

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

RECEIVED

MAR 22 2017

SC Court of Appeals

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417

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

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as
Limited Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Terry Brown, Michael Deon Brown and Daryl Brown are the Appellants.

**OBJECTION TO JOINT MOTION TO STAY APPEAL PENDING
CONSUMMATION OF SETTLEMENT**

Appellants Deanna Brown-Thomas, Yamma Brown, and Venisha Brown
("Appellants"), by and through their undersigned counsel, hereby object to appellant
David C. Sojourner, Jr.'s and respondent Tommie Rae Brown's Motion to Stay Appeal
Pending Consummation of Settlement.¹

¹ By Order dated March 16, 2017, appellant Sojourner was dismissed as a party to the appeal and no longer has standing to request a stay from this Court.

The Motion to Stay is inappropriate and unwarranted, and it should be denied. First, the requested stay does not promote judicial efficiency. Because Appellants are not parties to and have not participated in the subject Settlement Agreement, this appeal will not be resolved or mooted by the Circuit Court's approval or disapproval of the Settlement Agreement. Respondent still faces an identical challenge from Appellants; the presence or absence of the Estate from this appeal neither expands nor contracts the issue or arguments involved.² Indeed, Respondent has admitted to the Circuit Court that dismissal of Respondent's undue influence claim pursuant to the Settlement Agreement "will not affect Appellate Case No. 2015-002417". (Exhibit "A" at p. 3.)

Moreover, any concerns regarding unnecessary participation by appellant Sojourner have been resolved by this Court's Order dismissing Sojourner as a party to this appeal. All parties have filed their initial briefing, leaving only the Record on Appeal and the relatively ministerial final briefing to be completed.³

Finally, the requested stay is prejudicial to Appellants. The Settlement Agreement is subject to the approval or disapproval of the Circuit Court, which will require an evidentiary hearing and may result in its own appeal. If the requested stay is granted, it could be years before the present appeal is active again. As Respondent has previously admitted in her briefing, the question of whether she is Mr. Brown's surviving spouse has consequences beyond the Estate's present assets. Appellants should not be

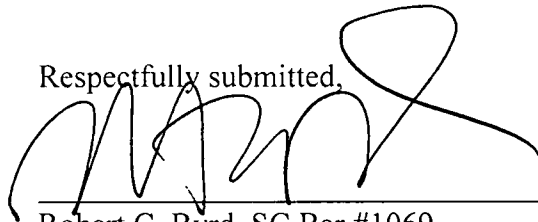
² Because the arguments and positions contained in the LSA's briefs have been incorporated into the briefs filed by other appellants, there is no uncertainty regarding which arguments respondent is expected address.

³ Because Appellants Deana Brown Thomas, Yamma Brown and Venisha Brown first filed their Notice of Appeal, they are deemed the chief appellant responsible for producing and serving the Record on Appeal. Accordingly, Appellants are currently preparing the Record on Appeal and intend to file and serve the same on or before the existing deadline of March 29, 2017.

subjected to an indefinite "time-out" as to the pursuit of their own legal rights when the proposed Settlement Agreement does not impact their own appeal.

A continued delay in this Court will mean a continued delay in clarity for Appellants, and such a result is wholly unnecessary and inappropriate where it does not promote judicial efficiency and results in prejudice to the remaining parties. For all of the foregoing reasons, Appellants respectfully request that this Court deny the Motion to Stay Appeal Pending Consummation of Settlement.

Respectfully submitted,



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EXHIBIT A

§ 62-2-301 and, in the alternative, a surviving spouse's elective share of the Estate under S.C. Code Ann. § 62-2-201, et seq. The probate court transferred all of Petitioner's claims, including the undue influence action and the omitted spouse/elective share action, to this Court.

Petitioner filed a Motion for Summary Judgment on April 24, 2014, contending she was entitled to a judicial determination she is Decedent's surviving spouse based upon an order entered by the Charleston County Family Court on April 15, 2004, which annulled Petitioner's February 1997 marriage to her first husband, Javed Ahmed. On May 29, 2014, the LSA filed a cross motion summary judgment, seeking an order finding Petitioner is not Decedent's surviving spouse because her marriage to Decedent was bigamous. Other parties to the action¹ joined in the LSA's cross motion and/or filed supporting memoranda.

