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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002222

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

AND

Susan D. Summer..... Respondent

v.

Alan Wilson, in his capacity as Attorney General of South Carolina..... Appellant,

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

**RESPONDENT SUMMER'S RETURN TO MOTION
TO WITHDRAW/DISMISS APPEAL**

In his motion to withdraw/dismiss appeal dated February 11, 2015, Russell L. Bauknight, as
Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable
Trust ("Appellant/Cross-Appellant"), moved to withdraw his Notice of Appeal dated September 29, 2014,
from the Order of the Honorable Eugene C. Griffith, Jr. denying Bauknight's motion to intervene. The

motion is based on the assertion that Appellant's appeal "no longer presents a justiciable controversy and is thus moot."

For the reasons set forth herein, Respondent Susan D. Summer believes that, in view of the posture of this FOIA case and based on the history of Bauknight's attempted intervention in this and other FOIA suits, the issues relating to Bauknight are not moot and do present a justiciable controversy. These issues are capable of repetition in the future, notwithstanding Bauknight's attempt to dismiss this appeal.

Under the facts of this FOIA case, the respondent has been thus far successful in having Judge Griffith grant all relief sought to date, notwithstanding the joint efforts of the Attorney General and Bauknight, as purported intervenor, to thwart her requests for public documents.

Further, several days after Bauknight's motion to withdraw/dismiss appeal and pursuant to leave granted to Respondent Summer by Judge Griffith's Order dated January 16, 2015, Respondent Summer filed a motion for additional information dated February 16, 2015, (Exhibit A hereto) in which she sought to have the Attorney General obtain from Bauknight, his agent, a copy of the \$4.7 million appraisal of the James Brown Estate (and other related valuation documents) and to have the Attorney General produce those documents to respondent.

The basis for that request in respondent's motion for additional information (Exhibit A) is that the Attorney General has admitted that he relied on and, in essence, vouched for the \$4.7 million appraisal but has asserted that he does not have a copy of same. Under the provisions of FOIA (specifically, SC Code §30-4-20(a)(c)), the definition of "public record" includes all documents which have been prepared, owned or "used" by a public body. Further, the motion asserts that because the Attorney General has admitted using the \$4.7 million but no longer has a copy of same, he should obtain it from Bauknight and produce it as a public record.

The Attorney General continues to refuse to release, or direct Bauknight to release, the \$4.7 million-death appraisal of the music empire of James Brown. The Attorney General and Bauknight continue to assert that FOIA requests for the \$4.7 million appraisal is subject to consolidation with, and discovery motions in, a Richland County case, Case No. 2010-CP-40-4900 (“Case 4900”). In Case 4900, the Attorney General and Bauknight are suing South Carolina citizens, Robert Buchanan and Adele Pope, for not accepting a 2007 offer of \$100 million for James Brown’s music empire, even though they refuse to produce the \$4.7 million appraisal.

They jointly have resisted producing the \$4.7 million appraisal even though the contract that the Attorney General has with Bauknight’s counsel confirms that documents held by the firm representing Bauknight are public and subject to FOIA.

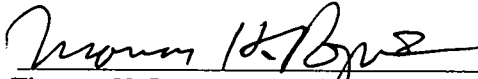
Further, Bauknight and the Attorney General continue to support Tommie Rae Hynie (one of the plaintiffs in Case 4900) in her efforts to prevent the release of the Attorney General’s copy of the so-called Hynie “diary.” Respondent’s motion for additional information referenced herein as Exhibit A also seeks to have the Attorney General’s copy of the “diary” produced under seal to Circuit Judge Griffith.

The joint actions by Bauknight and the Attorney General, a public official charged with the enforcement of FOIA, in matters related to the James Brown Estate raise public policy questions which are likely to repeat themselves; thus, the issues are not moot. Because the Attorney General and Bauknight have jointly sought to delay and interfere with respondent’s FOIA rights, and have done so in other FOIA cases involving other parties, the interests of judicial economy and the rights of the public under FOIA will be served by this Court’s denying Bauknight’s motion to withdraw/dismiss appeal.

