

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

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

RECEIVED

AUG 14 2017

SC Court of Appeals

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.

**RESPONSE TO “NOTICE OF SETTLEMENT BETWEEN APPELLANT DAVID C.  
SOJOURNER, JR. AND RESPONDENT TOMMIE RAE BROWN AND WITHDRAWAL  
OF APPEAL OF DAVID C. SOJOURNER, JR.”**

YOU WILL PLEASE TAKE NOTICE THAT respondents Deanna Brown Thomas,  
Yamma Brown and Venisha Brown (collectively, the “Children”), hereby respond to the “Notice  
of Settlement Between Appellant David C. Sojourner, Jr. and Respondent Tommie Rae Brown  
and Withdrawal of Appeal of David C. Sojourner, Jr.” (the “Notice”).

First, the South Carolina Appellate Court Rules do not appear to allow a party to an  
appeal to unilaterally withdraw his or her appeal by simply filing a “notice of withdrawal”.  
Instead, Rule 260(c), SCACR provides for withdrawal or dismissal of an appeal “on motion of

the appellant or petitioner”, and then dismissal may be allowed only “upon such terms as may be fixed by the court.” The joint “Notice” filed by the LSA and the Respondent does not appear to comport with the requirements of Rule 260(c).

Second, while the Children do not necessarily oppose the LSA’s withdrawal from the appeal, the Children believe the withdrawal should be conditioned on two things, both of which have been previously raised as concerns to this Court in their “Return to Joint Motion of LSA and Respondent to Amend, Clarify and/or Correct Order filed March 16, 2017”:

(1) That the LSA’s final appellate briefs and designations to the record be considered part of the record in the 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.

As the LSA admits in the Notice, the basis of his withdrawal is a settlement reached with the Respondent. Unfortunately, and inexplicably, the LSA has refused to confirm whether there are any undisclosed settlement terms. It is well-settled that the administrators of a probate estate are fiduciaries to the heirs and devisees of the estate. *See* S.C. Code Ann. § 62-3-703(a) (2017) (A “personal representative is a fiduciary” who must use his powers “for the best interests of successors to the estate.”); *see also* S.C. Code Ann. §62-3-617 (2017) (“A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties prescribed in the order.”). One of the fundamental characteristics of a fiduciary relationship between estate administrators and the beneficiaries is the duty of full disclosure. *Turpin v. Lowther*, 404 S.C. 581, 745 S.E.2d 397 (Ct. App. 2013). “Parties in a fiduciary relationship must fully disclose to each other all known

information that is significant and material, and when this duty to disclose is triggered, silence may constitute a fraud.” *Id.*, 404 S.C. at 590-91, 745 S.E.2d at 402 (quoting *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004)).

The Children are successors to the Estate of James Brown, and both the LSA and the Personal Representative, as the Estate administrators, thus owe a fiduciary duty to the Children. The Estate administrators’ failure to respond to repeated requests from the Children for clarification about the purported settlement terms has resulted in the Children having to file a motion in the Circuit Court seeking an order compelling the Estate to make full disclosure of the settlement terms (the “Motion to Compel”). A true and correct copy of the Motion to Compel, with its exhibits, is attached hereto as Exhibit “A”. The Children have requested a hearing on their Motion to Compel, which is scheduled for August 29, 2017.

Because the Children are frankly unable to determine the impact of the LSA’s settlement on themselves or, to the extent it might be necessary, to protect their interests against the possible actions of the Estate’s fiduciaries, the Children respectfully ask this Court to exercise its authority under Rule 260(c) to require full disclosure of any and all settlement terms with the Respondent, as a condition to the LSA’s withdrawal from the appeal.

Respectfully submitted,

*Her D* on Behalf of Robert C. Byrd

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August 14, 2017  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM AIKEN COUNTY  
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Doyet A. Early, III, Circuit Court Judge

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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 the 14<sup>th</sup> day of August, 2017, s/he has caused a copy of the RESPONSE TO “NOTICE OF SETTLEMENT BETWEEN APPELLANT DAVID C. SOJOURNER, JR. AND RESPONDENT TOMMIE RAE BROWN AND WITHDRAWAL OF APPEAL OF DAVID C. SOJOURNER, JR.” to be served upon all parties of record by mailing a copy of the same addressed as follows:

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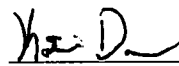
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August 14, 2017

**VIA HAND-DELIVERY**

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

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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.  
Appellate Case No. 2015-002417**

Dear Mrs. Kitchings:

Enclosed please find an original and seven (7) copies of **Response to "Notice of Settlement Between Appellant David C. Sojourner, Jr. and Respondent Tommie Rae Brown and Withdrawal of Appeal of David C. Sojourner, Jr."** regarding the above-referenced matter.

Please return a filed-stamped copy with our courier. Should you have any questions regarding this matter, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,

Katon E. Dawson, Jr.

KED:bg  
Enclosures

cc: All Counsel of Record

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