This Court heard oral argument on the parties' motions on November 24, 2014. On January 13, 2015, the Court issued an order granting Petitioner's motion, finding Petitioner to be Decedent's surviving spouse as a matter of law. The Court denied the cross motion for summary judgment. Shortly thereafter, the LSA and nine other parties filed motions to reconsider. On June 30, 2015, this Court heard oral argument on the parties' motions to reconsider.

After receiving supplemental memoranda from various parties, the Court denied the motions to reconsider by order dated October 26, 2015. The LSA and other parties timely filed Notices of Appeal between November 20, 2015 and November 24, 2015. The appeal remains pending in the South Carolina Court of Appeals. *See* Appellate Case No. 2015-002417.

The LSA, Russell L. Bauknight, as Personal Representative of the Estate (the "PR"), the Estate, and Tommie Rae Brown have entered into a settlement of her claims against the Estate, as set forth in the executed Settlement Agreement attached as **Exhibit A**. As part of this

¹ Including Terry Brown, Larry Brown, Venisha Brown, Deanna Brown-Thomas, Jason Brown Lewis, Yamma Brown (individually and on behalf of her minor children Sydney Lumar and Carrington Lumar), Jeanette Mitchell, and Daryl Brown.

settlement, the parties have agreed to take certain procedural steps, one of which is filing the present Joint Motion to Dismiss.

LEGAL STANDARD

Pursuant to Rule 41, SCRCP, a party may unilaterally dismiss her claims or counterclaims only before service by the adverse party of an answer or motion for summary judgment, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. *See* Rule 41(a)(1), SCRCP. As this court is aware, all defending parties in this case have appeared and answered, and several have filed motions for summary judgment. Accordingly, the settling parties must resort to Rule 41(a)(2), SCRCP, seeking dismissal through an order dismissing Petitioner's undue influence and fraud claims "upon such terms and conditions as the court deems proper."

ARGUMENT

Petitioner, the LSA, and the PR entered into a binding Settlement Agreement on March 7, 2017 (**Exhibit A**), through which the Petitioner will fully and finally terminate Petitioner's challenges to the validity of the 2000 Will and Trust. Through the Settlement Agreement, Petitioner agreed to forever relinquish her alleged right to challenge the validity of the 2000 Will and 2000 Trust. All other challenges to the 2000 Will and Trust have either been withdrawn or dismissed by Court-order.

The relief requested in this Motion will not affect Appellate Case No. 2015-002417, through which certain parties have appealed this Court's orders filed January 13, 2015 and October 26, 2015 finding Petitioner to be Decedent's surviving spouse, or Appellate Case No. 2016-001373, through which certain parties have appealed this Court's orders filed March 7, 2016 and May 31, 2016 authorizing the Estate's settlement with certain Brown Children.

The Court's order appointing Mr. Bauknight as Personal Representative of the Estate and Trustee of the Trust, and Mr. Sojourner as LSA of the Estate and as LST of the Trust Agreement, granted unto the LSA and the PR broad authority that encompassed authority to settle one or more of the Will and Trust Challenges. *See* Interim Order, filed October 1, 2013, pp. 19-20. This authority is consistent with South Carolina law. See section 62-3-715(8) of the South Carolina Probate Code and Section 62-7-816 (14) of the South Carolina Trust Code. Decedent's Irrevocable Trust Agreement contains provisions that are consistent with this statutory authority. *See* Irrevocable Trust Agreement, August 1, 2000, at Article X(19).

The Settlement Agreement fully resolves 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 Agreement is in the best interest of the Estate and Trust as it secures a prompt resolution of the Petitioner's challenges to the validity of the 2000 Will and Trust, saves potential time, expenses, and resources of the Estate and Trust, and reduces the expenditure of judicial time and resources.

