

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning

RECEIVED

JAN 29 2018

SC Court of Appeals

Appellate Case No. 2017-001899

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope and Robert L. Buchanan, Jr., Defendants.

Of whom Adele J. Pope is Appellant

INITIAL BRIEF OF APPELLANT

W.H. Bundy, Jr.
H. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Road
Summerville, South Carolina 29485
Telephone (843) 492-4134
Facsimile (843) 712-7318
walter@bundymcdonald.com

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernailfirm.com

Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities II

Statement of Issues on Appeal IV

Statement of the Case 1

Statement of the Facts 7

Argument 16

 I. The lower court erred in granting the Attorney General and other Respondents relief from default as to Buchanan’s and Pope’s counterclaims 16

 II. The lower court erred in failing to disqualify Respondents’ counsel from representing the Attorney General and failing to enjoin Bauknight from acting on behalf of the Attorney General. 19

 II. The lower court erred in ruling that Attorney General Wilson cannot be deposed in a tort suit the Attorney General brought in 2010 21

 IV. The lower court erred in dismissing the Attorney General as a party under Rule 21 SCRCP 25

Conclusion 35

TABLE OF AUTHORITIES

CASES

Ex Parte Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003)	19
Hallums v. Bowens, 318 S.C. 1, 3, 428 S.E.2d 894 (Ct. App. 1993)	19
In re Whetstone , 580 S.E.2d 447, 354 S.C. 213 (2003)	21
Mendelsohn v. Whitfield, 312 S.C. 17, 430 S.E.2d 524 (Ct. App. 1993), modified, 312 S.C. 226, 439 S.E. 2d 845 (1994)	33
Ray Charles Foundation v. Robinson, 795 F.3d 1109 (9th Cir. 2015)	11
Richardson v. PV, Inc., 383 S.C. 610, 682 S.E.2d 263 (2009)	17
Roche v. Young Brothers, Inc. 318 S.C. 207, 456 S.E.2d 897 (1995)	17
Roberts v. Peterson, 292 S.C. 149, 355 S.E.2d 280 (Ct.App. 1987)	17
South Carolina v. Eli Lilly and Co. Circuit Court case no. 07-CP-42-1855	34
Sundown Operating Co., v. Intedge Indus., Inc. 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)	16
U.S. District Court, District of New Jersey, Civil Docket Case No. 2:17-cv-008102-SDW-CLW	14
U.S. District Court Case, Central District of California, Civil Docket No. 2:18-cv-00307	14, 15, 18
United States v. Morgan, 313 U.S. 409, 313 U.S. 409 (1941)	21, 22
Valentine v. Davis, 460 S.E.2d 218 (1995)	33
Wham v. Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E. 2d 499, 502 (Ct. App. 1989)	16
White Oak Manor, Inc., v. Lexington Insurance Company, 407 S.C. 1, 753 S.E.2d 587 (2014)	16, 17
Wilson v. Dallas, 403 S.C. 411 743 S.E.2d 746 (2013)	1, 4, 7, 18, 20, 25, 26, 27, 28, 30, 31

STATUTES

S.C. Code Ann. §30-4-10 et seq. ("FOIA")	5
S.C. Code Ann. §62-1-106 (2013)	2
S.C. Code Ann. §62-7-104 (2013)	18

RULES

Rule 21, South Carolina Rules of Civil Procedure	4, 32, 34
Rule 55 SCRCP, South Carolina Rules of Civil Procedure	16
Rule 55 (c) SCRCP, South Carolina Rules of Civil Procedure	16

OTHER AUTHORITIES

17 U.S.C. §§ 203	9
17 U.S.C. §§ 304	9
U.S. Const. amend. I	3, 19
U.S. Const. amend. 5	3
U.S. Const. amend. XIV § 1	3, 19
S.C. Const., art. I, § 8	19
Grinblat, <i>Nine Ways to Avoid Copyright Terminations</i> , Part I and Part II (2012).	
Pope, A.J. and Smith, W.J. (2011). <i>Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....</i> Unpublished manuscript	28

STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court err in granting the Attorney General and other Respondents relief from default as to Buchanan's and Pope's counterclaims?
- II. Did the lower court err in failing to disqualify Respondents' counsel from representing the Attorney General and in failing to enjoin Bauknight from acting on behalf of the Attorney General?
- III. Did the lower court err in ruling that Attorney General Wilson cannot be deposed in a tort suit the Attorney General brought in 2010?
- IV. Did the lower court err in dismissing the Attorney General as a party under Rule 21 SCRCP?

Statement of the Case

This is an appeal from the dismissal of the Attorney General of South Carolina (“AG”) as a Plaintiff in a lawsuit he and others filed against Appellant and Robert Buchanan, Jr. in 2010.¹ Appellant also appeals certain rulings issued prior to the dismissal.

