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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	
)	CASE NO. 2008-CP-02-1647
)	
IN RE:)	ORDER AUTHORIZING SETTLEMENT OF
)	THE BROWN CHILDREN'S UNDUE
THE ESTATE OF JAMES BROWN)	INFLUENCE CASES AND DISMISSING
A/K/A JAMES JOSEPH BROWN)	CASES WITH PREJUDICE
)	

SC Court of Appeals

This matter is before the Court on a joint motion filed by the Estate of James Brown ("Estate") and James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000 ("Trust"), by and through its fiduciaries, Russell L. Bauknight, Personal Representative and Trustee ("Bauknight"), and David C. Sojourner, Jr., Limited Special Administrator and Limited Special Trustee ("Sojourner") (collectively, the "Fiduciaries"), and Petitioners Tonya Brown, a/k/a Sarah LaTonya Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, and Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar ("Petitioners") (collectively the "Moving Parties").

The Moving Parties request an order confirming the authority of the Estate and Trust to enter into two settlement agreements with Petitioners which would dispose of Petitioners' challenges to the Will and Trust (the "Settlement Agreements"); entering the Settlement Agreements into the record, in satisfaction of Rule 43(k), SCRCP; dismissing with prejudice all challenges to the Will and Trust filed by Petitioners, as amended, pursuant to Rule 41(a)(2), SCRCP; and dismissing Petitioners as parties to the above-captioned action.

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¹ This Order does not dispose of all claims to set aside the Will and Trust, as Tommie Rae Brown also has Petitions to Set Aside Informal Probate and to Set Aside the Trust Agreement, filed on December 20, 2007, which are not resolved by the Settlement Agreements and will continue under this case caption.

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Daryl Brown and Terry Brown were the only parties who filed oppositions to the Joint Motion. See Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015, and Amended Response of Terry Brown, filed on or about December 30, 2015.

The Court conducted a hearing on the Joint Motion on January 14, 2016 in Aiken, South Carolina. During the hearing, the Court heard oral argument from counsel for all parties and received sworn testimony from counsel for Petitioners, Mr. Louis Levenson.

DISCUSSION

I. BAUKNIGHT AND SOJOURNER, AS REPRESENTATIVES OF THE ESTATE AND TRUST, HAVE AUTHORITY TO ENTER INTO THE SETTLEMENT AGREEMENTS.

The Moving Parties sought confirmation pursuant to S.C. Code Ann. Section 62-3-105² that Mr. Bauknight, as Personal Representative and Trustee, and Mr. Sojourner, as Limited Special Administrator and Limited Special Trustee, had authority to enter into the Settlement Agreements on behalf of the Estate and Trust.

On October 1, 2013, the Court appointed Messrs. Bauknight and Sojourner as fiduciaries of the Estate and Trust (the "Appointment Order"). The Appointment Order does not expressly list a power to settle claims; however, the Court finds such power is inherent in both the Appointment Order and applicable legal authority.³ In addition, Decedent's Irrevocable Trust Agreement, Article X(19), authorizes the trustee, in his fiduciary discretion, to "compromise,

² This statutory provision enables estate representatives, including personal representatives and trustees, to request rulings which assist in the administration of estates and trusts. The Court finds the Joint Motion is appropriately asserted under this statute.

³ See S.C. Code Ann. § 62-3-715(8) (authorizing a personal representative to "settle claims" against the estate); S.C. Code Ann. § 15-51-42(A) ("Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions"); and S.C. Code Ann. § 62-7-816(14) (granting trustees with the power to "pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust").

adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best." The Court finds there are no other fiduciaries or representatives with capacity to enter into agreements on behalf of the Estate and Trust. Therefore, the Court confirms that Messrs. Bauknight and Sojourner are duly authorized to enter into the Settlement Agreements on behalf of the Estate and Trust.⁴

This Court confirms that Messrs. Bauknight and/or Sojourner are empowered to bind the Estate and Trust to the subject Settlement Agreements, as well as resolve, in whole or in part, other Will and Trust Challenges, so long as the fiduciary determines such agreements to be appropriate and in the best interests of the Estate and Trust.⁵

II. THE SETTLEMENT AGREEMENTS ARE IN THE BEST INTERESTS OF THE ESTATE AND TRUST.

Based on the Court's review of the pleadings, affidavits of record, transcripts of depositions, and discovery submitted by the parties, and after considering the testimony of Louis Levenson, Esquire, counsel for Petitioners, the Court finds the Settlement Agreements to be appropriate and in the best interests of the Estate and Trust.

As a preliminary matter, the Settlement Agreements fully resolve pending claims that, if successful, would significantly alter or invalidate Decedent's 2000 estate plan. The Court is informed that discovery is ongoing—limited written discovery has been conducted between the parties and certain depositions have been taken with others being scheduled. The Parties have informed the Court that additional discovery will be time-consuming and extremely expensive.

⁴ The Court notes that because the Joint Motion was not filed pursuant to Section 62-3-1101 of the Probate Code, and the Court is not being asked to "approve" the Settlement Agreements, the Settlement Agreements are not binding on parties other than the Moving Parties.