As this Court is aware, the Estate and Trust have already settled with some of Decedent's children which similarly contested the 2000 Will and Trust. Those settlement agreements were presented to the Court and the settlements were authorized on March 7, 2016.² In the order, the Court found:

...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.³

² A Motion to Reconsider, filed by Terry Brown, was denied by the Court on May 31, 2016. Terry Brown has appealed the Court's March 7, 2016 and May 31, 2016 Orders, in Appellate Case No. 2016-001373

³ *See*, March 7, 2016 Order Authorizing Settlement of the Brown Children's undue Influence Cases and Dismissing Cases with Prejudice, pp. 2-3.

In a similar vein, the subject settlement with Petitioner fully and finally terminates Petitioner's challenges to the validity of the 2000 Will and Trust, is appropriate, and in the best interests of the Estate and Trust.

CONCLUSION

The LSA and Petitioner respectfully request the Court dismiss her Petition to Set Aside Informal Probate and to Set Aside the Irrevocable Trust Agreement, u/a/d August 1, 2000, Case No. 2008-CP-02-1647, filed December 19, 2007, ending those claims, with prejudice.

Respectfully submitted,



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*Attorneys for David C. Sojourner, Jr. as
Limited Special Administrator for the
Estate of James Brown and as Limited
Special Trustee of the James Brown 2000
Irrevocable Trust*

March 8, 2017

SETTLEMENT AGREEMENT

WHEREAS, Decedent James Brown ("Decedent") died on December 25, 2006, a resident of Aiken County, South Carolina;

WHEREAS, a Last Will and Testament dated August 1, 2000 ("2000 Will") was submitted for informal probate in the Aiken County Probate Court on January 18, 2007 and assigned Probate Case No. 2007-ES-02-0056;

WHEREAS, December 19, 2007 Tommie Rae Brown ("TRB") filed petitions to set aside the probate of 2000 Will and to set aside an Irrevocable Trust dated August 1, 2000 ("2000 Trust") based upon allegations of undue influence and fraud (the "Undue Influence Claim");

WHEREAS, after removal from the Probate Court to the Court of Common Pleas, the Undue Influence Claims, probate of the 2000 Will, and other matters were consolidated under the present Case No. 2008-CP-02-1647 and have been litigated under that case number through the present;

WHEREAS, on January 31, 2007, TRB filed a petition asserting she is Decedent's surviving spouse and claiming an omitted spouse's share of the Estate under S.C. Code Ann., Section 62-2-301 ("Omitted Spouse Claim") and a surviving spouse's elective share of the Estate under S.C. Code Ann., Section 62-2-201, et seq. ("Elective Share Claim") (collectively, TRB's "Spousal Claims");

WHEREAS, through orders dated October 1, 2013 and October 10, 2013 (the "Appointment Orders"), the South Carolina Court of Common Pleas and the South Carolina Probate Court appointed Dave C. Sojourner, Jr. as Limited Special Administrator for the Estate of James Brown and as Limited Special Trustee of the James Brown 2000 Irrevocable Trust (the "LSA"), with sole, specific, and exclusive authority to defend the Estate and Trust against, among other claims, TRB's Undue Influence Claims and Spousal Claims;

WHEREAS, on December 16, 2013, the Court severed the Spousal Claims from the Undue Influence Claims, assigning to them Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850;

WHEREAS, on January 13, 2015 and October 26, 2015 the Court issued orders granting partial summary judgment to TRB and finding her to be Decedent's surviving spouse (the "Spousal Orders");

WHEREAS, on November 20, 2015 the LSA appealed the Spousal Orders. The LSA's appeal of the Spousal Orders is currently pending in the South Carolina Court of Appeals and assigned Appellate Case No. 2015-002417 (the "Surviving Spouse Appeal");

WHEREAS, on November 20, 2015 Deanna Brown-Thomas, Yamma Brown, and Venisha Brown, on November 23, 2015, Michael Deon Brown, and on November 24, 2015, Terry Brown



and Daryl Brown (collectively, the "Brown Children") also appealed the Spousal Orders, their appeals being a part of the Surviving Spouse Appeal;

