereinafter could constitute grounds for finding that a good faith controversy exists. The cumulation of these issues creates an overwhelming set of grounds for finding that a good faith controversy exists. Some of the more salient issues are as follows:

a. The Levenson clients and Tommie Rae Brown brought actions to contest the 2000 Will and the 2000 Irrevocable Trust. Although the contestants raised other reasons for the contest, a compelling argument was that Cannon, Dallas, and Bradley unduly influenced Mr. Brown into executing those documents. Without deciding whether the undue influence argument has merit, I find that argument certainly has a foundation in good faith. The 2000 Trust names Cannon, Dallas, and Bradley as trustees. The 2000 trust authorizes the trustees to expend up to

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50% of gross income for management expenses.⁵ Based on testimony from Ms. Pope and Mr. Ruff, the estate planning expert presented by Ms. Pope and Mr. Buchanan, such a provision is unprecedented, especially in a charitable trust. On behalf of the estate and trust, Ms. Pope and Mr. Buchanan have brought an action against Messrs. Cannon, Dallas, and Bradley, alleging inter alia that Messrs. Cannon, Dallas, and Bradley practiced undue influence on Mr. Brown and used various entities controlled by them to syphon off his assets, effectively under the guise of management expenses. Ms. Pope testified that Mr. Cannon told her he could get half of Mr. Brown's estate, if he wanted.

Moreover, the voluminous file of the drafter of the 2000 will and trust (and of the 1999 will and trust), Mr. Herring, is in evidence. That file contains a blank deed apparently signed by Mr. Brown and witnessed. There is no valid reason to create such a document, and its existence certainly adds additional credence to the argument against the validity of any document prepared for Mr. Brown by Mr. Herring. Upon questioning, Mr. Buchanan could testify to the existence of only one document that may be in that voluminous file that possibly represents direct correspondence between Mr. Herring and Mr. Brown. There is evidence in the file that Mr. Herring and Mr. Cannon are good friends.

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable. Mr. Herring is in jail for murder. The accuracy and veracity of the testimony in this matter by Messrs. Cannon, Dallas, and Bradley is suspect and at times

⁵ Whether the 50% provision would be valid, in light of the charitable savings clause language in the trust, is irrelevant to the issue of undue influence. The issue is whether the alleged practitioners of undue influence believed at the time of preparation and execution of the 2000 will and trust that the 50% provision would be enforceable. Assuming they did, otherwise why would a known invalid provision be included, that could be evidence of undue influence.

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contradictory. For example, Mr. Dallas testified that he signed a stipulation presented to this Court knowing it to be false because he did not want to lose his position as fiduciary. This is an astonishing admission that he did and would lie to this Court to protect his position as a fiduciary. The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims.

If the 2000 will and trust were found to be invalid for undue influence, and the issue of whether the 1999 will and trust were valid was then raised, the same arguments as above could be asserted against the validity of the 1999 will and trust, and that controversy would also be in good faith.

In her testimony, Ms. Pope asserted that the case of *Russell v. Wachovia Bank, N.A.*⁶ was controlling. That case is not controlling. The issue before this Court is whether the proposed settlement agreement is the result of a good faith controversy and whether the agreement is just and reasonable. There was no settlement agreement in *Russell*. The gist of the *Russell* case was whether a federal appellate court judge still sitting on cases until a few weeks before his death was the victim of undue influence practiced by family members. The circumstances of Mr. Brown's execution of the 2000 will and trust documents are not the same as in the *Russell* case.

b. In addition to the controversy over the validity of any will and trust executed by Mr. Brown, a good faith controversy exists over what property if any was funded into the 2000 trust and what property if any would pass through the probate estate pursuant to the 2000 will.

⁶ 370 S.C. 5, 633 S.E.2d 722 (2006); 353 S.C. 208, 578 S.E.2d 329 (2003).

Testimony demonstrates that records that would adequately prove the provenance of any trust or probate assets are either non-existent or too scanty to provide adequate proof. Moreover, testimony from the three original trustees is contradictory. They executed a stipulation representing that the only assets of the 2000 trust were the Beech Island real estate and 50 dollars. Subsequently, Mr. Dallas testified that the stipulation was incorrect and that he had joined in the stipulation to avoid losing his position as fiduciary. The fiduciaries ultimately sought to withdraw the stipulation.

