

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN ) FOR THE SECOND JUDICIAL CIRCUIT

RECEIVED

JUL 18 2016

CASE NO. 2008-CP-02-1647

IN RE:

SC Court of Appeals

THE ESTATE OF JAMES BROWN ) JOINT MOTION TO AUTHORIZE  
A/K/A JAMES JOSEPH BROWN ) SETTLEMENT OF BROWN CHILDREN'S  
UNDUE INFLUENCE CASES AND TO  
DISMISS CASES WITH PREJUDICE

FILED 12-7-15

TO: ALL COUNSEL OF RECORD:

*[Signature]*  
SC.C.P. & G.S.  
*[Signature]*  
Deputy Clerk

The undersigned will move within ten days or as soon as may be heard for an order

(1) Ruling Russell L. Bauknight, Personal Representative of the Estate of James J. Brown ("Estate") and Trustee of the James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000 ("Trust"), and David C. Sojourner, Jr., Limited Special Administrator of the Estate and Limited Special Trustee of the Trust (collectively, the "Estate"), are authorized and empowered to enter into the two settlement agreements attached hereto as Exhibits A and B (the "Settlement Agreements")<sup>1</sup>;

2) Entering the Settlement Agreements into the record, in satisfaction of South Carolina Rule of Civil Procedure 43(k); and

(3) Dismissing with prejudice, pursuant to South Carolina Rule of Civil Procedure 41, all claims to set aside the Will and Trust in the Petitions, as amended, filed by 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

<sup>1</sup> The Settlement Agreements are submitted without Mr. Bauknight's or Mr. Sojourner's signatures pending the Court's authorization. Mr. Bauknight and Mr. Sojourner stand ready and willing to execute the Settlement Agreements following issuance of the Court's order in response to this motion.

minor children Sydney Lumar and Carrington Lumar (collectively, "Petitioners"), and dismissing Petitioners as parties to Civil Action No. 2008-CP-02-1647 (the "Undue Influence Case")<sup>2</sup>.

### **BACKGROUND**

James J. Brown, Jr. ("Decedent") died on December 25, 2006 in the State of South Carolina, leaving a Last Will and Testament and Irrevocable Trust Agreement, dated August 1, 2000 ("2000 Will and Trust").<sup>3</sup> On January 18, 2007, an Application for Informal Probate of Will and Appointment of Personal Representative was filed in the Aiken County Probate Court.

On December 26, 2007, Petitioners filed Petitions to Set Aside the Informal Probate of the Last Will and Testament and the Trust Agreement, and on January 24, 2008 Petitioners filed Amended Petitions to Set Aside Informal Probate and Trust Agreement (the "Petitions"). Petitioners asserted the 2000 Will and Trust should be set aside on grounds including: (i) Decedent was unduly influenced; (ii) the Will and Trust are the product of fraud exerted on Decedent; (iii) Decedent lacked testamentary capacity; and (iv) the Trust is illusory.

In July 2015, the Estate and Trust began settlement negotiations with Petitioners 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, by and through their legal counsel, Louis Levenson. In October 2015, the Estate and Trust began settlement negotiations with Tonya Brown, a/k/a Sarah LaTonya Brown Fegan, by and through her counsel of record, William Joseph Barr, Itriss J. Jenkins, and Vera Elaine Gilford. These

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<sup>2</sup> The Estate and Trust recognize that this motion will not dispose of the Undue Influence Case in its entirety as Tommie Rae Hynie Brown also has Petitions to Set Aside Probate and Trust Agreement filed on December 20, 2007, which are not resolved by the Settlement Agreements.

<sup>3</sup> Decedent also executed a Last Will and Testament and Irrevocable Trust Agreement dated June 15, 1999 (hereinafter, the "1999 Will and Trust").

negotiations culminated in Settlement Agreements with an effective date of November 17, 2015 and November 13, 2015 (**Exhibit A** and **Exhibit B**).

