

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAY 20 2015

SC 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 ON AUGUST 1, 2000,.....DEFENDANTS,

OF WHOM RUSSELL L. BAUKNIGHT IS THE.....RESPONDENT.

**MOTION TO STRIKE RULE 204 MOTION OR,
IN THE ALTERNATIVE, DENY THE RULE 204 MOTION**

Russell L. Bauknight, Trustee of the James Brown August 1, 2000, Irrevocable Trust Agreement (“Trust”) hereby moves this Court to strike the Rule 204, SCACR, *pro se*¹ motion of Jacquelyne Hollander (“Movant”), or in the alternative, deny the same.

¹ Movant is an Illinois resident; at all times, she has been represented by Illinois counsel, a lawyer named Donald Rosen. Her Illinois counsel has not appeared *pro hac vice* and does not have a South Carolina bar license. He has attempted to directly interact with the court of appeals and received notice that he cannot do so unless he first moves for *pro hac vice* admission. (March 10, 2014 letter from Court of Appeals, attached as *Exhibit A*). He has not done so. Movant’s local counsel is a gentleman named O. Cyrus Hinton; Mr. Hinton was tragically killed just a few weeks ago.

BACKGROUND INFORMATION

Movant filed a lawsuit against the Trust, in the Aiken County Court of Common Pleas, seeking to establish a partnership interest in the Trust. Movant alleged that she and the late James Brown co-founded the Trust as a charitable partnership, and that as the sole surviving partner she was entitled to the alleged partnership assets. Upon motion of the Trust, and after oral argument, the circuit court dismissed the lawsuit pursuant to Rule 12(b)(6), SCRPC. The circuit court ruled that: (1) the legal theory advanced by Movant failed as a matter of law, and (2) the pleadings showed on their face that the action was time barred by the applicable statute of limitations. Movant filed a notice of appeal and the case proceeded to the court of appeals.

After briefing, on April 1, 2015, the court of appeals affirmed the circuit court's decision on the basis that the action was barred by the statute of limitations. (*Hollander v. The Irrevocable Trust Established by James Brown on August 1, 2000*, Unpublished Op. No. 2015-UP-169, April 1, 2015, attached as **Exhibit B**). Through counsel, Movant filed a Rule 221(a) petition for rehearing. The court of appeals received the petition for rehearing on April 16, 2015, and sent a deficiency letter noting that the petition did not contain a certificate of service. After the filing of the petition for rehearing, Mr. Hinton, Movant's local counsel, was killed. On April 14, 2015, this Court entered an Order appointing Carl L. Solomon, Esquire, to assume responsibility for Mr. Hinton's clients. Appointment counsel received the court of appeals' deficiency letter, and on May 4, 2015, cured the deficiencies by refiled the petition for rehearing with the certificate of service. The petition for rehearing is currently pending at the court of appeals.

THE MOTION SHOULD BE STRICKEN

Rule 204(b) provides a mechanism for this Court to take jurisdiction over an appeal pending at the court of appeals. Importantly, the Rule only allows this Court to exercise the authority when it is done so “before [the case] has been determined by the Court of Appeals.” Rule 204(a), SCACR. The subject motion is procedurally improper because the court of appeals has issued an opinion and that opinion is subject to a petition for rehearing. Consequently, Movant cannot seek to transfer this case pursuant to Rule 204, SCACR. Accordingly, the Trust respectfully requests that the Court issue an Order striking the subject motion, or in the alternative, denying the same.

Respectfully submitted,



J. David Black, SC Bar No. 68499
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
DBlack@nexsenpruet.com

Burl F. Williams, SC Bar No. 77901
NEXSEN PRUET, LLC
55 E. Camperdown Way, Suite 400
Greenville, South Carolina 29601
(864) 282-1165
BWilliams@nexsenpruet.com

Attorneys for Respondent

May 18, 2015

Greenville, South Carolina

EXHIBIT A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 10, 2014

Donald Rosen, Esquire
96 N. Kennedy Drive
Suite 203
Carpentersville IL 60110

Re: Jacquelyne Hollander v. The Irrevocable Trust Established by James Brown
Appellate Case No. 2013-001856

Dear Counsel:

This Court has received a filing from you in this matter. Because you are not admitted to practice law in South Carolina, you must file an application for admission pro hac vice and have a member in good standing of the South Carolina Bar associated with you as attorney of record. The specific requirements are outlined in Rule 404 of the South Carolina Appellate Court Rules (SCACR) and are available at www.sccourts.org/courtreg. Additionally, the application form appears directly below the rule on the website.