More specifically, questions remain as to whether James Brown Enterprises, Inc. ("JBE, Inc.") was transferred to the trust during Mr. Brown's lifetime. Available documentation shows that any attempted transfer was incomplete. Furthermore, income tax returns filed on behalf of JBE, Inc. showed Mr. Brown, not the 2000 trust, as the owner. Nevertheless, the ownership of JBE, Inc. is uncertain. Even if the ownership of JBE, Inc. could be confirmed, determining what assets if any JBE, Inc. owns is also problematic due to a dearth of documentation.

The ownership of the relevant assets as between the estate and the trust could affect the assets subject to the spousal share claims of Tommie Rae Brown, as discussed below, as well as the omitted child share claim of James Joseph Brown, II, as discussed below.

Any assets that would pass pursuant to the 2000 will would be subject to spousal share claims and omitted child claims. Also, a good faith argument exists for subjecting any assets of the 2000 trust to the elective share, pursuant to the *Seifert* and *Dreher* decisions,⁷ and by analogy, to the omitted spouse and omitted child shares. Because testimony demonstrated that Mr. Brown retained control of the 2000 trust, it could be deemed a revocable trust, which would

⁷ *Seifert v. Southern Nat. Bank of South Carolina*, 305 S.C. 353, 409 S.E.2d 337 (1991); *Dreher v. Dreher*, 370 S.C. 75, 634 S.E.2d 646 (2006).

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be subject to the elective share and, by extension, to the omitted spouse share and omitted child share.

Moreover, certain assets, such as the copyright termination rights would not belong to the 2000 trust or to the probate estate, instead passing by federal law to the federal statutory heirs.

Further confusing the question of ownership is the question of the validity of the 1999 revocable trust. Mr. Dallas, one of the trustees of that trust, testified that he did not know if the 1999 trust had been revoked in accordance with its provisions. Nor was any evidence produced from Mr. Herring's file that the 1999 trust had been revoked. If that trust was valid and was not revoked, then ownership issues similar to the 2000 trust arise as to the 1999 trust. If the 1999 trust was valid and not revoked, then any assets owned by that trust might not be included in the 2000 trust or the probate estate. Furthermore, any assets owned by the 1999 revocable trust would clearly be subject to the elective share pursuant to *Seifert* and *Dreher* and, by analogy would be subject to the omitted spouse's share and the omitted child's share.

If the 1999 trust was valid, funded, and not revoked, then the trustees of the 2000 trust had no power or control over those assets.

c. A compelling factor in finding that a good faith controversy existed is the assertion of Tommie Rae Brown (Mrs. Brown) of elective share and omitted spouse's share claims. If Mrs. Brown qualifies as a surviving spouse, then she would clearly be entitled to an elective share and may well qualify for an omitted spouse's share. The elective share would be one-third of the probate assets plus any assets held by a revocable trust, pursuant to *Seifert* and *Dreher*. The omitted spouse's share would be one-half of the probate assets plus, by analogy to *Seifert* and *Dreher*, any assets held by a revocable trust. In addition, Mrs. Brown would have a

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claim as a surviving spouse under federal copyright law to receive one-half of the copyright termination rights.

Asserting the *Lukich* decisions,⁸ the personal representatives and trustees have argued vigorously that Mrs. Brown does not qualify as a surviving spouse. They contended that she had an impediment to her marriage to Mr. Brown because she was already married at the time to Javed Ahmed. However, the evidence demonstrated that the Charleston County Family Court held as a finding of fact and a conclusion of law that Mrs. Brown had no impediment to her marriage to Mr. Brown because she was never previously married to Javed Ahmed as he had an impediment to that purported marriage: he was already married at the time. The family court order shows that Javed Ahmed was properly served by publication.

The *Lukich* decisions effectively held that an annulled marriage could not relate back to the time of the creation of the annulled marriage for purposes of removing an impediment to a subsequently attempted marriage. However, Mr. Buchanan admitted in his testimony that the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs. Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage. Thus, rather than supporting the position of the personal representatives and trustees, *Lukich* supports the position of Mrs. Brown as Mr. Brown's surviving spouse.

Moreover, Mr. Buchanan also admitted in his testimony that *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her

⁸ 379 S.C. 589, 666 S.E.2d 906 (2008); 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006).

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marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.