WHEREAS, TRB, the LSA, and Russell L. Bauknight, as Personal Representative of the Estate (the "PR") (together, the "Settling Parties"), have agreed to settle TRB's Undue Influence Claims and Spousal Claims through the terms of this agreement (the "Settlement Agreement");

NOW THEREFORE, the Settling Parties hereby settle TRB's Undue Influence Claims and Spousal Claims as follows:

1. As more fully set forth below, TRB will withdraw her Undue Influence Claims, Case No. 2008-CP-02-1647, ending those claims with respect to the 2000 Will and 2000 Trust with prejudice. TRB's withdrawal will fully and finally terminate her challenge to the validity of the 2000 Will and 2000 Trust and, with that withdrawal, she forever relinquishes her alleged right to challenge the validity of the 2000 Will and 2000 Trust. The parties hereto recognize that the Brown Children, other than Terry Brown, have settled their separate contests of the 2000 Will and 2000 Trust, although the settlement is being appealed by Terry Brown, Appellate Case No. 2016-001373.

2. As additional consideration for the PR to join in this Settlement Agreement, the PR and TRB acknowledge the following:

Termination rights. In the event TRB is determined to be Decedent's "surviving spouse," which will entitle her to 50% of the valuable federal copyright termination rights, TRB will contribute 65% of the proceeds from her federal copyright termination rights to the charitable trust created by the 2000 Trust ("Charitable Trust"). Without contribution by TRB, these federal termination rights proceeds would never belong to the Charitable Trust because, under applicable federal law, these termination rights belong solely to Decedent's surviving spouse and children (or their issue). The Brown Children, other than Terry Brown, have settled their separate contests of the 2000 Will and 2000 Trust, although the settlement is being appealed by Terry Brown, despite his claim that he wants the 2000 Will and Trust to be upheld.¹ Consequently, the real dispute over TRB's status as Decedent's surviving spouse is over the federal termination rights rather than an interest in Decedent's Estate or Trust. The only way the Charitable Trust will receive any proceeds from the federal termination rights is through TRB's contribution thereof and TRB will receive the proceeds she will contribute only if she is Decedent's surviving spouse. The value of the federal termination rights could be worth tens of millions of dollars, a substantial portion of which will inure to the benefit of the Charitable Trust assuming TRB is the surviving spouse.

The Appointment Orders do not place a duty on the LSA with regard to federal copyright termination rights, which are outside of the probate estate and, therefore, not directly subject to TRB's Undue Influence Claims and Spousal Claims. Accordingly, the LSA has not confirmed or expended estate funds to study the information set forth in this paragraph.

¹ Terry Brown is not contesting the 2000 will or 2000 Trust, although he is appealing the settlement with the remaining Brown children that would dismiss their contests of the 2000 Will and Trust. If that settlement is affirmed, then this settlement with TRB will effectively end all litigation over the validity of the 2000 Will and Trust and ensure the existence of a charitable trust.

3. As more fully set forth below, the LSA will withdraw his appeal of the Spousal Orders and end all participation as an appellant to the Surviving Spouse Appeal.

4. TRB will take the following actions with respect to her Spousal Claims:

(a) Within ten (10) days of a final appellate court decision in the Surviving Spouse Appeal establishing that TRB is or is not Decedent's surviving spouse, TRB will withdraw and/or dismiss with prejudice her Spousal Claims and release the LSA from any and all claims she may have, as surviving spouse or otherwise.

(b) if in the Surviving Spouse Appeal, a final appellate court decision *fails to establish* TRB is or is not the Decedent's surviving spouse but, instead, remands the case to the lower court for further proceedings to determine whether TRB is the Decedent's surviving spouse, then, on remand, TRB and the LSA will join in a motion to bifurcate the issues so that the lower court first tries and/or rules upon the sole question whether TRB is the Decedent's surviving spouse. If a final lower court order, or, if appealed, a final appellate court decision, establishes TRB is the Decedent's surviving spouse, then before the lower court addresses and/or rules upon the remainder of TRB's Spousal Claims, TRB will immediately withdraw and/or dismiss with prejudice her Spousal Claims and release the LSA from any and all claims she may have, as surviving spouse or otherwise. An underlying foundation of this Settlement Agreement is that TRB will relinquish her Spousal Claims and will not pursue her Spousal Claims, regardless of how procedural matters ultimately develop in the trial or appellate court.