⁵ Messrs. Bauknight and Sojourner are free to seek guidance from the Court pursuant to S.C. Code Ann. § 62-3-105 with regard to future settlement agreements, but are not required to do so.

In addition, the LSA pointed out during the hearing that if Petitioners were successful on their claims, and Decedent's 2000 Will and Irrevocable Trust Agreement were set aside or invalidated, the Court would then have to consider the enforceability and validity of Decedent's prior estate plans, such as the 1999 estate plan consisting of a will and revocable trust agreement. Trying the current undue influence cases, seeking to set aside the 2000 estate plan of Decedent, and if successful, subsequently seeking to enforce the in terrorem clauses against Petitioners, will cost the Estate and Trust substantial legal fees, will require lengthy discovery, and will involve at least a week, if not more, of judicial resources for trial. If the 2000 Will and Trust are overturned, additional estate litigation involving Decedent's prior estate plans will result. Undoubtedly, additional trials on the enforceability and validity of prior estate plans, such as Decedent's 1999 estate plan, will be as costly if not more so. Settlement at this stage saves substantial estate and trust assets and eliminates all risks to the Estate and Trust that Petitioners might succeed in setting aside Decedent's estate plan.

The Settlement Agreements also have the beneficial effect of eliminating challenges asserted by Petitioners, Decedent's children, who have intimate and deep personal knowledge of Decedent, his testamentary intentions, and the manner in which he operated his businesses. The Estate and Trust's settlements with these Petitioners are also valuable because of Petitioners' close connection to the local community and personal relationships with key witnesses. Furthermore, Petitioners have agreed, through the express terms of their Settlement Agreements, to support the LSA in his ongoing defense of the Estate and Trust in other still-pending Will and

Trust Challenge actions.⁶ Petitioners' support is in addition to the already-existing, and acknowledged,⁷ support of the Estate and Trust by Terry Brown and Daryl Brown.

For these reasons, the Court finds the Settlement Agreements are in the best interests of the Estate and Trust to the extent they secure a prompt, certain, and favorable resolution of the Petitioners' challenges to the validity of the Will and Trust, save potential time, expenses, and resources of the Estate and Trust, and reduce the expenditure of judicial time and resources. The Estate and Trust's one-time payment of \$37,500 to each Petitioner, while undisputedly valuable to Petitioners, is easily justified when compared to the foreseeable litigation costs and risk to the Estate and Trust if these actions were tried before a jury.

Daryl Brown argued in his opposition to the Joint Motion that the Settlement Agreements are unfair because they purportedly reward children of Decedent who opposed Decedent's will and trust instrument whereas Daryl "gets nothing" in spite of his "support" for these instruments and aide to the Estate and Trust since Decedent's death.⁸ Daryl Brown asked "[a]t a minimum," for "payment equal to that given to [Petitioners]."⁹ Because this Court does not have authority in the context of the Joint Motion before the Court to order the Estate and Trust to compensate Daryl Brown for his alleged support¹⁰ of Decedent's testamentary instruments, the Court

⁶ See Tommie Rae Brown's undue influence action (C/A No. 2008-CP-02-01647); Tommie Rae Brown's elective share and omitted spouse actions (C/A Nos. 2013-CP-02-02849 and -02850); and James Brown II's omitted child claim (C/A No. 2013-CP-02-02851).

⁷ See Transcript of Hearing, January 14, 2016, at p. 16, lines 5-11, p. 24, line 24 - p. 25, line 3, p. 26, lines 11-19; p. 27, lines 7-15; p. 29, lines 3-15

⁸ See Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015 ("[T]he proposed settlement rewards bad behavior and punishes those named in the will who supported the will.").

⁹ *Id.*

¹⁰ The Court notes that Daryl Brown contested the validity of the 2000 Will and Trust in this litigation as a named plaintiff. Daryl and Terry Brown were both parties to the 2009 settlement agreement, which purported to overturn the 2000 Will and Trust and replace that estate plan with a different one. Daryl and Terry Brown also advocated

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declines to address Daryl's request for compensation as it appears improper. For that same reason, Terry Brown's arguments, to the extent they seek compensation for his past support of the Will and Trust, are improper and the Court declines to address those requests for compensation. The Estate and Trust's failure to compensate Terry Brown and Daryl Brown does not constitute reasonable grounds to prohibit the Moving Parties from entering into the Settlement Agreements.

Terry Brown asserted during the hearing the South Carolina Supreme Court would reverse the Settlement Agreements for the same reasons it reversed the 2009 Compromise Agreement in 2013. *See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Settlement Agreements presently before the Court are substantively and materially different from the 2009 Compromise Agreement and therefore the Supreme Court's concerns about the 2009 Compromise Agreement are not a concern here. First, in 2009, the moving parties asked the Court to approve the Compromise Agreement pursuant to S.C. Code Ann. § 62-3-1101. Here, the Moving Parties have not asked the Court to "approve" the Settlement Agreements and, in fact, the Settlement Agreements bind only the Moving Parties.

