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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 23 2017

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Case Nos. 2013-CP-02-02849, 2013-CP-02-02850

Appellate Case No. 2015-002417

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deana Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is theAppellant.

APPELLANT DAVID C. SOJOURNER, JR.'S AND
RESPONDENT TOMMIE RAE BROWN'S MOTION
TO AMEND, CLARIFY AND/OR CORRECT ORDER
FILED MARCH 16, 2017

TO: THE HONORABLE CHIEF JUDGE AND THE ASSOCIATE JUDGES OF THE
SOUTH CAROLINA COURT OF APPEALS:

Appellant David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 ("LSA") and Respondent Tommie Rae Brown (together, the "Settling Parties"), by and through their

J

undersigned counsels, hereby move for an amendment to, clarification of and/or correction of the Court's Order of Partial Dismissal filed March 16, 2017 (the "Order"). The Order improperly dismisses the LSA's appeal, incorrectly remands the case to the lower court, and incorrectly directs the settling parties to seek lower court approval of their settlement.

On March 8, 2017, the LSA and Respondent filed a Joint Motion to Stay Appeal Pending Consummation of Settlement ("Motion to Stay", attached as Exhibit 1). In that joint motion, the LSA and Respondent disclosed a Settlement Agreement to the Court (*See* Exhibit A to "Motion to Stay") and moved the Court to stay (not dismiss) the above-captioned appeal until such time as the lower court issues a final order on the Settling Parties' joint motion to dismiss Respondent's Undue Influence Claims - a motion the Settling Parties have filed in lower court Case No. 2008-CP-02-01647 - a separate case from the two Spousal Claims cases on appeal here.¹ The Settlement Agreement makes the lower court's final order dismissing Respondent's Undue Influence Claims a condition precedent to the LSA's withdrawal of his Notice of Appeal in this appeal. *See* Motion to Stay, p. 2; Settlement Agreement, p. 3, paragraphs 5 and 6.

The Order, however, dismissed the LSA's appeal rather than staying the appeal. This dismissal is inappropriate for the following reasons.

Rule 260 of the South Carolina Appellate Court Rules only allows for dismissal of an appeal under three circumstances: (a) involuntary dismissal where appellant has failed to comply with a Rule or other requirement; (b) dismissal where parties to the

¹ Respondent's Undue Influence Claims, which are not currently before the Court of Appeals, contest the validity of James Brown's 2000 will and 2000 trust. The Spousal Claims cases, the subject of the appeal currently before the Court of Appeals, involve statutory elective share and omitted spouse's share claims.

appeal have submitted an agreement to dismiss the appeal; and (c) dismissal on appellant's motion where appellant withdraws his appeal. None of these three circumstances were before the Court when it issued the Order.

The Settling Parties have neither agreed to dismiss the LSA's appeal at this point in the settlement process nor moved for dismissal. They have agreed to dismiss the LSA's notice of appeal, but only following issuance of a final order dismissing Respondent's undue influence claims in Case No. 2008-CP-02-01647 – a condition not yet accomplished. If and when the trial court issues an order of dismissal and that order becomes final, the Settling Parties will take appropriate action before this Court to dismiss the LSA's notice of appeal in this appeal. Because achieving a final order dismissing Respondent's undue influence claims is a condition precedent to the LSA's withdrawal from this appeal, the Settling Parties have requested the stay set forth in their Motion to Stay pending satisfaction of that settlement requirement.²


The Order also mistakenly remanded the case “for approval . . . of the settlement.” Pursuant to the terms of the settlement agreement, the Settling Parties will not be seeking approval of the settlement. It would be inconsistent with the Settling Parties' agreement and also *ultra vires*, for the Court to place any requirement regarding settlement approval on the Settling Parties. The relief in this Court's order was, therefore, inconsistent with the relief sought in the parties' Motion to Stay.

Accordingly, the parties respectfully request that the Court's Order be amended, clarified, and/or corrected to state that the appeal is stayed pending a final order dismissing the Undue Influence Claim in the lower court, at which time the LSA will

² The Settling Parties are moving expeditiously toward satisfying this condition, having scheduled a lower court hearing on their Joint Motion to Dismiss for March 21, 2017. The Court postponed that hearing so the Parties could seek the clarification requested in this Motion.

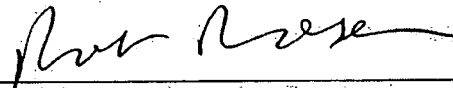
notify the Court that the LSA withdraws his participation in the appeal related to the Spousal Claims pursuant to the terms of the Settlement Agreement and as set forth in the Joint Motion to Stay.

Respectfully submitted,



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Attorneys for Tommie Rae Brown

March 22, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 08 2017

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Appellate Case No. 2015-002417

Tommie Rae Brown,Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is theAppellant

APPELLANT DAVID C. SOJOURNER, JR.'S AND
RESPONDENT TOMMIE RAE BROWN'S
MOTION TO STAY APPEAL PENDING CONSUMMATION OF SETTLEMENT

David C. Sojourner, Jr., Esquire, in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown, and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 ("Appellant"), and Tommie Rae Brown ("Respondent"), hereby move for an order staying the above-captioned appeal pending establishment of Appellant's settlement with Respondent.