5. Within ten (10) days of the Settling Parties' execution of this Settlement Agreement, the Settling Parties will jointly seek a status conference with the lower court, at which the Settling Parties will announce this settlement to the Court, place the executed Settlement Agreement into the record, and submit to the lower court a proposed consent order of dismissal, dismissing the Undue Influence Claims with prejudice.

6. Within ten (10) days of a final order dismissing the Undue Influence Claims with prejudice (as described in the immediately preceding paragraph of this Settlement Agreement), the Settling Parties will jointly submit to the South Carolina Court of Appeals a Notice of Settlement and Withdrawal of LSA's Notice of Appeal, informing the Court the Settling Parties have reached a settlement, withdrawing the LSA's appeal of the Spousal Orders, and stating that the Brown Children, as the remaining appellants in the Spousal Appeal, are adequately represented and capable of asserting their appeal of the Spousal Orders in the LSA's absence as an appealing party. The Notice of Settlement and Withdrawal of Appeal will include this executed Settlement Agreement as an Exhibit.

7. Each signatory to this Settlement Agreement hereby warrants that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her client, has explained this


settlement to his or her client, and that his or her client fully understands and agrees, by the respective signature, to be bound by all terms set forth herein.

[Signature pages to follow]

By signing below, I hereby bind my client to this Settlement Agreement:

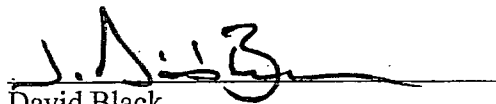


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Attorneys for David C. Sojourner, Jr., Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of the James Brown Irrevocable Trust, w/a/d August 1, 2000

By signing below, I hereby bind my client to this Settlement Agreement:



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*Attorneys for Russell L. Bauknight, Personal Representative
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By signing below, I hereby bind my client to this Settlement Agreement:



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A handwritten signature in black ink that reads "Linda B. Brewer". The signature is written in a cursive style and is positioned above a horizontal line.

Linda B. Brewer
Paralegal

March 8, 2017

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APPEAL FROM AIKEN COUNTY
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Of whom David C. Sojourner, Jr., in his capacity as
Limited Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Terry Brown, Michael Deon Brown and Daryl Brown are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on _____, 2017, s/he has caused a copy
of the Objection to Joint Motion to Stay Appeal Pending Consummation of Settlement to
be served upon all parties of record by mailing a copy of the same addressed as follows:

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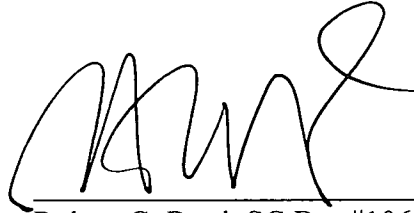
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March 20, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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MAR 22 2017

SC Court of Appeals

**Re: In Re: The Estate of James Brown a/k/a James Joseph Brown, Tommie Rae Brown v. David C. Sojourner, Jr., et al.
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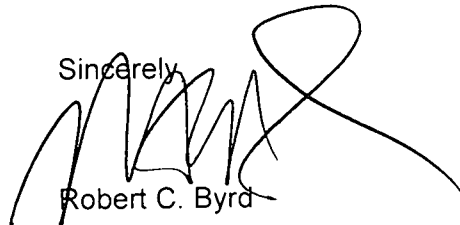
Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of an *Objection to Joint Motion to Stay Appeal Pending Consummation of Settlement* along with a Proof of Service in the above-referenced appeal. Please return a filed-stamped copy of the motion in the enclosed postage-prepaid envelope.

By copy of this letter, we are serving all parties of record with a copy of the *Objection*. Should you have any questions regarding this matter, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Robert C. Byrd

RCB:kxl
Enclosures

cc w/enc.: (please see the following page)

cc: Robert N. Rosen, Esq.
Erin Casey, Esq.
S. Alan Medlin, Esq.
T. Heyward Carter, Jr., Esq.
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To:

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