

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2013-001649

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,

v.

Albert H. Dallas and others,..... Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under South
Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas
and Tommie Rae Hynie are.....Respondents

And Alan Wilson in his Capacity as Attorney General of South Carolina,
Deanna J. Brown Thomas and Robert L. Buchanan, Jr.,
are.....Additional Interested Persons.

In Re: The Estate of James Brown and The James Brown 2000 Irrevocable
Trust u/a/d August 1, 2000, Respondents.

**REPLY TO RETURN OF ATTORNEY GENERAL
TO MOTION OF APPELLANT TO ADD RESPONDENTS**

Appellant respectfully submits this Reply to the Return of Alan Wilson, in his
capacity as Attorney General of South Carolina (AG), to Appellant's request that the

AG, the James Brown Legacy Trust (Legacy Trust), and certain heirs of James Brown be made Respondents to this appeal.

General Reply to AG's Return

On page 3 of the Return the AG asserts that to permit the use of the name of the AG where a trustee is acting in good faith and within the bounds of reasonable judgment and sound discretion will lead to "unreasonable and vexatious litigations."¹ However, since May 19, 2010, when the AG sued Robert L. Buchanan, Jr. (Buchanan) and Appellant to stop the appeal which became *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), the AG has permitted his name, and that of the Legacy Trust he controls, to be used in various unreasonable and vexatious litigations. A purpose of those litigations has been to damage the reputations and careers of the only two fiduciaries who have properly served and defended entertainer James Brown's estate plans since Brown's death on Christmas Day 2006, eight years ago.

The AG, the Legacy Trust and the AG's trustee Russell Bauknight (Bauknight) are still actively involved with Respondents Hynie, Forlando Brown (Forlando) and Terry Brown (Terry), and with attorneys Louis Levenson, Esq. (Levenson) and David Bell, Esq. (Bell), to carry out the announced intention² to reinstate the AG's 2008 settlement which dismembered the "I Feel Good" Foundation and severely damaged its 800+

¹ *Ames v. Attorney General*, 124 n.E.2d 511(Mass. 1955).

²At a status conference before Judge Early on May 29, 2013, Levenson and Hynie's counsel requested to go *in camera* and explain to the Honorable Doyet A. Early, III, why the AG's 2008 settlement should be reinstated.

copyrights and their \$3+ million annual royalty stream. If they are successful, Levenson, Bell and Hynie's counsel will reap about \$20 million. Hynie will net another \$11 million. All will come from assets Brown gave for scholarships for needy students.

The AG's failure to halt Bauknight's fiduciary service to Hynie and the Levenson will contestants alone merits making the AG and the Legacy Trust Respondents to this appeal. If the Legacy Trust has ceased to exist, the AG and Bauknight, as its controlling successors, should be made Respondents.³

Specific Objections to AG's Return

a. The AG Should be a Respondent.

Except as specifically agreed herein, Appellant objects to all statements in the AG's return. She incorporates her motion and memorandum, and her briefs filed herein. The Court is also asked to take judicial notice of the actions of the AG since May 8, 2013 in Case 4900 and the three James Brown FOIA cases (two brought by Appellant).

The record refutes the AG's claims on page 3 that there is no reason for the AG to be a party to this appeal, and that he has been inactive since *Wilson*. As briefly outlined below, the AG has continued to be active in Richland County Case 2010-CP-40-4900 ("Case 4900"):

On May 19, 2010 the Wingate contingency fee contract was signed by Bauknight, Levenson, Bell and counsel for Tommie Rae. The AG's Case 4900 complaint against Buchanan and Appellant was approved and filed.

While suing Buchanan and Appellant for not accepting a 2007 \$100 million offer for Brown's music empire, the AG used Bauknight's \$4.7 million "appraisal" to

³ The AG does not refute that the Legacy Trust was funded with the Federal Copyright Act termination rights of all parties to the AG's 2008 settlement who are heirs of James Brown; tangible person property Brown gave six children; and real estate.

accuse Buchanan and Appellant of the felony of intentionally overstating Brown's music empire to the IRS by \$79 million in order to secure a \$5 million commission. The AG now says neither he nor his staff has seen the \$4.7 million appraisal on which he based the false felony claim.