The personal representatives and trustees assert that Mr. Brown brought his own annulment action against Mrs. Brown. The record shows that action was commenced after the commencement of the Javed Ahmed action. Mr. Brown and Mrs. Brown mutually consented to a dismissal of the annulment action brought by Mr. Brown. Although the personal representatives and trustees assert that the consent order of dismissal includes a waiver by Mrs. Brown to ever claim any status as a common-law spouse, that waiver, even if valid under the law, is immaterial to the matter *sub judice*. Mrs. Brown is not asserting her claim as a common-law spouse but rather as a surviving spouse based on her ceremonial marriage to Mr. Brown and their South Carolina marriage license and certificate.

The evidence also demonstrates that, in his authorized autobiography, Mr. Brown represented that he was married to Tommie Rae Brown. Significantly, his autobiography was copyrighted and first published in 2005, after the conclusion of both family court matters discussed above.

Thus, based on *Lukich*, Mr. Brown (or any third party) did not have the right to intervene or contest the family court order holding that there was an impediment to the purported marriage between Mrs. Brown and Javed Ahmed. If he did not have that right, neither do his fiduciaries. Thus, as to the estate and any trust, that family court order, as well as the marriage license, constitute the law of the case as to that issue.

In the settlement agreement, the settling parties agree that Mrs. Brown is the surviving spouse of Mr. Brown, presumably spurred on by the compelling factors discussed above. Treating Mrs. Brown as the surviving spouse provides substantial benefit to the settling parties,

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including the charitable beneficiaries. Her status as surviving spouse allows the estate to claim a marital deduction for those assets passing to her, which increases the net amount passing to the settlement entity, in which the charitable beneficiaries have a share and thereby benefit from that tax savings.

d. Another factor evidencing the existence of a good faith controversy is the omitted child's claim submitted on behalf of James Joseph Brown, II by his guardian ad litem. Pursuant to SCPC section 62-2-302, a child born after the execution of the testator's will is entitled to receive his intestate share if omitted from the will. The 2000 will was executed before the birth of James Joseph Brown, II. Although the personal representatives contested that James Joseph Brown, II was the biological child of Mr. Brown, substantial evidence would demonstrate that James Joseph Brown, II is indeed the biological child of Mr. Brown. Mr. Brown's describes James Joseph Brown, II as his son in his autobiography. Mr. Brown is listed as the father on the birth certificate. Mr. Brown obtained health insurance and social security benefits for James Joseph Brown, II by representing that he was his son;⁹ he named him as his son in his medical directive. The guardian ad litem procured a DNA test demonstrating that there was a greater than 99 percent probability that they were father and biological son. James Joseph Brown, II is presumed to be the child of the marriage of Mr. Brown and Mrs. Brown because that marriage was valid, as discussed above. Even though James Joseph Brown, II was born before that marriage, the subsequent marriage of Mr. Brown and Mrs. Brown would legitimize James Joseph Brown, II, pursuant to SCPC section 62-2-109.¹⁰ Although James Joseph Brown, II would not

⁹ Thus, to find that James Brown II was not the son of Mr. Brown opens the door for a claim that Mr. Brown defrauded the health insurance carrier and social security.

¹⁰ This would be true even if the marriage was not valid. SCPC section 62-109 legitimizes a child if his parents

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need to be legitimate to qualify under section 62-2-302 for his intestate share, it is an additional factor to consider.

James Joseph Brown, II is not automatically entitled to an omitted child's share merely because he is found to be Mr. Brown's son. One operative exception to the granting of the omitted child's share is if the testator specifically provides for overriding the statutory share. One might argue that language in Mr. Brown's 2000 will does specifically provide for such an override, but there is compelling authority to the contrary.¹¹ Ultimately, that issue would be decided by determining Mr. Brown's intent.

The settling parties agree that James Joseph Brown, II is the biological child of Mr. Brown. Treating him as a child provides substantial benefit to the settling parties, including the charitable beneficiaries. His status as a child allows him to claim, for the benefit of the settlement entity, a federal copyright termination rights share. Moreover, treating James Joseph Brown, II as the child of Mr. Brown does not detrimentally impact the settlement entity, including the charitable beneficiaries, because according to the settlement agreement his share is paid from Mrs. Brown's share.

e. Another factor indicating the existence of a good faith controversy involves the applicable time to contest the 2000 trust. Section 62-7-5 provides that a trust is voidable if it resulted from fraud, coercion, or undue influence — the gravamen of the contestant's actions to contest the trust. The fiduciaries contend that the statute of limitations to contest the 2000 trust

subsequently attempt to marry even in the attempted marriage is not valid.