Second, and more importantly, the 2009 Compromise Agreement materially changed, and effectively rewrote, Mr. Brown's estate plan and therefore strayed from the testamentary intentions of Decedent. For example, the 2009 Compromise Agreement (a) purported to settle all will and trust challenges, including those filed by alleged heirs of Decedent who were not acknowledged in the Will or Trust, (b) acknowledged Tommie Rae Brown as Decedent's

approval of the Settlement Agreement as parties in *Wilson v. Dallas*. Daryl and Terry were either adverse parties in a proceeding for the probate of the Decedent's Will and Trust and/or contested the validity of the Decedent's Will and Trust. Their own insistence that the in terrorem clause be exercised against anyone challenging the Will and Trust, if accepted by the Court, would place a similar duty upon the Estate and Trust to enforce the in terrorem clause against Daryl and Terry Brown.

“surviving spouse,” and (c) awarded Tommie Rae Brown and the six children named in the Will a significant portion of Decedent’s Estate. In addition, the 2009 Compromise Agreement called for the creation of a new trust to be known as the James Brown Legacy Trust designed to “receive, hold, manage and be authorized to sell the James Brown Assets.”

The Settlement Agreements presently before the Court do not in any way alter, modify, or amend the terms or distribution scheme of Decedent’s Will or Trust. They do not purport to resolve all pending Will and Trust Challenge cases and do not alter the testamentary intentions of Decedent. Rather, they resolve pending challenges to set aside Decedent’s estate plan brought only by Petitioners through the Estate and Trust’s payment of what the Court considers to be a “nuisance value” settlement. The Settlement Agreements leave intact Decedent’s express intention to devise all of his tangible personal property to certain named heirs. The Settlement Agreements do not disturb Decedent’s express intention of pouring over all remaining Estate assets into an irrevocable trust designed to benefit the education of his grandchildren and qualified poor and financially needy children seeking education in Georgia and South Carolina.

Rule 43(k), SCRPC, enables the Court to bind parties to a private settlement agreement by entering the settlement in the record. In Section XVIII of the Brown Children Settlement Agreement and Section XVII of the Fegan Settlement Agreement, Petitioners consented to submit the Settlement Agreements to the Court pursuant to the procedures set forth in Rule 43(k), SCRPC. Accordingly, the Court confirms that (i) Messrs. Bauknight and Sojourner have authority to enter into the Settlement Agreements, and further finds that (ii) the Settlement Agreements are appropriate and in the best interests of the Estate and Trust, and (iii) based on the consent of all Moving Parties, the Court hereby incorporates the Settlement Agreements into the

record in the above-captioned action. These Settlement Agreements are therefore binding on all Moving Parties pursuant to Rule 43(k), SCRPC.

III. SETTLEMENT IS NOT BARRED BY THE FIDUCIARIES' FAILURE TO ENFORCE THE IN TERROREM CLAUSES BECAUSE THERE IS RECORD EVIDENCE THAT PETITIONERS HAD PROBABLE CAUSE TO FILE THE UNDUE INFLUENCE ACTIONS.

The Moving Parties' Joint Motion was opposed by only Daryl Brown and Terry Brown, both of whom are acknowledged children of Decedent and are specifically named in Decedent's testamentary instruments. Both oppositions center around an argument that settlements with challenging parties contradict the *in terrorem* clauses, or "no contest" clauses, contained in Will (*see* 2000 Last Will and Testament at Item X) and Trust (*see* 2000 Trust at Article XXI) and therefore should not be permitted by this Court.¹¹ Terry Brown also goes as far as to say the Estate and Trust's failure to enforce the *in terrorem* clauses may amount to a breach of fiduciary duty.¹²

There is no dispute by any of the parties that *in terrorem* clauses are enforceable in the State of South Carolina. *See Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 12, 633 S.E.2d 722, 725 (2006). However, such clauses need not be invoked and cannot act as a bar to a petitioner's recovery where the petitioner has probable cause to contest the testamentary instruments. *See* S.C. Code Ann. § 62-3-905, 62-7-605.

As established above, the Court has already concluded the Fiduciaries have authority to enter into the Settlement Agreements and, further, the Settlement Agreements are in the best

¹¹ *See* Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015 ("Th[e] proposed settlement is in contradiction of the In Terrorem clause contained in the will."), and Amended Response of Terry Brown to Joint Motion filed on or about December 30, 2015 at pp. 3-11 (arguing the personal representative and trustee have a duty to enforce the *in terrorem* clauses).

¹² *See* Amended Response of Terry Brown to the Joint Motion at § 3.

interests of the Estate and Trust. In addition, sufficient evidence exists in the record which would have enabled Messrs. Bauknight and Sojourner to reasonably conclude probable cause existed in relation to Petitioner's Will and Trust Challenges.

In *Wilson v. Dallas*, the Supreme Court addressed what it perceived as a lack of evidence in the matter as it related to the ability of Petitioners to invoke the good faith, probable cause exception to enforcement of in terrorem clauses in Decedent's Will and Trust. *Wilson v. Dallas*, 403 S.C. at 437-440, 743 S.E.2d at 760-762. The Supreme Court stated:

Although proof of a claim is not required, we believe something more than a subjective belief or a mere allegation is necessary to avoid the potential for collusion among disinherited or disgruntled family members who wish to dispose of the testator's estate plan and substitute it with one more to their liking.