To date, limited written discovery has been conducted between the parties. Certain depositions have been taken and others are scheduled. The parties anticipate extensive additional discovery, including depositions of the parties and potential witnesses. The parties are informed and believe additional discovery will be time-consuming and expensive and that these burdens will significantly fall upon the Estate and Trust.

### **LEGAL ANALYSIS**

#### **I. BAUKNIGHT AND SOJOURNER, JR. HAVE AUTHORITY TO SETTLE WILL AND TRUST CHALLENGES ON BEHALF OF THE ESTATE AND TRUST WITHOUT COURT APPROVAL.**

This Court's order appointing Mr. Bauknight as Personal Representative of the Estate and Trustee of the Trust granted unto Mr. Bauknight "full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business and matters related thereto . . . ." *See* Interim Order, filed October 1, 2013, at p. 19, ¶ 1 ("Appointment Order"). The Appointment Order granted Mr. Bauknight "the authority and power to act on behalf of, and bind, the Estate and Trust for all purposes, except as limited by the appointment of the Limited Special Trustee and Limited Special Administrator . . . ." *Id.*

The Appointment Order appointed Mr. Sojourner as LSA of the Estate and as LST of the Trust Agreement and specifically authorized Mr. Sojourner to "defend[] the Trust and the Estate against the claims made in the Will and Trust Challenges until final resolution thereof." *See* Appointment Order at pp. 19-20. "This interim appointment [was] made with the requirement that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight [and] shall act with sole and absolute authority in his limited capacity . . . ." *Id.* at p. 20.

The Appointment Order does not expressly list the power to settle claims as one of the powers given to the Estate. However, the Estate is informed and believes such power is inherent in Estate's authority, and is supported by South Carolina law.

Specifically, section 62-3-715(8) of the South Carolina Probate Code authorizes a personal representative to "settle claims" against the estate<sup>4</sup>. The South Carolina Trust Code contains a similar provision in Section 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").

Consistent with this statutory authority, Decedent's Irrevocable Trust Agreement authorizes the trustee, in its fiduciary discretion, to "compromise, 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." *See* Irrevocable Trust Agreement, August 1, 2000, at Article X(19).

Section 62-3-105 of the South Carolina Probate Code provides: "Persons interested in decedents' estates may apply to the court for . . . orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article" S.C. Code Ann. § 62-3-105 ("Proceedings affecting devolution and administration; jurisdiction of the subject matter"). This statutory provision enables estate representatives, including personal representatives and trustees, to request rulings from the Court to assist in administering estates and trusts.

Pursuant to this Section, the undersigned seek an order of the Court authorizing and empowering the Estate and Trust, through its fiduciaries, Mr. Bauknight and Mr. Sojourner, to

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<sup>4</sup> *See also* 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.").

enter the Settlement Agreements. There are no other Estate or Trust representatives that would otherwise have the capacity to enter into agreements on behalf of the Estate and Trust.

Moreover, the Settlement Agreements fully resolve pending claims that, if successful, would significantly alter or invalidate Decedent's estate plan. Mr. Bauknight and Mr. Sojourner are informed and believe the Settlement Agreements are in the best interest of the Estate and Trust as they secure a prompt 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.

**II. RULE 43(K), SCRPC, ESTABLISHES A PROCEDURE TO BIND THE PARTIES TO THE TERMS OF A SETTLEMENT AGREEMENT BY ENTERING THE SETTLEMENT INTO THE RECORD.**

South Carolina Rule of Civil Procedure 43(k) provides:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

Section XVIII of the Brown Children Settlement Agreement and Section XVII of the Fegan Settlement Agreement state:

The Parties consent to the entry of this Agreement into the record through submission by any Party or their counsel to the Court and agree that such submission will fully satisfy the requirements set forth in Rule 43(k) of the *South Carolina Rules of Civil Procedure*, and, in particular, those necessary to make this Agreement binding and enforceable.