¹¹ See, e.g., *Estate of Robbins*, 756 A.2d 602 (N.H. 2000); *Estate of Torregano*, 352 P.2d 505 (Cal. 1960). The estate would bear the burden of proof. *In re Estate of Hoigaard*, 360 N.W.2d 360 (Minn.App.1984).

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has run. However, for the reasons discussed below, the contestants would have viable arguments that no statute of limitations would bar their contest.

i. As to fraud

Assuming arguendo that the 2000 trust is irrevocable, South Carolina follows the discovery rule for fraud, which commences the running of the statute of limitations from discovery of the fraud itself or of such facts as would have led to the knowledge thereof, if pursued with reasonable diligence. *Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). A suspicion alone is not sufficient to place a party on inquiry. *Beattie v. Pool*, 13 S.C. 379 (1880); *Hunt v. Smith*, 202 S.C. 129, 24 S.E.2d 164 (1943). The burden would be on the fiduciaries to show that the contestants had knowledge of the fraud or of such facts as would have led to knowledge if pursued with reasonable diligence. *Grayson v. Fidelity Life Ins. Co.*, 114 S.C. 130, 103 S.E. 477 (1920); *Means v. Feaster*, 4 S.C. 249 (1873); *Richardson v. Mounce*, 19 S.C. 477 (1883). The contestants would also assert that the fraud was continuing, so that any applicable statute of limitations did not commence any sooner than Mr. Brown's death.

The original trustees would be the alleged perpetrators of the fraud. The commission of a fraud or an intentional misrepresentation therefore estops the trustees from asserting any statute of limitations. See *R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 730 (2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrrecht*, 327 U.S. 392 (1946). Moreover, even if the trustees did not engage in fraud or make intentional misrepresentations, they are estopped from asserting any statute of limitations because the settling parties reasonably relied on the words and conduct of the trustees in allowing any limitations period to expire. See *Regions Bank v. Schmauch*, 582 S.E.2d 432 (Ct.

App. 2003); *Hedgepath v. American Telephone and Telegraph Co.*, 559 S.E.2d 327 (Ct. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (2000); *Harvey v. South Carolina Dept of Corrections*, 527 S.E.2d 765 (Ct. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (Ct. App. 1997).

The fiduciaries assert that the recordation of the certificate of trust commenced the running of the statute of limitations. However, recordation of a deed will not, by itself, be sufficient notice to put a party on inquiry as to the existence of a fraudulent conveyance. *Tucker v. Weathersbee*, 98 S.C. 402, 82 S.E. 638 (1914); *Means v. Feaster*, 4 S.C. 249 (1873).

ii. As to undue influence

Statute of limitations for fraud would not apply to the contestants' claims for undue influence because undue influence is an action in equity. *Dixon v. Dixon*, 362 S.C. 388, S.E.2d 849 (2005).

iii. Tolling as to minors

To the extent that any statute of limitations would apply to the trust contests, the contestants would assert that the statute of limitations would be tolled for a minor, such as James Joseph Brown, II.

iv. If the trust is deemed revocable, then SCPC section 62-7-604 provides that the trust contests were timely commenced.

f. One additional salient factor demonstrating the existence of a good faith controversy involves the issue of the ownership of federal copyright termination rights. Federal copyright law provides a termination right to a songwriter who has assigned some or all of his

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copyright rights to a third party, such as a publisher.¹² Testimony revealed, Mr. Brown assigned at least a substantial number of his copyrights to one or more publishers and he assigned to one or more third party entities the remaining rights to a substantial number of his copyrights. Federal copyright law allows a songwriter who is alive after a certain number of years pass from any assignment of some or all of his copyrights to terminate, or revoke, that assignment, thereby regaining control of the assigned right with the freedom to negotiate a new assignment.¹³ However, if the applicable time period for that song has not expired before the songwriter dies, that termination right passes by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to otherwise transfer the termination right. See 17 U.S.C.A. §§ 203, 304; Ann Bartow, *Intellectual Property and Domestic Relations: Issues to Consider When There Is an Artist, Author, Inventor, or Celebrity in the Family*, 35 Fam. L.Q. 383.

Under the settlement agreement, those settling parties who would qualify as statutory heirs for federal copyright law termination rights purposes have contributed their termination rights, and any proceeds therefrom, to the settlement entity, which includes the charitable beneficiaries. If it were not for this contribution to the settlement entity, there is no way that the charitable beneficiaries could receive any benefits from the federal copyright termination rights.