Id. at 436, 743 S.E.2d at 760.

The Supreme Court further defined its analysis as follows:

However, it is universally acknowledged that full proof of the asserted claims is not required because the *reason d'etre* for the [family settlement] statute is to dispense with the necessity of litigating the case on the merits. The circuit court's duty was not to decide the ultimate question of the merits of the undue influence and other claims; rather, the statutory standard is whether the proposed compromise agreement resolves a good faith controversy and whether the agreement is just and reasonable. (citations omitted).

Id.

The Supreme Court's analysis in *Wilson v. Dallas* focused on whether a good faith controversy existed sufficient to justify a settlement "that seeks to vitiate the decedent's entire estate plan." *Id.* at 440, 743 S.E.2d at 762 (citations omitted). The standard necessary for approval of the May 26, 2009 Compromise Agreement, as addressed in *Wilson v. Dallas*, is higher than the one necessary for the Court to grant the present motion. In contrast to the May 26, 2009 Compromise Agreement addressed by the Supreme Court, the settlements presently before the Court do not rewrite or modify any term of the 2000 Will and Trust. Rather, the

settlement agreements simply allow the Petitioners to drop their Will and Trust challenges against the Estate and Trust in exchange for monetary payments from the Estate and Trust. Requiring the Moving Parties to litigate this matter into perpetuity would serve no useful purpose other than to unnecessarily prolong costly litigation. Such result would be unjust and harmful to the Estate and Trust.

At oral argument on the Moving Parties' Joint Motion, Mr. Louis Levenson, counsel for Petitioners,¹³ testified regarding his efforts to investigate Petitioners' claims prior to their filing of the Petitions in the undue influence actions in order to establish probable cause to challenge the estate plan. His testimony is sufficient to establish the existence of a good faith controversy as to whether Petitioners had probable cause to initiate the above-captioned legal actions and helps to establish that the Settlement Agreements are just and reasonable.

Mr. Levenson testified he conducted an extensive investigation before he filed the claims at issue.¹⁴ As a part of that investigation, Mr. Levenson interviewed the following persons: Elif Crawford, one of Decedent's secretaries¹⁵; Jeff Allen, Decedent's booking agent for shows and tours on behalf of Universal Attractions¹⁶; Tommie Rae Brown, Decedent's alleged surviving spouse¹⁷; Loic Yanel, a European tour promoter¹⁸; Dr. Tommy Richardson, a physician in

¹³ Mr. Levenson testified that his original clients included Deanna Brown Thomas, Yamma Brown Lumar, Vanisha Brown, Larry Brown, Daryl Brown, Terry Brown, Tonya Brown, Romunzo Brown, and Forlando Brown. See Hearing Transcript, January 14, 2016, at p. 43, lines 5-16.

¹⁴ *Id.* at p. 43, lines 17-24, p. 71, line 20 – p. 72, line 5.

¹⁵ *Id.* at p. 48, lines 2-4, p. 63, lines 7-19.

¹⁶ *Id.* at p. 48, lines 4-11, p. 64, lines 3-13.

¹⁷ *Id.* at p. 49, lines 1-8, p. 62, line 16 – p. 63, line 19.

¹⁸ *Id.* at p. 49, lines 9-16, p. 59, lines 16-23.

Atlanta, Georgia¹⁹; Reverend Al Sharpton, a close friend and confidante of Decedent²⁰; and Joseph Lizzio of Morgan Stanley in New York, New York, who acted as an agent or broker for Decedent.²¹ Mr. Levenson also discussed the factual foundation of Petitioners' claims with his clients, including Terry Brown and Daryl Brown.²²

Mr. Levenson testified it became apparent to his clients in December 2007 that certain people who were close to Decedent, and who also held confidential relationships with him,²³ were involved in preparing documents for Decedent to sign.²⁴ These persons included David Cannon, Albert Bradley, and Buddy Dallas.²⁵ One such purported document, allegedly prepared by Messrs. Cannon, Bradley and Dallas, was a blank deed.²⁶ Mr. Levenson testified that some of the witnesses he interviewed were also aware of contracts, some oral and some written, prepared by Messrs. Cannon, Dallas, and Bradley which purported to give them each five percent of Decedent's gross revenue.²⁷ Mr. Levenson was informed there was a pattern of Messrs. Cannon, Dallas, and Bradley asking Decedent to sign blank documents without reading them.²⁸ This pattern appears to be indirectly corroborated by claims of alleged wrongdoing brought on behalf

¹⁹ *Id.* at p. 49, lines 17-20, p. 53, line 23; p. 72, line 9.

²⁰ *Id.* at p. 53, line 24 – p. 25, line 11.

²¹ *Id.* at p. 57, lines 3-7, p. 59, lines 8-13.

²² *Id.* at p. 54, lines 22-25.

²³ *Id.* at p. 81, lines 5-10 (testifying Messrs. Cannon, Dallas, and Bradley had “great control over [Decedent] during the later years of his life ... in various – each in different areas....”).

²⁴ *Id.* at p. 55, lines 2-16.