In the alternative, Bauknight’s motion to withdraw/dismiss the appeal should be construed as a matter of law as a binding admission that Bauknight has no standing to intervene in respondent’s FOIA rights in this case, and this Court should so find. Respondent asks, in the alternative, that this Court

issue an Order finding that Bauknight had no standing to intervene in FOIA matters relating to the James Brown Estate, and that his appeal is dismissed.

Respectfully submitted,

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February 23, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002222

FILED
NEWBERRY COUNTY
2015 FEB 17 AM 11 05
JACKIE S. FOREMAN
CLERK OF COURT

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.

AND

Susan D. Summer.....Respondent

v.

Alan Wilson, in his capacity as Attorney General of South Carolina.....Appellant,

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

PLAINTIFF'S MOTION FOR ADDITIONAL INFORMATION

Background

In the Order dated January 16, 2015, this Court directed the Attorney General's ("AG") office to release additional documents under the Freedom of Information Act ("FOIA"). Thereafter, the AG did produce the documents listed on the two privilege logs. One of the privilege logs contained documents relating to the gag order for "Hynie" diary. These documents were produced by the AG on January 26, 2015. Thereafter, documents were

anonymously produced to plaintiff via an unknown source on January 27, 2015, which documents appear to be and purport to be the Hynie diary.

The plaintiff, by and through her counsel, notified the Circuit Court of the Second Judicial Circuit on January 27, 2015, by email that these documents had been produced and that she would in fact publish and disseminate information about these diaries unless the Court entered an Order prohibiting her from doing so prior to Friday, January 30, 2015. No restraining order prohibiting her from doing so was issued prior to that date and, on January 30, 2015, Summer disseminated on her Facebook page portions of and comments about the Hynie diary documents she had received. Thereafter, on the same day the Circuit Court of the Second Judicial Circuit entered a Temporary Restraining Order prohibiting Mrs. Summer from publishing the diary documents and scheduled a hearing for Monday, February 2, 2015, for temporary and permanent injunctive relief against plaintiff.

Before that hearing was held, plaintiff filed with the Supreme Court on February 2, 2015, a Motion to Quash Subpoena issued against her by Hynie's attorney, as well as a Petition for Writ of Prohibition and a Petition for Writ of Supersedeas.

On February 2, 2015, Chief Justice Jean H. Toal for the Supreme Court of South Carolina issued an Order (attached hereto as Exhibit A) which quashed the subpoena issued to Mrs. Summer by Hynie's attorney and stayed the hearing on the Court's Temporary Restraining Order against Mrs. Summer subject to "consideration by the full Court." No hearing has been conducted yet on the pending writs of prohibition and supersedeas.

Current Motion

a. Hynie diary documents

This Court on January 16, 2015, granted leave to this plaintiff to request more information subject to what was revealed in the documents produced the AG pursuant to that Order. She has reviewed those documents and has seen the Hynie diary. This motion is to request that this Court direct the Attorney General to produce herein, under seal, the Hynie diary documents which the AG has possession of. The reason that this request is made is because references have been made in the various filings in the last three weeks to the effect that journalist Summer may have received documents which purport to be, but are not, the Hynie diaries – in other words, that they may be fakes or forgeries. Summer adamantly believes that, given the information in those diaries, this is not the case. However, because this matter is under review by the South Carolina Supreme Court, it is imperative that the Attorney General's copy of the diary be preserved to thwart and defend false claims against Summer about the authenticity of the copy she has of the Hynie diary. Further, the AG has publically stated to this Court and to the media that he has no objection to releasing the Hynie diary documents (but for the gag order which is under review by the Supreme Court).

b. The \$4.7 Million Appraisal And Related Valuation Documents

The AG has asserted that his office does not have the \$4.7 Million appraisal for the James Brown Estate. The plaintiff wants a copy of same because she is, and many other journalists also are, perplexed that because Brown earned at least \$5 Million in the calendar year that he died (2006) and his stream of income from royalties was in excess of \$3 Million annually, it seems incredible that his estate could be valued so low. This is a public issue of

interest to all South Carolina, given that his will essentially left almost all of his assets to his charitable trust.