This appeal arises out of an order from the lower court, dated January 13, 2015,



concluding Respondent is Decedent's surviving spouse as a matter of law. The lower court's order granted Respondent's motion for partial summary judgment and denied Appellant LSA's and others' cross motions for summary judgment which requested the court conclude Respondent was not Decedent's surviving spouse. Appellant LSA and other appellants to this appeal timely filed notices of appeal with this Court. Since that time, the appeal has been pending before this Court and is not yet fully briefed.¹

On March 8, 2017, Appellant LSA, Respondent, and Russell L. Bauknight, as Personal Representative of the Estate of James Brown ("PR") entered into the Settlement Agreement attached as **Exhibit A** ("Settlement Agreement"). The Settlement Agreement requires the settling parties to take certain actions at the lower court and the appellate court. Consistent with those obligations, simultaneous with the filing of this Motion, the parties filed a joint motion in the lower court providing notice of the settlement and moving for dismissal of Respondent's petitions and amended petitions to set aside the probate of Decedent's 2000 Will and to set aside Decedent's Irrevocable Trust dated August 1, 2000 based upon claims of undue influence and fraud ("Respondent's Undue Influence Claims").

Upon issuance of the lower court's final order dismissing Respondent's Undue Influence Claims, the LSA and Respondent will notify the Court that the LSA withdraws his participation as an appellant in this matter and state that the remaining parties are adequately represented and capable of asserting their appeal in the LSA's absence as an appealing party. Accordingly, the settlement will not conclude this appeal with respect to

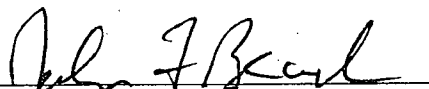
¹ On February 9, 2017, the Court granted a consent order resolving Appellant LSA's Motion to Exclude Irrelevant Documents from the Record on Appeal and a Motion to Strike Irrelevant and Prejudicial Statements from the Initial Brief. The Consent Order permitted Respondent to file a revised initial brief on or before March 10, 2017.

remaining parties.

CONCLUSION

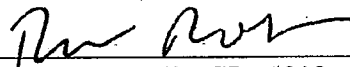
For the reasons stated, LSA and Respondent respectfully request the Court stay the above-captioned appeal until the lower court issues a final order on their joint motion to dismiss Respondent's Undue Influence Claims. The parties intend to advise this Court as soon as a final order is issued with respect to the pending joint motion before the lower court.

Respectfully submitted,


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March 8, 2017.


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Attorneys for Tommie Rae Brown

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”);

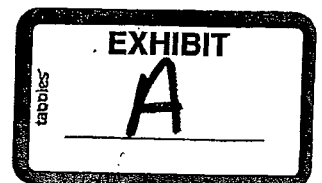
WHEREAS, through orders dated October 1, 2013 and October 10, 2013 (the “Appointment Orders”), the South Carolina Court of Common Pleas and the South Carolina Probate Court appointed Dave C. Sojourner, Jr. as Limited Special Administrator for the Estate of James Brown and as Limited Special Trustee of 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

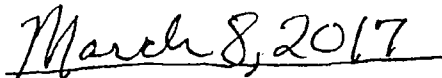
settlement to his or her client, and that his or her client fully understands and agrees, by the respective signature, to be bound by all terms set forth herein.

[Signature pages to follow]

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

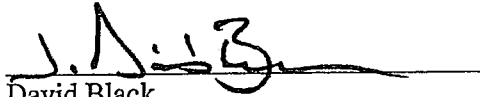


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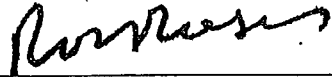
By signing below, I hereby bind my client to this Settlement Agreement:



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*Attorneys for Russell L. Bauknight, Personal Representative
of the Estate of James Brown and Trustee of the
James Brown Irrevocable Trust, u/a/d August 1, 2000*

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



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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.

PROOF OF SERVICE

The undersigned hereby certifies that she has served the foregoing Appellant David C. Sojourner, Jr.'s and Respondent Tommie Rae Brown's Motion to Amend, Clarify and/or Correct Order Filed March 16, 2017 and this Proof of Service, by depositing a copy of same in the United States Mail, postage prepaid on March 23, 2017 and addressed as follows:

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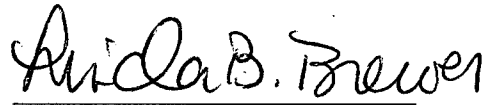
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and Ciara Petitt and Cherquarius Williams
for LaRhonda Petitt*

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and Ciara Pettit and Cherquarius Williams
for LaRhonda Pettit*



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Paralegal for Adams and Reese LLP

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Trust, w/a/d August 1, 2000*

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SC Court of Appeals

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Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

In re: The Estate of James Brown a/k/a James Joseph Brown
Tommie Rae Brown v. David C. Sojourner, Jr., et al.
Appellate Case No. 2015-002417
A&R File No. 022853-000001

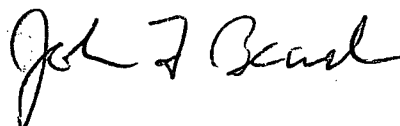
Dear Ms. Kitchings:

Enclosed herewith for filing are the original and one copy of Appellant David C. Sojourner, Jr.'s and Respondent Tommie Rae Brown's Motion to Amend, Clarify and/or Correct Order filed March 16, 2017 and a Proof of Service in the referenced matter. Please file these documents and return a clocked copy to me via our courier. Our check in the amount of \$25.00 is enclosed to cover the motion fee.

By copy of this letter, I am serving all counsel of record with a copy of these documents.

Thank you for your attention to this matter. Please contact me with any questions or concerns.

Sincerely,



John F. Beach

JFB/lbb

Enclosures

cc: David C. Sojourner, Jr., Esquire
All parties of Record