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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Eugene C. Griffith, Circuit Court Judge

Case No. 2012-CP-36-00688

Applicant for Intervention Russell L. Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust.....Appellant.

In re Susan D. Summer,.....Plaintiff,
of whom Susan D. Summer is.....Respondent,

v.

Alan Wilson, In His Capacity as Attorney General for South Carolina.....Defendant.

RESPONSE TO RESPONDENT'S MOTION FOR LEAVE

The Proposed Intervenor Russell L. Bauknight as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust submits this Memorandum in Response to Plaintiff's Motion for Leave.

ARGUMENT

Separate and apart from any appeal by the Attorney General, the Proposed Intervenor's appeal of the trial court's denial of his Motion to Intervene acts to automatically stay the trial court's entire order and any subsequent rulings on the production of documents in this case for the following reasons:

First, the general rule of 241(a), SCACR is "the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on

appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” In this matter, the appealed order denied the Proposed Intervenor’s Motion to Intervene and set forth terms regarding the production of documents by the Attorney General.

The order denying the Estate and Trust’s right of intervention to protect its potentially privileged documents and materials denied it the ability to engage in discovery, develop facts, and present arguments to support its contention that the Freedom of Information Act (FOIA) cannot be used by a litigant or a surrogate to circumvent the laws concerning discovery in civil litigation. Specifically, the Proposed Intervenor was denied the right to contend that potentially privileged documents should be exempted from disclosure under FOIA at least until a pending discovery dispute previously joined before another circuit court judge involving the very same documents is resolved. Therefore, enforcing compliance with any part of the order during the pendency of the appeal eviscerates the heart of Mr. Bauknight’s appeal and would irreparably harm and legally and actually prejudice the rights of the Estate and Trust to protect potentially privileged material.

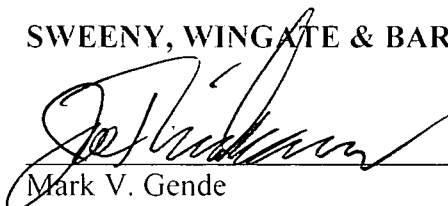
Second, this matter does not fall within any of the exceptions to the general rule enumerated in 241(b), SCACR, nor does the plaintiff cite any relevant “statue, court rules, or case law” as grounds for an alleged exception to the automatic stay in place due to the Proposed Intervenor’s appeal. Rule 241(b), SCACR. As set forth above, all of the issues pursued by the Plaintiff regarding production of documents via FOIA request go to the heart of the Proposed Intervenor’s appeal. Thus, an automatic stay exists separate and apart from any stay which may also exist as a result of other appeals in this matter, and “the appealed order may not be carried out or enforced during the pendency of the appeal.” Tillman v. Oakes, 398 S.C. 245, 255, 728 S.E.2d 45, 50-51 (Ct. App. 2012).

CONCLUSION

Given the foregoing, the Proposed Intervenor respectfully requests that this Court issue an order affirming and continuing the automatic stay of this matter which exists because of the pending appeal of the trial court's denial of the Proposed Intervenor's Motion to Intervene.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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**ATTORNEYS FOR PROPOSED
INTERVENOR**

Columbia, South Carolina
November 4, 2014

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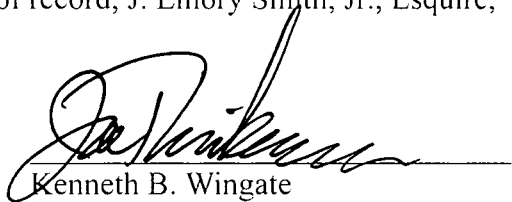
v.

Alan Wilson, In His Capacity as Attorney General for South Carolina.....Defendant.

PROOF OF SERVICE

I certify that I have served the Appellants Response to Respondent's Motion for Leave on Susan D. Summer by depositing a copy of it in the United States Mail, postage prepaid, on November 4, 2014, addressed to her attorneys of record, Jay Bender, Esquire, Post Office Box 8057, Columbia, SC 29202 and Thomas H. Pope, Esquire, P.O. Box 190, Newberry, SC 29108 **and** The Honorable Alan Wilson by depositing a copy of it in the United States Mail, postage prepaid, on November 4, 2014, addressed to his attorney of record, J. Emory Smith, Jr., Esquire, P. O. Box 11549, Columbia, SC 29211-1549.

November 4, 2014



Kenneth B. Wingate
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November 4, 2014

Reply to: Main Office

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NOV 06 2014

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

SC Court of Appeals

RE: Susan D. Summer V. Alan Wilson, In His Capacity as Attorney General of SC
Civil Action No.: 2012-CP-36-00688
Our File: 4077-7389.001

Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of Response to Respondent's Motion for Leave. I would appreciate your filing the original and returning the clocked copies to me in the envelope provided.

Should you have any questions or concerns, please do not hesitate to give me a call.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Joseph O. Thickens

JOT/ljm
Enclosures

cc: Jay Bender, Esquire
J. Emory Smith, Jr., Esquire
Thomas H. Pope III, Esquire

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SC Court of Appeals

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TO:

The Honorable Jenny Abbott Kitchings
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