

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP0202850

ELECTRONICALLY FILED - 2017 Dec 19 8:30 AM - AIKEN - COMMON PLEAS - CASE#2013CP0202850

Tommie Rae Hynie-Brown		David Soujourner Deanna Brown Thomas Venisha Brown Daryl Brown Michael Deon Brown	Terry Brown Yamma Brown Larry Brown Jeanette Mitchell
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b). SCRPC: Rule 41(a). SCRPC (Vol. Nonsuit):
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC: Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

RECEIVED
 JAN 22 2018
 SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: (formal order to follow) Statement of Judgment by the Court:

Defendants Motion to alter or amend Order entered December 6, 2017 is respectfully denied.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX


Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



 Circuit Court Judge

2136

 Judge Code

12-15-17

 Date

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Tommie Rae Brown

Petitioner,

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,

IN RE The Estate of James Brown a/k/a James
Joseph Brown

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case No. 2013-CP-02-02849
2013-CP-02-02850
2007-ES-02-0056

MOTION TO ALTER OR AMEND

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JAN 22 2018

SC Court of Appeals

YOU WILL PLEASE TAKE NOTICE that respondents Deanna Brown Thomas, Yamma Brown and Venisha Brown (collectively, the "Children"), hereby move the Court, pursuant to Rule 59(e), SCRCP, for an order altering or amending the Order of the Honorable Doyet A. Early, III, entered December 6, 2017. Counsel for the plaintiff first received notice of entry of the said Order by email notification on December 6, 2017. The grounds for this Motion are as follows:

1. The Court's denial of the Children's Motion to Compel Disclosure of Settlement Terms (the "Motion") by way of a Form 4 Order without articulating the Court's reasoning for the denial unfairly prejudices the Children, who are forced to file this motion simply to preserve their grounds for appeal. The Children respectfully request the Court issue, without delay, an order clarifying the basis for the Court's denial of their Motion.

2. The Court erred in denying the Children's Motion because neither the Personal Representative nor his legal counsel submitted a brief or any objection opposing the Motion, and neither the Personal Representative or his legal counsel even bothered to appear at the October 30, 2017 hearing to offer any objection or opposition to the Motion. Moreover, the Personal Representative offered no excuse for failing to attend the hearing, other than his legal counsel apparently sending an *ex parte* email to the Court the day before the hearing stating that he saw no reason for its attendance. The Children object to the *ex parte* communications between the Personal Representative's counsel and the Court, and the Children further respectfully request that all communications between the Court and the Personal Representative or his counsel be produced and made a part of the record in this probate proceeding.

3. The Court erred in accepting an untimely brief in opposition to the Children's Motion from counsel for the petitioner Tommie Rae Brown, and by further allowing argument from the petitioner's counsel in opposition to the Motion. The petitioner is not a party to the Motion, which seeks no relief against the petitioner, and neither she nor her attorney had standing to object to the Children's Motion.

4. The Court erred in denying the Children's Motion because every party to the settlement in question has expressly and repeatedly refused to deny the existence of a "side deal" or undisclosed settlement terms, even to the point of refusing to answer direct questions by the Court during the hearing about the existence of such terms. The Children are named beneficiaries of the Estate (unlike the petitioner), and the Estate's administrators owe a fiduciary duty to deal fairly and openly with the Children and other beneficiaries.

5. The Court erred in denying the Children's Motion because South Carolina law is clear that a fiduciary relationship, which clearly exists between an Estate's administrators and the beneficiaries, includes a duty of full disclosure. "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.” *Turpin v. Lowther*, 404 S.C. 581, 590-91, 745 S.E.2d 397, 402 (Ct. App. 2013) (quoting *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004)).

6. The Court erred in denying the Children’s Motion because a Circuit Judge who is presiding over a probate case has the duties and responsibilities of a Probate Judge, which include the responsibility to oversee the legal and fair administration of the Estate. The notion of an Estate entering into an undisclosed “side deal” with one of the beneficiaries potentially to the detriment of other beneficiaries is antithetical to the proper administration of an Estate. When the Court refuses to require the Estate administrators even to confirm or deny the existence of such a secret settlement, much less require that the secret terms be disclosed, justice is not being served.

7. The Court erred in denying the Children’s Motion because the petitioner’s primary concern was the public disclosure of the terms, which can be remedied by a confidentiality order, as was suggested by the undersigned during the hearing.

This Motion is based upon the pleadings herein, the applicable law, and such other materials as may be served upon you before or at the hearing of the Motion. The undersigned certifies that consultation with opposing counsel regarding the subject matter of the Motion would serve no useful purpose.

s/Robert C. Byrd

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December 15, 2017

Charleston, South Carolina

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