²⁵ *Id.* at p. 58, lines 15-21.

²⁶ *Id.*

²⁷ *Id.* at p. 56, lines 10-15.

²⁸ *Id.* at p. 55, line 23 – p. 56, line 1.

of the Estate against Messrs. Dallas, Cannon, and Bradley through the Estate and Trust's legal counsel.²⁹

From Mr. Levenson's discussions with Tommie Rae Brown, he was informed Ms. Brown had allegedly observed Decedent signing documents during instances when he was under the influence of certain controlled substances.³⁰ Ms. Brown also told Mr. Levenson that Messrs. Cannon, Dallas, and Bradley would visit Decedent at home during times of the day when they allegedly knew he was under the influence of substances in order to get him to sign documents.³¹ This information was purportedly corroborated by Ms. Elif Crawford, Decedent's personal assistant or secretary.³² Based on such information, Mr. Levenson testified his clients were informed and believed at the time they filed the subject Petitions that Decedent did not read many of the documents he signed and/or was incapable of understanding or reading the documents due to his altered condition.

Such information, when set alongside information Mr. Levenson obtained from Dr. Richardson and Loric Yanel, painted a troubling picture from the perspective of Mr. Levenson's clients in 2007. Dr. Richardson informed Mr. Levenson about Decedent's commitment to a facility in Atlanta, Georgia for alleged substance dependence.³³ Mr. Yanel further indicated Decedent's European tour ended prematurely in July 2000 because of Decedent's behavior

²⁹ *Id.* at p. 82, line 13 – p. 83, line 17.

³⁰ *Id.* at p. 63, lines 7-19.

³¹ *Id.*

³² *Id.*

³³ *Id.* at p. 49, lines 17-20.

during the tour caused by his alleged substance dependence.³⁴ This European tour allegedly ended only weeks, if not days, before he executed the August 1, 2000 Will and Trust which are the subject of the undue influence claims.³⁵

Mr. Levenson took Mr. Joseph Lizzio's deposition on or about September 21, 2007.³⁶ Based on the deposition testimony, an entity allegedly incorporated by Mr. Cannon during Decedent's lifetime, Seventh Decade, purportedly transferred approximately \$2.5 million dollars from Decedent's Morgan Stanley account into Seventh Decade's corporate account.³⁷ It was during this same time period that a \$5 million check, signed by Decedent, disappeared.³⁸ Mr. Levenson testified that after 1999, but before approximately 2002 or 2003, large sums of money were being transferred from Decedent's Morgan Stanley account upon the sole authorization of Mr. Cannon.³⁹ Mr. Levenson stated that by 2002, Decedent's Morgan Stanley account had lost significant value due to transfers by Mr. Cannon.⁴⁰ These transactions were believed by Mr. Levenson and his clients, to have all occurred under the direction of Mr. Cannon and without the direct knowledge of Decedent.⁴¹

³⁴ *Id.* at p. 49, lines 9-16.

³⁵ *See id.*

³⁶ This sworn testimony led to a claim being made by the Estate's Trustee and Personal Representative against Morgan Stanley for breaches of fiduciary duty. *Id.* at p. 58, lines 4-6.

³⁷ *See* Hearing Transcript, January 14, 2016, at p. 57, line 3 – p. 60, line 16. Mr. Levenson testified as to additional transfers from Decedent's Morgan Stanley account, totaling upwards of \$10-15 million dollars. *Id.* at p. 58, line 8 – p. 59, line 7.

³⁸ *Id.* at p. 58, lines 1-3.

³⁹ *Id.* at p. 58, lines 16-24.

⁴⁰ *Id.* at p. 58, line 25 – p. 59, line 7.

⁴¹ *Id.* at p. 59, lines 8-13.

Mr. Levenson also recounted details regarding alleged substituted and/or altered documents.⁴² For example, Mr. Dallas testified during a hearing on February 8, 2008 before this Court that a document attached as Exhibit B to Decedent's 2000 Irrevocable Trust was a document Mr. Dallas himself substituted *after* Decedent's death.⁴³ This testimony corroborated the belief by Mr. Levenson's clients that Decedent's "confidantes" were substituting their judgment for that of Decedent and that Decedent had been unduly influenced.

Mr. Levenson further testified regarding discussions he had with his own clients, including, in 2007, Terry Brown and Daryl Brown.⁴⁴ His clients allegedly informed Mr. Levenson their father was pathologically afraid of going to jail for tax evasion.⁴⁵ Decedent's alleged fear of going to jail for tax evasion was purportedly encouraged or unnecessarily emphasized by Messrs. Cannon, Dallas, and Bradley.⁴⁶ Mr. Levenson stated his clients believed Messrs. Cannon, Dallas, and Bradley were, on the one hand, informing Decedent he would likely go to jail for tax evasion while, at the same time, allegedly stealing money from him, and not reporting it on their own taxes.⁴⁷

Mr. Levenson further testified regarding his clients' concern about Decedent's engagement of Mr. H. Dwaine Herring, Esquire, for the purpose of preparing Decedent's 1999 and 2000 Will and Trust.⁴⁸ Mr. Levenson testified his clients' were concerned because Mr.

