

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.

**MOTION AND MEMORANDUM SEEKING CONFIRMATION THAT
ORDER OF FEBRUARY 19, 2015 STAYING JAMES BROWN AIKEN
CASES DOES NOT STAY FOIA CASES AND "CASE 4900"**

TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE
COURT:

Appellant respectfully moves this Honorable Court for an Order as follows:

1. Confirming that the Order of this Court dated February 19, 2015 (the "February 19 Order") does not stay Richland County Case 2010-CP-40-4900 ("Case 4900"), filed by the Attorney General ("AG") and certain respondents against Robert Buchanan, Jr. ("Buchanan") and appellant on May 19, 2010.
2. Confirming that the February 19 Order does not stay appellant's 2011 FOIA case the AG and Estate are seeking to consolidate with Case 4900.
3. Confirming that the February 19 Order does not stay appellant's 2011 FOIA case now consolidated with Case 4900.

The grounds of this motion are that appellant and Buchanan will be damaged if the above cases are stayed, and both justice and judicial economy will be served by the FOIA cases and Case 4900 proceeding while this appeal is pending.

This motion is supported by Exhibit A, attached hereto; the affidavit of Appellant filed January 9, 2015; the motion of Appellant filed herein on January 26, 2015; and the memorandum set out below.

Memorandum in Support of Motion

For the reasons set out in Federal Case No. 3:08-cv-00014-WOB (the "Forlando Suit") and the record in this case and Appellate Case No. 2014-000250, the stay imposed on James Brown Aiken County cases by its February 19 Order should be found not to apply to the two FOIA cases pending in Richland County or Case 4900.

On January 2, 2008, respondent Forlando Brown ("Forlando") sued the 2000 Trust. Forlando's amended complaint sought damages against Buchanan and appellant.

On May 19, 2010, appellant and Buchanan were sued by the AG, the Estate, through Russell Bauknight ("Bauknight"), respondents Tommie Rae Hynie ("Tommie Rae") and Terry Brown ("Terry"), and others in Case 4900.

Since May 8, 2013, at the request of counsel for the AG, Tommie Rae and Terry,

the Honorable L. Casey Manning (“Judge Manning”) has declined repeated requests for a hearing on the two FOIA cases and Case 4900.

On June 13, 2013, Buchanan and appellant were enjoined from participating in most Aiken cases by the Honorable Doyet A. Early, III (“Judge Early”).

In 2013, Bauknight asserted that Forlando had done nothing to damage the 2000 Trust, and that Buchanan’s and appellant’s claims for attorneys’ fees and costs in the Forlando Suit were “meritless and frivolous.”

By order dated October 8, 2013, Judge Early “double approved” the \$500,000 which was paid to Buchanan; confirmed that no disgorgement was appropriate under *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and left open the possibility of overturning Buchanan’s “settlement” in Case 4900.

In October 2014, Bauknight told Judge Early appellant was not entitled to be paid even her unpaid 2007 SA fee until Case 4900 was concluded.

In November 2014, Judge Early announced he and Judge Manning would order joint mediation in Case 4900 and Aiken Case 2013-CP-02-1337 (“Case 1337”).

On January 5, 2015, Bauknight and Forlando filed briefs in the Forlando Suit. Both asserted Buchanan and appellant were not entitled to any attorneys’ fees for defending the 2000 Trust from Forlando’s 4-year attempt to reinstate respondents David Cannon and Albert Dallas. Forlando relied on Bauknight’s assertion their claim was “meritless and frivolous.” Appeal:14-1713, Doc. 37, Doc. 38, filed 01/05/2015.

On January 13, 2015, Judge Early declared Tommie Rae to be Brown’s spouse. AG Wilson advised Appellant he would not seek reconsideration of the Order.

On January 20, 2015, Judge Early and Judge Manning filed the joint mediation order. Case 4900 plaintiffs, who had been exempted by Judge Manning from attending a 2012 mediation, were ordered to attend.

On February 19, 2015, this Court stayed the Aiken James Brown cases.

On February 20, 2015, the mediator indicated he is unwilling to proceed with mediation because of uncertainty resulting from the February 19 Order.

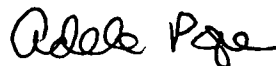
If the parties are required to attend mediation in Case 4900, there is a great likelihood that some or all of the issues raised in that suit can be resolved. If mediation is unsuccessful, that five-year-old case should proceed to trial.

Appellant's and Buchanan's professional insurance was cancelled by the filing of Case 4900. Appellant's career has been put on hold by the allegations. Appellant's FOIA rights have been denied since 2011.

Conclusion

Fairness and judicial economy will be served by this Court's confirming that the February 19, 2015 Order should not be read to stay Case 4900, and that Case 4900 and the FOIA cases should proceed.