¹² Typically, the publisher's share of any royalties is 50 percent of the total and the songwriter's share is 50 percent.

¹³ For songs copyrighted before the 1976 copyright act, the time period before the termination rights can be asserted is 56 years from the date copyright was secured. For songs copyrighted after the 1976 copyright act, that time period is 35 years from the assignment.

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2. Just and Reasonable

Including those discussed above, there are many reasons supporting the conclusion that the proposed settlement is just and reasonable. The key issue is how the charitable beneficiaries fare under the proposed settlement. I find that the settlement is just and reasonable and provides a just and reasonable result for the charitable beneficiaries.

From the perspective of the charitable beneficiaries, the risks of not approving the settlement agreement are substantial. As discussed above, significant arguments can be made that the 2000 will and trust are not valid. If the 2000 will and trust are overturned, essentially the same arguments can be made that the 1999 will and trust are invalid. If the contestants would prevail in these contests, an intestacy would result and the charitable beneficiaries would get nothing — a substantial risk.¹⁴

Even if the 2000 will and trust (or the 1999 will and trust) are upheld, significant arguments can be made to recognize Mrs. Brown's spousal share claims, as discussed above. No matter Mr. Brown's intent, she would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust. And unless Mr. Brown demonstrated an intent to override SCPC section 62-2-301 (the omitted spouse's share), which is questionable, Mrs. Brown would be entitled to one-half of the probate estate¹⁵ and likely one-half of the assets of any revocable trust. If Mrs. Brown would prevail in her claims, the charitable beneficiaries' share of the

¹⁴ The risk for the charitable beneficiaries would be enhanced by the burden of proof. Because Messrs. Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Mr. Brown's execution of the 2000 will and trust documents, the burden of proof would fall on the proponents of the will and trust because Messrs. Cannon, Dallas, and Bradley were in a confidential relationship with Mr. Brown. *Dixon v. Dixon*, 362 S.C. 388, S.E.2d 849 (2005).

¹⁵ As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

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probate estate and any revocable trust would be reduced by either one-half or one-third — a substantial risk.

Even if the 2000 will and trust (or the 1999 will and trust) are upheld (and even if Mrs. Brown is not entitled to any spousal share), significant arguments can be made to recognize James Joseph Brown, II's omitted child claim, as discussed above. Unless Mr. Brown demonstrated an intent to override SCPC section 62-2-302 (the omitted child's share), which is questionable, James Joseph Brown, II would be entitled to his intestate share of the probate estate¹⁶ and likely the same share of the assets of any revocable trust. If James Joseph Brown, II would prevail in his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share — a substantial risk.

Even if the 2000 will and trust are upheld and the spousal and omitted child's claims are unsuccessful, the time and expense to litigate through appeal all of these and other issues would be extraordinary. The cost to the estate and trust for fees and costs and related expenses are substantive. It has taken more than two years of estate administration and millions of dollars of fees and costs just to get to the point of considering a settlement. The time and expense necessary to carry out all litigation to completion and appeal boggles the mind.

The Court has been apprised as to the distribution of the settling parties' interest as more fully set forth in the settlement agreement, and the settlement agreement has been made a part of the record. The percentages assigned to each settling party are fair and reasonable. The Attorney General's Office has ensured a substantial portion of the Estate will be dedicated to the specific intent of James Brown, that is providing an educational trust. The Court has also considered and

¹⁶ As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

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is satisfied that the minor child, James Joseph Brown II, will receive his share of the estate assets as distributed through his Mother's share and that he will receive another equal portion from his Mother in the form of a second trust.

The protection of a public trust is of paramount concern to the Court and the Court is satisfied that through the diligent efforts of the Attorney General's Office, the assets to fund the public trust will now be available. Furthermore, any issues as to the protection of the minor child's interest have been preserved through this agreement.

Consideration of these factors demonstrates that the allocation of the proposed settlement is just and reasonable. However, an additional, and perhaps substantial additional benefit to the charitable beneficiaries is the contribution by the other settling parties of their federal copyright termination rights. As discussed above, these rights may have considerable value and, without the settlement, the charitable beneficiaries could derive no benefit from these rights.

Replacement of the currently serving fiduciaries is also just and reasonable. The propriety of their appointment as trustees is currently on appeal, and their replacement should moot that issue. Moreover, both fiduciaries testified that they intended to appeal the approval of the settlement; that action would place them in the position of an irreconcilable conflict of interest.