⁴² *Id.* at p. 60, line 22 – p. 61, line 20.

⁴³ *Id.* at p. 60, line 25 – p. 61, line 4.

⁴⁴ *Id.* at p. 54, lines 22-25.

⁴⁵ *Id.* at p. 61, line 21 – p. 63, line 6.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at p. 69, lines 10-14.

Herring had not been a lawyer their father had traditionally used with respect to the management of his business or legal affairs.⁴⁹ Mr. Levenson testified his clients believed Mr. Herring was an attorney who had been referred to Decedent through Messrs. Dallas or Cannon and therefore the circumstances of his employment by Decedent were suspicious to Petitioners.⁵⁰ Mr. Levenson testified he interviewed Mr. Herring in 2007⁵¹ and learned that although Mr. Herring had communicated with Decedent himself on a few occasions, Messrs. Cannon, Dallas, and/or Bradley were present when those conversations took place, further corroborating Petitioners' belief that their father had been unduly influenced with respect to signing the 1999 and 2000 Wills and Trust Agreements.⁵²

Mr. Levenson also testified about an alleged provision in Decedent's 2000 Irrevocable Trust Agreement which provided an unusual compensation package for the trustees, including, Messrs. Dallas, Cannon, and Bradley, after Decedent's death.⁵³ Mr. Levenson indicated he had never seen such a high compensation provision in any trust or charitable trust he has ever been involved with, despite his extensive experience handling fiduciary cases during his career.⁵⁴

⁴⁹ *Id.* at p. 71, lines 7-19; p. 69, line 16 – p. 70, line 18 (stating Decedent had previously retained Joel Katz, Jay Ross, and Leon Friedman and testifying: “there’s nothing wrong with a person getting their own lawyer totally different from any lawyer they’ve ever used. But from the perspective of the reasonable suspicion and belief, that was an additional concern.”); *id.* at p. 88, line 20 – p. 89, line 5.

⁵⁰ *Id.* at p. 70, lines 18-21.

⁵¹ *Id.* at p. 75, lines 12-13.

⁵² *Id.* at p. 84, lines 5-18; p. 86, line 10 – p. 88, line 18.

⁵³ *Id.* at p. 85, lines 3-11; p. 90, lines 5-24, p. 91, lines 13-21.

⁵⁴ *Id.* at p. 76, line 2 – p. 77, line 9 (testifying he served as the Fulton County, Georgia, guardian and administrator, a “public fiduciary” position for approximately 10 years; tried probate and estate contests to a jury four or five times, etc.).

Based on the foregoing evidence and testimony, the Court finds sufficient evidence and issues of fact exist in the record to support the Fiduciaries' conclusion that a genuine dispute existed regarding Petitioner's good faith and/or probable cause to initiate the actions challenging the Will and Trust. Accordingly, this Court finds the existence of a good faith controversy as to whether Petitioners had probable cause to initiate the above-captioned legal actions and the Settlement Agreements are just and reasonable.

Terry Brown has asserted the Petitioners did not have probable cause to challenge the validity of the Will and Trust, and, therefore, the Court must deny the Joint Motion and find the Fiduciaries have breached their fiduciary duties by entering into the Settlements and not seeking to enforce the in terrorem clauses. Terry Brown has submitted evidence, including sworn deposition testimony, in support of his assertions and has explained at length, in written submissions to the Court and his counsel's arguments on January 14, 2016, why he contends the evidence before the Court establishes Petitioners' challenges to the Will and Trust were not supported by probable cause.

As explained above, a finding by the Court on the merits of the issue of probable cause is unnecessary to support the Court's conclusion that the Settlements are just, reasonable, and in the best interests of the Estate and Trust, or the Court's decision to grant the present motion. The Court's findings set forth in other parts of this Order fully support and justify the Court's ruling. However, because Terry Brown has placed the merits of this issue squarely before the Court and because he has asserted grave allegations of wrongdoing by the Fiduciaries, the Court has spent considerable time reviewing the evidence and considering the arguments of the Parties with regard to the issues Terry Brown has raised.

Based upon the Court's review of the evidence submitted by the Parties, which include discovery responses, several hundred pages of sworn deposition testimony, and sworn testimony presented by Mr. Levenson at the January 14, 2016 hearing, the Court finds Petitioners had probable cause to bring their challenges against the Will and Trust.⁵⁵ The Court further finds the Fiduciaries, in negotiating the Settlements and submitting them to the Court, have not violated any fiduciary duties to the Estate, Trust, or beneficiaries. Indeed, the Court finds these Settlements constitute an appropriate exercise of discretion by Messrs. Bauknight and Sojourner for the reasons explained elsewhere in this order.