In fact the AG and Bauknight jointly filed with the Supreme Court on May 6, 2011, a motion to supplement the Record (attached as Exhibit B hereto) where he stated that "...Bauknight engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust." (Ex. B, p. 3). How could he make this statement without having "used" the appraisal? His filing indicated that he wanted to supplement the record, based on the appraisal, to show that the date of death value of the Brown music empire was only \$4.7 Million.

The provisions of FOIA require that a public body (such as the office of the AG) produce all documents which the AG has possession of or has "used". The AG asserted in Exhibit B that he had in fact relied on the \$4.7 Million Appraisal to try to supplement the record in Wilson v. Dallas, 743 S.E.2d 746 (2013), in which the Supreme Court voided the settlement. That being the case, even though the AG may not currently possess the appraisal, his agent (who is serving now as personal representative of the Estate) does have it and/or it must be inferred from Exhibit B that the AG "used" it. FOIA does not limit the production of public documents to those which the public body has possession of at the time of the FOIA request. See S.C. Code §30-4-20(a)(c) ("public record includes all...documentary materials...prepared, owned, used, in the possession of, or retained by a public body.")

Plaintiff's request is made pursuant to the statutory findings and purpose of FOIA set forth in §30-4-15 as follows:

"The General Assembly finds that... the provisions of this chapter must be construed so as to make it possible for citizens to learn and report fully the activities of their public officials at a minimum costs or delay to the person seeking access to public documents..."

Where the AG has relied on and vouched for the \$4.7 Million appraisal, he has "used" that document and it must be produced.


Plaintiff requests that this Court direct the AG to retrieve the \$4.7 Million Appraisal (and all associated back up documents) from his agent Bauknight and produce them to plaintiff within ten (10) days of Order this Court.

CONCLUSION

For the reasons set forth herein the plaintiff moves, as provided under this Court's Order of January 16, 2015, that this Court issue an Order directing the AG to:

- (a) produce to this Court under seal for safekeeping all documents referred to as the Hynie "diary" within ten (10) days of this Order and that this Court safekeep same until the Supreme Court has ruled on the pending writs referenced herein; and,
- (b) obtain immediately from the AG's agent Russell Bauknight the \$4.7 Million Appraisal (and related valuation documents) and then produce them to the plaintiff within ten (10) days this Order.

Respectfully submitted,

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February 16, 2015

Attorneys for Plaintiff Susan D. Summer

The Supreme Court of South Carolina

Ex Parte: Susan D. Summer, Petitioner,

In Re: The Estate of James Brown, a/k/a James Joseph
Brown.

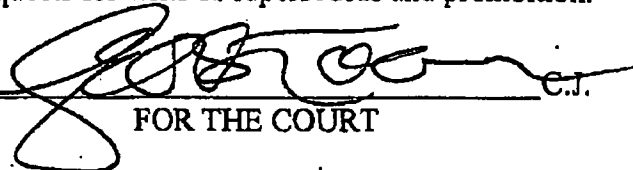
Appellate Case No. 2015-000186

ORDER

On January 30, 2015, the circuit court issued a temporary restraining order prohibiting petitioner from disseminating or publishing the contents of any diary or document belonging to Tommie Rae Brown. A hearing is scheduled before the circuit court in this matter for 2:00 p.m. today, and petitioner has been served with a subpoena to produce certain documents at the hearing.

Petitioner asks this Court to quash the subpoena and for a writ of supersedeas to stay the temporary restraining order. In addition, petitioner requests a writ of prohibition to prohibit the circuit court from exercising jurisdiction over her for the purposes of restraining her publication of any portion of the diaries or documents.

The subpoena is hereby quashed as it requires petitioner to disclose information in violation of S.C. Code Ann. § 19-11-100 (2014), and the hearing is stayed pending consideration by the full Court of the petitions for writs of supersedeas and prohibition filed by petitioner. Petitioner's request for costs and attorneys' fees shall be addressed along with the requests for writs of supersedeas and prohibition.