Pursuant to these rules and Settlement Agreement provisions, the undersigned hereby submit the Settlement Agreements into the record and request the Court review them, order that Mr. Bauknight and Mr. Sojourner possess the authority to enter into the Settlement Agreements on behalf of the Estate and Trust, and rule that the Settlement Agreements fully resolve Petitioner's claims to set aside the Will and Trust.

**III. BASED ON THE SETTLEMENT AGREEMENTS NEGOTIATED BETWEEN THE PARTIES, THIS COURT SHOULD DISMISS PETITIONERS' CLAIMS WITH PREJUDICE PURSUANT TO RULE 41, SCRPC.**

The attached Settlement Agreements completely dispose of Petitioners' claims to set aside the Estate and Trust. Based on the clear terms of the Settlement Agreements and pursuant to Rule 41, SCRPC, Petitioners and the Estate and Trust seek to have Petitioners' claims dismissed with prejudice. This motion is supported by the consent orders to dismiss the case with prejudice signed by Petitioners and attached hereto as **Exhibits C and D**<sup>5</sup>.

Because not all parties to the above-captioned action stipulate as to the dismissal of the Petitioners' claims, the parties to the Settlement Agreements seek an order of the Court dismissing Petitioners' claims with prejudice, pursuant to Rule 41(a)(2), SCRPC.

The effect of the settlements upon those represented by Mr. Bauknight and Mr. Sojourner are just and reasonable, and the Settlement Agreements are in the best interest of the Estate and Trust. Moreover, under South Carolina's public policy, "family settlements are favored by the courts[.]" *Dibble v. Dibble*, 248 S.C. 165, 171, 149 S.E.2d 355, 358 (1966). Accordingly, the undersigned respectfully request an order dismissing with prejudice all challenges to the validity of the Estate and Trust asserted by Petitioners, including without limitation those set forth in the Petitions filed on December 26, 2007, as amended on January 24, 2008.

**CONCLUSION**

For the foregoing reasons, the undersigned respectfully request an order:

- (1) Ruling 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

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<sup>5</sup> The Consent Orders of Dismissal are submitted without Mr. Bauknight's or Mr. Sojourner's signatures pending the Court's authorization. Mr. Bauknight and Mr. Sojourner stand ready and willing to execute the Consent Orders of Dismissal following issuance of the Court's order in response to this motion.

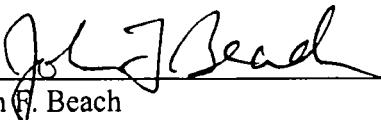
Limited Special Trustee of the Trust, are authorized and empowered to enter into the Settlement Agreements with Petitioners pursuant to the South Carolina Probate Code, South Carolina Trust Code, and the Irrevocable Trust Agreement, u/a/d August 1, 2000;

(2) Entering the Settlement Agreements into the record, in satisfaction of South Carolina Rule of Civil Procedure 43(k);

(3) Dismissing, with prejudice pursuant to Rule 41, SCRCPP, the Petitions, including all claims contained therein, filed by Petitioners on December 26, 2007, as amended on January 24, 2008 and dismissing Petitioners as parties to Civil Action No. 2008-CP-02-1647.

[SIGNATURES ON FOLLOWING PAGE]

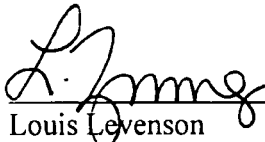
WE SO MOVE AND CONSENT

  
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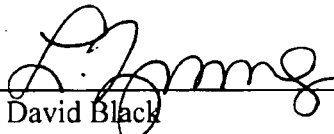
  
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December 4, 2015.

WE SO MOVE AND CONSENT

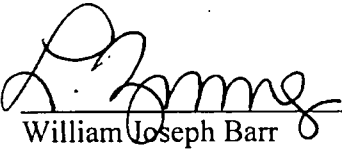
  
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