In October 2010 the AG named Respondents Cannon and Dallas as his witnesses in Case 4900, even though Cannon was under indictment.⁴

In 2010 the AG began seeking relief from default in Case 4900 after his private attorney failed to timely respond to Buchanan's and Appellant's counterclaims.

In 2011 and 2012 the AG moved two Newberry County FOIA cases to Richland County. One was consolidated with Case 4900. In 2015 the AG's motion to consolidate the second FOIA case with Case 4900 is pending.

In 2012, without advising this Court, the AG "settled" with Buchanan in Case 4900. The AG required that Buchanan not file a Petition for Rehearing in *Wilson*. [A motion to void the settlement as against public policy is pending.]

In May 2013 the AG asked the Honorable L. Casey Manning to stay all proceedings in Case 4900 and the FOIA cases. No hearing has been held since. The AG made a formal motion to the same effect in 2014.

In 2015 the AG is asserting that a second Case 4900 mediation should be held without the Plaintiffs being required to attend, and with 2011 FOIA cases made part of the mediation.

In short, the AG and the Legacy Trust are currently actively working against the "I Feel Good" Trust in Case 4900. Both should be made Respondents to this appeal.

b. The AG's Discovery Defiance and FOIA Noncompliance

Every Case 4900 Plaintiff has admitted that creating the "I Feel Good" Foundation was Brown's often-stated and long-held desire. Nine children and four

⁴ Cannon was indicted for taking more than \$12 million from funds Brown gave the "I Feel Good" Trust. Cannon was never charged with taking the "\$5 Million check to nobody" he cashed in 1999. [Cannon, with Respondent Dallas as his attorney, confirmed in a 2002 deposition that he had been "paid" \$4.9 million in 1999 from a \$26 million transaction Brown made with the New York Teachers (TIAA).] [Tr.Hg.11/15-20, 2007, Case 2007-CP-02-0122] None of the \$17 million Cannon misappropriated has been recovered.

former trustees, with others, have confirmed Hynie was not Brown's spouse. This was known in 2008. Yet Hynie, the AG and Bauknight continue to waste tens of thousands of taxpayer dollars and hundreds of thousands of charitable dollars abusing discovery in Case 4900; evading Hynie's deposition;⁵ and delaying and denying FOIA compliance. Some of the documents the AG and Legacy Trust are attempting to secrete are described below:

1. The so-called Hynie "diary." - This document and a transcript of it were made public in 2007 by order of Judge Early. In 2008 Judge Early issued (without notice or hearing) gag orders to stop the dissemination and discussion of the "diary." The orders have been ignored by Hynie, Forlando, Dallas and others. The AG says the 2008 gag orders prevent FOIA release of the copy of the "diary" AG McMaster used in his decision to give Hynie a quarter of the "I Feel Good" Trust's assets.
2. The \$4.7 Million "Appraisal" – After relying on Bauknight's \$4.7 million appraisal to accuse Buchanan and Appellant of a felony, the AG says it cannot be released under FOIA because neither he nor his staff ever saw it.
3. The Legacy Trust and Amendments - Until it was released by Forlando, the AG said the secret 2011 Legacy Trust amendment did not exist. The amendment, signed by AG McMaster, Terry Brown, Levenson, Hynie's counsel and Bell, helps show how the AG and Bauknight aided Forlando and Terry in their fraud on both State and Federal Courts.
4. The Wingate Contingency Fee Agreement - After the AG fought its release for three years under Case 4900 discovery and FOIA, this public document was declared public on November 15, 2013 by a federal judge in Forlando's suit.

Case 4900 discovery abuse and FOIA noncompliance have served the twofold purpose of discrediting Buchanan and Appellant and justifying the AG's 2008 settlement. Because of his active participation in both, the AG should be made a

⁵ Hynie has not been deposed in the seven years she has been seeking to dismember the "I Feel Good" Foundation.

Respondent to this appeal

c. The Legacy Trust, or the AG and Bauknight as Principal Successors to its Assets and Liabilities, Should be Made Respondents in this Appeal.