The settling parties propose that Mr. Russell Bauknight be appointed as the replacement personal representative and trustee. I find that he is qualified and willing to serve and suffers from no conflict of interest because the settling parties have all consented to his appointment and, because the settlement agreement places all possible probate estate and trust assets into the same settlement entity, he has no conflict of interest by serving as both personal representative

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and trustee. Pursuant to Mr. Bauknight's testimony, I find that no transition period is necessary before the appointment of Mr. Bauknight to replace Ms. Pope and Mr. Buchanan.

C. Tax Issues

1. Charitable Exemption Concerns

I find that the Settling Parties have carefully considered the impact of the Settlement Agreement and participation in the Settlement Entity and the James Brown Legacy Trust on the tax exempt status of the 2000 "I Feel Good" Trust.

As the Trustee of the 2000 "I Feel Good" Trust will be selected by, and can be removed for any reason by, the South Carolina Attorney General, the Settling Parties believe there is no private inurement problem. Additionally, all transactions between the Brown family members, the 2000 "I Feel Good" Trust, and the James Brown Legacy Trust are at fair market value. The provisions of the James Brown Legacy Trust effectively grant the 2000 "I Feel Good" Trust a veto over major decisions, allowing the 2000 "I Feel Good" Trust sufficient control over the settlement entity to prevent the Settling Parties from conducting the business of the James Brown Legacy Trust in such a manner as to allow them to use the assets or income of the "I Feel Good" Trust for their own private benefit.

Marital Deduction – In order to receive the marital deduction, Tommie Rae Brown must have been the spouse of James Brown. The Attorneys for Mrs. Brown strongly believe that they have sufficient evidence to prevail in a trial on the merits as to whether Tommie Rae Brown was the spouse of James Brown. The other Settling Parties agree that Mrs. Brown has a material chance of success, as they are willing to settle with Mrs. Brown and recognize her status as surviving spouse.

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Charitable Deduction – The Settling Parties recognize that the charitable deduction will be limited to the amount that the 2000 “I Feel Good” Trust actually receives, per Regulation §20.2055-2(d) and Reed v. U.S., 26 AFTR 2d 70-6042 (DC Ill. 1970), and that the amount of the charitable deduction cannot exceed the amount the 2000 “I Feel Good” Trust otherwise would be entitled to under the terms of the Will, per Terre Haute First National Bank v. U.S., 67 AFTR 2d 91-1217 (DC Ind. 1991).

I find that the Settling Parties took the issues discussed above into account in drafting the Settlement Agreement, and, other than the loss of the charitable deduction for assets passing to heirs/devisees other than the 2000 “I Feel Good” Trust, the Settling Parties have planned to preserve the Estate’s right to a charitable deduction for the value of the assets passing to the 2000 “I Feel Good” Trust.

The specific concerns of the Personal Representatives/Trustees, as expressed by their expert witness, Harley Ruff, Esquire, are addressed below.

Attorneys’ Fees – According to the settlement agreement, each party is ultimately responsible for his or her own attorneys’ fees. These fees are therefore not additional costs to the charitable beneficiaries. These attorneys’ fees may be deductible for estate tax purposes. Treasury Regulation §20.2053-3(c)(3) provides “[a]ttorneys’ fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney’s fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate.” This regulation allows attorneys fees incurred by beneficiaries to be deductible for estate tax purposes if they were incurred in litigation that was

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essential to the proper settlement of the estate. The Settling Parties plan to contend that the majority of their legal fees have been incurred in litigation essential to the proper settlement of the Estate and, thus, are deductible by the Estate. By providing a pro-rata reduction of the elements of the Estate which are subject to estate taxes, the net amount to be received by the Settling Parties, including the charitable beneficiaries, would be increased.

The Settling Parties plan to assert that the payment of the Settling Parties' legal fees are deductible as an estate administration expense under §2053. The Settling Parties' legal fees were necessary in determining the proper distribution of the estate due to (i) the alleged undue influence asserted against Mr. Brown, and (ii) establishing Tommie Rae Brown as the spouse of James Brown, and her entitlement to either the elective share or the omitted spouse share. Additionally, the efforts of the Settling Parties, Pope and Buchanan, and their counsel uncovered the mismanagement and misappropriation by the initial fiduciaries and led to their resignation. Pending the outcome of additional litigation, these efforts may lead to the Estate's recovering substantial sums.