The **original** application for admission pro hac vice with an **original** certificate of good standing of the Bar from the highest court of any state or the District of Columbia in which you are admitted to practice law must be filed with this Court. A **copy** of the completed application form, including the \$250 filing fee and any required attachments, must be filed with the South Carolina Supreme Court Office of Bar Admissions. The Clerk of the Supreme Court will certify to this Court that the completed application and fee have been received.

In addition, the South Carolina attorney with whom you will be associated must serve and file a motion to admit you pro hac vice. The motion must be in compliance with the requirements of Rule 240, SCACR, to include the original motion, six copies, proof of service on all other parties, and the filing fee of \$25.

The required documents should be served and filed within thirty (30) days of the date of this letter. If you have any questions, please contact this office:

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Oshun Cyrus Hinton, Esquire
J. David Black, Esquire
Burl F. Williams, Esquire

EXHIBIT B

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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 on
August 1, 2000, Defendants,

Of whom Russell L. Bauknight is the Respondent.

Appellate Case No. 2013-001856

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2015-UP-169
Submitted January 1, 2015 – Filed April 1, 2015

AFFIRMED

Oshun Cyrus Hinton, of Hinton and Associates, P.A., of
Rock Hill, for Appellant.

J. David Black, of Columbia, and Burl F. Williams, of
Greenville, both of Nexsen Pruet, LLC, for Respondent.

PER CURIAM: Jacquelyne Hollander appeals the dismissal of her complaint with prejudice, arguing the statute of limitations was estopped, the trial court erred in ruling a partnership for charitable purposes cannot be a legal partnership, and the trial court should have allowed her to amend her complaint. Because Hollander does not challenge the trial court's finding that her complaint was not timely filed within the statute of limitations and her argument regarding estoppel is not preserved, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 398, 593 S.E.2d 183, 189 (Ct. App. 2004) ("Any unappealed portion of the trial court's judgment is the law of the case, and must therefore be affirmed."); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (stating an issue raised to but not ruled on by the trial court must be raised in a Rule 59(e), SCRCP, motion in order to preserve the issue for appeal); Rule 220(c), SCACR (stating an "appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal"); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."); *id.* (noting "the two issue rule is applicable in situations not involving a jury").¹

AFFIRMED.²

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

¹ We decline to address Hollander's remaining arguments. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate courts need not address remaining issues when determination of a prior issue is dispositive).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED
MAY 20 2015
SC Court of Appeals

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

JACQUELYN 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,

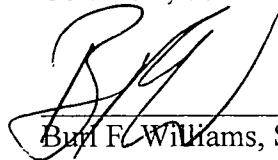
OF WHOM RUSSELL L. BAUKNIGHT IS THE.....RESPONDENT.

PROOF OF SERVICE

I certify that I have served the MOTION TO STRIKE RULE 204 MOTION OR,
IN THE ALTERNATIVE DENY THE RULE 204 MOTION, by depositing a copy of
same in the United States Mail, on May 18, 2015, postage prepaid and addressed to the
following:

Jacquelyne Hollander
1850 White Oak Drive
Algonquin, Illinois, 60102

Mr. Carl L. Solomon, Esquire
P.O. Box 1866
Columbia, South Carolina, 29202


Burl F. Williams, SC Bar #77901
NEXSEN PRUET, LLC
Post Office Drawer 10648
Greenville, South Carolina 29603
(864) 370-2211

May 18, 2015

6

NEXSEN | PRUET

Burl F. Williams
Associate

May 18, 2015

RECEIVED

MAY 20 2015

SC Court of Appeals

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: *Jacquelyne Hollander v. The Irrevocable Trust Established by James Brown*; Appellate Case No. 2013-001856

Dear Mr. Shearouse:

Please find enclosed the original and six copies of MOTION TO STRIKE RULE 204 MOTION OR, IN THE ALTERNATIVE DENY THE RULE 204 MOTION in the above-referenced matter. Please return a file stamped copy in the enclosed self-addressed, postage paid envelope.

By copy of this letter, I am serving Appellant's counsel with a copy of the same.

Sincerely,

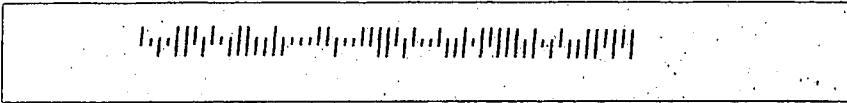
Burl

Burl F. Williams
BFW/vgp

Enclosures

cc: Counsel of Record
South Carolina Court of Appeals

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh



Hasler

FIRST-CLASS MAIL

05/18/2015

US POSTAGE

\$00.90⁰⁰



ZIP 29601
011D11635376

NEXSEN | PRUET

P. O. Drawer 10648
Greenville SC 29603-0648

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

44146-11

RECEIVED
MAY 20 2015
SC Court of Appeals