The AG does not deny that the Legacy Trust holds, either legally or equitably, Federal Copyright Act termination rights of a number of Brown's heirs; Brown's personal and household effects; and real estate. Yet on page 1 of the return he notes that the Legacy Trust does not exist "at this time." The Legacy Trust's counsel in a FOIA suit recently articulated the AG's new position. He said in part:

In *Wilson*...the South Carolina Supreme Court overturned the settlement agreement creating the Legacy Trust. Thus the Legacy Trust does not exist as a legal entity and cannot respond to any FOIA request. The Legacy Trust has no successor that can respond to any FOIA request.
[Ltr. Babcock, 1/6/15, Ex. A, Motion to Compel Attendance...at Court-ordered Mediation, filed, Case 1337, 1/15/15..]

This claim that the Legacy Trust does not exist conflicts with the record of its continuing activity, including FOIA interference and in positions taken in Case 4900. The Legacy Trust, with Hynie, continues as the driving force in the vicious and unwarranted attacks on Buchanan and Appellant⁶.

It is inconsistent with Due Process to allow the AG to create and control a trust; represent to the courts that it has already been funded; sue through it to damage those opposing the AG's positions; then assert that it does not exist "at this time."

The Legacy Trust was secretly amended in January 2011 by AG McMaster, Terry and others. That secret amendment was circulated and acted on by AG Wilson's

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When Buchanan, financially broken, settled, the Legacy Trust's attacks shifted to Appellant.

staff. The Legacy Trust then helped Terry and Forlando defraud both the State and Federal Courts.

The AG presents no evidence that the Legacy Trust has since been dissolved, or that it has met the strict IRS guidelines for terminating private foundations or other charities. Nor has any such evidence been presented in Case 4900 or the FOIA cases.

The needy student beneficiaries of the "I Feel Good" Foundation should not be left to bear the cost of the Legacy Trust's years of waste and litigation. Either the Legacy Trust, or the AG and Bauknight as its controlling successors, should be Respondents to this appeal.

CONCLUSION⁷

The AG's return and record of his FOIA noncompliance and Case 4900 activities confirm that Appellant's motion to add both the AG and the Legacy Trust as Respondents should be granted. If proper evidence is presented of the Legacy Trust's dissolution, the AG and Bauknight, as the controlling successors to its assets and liabilities, should be joined as Respondents.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com
S.C. Bar No. 4501

January 20, 2015

⁷ The AG does not oppose the addition of certain heirs as Respondents, which should also be granted.

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PROOF OF SERVICE

I certify that on the 20th day of January, 2015, I have served a copy of the
REPLY TO RETURN OF ATTORNEY GENERAL TO MOTION OF
APPELLANT TO ADD RESPONDENTS in this matter on the Respondents and
others described below by depositing a copy of same in the United States Mail,
postage prepaid, addressed to them or their attorneys of record, as follows:

Respondents:

Tanya A. Gee, Esquire
PO Drawer 2426
Columbia, South Carolina 29202-2426
Attorneys for Respondent Estate/2000 Trust

David G. Cannon
P. O. Box 865
Barnwell, SC 29812

Eugene C. Covington, Jr., Esquire
P. O. Box 2343
Greenville, SC 29602
Attorney for Respondent Albert H. Dallas

Robert N. Rosen, Esquire
18 Broad Street, Suite 201
Charleston, SC 29401
Attorney for Respondent Tommie Rae Hynie

Albert P. Shahid, Jr., Esquire
89 Broad Street
Charleston, South Carolina 29401
Attorney for Respondent James B.

John A. Donsbach, Sr., Esquire
504 Blackburn Drive
Augusta, Georgia 30907
Attorney for Respondents Terry Brown and Forlando Brown

Others:

The Honorable Alan Wilson
The James Brown Legacy Trust
Russell L. Bauknight, Trustee and/or
Successor in Interest
c/o South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Proposed Respondents

Kenneth B. Wingate, Esq.
Sweeney, Wingate & Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211

Attorney of Record in Case 4900 for Respondents Hynie, James B., Terry Brown, Estate and 2000 Trust, and for Proposed Respondents Daryl Brown, Tonya Brown, Legacy Trust and Attorney General

Louis Levenson, Esquire
125 Broad Street, SW
Atlanta, Georgia 30303
Attorney for Interested Person Deanna J. Brown Thomas

Robert L. Buchanan, Jr.
212 Newberry St., NW
Post Office Box 463
Aiken, South Carolina 29802

Interested Person



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com
S. C. Bar No. 4501

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