Due Diligence – The Settling Parties are aware that it is in the best interest of all beneficiaries of the Estate of Mr. Brown, whether Settling Parties or not, that the Estate minimize any potential estate tax due by Mr. Brown's estate. For that reason, the Settling Parties assert that they have carefully examined the potential estate tax consequences of the Settlement Agreement and are confident that they have drafted the Agreement in such a way as to preserve the charitable and marital deduction to the greatest extent possible in line with the provisions of the settlement.

Effect of Settlement on Charitable Deduction – Mr. Ruff expressed concerns that the structure of the Settlement Agreement and the James Brown Legacy Trust would jeopardize the

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charitable deduction because it results in a non-qualified split interest trust under §2055(e)(2). The Settling Parties disagree that a non-qualified split interest trust is created, and, even if it was, assert that the form of the James Brown Legacy Trust can be revised to satisfy the split interest trust rules of §2055(e)(2).

The Settlement Agreement provides that each Settling Party will receive a specified percentage of the Estate assets. These assets are first distributed to and/or are owned by the Settling Parties outright. The Settling Parties have contractually obligated themselves to then contribute these assets to the James Brown Legacy Trust for consolidated management and marketing of the "James Brown assets." The assets do not pass directly from Mr. Brown's estate to the James Brown Legacy Trust. The assets pass directly to the Settling Parties, who in turn contribute these assets to a co-investment entity, the James Brown Legacy Trust. Such co-investment between charitable and non-charitable beneficiaries is specifically permitted by Section 4943 of the Internal Revenue Code.

Even if the IRS or a federal court were to disregard the distribution of assets to the Settling Parties and their subsequent contribution to the James Brown Legacy Trust, and treat the assets of the Estate of James Brown as passing directly to the James Brown Legacy Trust, the Settling Parties could amend the structure of the James Brown Legacy Trust (as they are required under the settlement agreement to do if necessary to preserve the charitable deduction) to allow the contribution to qualify for the charitable deduction. In *Galloway v. U.S.*, 99 AFTR2d 2007-3412, the case cited by Mr. Ruff in support of his opinion that the charitable deduction would not be allowed if the Settlement Agreement were approved, the Court emphasized that there was a single Trust that did not divide until distributions were to be made some years in the future. The Settling Parties believe that amending the James Brown Legacy Trust to provide for a charitable

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share, to which the 2000 "I Feel Good" Trust assets would be contributed, and a non-charitable share, to which all other "James Brown assets" would be contributed, is one option that would resolve the issue of the non-qualified split interest trust, if necessary.

2. Self Dealing

Mr. Ruff alleged that the right of first refusal granted to Terry Brown in the Settlement Agreement would constitute self-dealing and would generate an excise tax and/or a loss of charitable exemption for the 2000 "I Feel Good" Trust.

The Settling Parties opine that the granting of the right of first refusal and the exercise of the right of first refusal (presuming such exercise is done while the estate is still open for federal income tax purposes) fall within the "estate administration" exception to self-dealing found in Regulation §53.4941(d)-1(b)(3). If the right of first refusal does not fall within the "estate administration" exception to self-dealing, the Settling Parties could propose that the 2000 "I Feel Good" Trust become a public charity (such as a Supporting Organization supervised and controlled by the South Carolina Attorney General's Office), which is not subject to the self-dealing prohibition.

If the right of first refusal does not meet the "estate administration" exception, and the 2000 "I Feel Good" Trust cannot be converted to a public charity, the Settlement Agreement provides that "[i]f any time any federal or state agency determines that any part of this Addendum shall endanger the tax-exempt status of the Charitable Trust, and that decision becomes final and non appealable, then the parties shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the charitable trust." This type of curative language is used by planners as the ultimate safeguard to prevent charitable exemption problems.

DAE
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3. Marital Deduction

Mr. Ruff addressed the case of *Commissioner of Internal Revenue v. Estate of Bosch*, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967), and its impact on the marital deduction. In *Bosch*, the issue of whether the estate was due a marital deduction was dependent on the interpretation of state law (i.e. whether the widow's purported release of a power of appointment was valid). The Supreme Court of the United States ruled that only an opinion of the state's highest court as to a state law issue is binding on federal authorities when applying federal law.