The LSA also argued that enforcement of the in terrorem clauses, while potentially benefiting Terry Brown and Daryl Brown, would have resulted in a significant financial detriment to the beneficiaries of Decedent's Irrevocable Trust. It is undisputed that fiduciaries of an estate and trust are under a duty of loyalty to act in the best interests of the beneficiaries. *See* S.C. Code Ann. §§ 62-1-201, 62-7-703, 62-7-802; *Yates v. Yates*, 292 S.C. 49, 354 S.E.2d 800 (Ct. App. 1987) (citing *Ramage v. Ramage*, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984) (trustees are under duty of loyalty to administer trust property solely in beneficiary's interest)). "That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental." *Witherspoon v. Stogner*, 182 S.C. 413, 414, 189 S.E.2d 758, 759 (1937). This duty includes the duty to administer the trust expeditiously for the benefit of the beneficiaries and a continuing duty to administer the trust according to the objectives of the trustor. *See id.* at §§ 62-7-301, 62-7-305; *see also Ex parte Wheeler v. Estate of Green*, 381

⁵⁵ Counsel for the opposing parties, Terry Brown and Daryl Brown, had an adequate opportunity to cross-examine Mr. Levenson during the January 14, 2015 hearing on this Joint Motion. *See generally* Hearing Transcript, January 14, 2016. Counsel for Terry Brown availed himself of this opportunity by asking Mr. Levenson a series of questions pertaining to his involvement during the deposition of H. Dewain Herring in November and December 2015. *Id.* at p. 74, line 16 – p. 75, line 8.

S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). The South Carolina Probate and Trust Codes require a fiduciary to act impartially. *See* S.C. Code Ann. § 62-7-803 (“If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries’ respective interests.”)

The LSA argued, pursuant to these statutory provisions and jurisprudence, the Fiduciaries had an obligation to consider *all beneficiaries* of Decedent’s Estate and Trust in determining whether a potential settlement with Petitioners was appropriate and in the best interests of the Estate and Trust. In coming to their conclusion, the Fiduciaries determined that should the Estate and Trust be forced to continue to litigate against Petitioners, the costs of defense would be placed directly upon the shoulders of the residual beneficiary of Decedent’s Estate and Trust, the James Brown “I Feel Good” Charitable Trust.

The Court agrees with the LSA’s arguments. Under these circumstances, continuing litigation, including defending the Estate and Trust against the undue influence actions and then, separately, seeking to enforce the in terrorem clauses, would be extraordinarily costly to the Estate and Trust. These costs would be disproportionately borne by the charitable trust and would, under Daryl Brown’s and Terry Brown’s own arguments, benefit only two named beneficiaries, Daryl Brown and Terry Brown, who apparently seek to gain a windfall from their father’s estate.⁵⁶ Under their counsel’s own analysis the in terrorem clause should be enforced against them as well. The Court finds that such unbalance and inconsistent legal positions are not in the best interests of the Estate and Trust and that it would be inequitable to require the Estate and Trust to continue to defend these actions in such an unbalanced and partial manner.

⁵⁶ As discussed in footnote 10, above, both Daryl and Terry Brown have served the role of “adverse parties in a proceeding for the probate of Grantor’s Will” or beneficiaries who “in any manner contest the validity of Grantor’s Irrevocable Trust.” *See*, 2000 Will, Article X and 2000 Trust, Article XXI.

IV. GROUNDS EXIST FOR DISMISSAL OF THESE ACTIONS WITH PREJUDICE.

The Moving Parties provided the Court consent orders signed by Petitioners in which Petitioners consent to dismissal of their claims with prejudice.⁵⁷ Based on the foregoing findings, including that the Settlement Agreements are appropriate and in the best interests of the Estate and Trust, the Court finds a complete dismissal with prejudice of all challenges to the validity of the Will and Trust filed by Petitioners, including without limitation those set forth in the Petitions filed on December 26, 2007, as amended on January 24, 2008, is just and proper. Pursuant to Rule 41(a)(2), SCRCP, Petitioner's challenges shall be dismissed with prejudice and Petitioners shall be dismissed as parties to the Undue Influence Case.

CONCLUSIONS

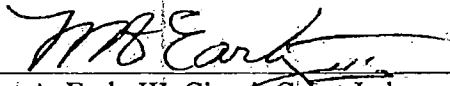
The Court hereby grants the Moving Parties' motion in its entirety and orders as follows:

- (1) The Court confirms that Russell L. Bauknight, as Personal Representative of the Estate and Trustee of the Trust, and Dave C. Sojourner, Jr., as Limited Special Administrator of the Estate and Limited Special Trustee of the Trust, are authorized and empowered to enter into the Settlement Agreements with Petitioners;
- (2) The Settlement Agreements are in the best interests of the Estate and Trust;
- (3) The Settlement Agreements shall be and hereby are expressly incorporated into the record, in satisfaction of Rule 43(k), SCRCP; and
- (4) All challenges to the Will and Trust filed by Petitioners, including those filed on December 26, 2007, as amended on January 24, 2008, are hereby dismissed with prejudice

⁵⁷ The Moving Parties' federal termination rights and interests under the Copyright Act are expressly excluded from the Settlement Agreement, as are any claims regarding the disposition of educational funds and personal property under the Will and Trust.

pursuant to Rule 41(a)(2), SCRPC, and Petitioners are hereby dismissed as parties to Civil
Action No. 2008-CP-02-1647.

IT IS SO ORDERED.



