

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

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Appellate Case No. 2015-002417

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RECEIVED

AUG 23 2017

SC Court of Appeals

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.

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REPLY OF APPELLANT DAVID C. SOJOURNER, JR. IN SUPPORT OF  
JOINT NOTICE OF SETTLEMENT BETWEEN APPELLANT  
DAVID C. SOJOURNER, JR. AND RESPONDENT TOMMIE RAE BROWN AND  
WITHDRAWAL OF APPEAL OF DAVID C. SOJOURNER JR.

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On August 4, 2017, 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”), together with Tommie Rae Brown (“Respondent”) jointly filed a Notice of Settlement and Withdrawal of LSA’s Appeal pursuant to the terms of a Settlement

Agreement executed by the parties. The parties' withdrawal dealt solely with the LSA's appeal, filed November 20, 2015 (the "LSA Appeal").

On August 14, 2017, Deanna Brown Thomas, Yamma Brown, and Venisha Brown (collectively the "Brown Children"), by their counsel of record, filed a Response to the LSA and Respondent's Notice of Settlement and Withdrawal of Appeal. In the Brown Children's Response, they asserted the Notice of Settlement and Withdrawal of Appeal was procedurally improper as it was not made "on motion of the appellant or petitioner" pursuant to Rule 260(c), SCACR. *See* Response at pp. 1-2.

The Brown Children also indicated that although they "do not necessarily oppose the LSA's withdrawal from the appeal," they request that the withdrawal be "conditioned on two things . . . : (1) That the LSA's final appellate briefs and designations to the record be considered part of the record in this case and shall not be affected by the LSA's withdrawal; and (2) That the LSA be required either to confirm that the settlement agreement attached to their Notice contains all the terms and conditions of the settlement reached with the Respondent or else to disclose any and all additional settlement terms that have not been disclosed to the Children." Response at p. 2.

**1. The LSA Should Have Filed the Notice of Settlement and Withdrawal of Appeal as a Motion under Rule 260(c), SCACR.**

The LSA and Respondent did not file the Notice of Settlement and Withdrawal of Appeal as a motion because they concluded Rule 260(c), SCACR, does not apply.

Rule 260(c), SCACR, appears to apply when there is no "consent" between the appealing and responding parties. With such consent, the parties could file an "agreed dismissal" under Rule 260(b), SCACR. However, where there is no consent, "[a]n

appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court.” (emphasis added) Rule 260(c), SCACR. This rule appears to address appellate proceedings involving a single appellant and single appeal, where withdrawal of the moving appellant’s appeal results in dismissal of the entire appellate proceeding.

Here, the LSA is not the only appealing party. Rather, other appealing parties, including the Brown Children, have active appeals from the Lower Court’s orders granting partial summary judgment to Respondent on the finding she is James Brown’s surviving spouse. Because the LSA’s appeal will not end proceedings in this appeal, the LSA is informed and believes a Notice of Settlement and Withdrawal of Appeal as filed is appropriate.

If the Court determines withdrawal of the LSA’s appeal should be addressed through a Rule 260(c) motion, the LSA will re-file the LSA and Respondent’s joint filing as a motion and the LSA and Court may address any terms of dismissal the Brown Children might request at that time.

**2. The LSA’s final appellate briefs and designations to the record should be considered part of the record in this case following withdrawal of the LSA’s appeal.**

Should the Court accept the LSA and Respondent’s Notice of Settlement and Withdrawal of Appeal as procedurally appropriate, the LSA agrees its final appellate briefs and designations to the record should either be considered part of the record, or treated in some way that allows parties to properly adopt the LSA’s arguments. However, in making this ruling, the LSA requests the Court also clearly rule, because the LSA has settled with Respondent and withdrawn, those briefs no represent the LSA’s position, and

that the LSA, accordingly, has no further procedural obligation to participate as a party in this appeal.