Bosch does not directly affect whether or not the Estate of James Brown will be entitled to a marital deduction for assets that pass to his wife, Tommie Rae Brown. *Bosch* simply states that the IRS and the federal courts are not required to accept a South Carolina court's ruling that Tommie Rae Brown is the spouse unless that ruling comes from the South Carolina Supreme Court. As is the case with any surviving spouse, nothing in *Bosch* prevents the Estate of James Brown from arguing the merits of Tommie Rae Brown's claim that she was the wife of James Brown. If the Estate prevails on the merits of that claim, it will be entitled to a marital deduction for assets that pass to Mrs. Brown, despite the lack of a Supreme Court ruling that she is the wife of Mr. Brown.

4. Private Letter Ruling

The Settling Parties have not yet sought a Private Letter Ruling ("PLR"). *Revenue Procedure 2009-1* states that a PLR is issued only to a "taxpayer" and must be signed by the taxpayer or an "authorized representative." In this case, the Settling Parties have no authority to act on behalf of either the estate or the 2000 "I Feel Good" Trust.

DAE
#4/3

The Settling Parties anticipate that an independent professional fiduciary appointed by this Court will carefully consider whether or not to apply for a PLR on one or more issues, after consulting with the Settling Parties, especially the Attorney General.

Thus, after conducting substantial due diligence with the advice of highly-regarded tax lawyers, including a number of certified tax specialists, the Settling Parties assert that the Settlement Agreement does not disqualify the charitable exemption, cause excise tax problems, or prevent the Estate from receiving a charitable deduction for property passing to the 2000 "I Feel Good" Trust. However, to the extent that there may be a problem, the Settling Parties have a number of options. They can pursue the estate administration exception. They can pursue the conversion of the private foundation to a public charity (which they may choose to do for nontax reasons as well). If such options fail to protect the charitable exemption, the Settling Parties are required by the Settlement Agreement to take whatever curative action is necessary to protect the charitable exemption, which would be enforced by the Attorney General.

IV. Conclusion

Based on the foregoing, I find as follows:

1. All necessary parties are properly joined;
2. Notice has been provided to all necessary parties;
3. The settlement agreement has been executed by all persons having beneficial interests which are affected by the compromise;
4. The controversy is in good faith; and
5. The settlement is fair, equitable, and reasonable.

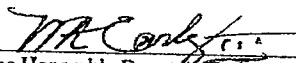
I therefore Order as follows:

1. The settlement is approved;

DAE
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2. Adele J. Pope and Robert L. Buchanan, Jr., are directed to execute the agreement; and
 3. Russell L. Bauknight is immediately appointed as Personal Representative of the Estate and Trustee of the James Brown 2000 Irrevocable Trust in replacement of Ms. Pope and Mr. Buchanan.

AND IT IS SO ORDERED.


The Honorable Doyet A. Early, III

May 26, 2009
Aiken, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) SECOND JUDICIAL CIRCUIT

COUNTY OF Aiken

HENRY DANIEL MCGOWAN, in his

CAPACITY as Attorney General of the

) CASE NO. 08-CP-02-1547

State of South Carolina, et al.,

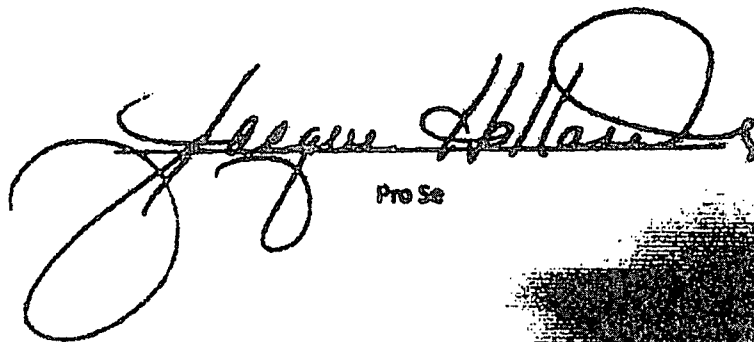
Petitioner,

ALBERT R. BELLAR, et al.,

Respondents

APPEARANCE

The undersigned, Jacque Hollander, enters her appearance in the above entitled cause.



Pro Se



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

Appellate Case No. 2013-001856

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

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties that has not been stricken or that is inconsistent with the May 16, 2014 Order of the South Carolina Court of Appeals in this matter.



O. Cyrus Hinton
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Respondent/Defendant

CERTIFICATE OF SERVICE

I certify that I served three (3) copies of the Record on Appeal on J. David Black, Esq., by regular mail, on May 30, 2014, to the following address:

J. David Black, Esq.
Nexsen Pruet, LLC
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O. Cyrus Hinton
Hinton and Associates, PA