C.J.
FOR THE COURT

Columbia, South Carolina

February 2, 2015

Exhibit A

cc:

Jerry Jay Bender, Esquire

Thomas H. Pope, III, Esquire

Robert N. Rosen, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettit; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettit; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

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

**MOTION TO SUPPLEMENT THE RECORD PURSUANT TO
RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL
NOTICE OF RECORDS FILED IN A RELATED PROCEEDING**

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SOUTH CAROLINA SUPREME COURT:

Exhibit B

Respondents respectfully request that this Court supplement the record of this appeal to include (1) Internal Revenue Service ("IRS") Federal Estate tax records that were received by Respondents after filing their initial brief on December 22, 2010, and that are related to the date of death valuation of the estate and the tax consequences of the settlement agreement and (2) the Supplemental Inventory and Appraisal of the James Brown Estate ("Estate") related to the date of death valuation and appraisal of assets for the Estate. In the alternative, this Court may take judicial notice of these documents as they were filed in the probate court or issued by the IRS in related proceedings.

FACTUAL BACKGROUND

This appeal presents a unique situation: it concerns an ongoing estate and trust that are continuing to be administered in the normal course of estate and trust administration, and matters relating to their ongoing administration are relevant to this appeal. Although the documents that Respondents seek to include in the record had not been prepared and were thus not available when the circuit court issued its May 26, 2009 Order approving the Settlement Agreement, the Supplemental Inventory and Appraisal should properly be considered in this appeal as it was filed as required by the South Carolina Probate Code in the ongoing probate proceeding, and the IRS tax records should properly be considered because they were created as a result of an independent IRS audit of the Estate.

The Supplemental Inventory and Appraisal and IRS tax records refute factual assertions that the Appellants make to support their legal positions before this Court. Because these documents provide *support* to the circuit court's decision to approve the settlement agreement, their inclusion in the record would neither undercut the circuit court's decision, nor hamper appellate review of it. *Cf. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*,

368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) (“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review.”).

ANALYSIS

In their brief, Appellants argue: (1) that the settlement will cause serious tax problems for the James Brown Estate and Trust (the “Estate and Trust”); and (2) without the aid of a professional appraisal, Appellants contend that the combined Estate and Trust are worth roughly \$100 Million. Specifically, Appellants make the following misleading representations to this Court:

Tax Consequences:

- On page seven (7) of their brief, Appellants state that “the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest.”
- On pages thirty-eight to thirty-nine (38–39), Appellants devote a section of their brief to argue that the settlement will cause serious tax problems. They note that the “settling parties offered no evidence to refute the evidence of a likely tax disaster. Instead, their counsel reassured the court that they were ‘dedicated’ to preventing it.” *Id.* at 39.

Valuation:

- On page five (5), footnote five (5), of their brief, despite never having obtained a professional appraisal, Appellants state that the late James Brown’s assets have been valued at roughly \$80–120 Million.
- On page thirty-two (32) of their brief, Appellants note that the trust could be funded with \$100 Million.

See Final Brief of Appellants at pp. 5, 7, 32, 38-39.

Following the circuit court’s approval of the Settlement Agreement and after Appellants entered their notice of appeal, Russell L. Bauknight (“Mr. Bauknight”) engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust. This is the first

professional valuation and appraisal of the James Brown music assets since James Brown passed away on Christmas Day 2006. The valuation and appraisal work is now complete. As required by S.C. Code Ann. § 62-3-706, Mr. Bauknight filed the Supplemental Inventory and Appraisal at the Aiken County Probate Court (Supplemental Inventory and Appraisal, Appendix R. pp. 1-6). To protect the Estate and Trust, Mr. Bauknight filed the Supplemental Inventory and Appraisal under seal.