3. **The LSA should either confirm the Settlement Agreement attached to their Notice contains all the terms and conditions of the settlement reached with the Respondent or disclose any additional settlement terms that have not been disclosed to the Children.**

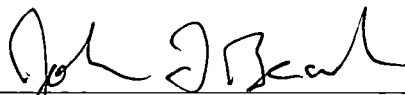
Whether the Court treats the LSA and Respondent's Notice of Settlement and Withdrawal of Appeal as procedurally appropriate or requires the LSA to move for dismissal of his appeal, the LSA opposes the Brown Children's request for disclosure of all terms and conditions. This appeal solely addresses the Lower Court's orders granting partial summary judgment to Respondent on the finding she is James Brown's surviving spouse. The Brown Children have filed with the Lower Court, in Case No. 20008-CP-02-01647, a Motion to Compel Disclosure of Settlement Terms. That motion moves the Lower Court to issue an order granting the identical disclosures the Brown Children suggest this Court grant here. While the LSA is the only representative of the Estate in this appeal, the Estate's Personal Representative is a party in the Brown Children's Lower Court motion. All parties have or will have the opportunity to fully brief this issue in the Lower Court. All parties will argue their respective positions before the Lower Court, which has rescheduled a hearing from August 29, 2017 as stated in the Brown Children's Response to September 20, 2017.

The LSA is informed and believes the issue regarding disclosure of settlement terms should be addressed in the Lower Court, in response to the Brown Children's motion. That issue is wholly unrelated to the LSA's voluntary withdrawal of its appeal in this matter. The LSA therefore respectfully requests the Court deny this condition regardless of its treatment of the LSA and Respondent's joint filing.

## CONCLUSION

For the reasons set forth above, the LSA respectfully requests the Court enter an order (i) finding the LSA has settled its appeal with Respondent, (ii) allowing the LSA to withdraw its appeal pursuant to the LSA and Respondent's Notice of Settlement and Withdrawal of Appeal, (iii) permitting requesting appellants to adopt the LSA's arguments as set forth in the LSA's final briefs on record with this Court, and (iv) excuse the LSA and counsel from further proceedings in this appeal. All other conditions requested by the Brown Children should be denied.

Respectfully submitted,



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Estate of James Brown and Limited Special  
Trustee of the James Brown Irrevocable  
Trust, w/a/d August 1, 2000*

August 21, 2017.

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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.

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PROOF OF SERVICE

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The undersigned hereby certifies that he has served the Reply of 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 in Support of Notice of Settlement and Withdrawal of Appeal, Appellant David C. Sojourner, Jr.'s Motion for an Extension of Time to File Reply in Support of Notice of Settlement and Withdrawal of Appeal and this Proof of Service by depositing a copy of same in the United States Mail, postage prepaid on August 21, 2017 and addressed as follows:

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and Ciara Petitt and Cherquarius Williams  
for LaRhonda Petitt*

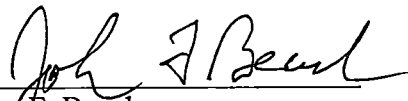
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Trustee of the James Brown Irrevocable  
Trust, u/a/d August 1, 2000*

August 21, 2017

August 21, 2017

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Via U.S. Regular Mail

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

RE: *In re: The Estate of James Brown a/k/a James Joseph Brown*  
Appellate Case No.: 2015-002417  
A&R Case No.: 022853-000001

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AUG 23 2017

SC Court of Appeals


Dear Ms. Kitchings:

Enclosed for filing are an original and six copies of a Reply of 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 in Support of Notice of Settlement and Withdrawal of Appeal, Appellant David C. Sojourner, Jr.'s Motion for an Extension of Time to File Reply in Support of Notice of Settlement and Withdrawal of Appeal a Proof of Service in the referenced appeal. Please file the originals and return one filed-stamped copy of each to us with 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 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,

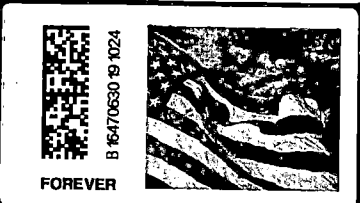


John F. Beach

JFB/lbb

Enclosures

cc: All counsel of record



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ADAMS AND REESE LLP

RECEIVED  
AUG 28 2018  
SC COURT OF APPEALS

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