Doyet A. Early III, Circuit Court Judge

Bamberg, South Carolina
February 24, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
)
)
)
IN RE:)
)
)
)
THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2008-CP-02-1647

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served on March 3, 2016, a copy of the signed Order Authorizing Settlement of the Brown Children's Undue Influence Cases and Dismissing Cases with Prejudice, Order Cover Sheet and this Certificate of Service by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows to:

Robert N. Rosen, Esq.
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Attorneys for Tommie Rae Brown

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia SC 29205
Attorney for Tommie Rae Brown

3.7.16

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Levenson & Associates
125 Broad Street, SW
Atlanta GA 30303
Attorney for Deanna Brown Thomas, Yamma Brown, Venisha Brown and Larry Brown

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David Bell Law Firm
619 Greene Street
Augusta GA 30903
Attorney for Daryl Brown, Michael Deon Brown and Lisa Sims

[Handwritten signature and initials]

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Attorney for Terry Brown and Forlando Brown

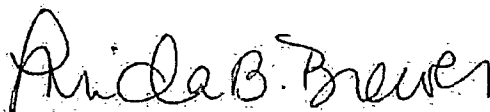
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Columbia, SC 29201
Attorneys for Appellants, Deanna Brown-Thomas, Dr. Yamma Brown and Venisha Brown



Linda B. Brewer, Paralegal

March 3, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

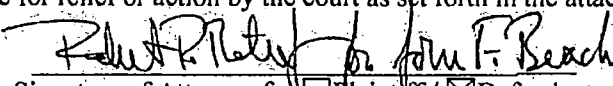
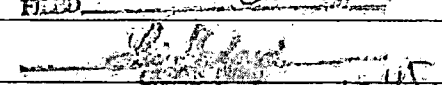
IN RE:)

THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN,)

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-02-1647

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Mary Frances G. Jowers, Bar No. Address: PO Box 11549, Columbia, SC 29211 phone: 803-734-3996 fax: e-mail: _____ other: _____	Defendant's Attorney: John F. Beach, Bar No. 595 Address: 1501 Main St., 5 th Floor, Columbia, SC 29201 phone: 803-343-1269 fax: 803-799-8479 e-mail: john.beach@arlaw.com other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	March 3, 2016 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID – AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other: _____	
FILED <u>3-7-16</u>	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE:  CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: _____	
Date Filed: _____	

ADAMS AND REESE LLP

Attorneys at Law
Alabama
Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

March 2, 2016

John F. Beach
Direct: 803.343.1269
E-Fax: 803.343.1224
john.beach@arlaw.com

The Honorable Liz Godard
Aiken County Clerk of Court
109 Park Avenue SE
Aiken, SC 29802

RE: Estate of James Brown a/k/a James Joseph Brown
Case Numbers: 2008-CP-02-1647
A&R File No. 022853-000001

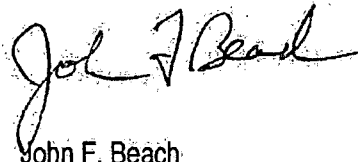
Dear Ms. Godard:

Enclosed herewith for filing are the original and one copy of the executed Order Authorizing Settlement of the Brown Children's Undue Influence Cases and Dismissing Cases with Prejudice, Order Cover Sheet and Certificate of Service in the referenced matter. Please file these documents and return a clocked in copy to me in the enclosed envelope.

By copy of this letter, I am serving a copy of these documents on all attorneys of record.

Thank you for your assistance in this matter. Please contact me with any questions or concerns.

Sincerely,



John F. Beach

JFB/lbb

Enclosures

cc: David C. Sojourner
All parties of Record

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2008CP0201647

Henry Dargan McMaster

Daryl J Brown
 Janise Vanisha Brown
 Larry Brown
 Jason Brown Lewis
 Sydney Lumar

Lindsey Delores Brown
 Vanisha Brown
 Deanna J. brow Thomas
 Yamma N Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

3/7/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

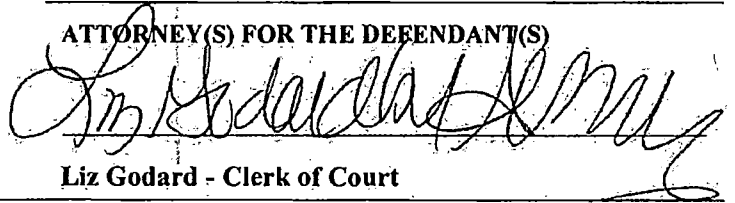
This judgment was entered on 3-7-16, and a copy mailed first class or placed in the appropriate attorney's box on 3-7-16, to attorneys of record or to parties (when appearing pro se) as follows:

Mary Frances G. Jowers PO Box 11549 Columbia, SC
29211

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
William W. Wilkins PO Drawer 10648 Greenville, SC
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Adele Pope
William Joseph Barr 108 N. Academy St. Kingstree, SC
29556-3422
Robert N. Rosen 18 Broad Street Suite 201 Charleston, SC
29401
Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401
Matthew Day Bodman 1500 Calhoun St. Columbia, SC
29201
Louis Levenson 125 Broad St., SW Atlanta, GA 30303
James Mixon Griffin PO Box 999 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