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

February 24, 2015

Adele Pope

Exhibit A

From: Karl Folkens <karl@folkenslaw.com>
Sent: Friday, February 20, 2015 1:59 PM
To: Adele Pope; Ken Wingate; Newsome, William G.; Adam T. Silvernail; agwilson@scag.gov; rbuchananjr@atlanticbbn.net; FCrawford@richardsonplowden.com; Mark V. Gende
Cc: Nell Folkens
Subject: Re: MEDIATION TENTATIVELY SCHEDULED FOR MARCH 23

Attorneys,

I was initially told that the circuit judges wanted a comprehensive mediation in an effort to resolve the "entire James Brown matter."

It was my understanding the circuit judges did not want the mediation piecemealed, which is why the Order as to mediation was joint-captioned and jointly signed.

I am the last person to discern what was intended by the Supreme Court's Order yesterday, but I read the effect of it to be a stay of a mediation which was to be held at the same time as the Richland County case. It's obvious the Supreme Court is concerned about something significant in the Aiken County case.

I do not want any of us to be in contempt of the stay directive. Therefore, out of an abundance of caution, I am staying the mediation efforts in both cases. If you want to seek a clarification from Judge Manning and/or the Chief Justice, please do so. It is not appropriate for me to do that for you.

Also, without a clarification, we'd spend way too much of our time in the actual mediation speculating on what the Supreme Court was intending to do with the Aiken County case that we wouldn't be very productive.

It is better not to have the mediation in the Richland County case alone, and then proceed at a later time with scheduling it if it was the intent of the Supreme Court not to stay that matter, than it is to proceed with it to learn that one or more judges/justices will be critical that we proceeded despite the stay Order.

Please keep me posted on any efforts you undertake to clarify the status of mediation in the Richland County case.

Karl

Karl A. Folkens
karl@folkenslaw.com
www.folkenslaw.com
843.665.0100



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On Fri, Feb 20, 2015 at 11:25 AM, Adele Pope <adele@popelawfirm.com> wrote:

Dear Karl,

We have carefully reviewed the Order of the South Carolina Supreme Court issued yesterday in Appellate Case Nos. 2013-001649 and 2014-000250, and believe that it does not have any impact on Judge Manning's Order directing the parties in Case 4900 to appear at mediation to be scheduled by you.

The Supreme Court was fully aware of the pending Case 4900 mediation and did not elect to include any Richland County matter in the Orders.

We believe this to be a clear mandate to proceed with the Case 4900 mediation, and for Judge Manning to proceed with the FOIA cases.

I am also willing to join with Billy Newsome and Fred Crawford in asking the Supreme Court to allow Case 1337 to proceed as part of the mediation. Billy is out until the 24th, and I will try to speak to him about this when he returns.

Meanwhile, we look forward to receiving from you the date for the Case 4900 mediation, and as much of the 1337 mediation as remains a part of that.

As I notified you and all counsel this week, to be efficient I will be coordinating and articulating our positions as to all of these matters.

Thank you very much. We look forward to receiving the date from you.

Best,
Adele

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Persons.

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Trust u/a/d August 1, 2000, Respondents.

PROOF OF SERVICE

I certify that on the 24th day of February, 2015, I have served the MOTION
AND MEMORANDUM SEEKING CONFIRMATION THAT ORDER OF
FEBRUARY 19, 2015 STAYING JAMES BROWN AIKEN CASES DOES NOT
STAY FOIA CASES AND "CASE 4900" on the parties 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:

ATTORNEYS OF RECORD FOR RESPONDENTS OR RESPONDENTS

John A. Donsbach, Sr., Esquire
Post Office Box 212139
Martinez, GA 30917-2139

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

Eugene C. Covington, Jr., Esquire
P. O. Box 2343
Greenville, SC 29602

Robert N. Rosen, Esquire
18 Broad Street, Suite 201
Charleston, SC 29401

J. David Black, Esquire
William W. Wilkins, Esquire
Burl F. Williams, Esquire
William G. Newsome, Esquire
PO Drawer 2426
Columbia, South Carolina 29202-2426

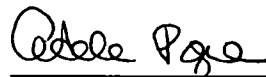
Peter Shahid, Jr., Esquire
89 Broad Street
Charleston, South Carolina 29401

OTHERS

The Honorable Alan Wilson
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Robert L. Buchanan, Jr., Esquire
212 Newberry Street, N.W.
Post Office Box 463
Aiken, South Carolina 29802

Sheila Bias, Esquire
Frederick Crawford, Esquire
Richardson, Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, South Carolina 29202
Attorneys for Respondent Russell L. Bauknight, Individually



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com

February 24, 2015