Furthermore, following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, the IRS continued to conduct an independent audit involving the valuation of the James Brown Estate and Trust. The IRS Auditors reviewed all estate tax issues surrounding the James Brown Estate and Trust, including the tax consequences of the subject Settlement Agreement. The Respondents received the IRS Proposed Estate Audit Examination Report ("IRS Audit") on December 27, 2010. (IRS Proposed Estate Audit Examination Report, Appendix R. pp. 7-11). Respondents and the IRS agreed to all adjustments concerning the IRS Audit, and the Respondents received the Final IRS Estate Closing Letter ("Closing Letter") on January 31, 2011.¹ (Final IRS Estate Closing Letter, Appendix R. pp. 12-15). As noted above, the Respondents received each of these documents *after* filing their initial brief on December 22, 2010.

As noted in the IRS Audit, after reviewing the settlement agreement, the IRS specifically concluded that, pursuant to the Internal Revenue Code, the charitable deduction applied and that "[t]he charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 11). Further, the IRS

¹ Because Appellants filed the initial tax return that was subject to the audit, the IRS as a matter of course separately notified the prior fiduciaries that the incorrect estate valuation had been corrected and that the audited return had been accepted. (Appendix R. pp. 13-14). Appellants have since informed Respondents that they disagree with the IRS Final Closing Letter.

Audit found that the marital deduction applied: “[t]he marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009.” (Appendix R. p. 10). Respondents argued in their brief that this deduction would apply and that it favored a finding that the Settlement Agreement was *just and reasonable*. Final Brief of Respondents, at 35-36. (The tax return previously filed by Appellants did not seek the marital deduction.) Finally, as noted in the Closing Letter, the Settlement Agreement resulted in zero tax liability to the Estate. (Appendix R. pp. 13-14).

The IRS Audit and Closing Letter show that the IRS rejected Appellants’ contention that the settlement agreement will cause additional tax liability, but instead, that the Estate is owed a \$10,000 federal tax refund due to Appellants’ overpayment. (R.p. 2760 (Estate Accounting filed by Appellants, first entry on the page: “US Treasury – payment towards Estate Taxes . . . \$10,000”); (Appendix R. p. 7 (“The report, though not final, shows that the estate is entitled to a refund.”); (Appendix R. pp. 12-15 (adopting audit, accepting return, and making final determination that no estate taxes are owed: “0.00.”)). Additionally, these documents further underscore Respondents position that the Appellants are not professional fiduciaries and are ill-equipped to manage the Estate and Trust.

The Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter reveal that on the date of death, the James Brown Estate and Trust were actually valued at roughly \$6.5 Million.² Referring to the intellectual property—royalty interests, reversion rights, etc.—the IRS Audit revealed that, “[v]aluation of these interests was corrected to fair market value based

² The Supplemental Inventory and Appraisal accounts for only probate assets; it does not include the home of the late James Brown that is valued at roughly \$1.2 Million. That is the case because at the date of his death, the Trust owned the home and trust assets are not considered probate assets. (The Trust still owns the home.) The date of death, gross estate value reported to the IRS included the home, as both probate and non-probate assets must be reported for tax return purposes. Accordingly, the Estate and Trust were valued at roughly \$6.5 Million. (Appendix R. p. 10).

upon expert opinion and financial analysis”—that is, the independent professional appraisal authorized by Mr. Bauknight, as audited and accepted by the IRS. (Appendix R. p. 9). Consequently, the IRS rejected Appellants’ prior inexpert notion that James Brown’s royalty interests and reversion rights were worth approximately \$84 Million dollars. Accordingly, the date of death valuation of these taxable interests was corrected from \$84 Million to \$4.697 Million.³ (Appendix R. p. 9). This IRS finding, based upon its own independent review and valuation, directly and incontrovertibly refutes Appellants’ contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80-120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record.

Although these documents were not presented (could not be presented) to the circuit court because they did not exist at that time, this Court should consider the evidence. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000) (noting “the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice”); *see also In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (“Normally, of course, [courts] are not required to consider evidence presented for the first time on appeal . . . [but] [i]t is within the discretion of the court . . . , however, to make limited exceptions to this

³ While this figure may appear low, it is the date-of-death value that controls for purposes of the Federal estate tax return and the probate inventory and appraisal. Furthermore, this final figure accurately accounts for the debts of James Brown including the outstanding bond executed by Mr. Brown during his lifetime whereby he exchanged the rights to his royalty stream for a lump sum payment of \$26 Million. Once the bond debt is retired, the royalty stream will flow to the Settlement Entity where it will be apportioned among the settling parties—which includes the charitable trust that will fund scholarships to needy children attending schools in South Carolina and Georgia.

rule when 'injustice might otherwise result.'" (citing and quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Here it would appear unjust for this Court to rely on Appellants' assertion that the Settlement Agreement will cause additional tax liability to the Estate when the IRS has clearly rejected that contention. Accordingly, these documents are relevant to the current appeal, as they are official records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief.

CONCLUSION

As the IRS has independently concluded, the Settlement Agreement does not create additional tax liability to the James Brown Estate. In fact, the Settlement Agreement has reduced the tax liability to the James Brown Estate. Due to the nature of the underlying proceedings, the ongoing probate record on which Appellants' base their appeal must be considered. Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission⁴ based upon their prior unsubstantiated position that the Estate was worth \$80-120 Million.

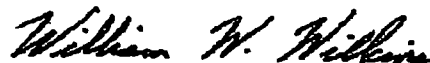
Alternatively, Respondents would respectfully request that this Court take judicial notice of these records for they were filed in a lower court or issued by the IRS in a related proceeding. *See Ins. Comm'n of S.C. v. New S. Life Ins. Co.*, 270 S.C. 612, 635-36, 244 S.E.2d 289, 301 (1978). Furthermore, pursuant to Rule 208(b)(7), SCACR, because the IRS Audit and Closing Letter were received after Respondents filed their initial brief, it would appear appropriate for this Court to recognize the IRS records as supplemental authority to Respondents' brief.

⁴ Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80-120 Million. (R. pp. 2879-80).

Respectfully submitted,



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as the Special Administrator and Special Trustee
for the Estate of James Brown and the James Brown
2000 Irrevocable Trust*

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May 6, 2011

Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

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

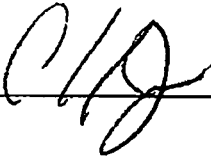
PROOF OF SERVICE

The undersigned certifies that a copy of **RESPONDENTS' MOTION TO SUPPLEMENT THE RECORD** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 6 day of May, 2011, to the address shown below.

James B. Richardson, Jr., Esquire
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

Tressa T. H. Hayes, Esquire
Post Office Box 7346
Asheville, North Carolina 28802

May 6, 2011.

A handwritten signature in black ink, appearing to be 'T.H.H.', is written over a horizontal line.

STATE OF SOUTH CAROLINA
In the Supreme Court

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

Appellate Case No. 2014-002222

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

AND

Susan D. Summer..... Respondent

v.

Alan Wilson, in his capacity as Attorney General of South Carolina..... Appellant,
and Applicant for Intervention Russell L. Bauknight, as Personal Representative of the
Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust..... Cross-Appellant.

PROOF OF SERVICE

The undersigned hereby certifies he has served each of the following named individuals with a copy of the pleading indicated below via email and U.S. mail with postage in full prepaid on February 23, 2015:

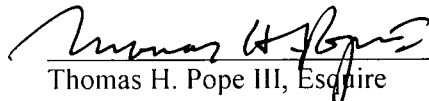
COUNSEL SERVED:

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PLEADING SERVED:

RESPONDENT SUMMER'S RETURN TO MOTION TO TO WITHDRAW/DISMISS APPEAL
in Applicant for Intervention Russell L. Bauknight, as PR 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 SC, Defendant AND Susan D. Summer, Respondent v. Alan Wilson, in his capacity as Attorney General of SC, Appellant, and Applicant for Intervention Russell L. Bauknight, as PR of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust, Cross-Appellant - (**Appellate Case No. 2014-002222**) dated February 23, 2015.


Thomas H. Pope III, Esquire
Pope & Hudgens, P.A.
PO Box 190 – 1508 College Street
Newberry, SC 29108

February 23, 2015