From November 20, 2007, until May 26, 2009, Buchanan and Appellant served as personal representatives under the will of entertainer James Brown dated August 1, 2000 (the “Will”) and as trustees of Brown’s 2000 Irrevocable Trust (“PR/Trustees”).² [Aff AJP 8/10/11]

a. Order Granting Plaintiffs’ Motion to Set Aside Default

Respondents’ Complaint was filed in Richland County on May 19, 2010.³ [Comp.] The Complaint asserts that by appealing a settlement brokered by the AG in 2008,⁴ and other acts, Buchanan and Appellant caused tens of millions of dollars damage to the financial legacy of entertainer James Brown.

The AG’s settlement referenced in the Complaint was approved by the circuit

1

At the time the suit was filed the Honorable Henry Dargan McMaster was AG. In January 2011 the Honorable Alan McCrory Wilson became AG.

2

Buchanan was a party to this suit until July 2012.

3

The case was filed in the Richland County Probate Court, and removed to circuit court. It was assigned to the Honorable L. Casey Manning.

4

The settlement brokered by the AG was declared void in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

court on May 26, 2009. An appeal of the AG's settlement was pending when this suit was filed.

In their Answer and Counterclaim Buchanan and Pope deny all wrongdoing. They assert that the AG's settlement and other actions by Respondents have damaged them, and also James Brown's estate and 2000 Trust. [Ans.CC]. The counterclaim seeks actual and punitive damages and offset against Respondents for abuse of process; interference with contract; civil conspiracy; and violations of S.C. Code Ann. § 62-1-106 (2013) of the South Carolina Probate Code ("SCPC"). [Ans./CC pp. 13-32]

On November 10, 2010, after Respondents failed to timely respond to Buchanan's and Pope's counterclaims, an Affidavit of Default was filed. [Affid. Def.]

On November 16, 2010, Respondents served a Motion to Set Aside Entry of Default. They also served a proposed Response to Buchanan's and Pope's counterclaim. [Ord. 10/13/15; Resp.to Ccs]

On December 17, 2012, a hearing was held on the Motion to Set Aside Entry of Default. [Ord. dtd.10/13/15, p.2]

By order dated October 13, 2015, five years after the motion was filed, circuit court granted Respondents' Motion to Set Aside Entry of Default. [Ord.1013/15]

b. Order Declining to Disqualify Respondents' Counsel or Enjoin Bauknight

On May 18, 2011, Buchanan and Pope filed a motion to disqualify the law firm of Kenneth Wingate, Esq., from serving as sole counsel of record to the AG

while serving as counsel to all remaining Respondents. [Mot., 5/18/11] The motion also sought to enjoin Russell L. Bauknight from purporting to act as agent for the AG and State of South Carolina. [Mot., 5/18/11]

The motion was based in part on a May 4, 2011, Inventory of James Brown's assets filed by Bauknight valuing James Brown's music empire at \$4,697,736.

[Mot., p. 2, 3] The motion asserted that the approximately \$4.7 million value was less than 1/12 the actual fair market value of Brown's music empire. [Mot., p.2]

The motion asserts Respondents' counsel cannot simultaneously represent the AG, who has a duty to protect Brown's private foundation, while representing Respondent Terry Brown ("Terry"), who is seeking to purchase the music empire.

[Mot., pp. 2, 3] The motion asserts that a sale to Terry at \$5 million would reduce Brown's "I Feel Good" charity from its correct \$80 million value to less than \$1 million. [Mot. Dtd.5/18/11, pp. 2,3]

The motion also asserts that the Wingate contract with the AG is void, and violates Buchanan's and Pope's Due Process⁵ and First Amendment⁶ rights. [Motion, pp. 2-4]

Based on Bauknight's May 4, 2011, Inventory, Buchanan and Appellant also sought to enjoin Bauknight from purporting to act as agent for the AG or the State of South Carolina. [Motion, pp. 2-4]

A hearing was held on the motion on April 12, 2012.

⁵ U.S. Const., amend 1; U.S. Const., amend. XIV § 1.

⁶ U.S. Const., amend 5; U.S. Const., amend. XIV § 1.

On July 5, 2012, the circuit court denied the relief sought in the motion. [Ord. dtd. 7/5/12]

c. Protective Order as to Deposition of Attorney General Wilson

In 2016 AG Wilson filed a motion to bar the taking of his deposition in this case. [Ord.dtd., 9/21/16, p.1]. The AG asserted that he was not AG when this lawsuit was instituted; that he lacked personal knowledge of all or most of the matters at issue in this suit; that all or most of the questions which might be asked would be subject to privilege; and that the deposition would interfere with his duties as AG. [Ord., pp.1,2; Memo.Opp.Prot.Ord.]

On August 29, 2016 a hearing was held on the AG's motion. [Ord., p. 1; Tr. 8/29/16, pp 1, .p. 34, L.7 - p. 24;p. 35, L. 19 -p. 47, L. 7]

By order dated September 21, 2016 the circuit court directed that the deposition of the AG not be taken in this case. [Ord. dtd. 9/21/16]

d. Order Granting AG Alan Wilson's Motion to Be Dropped as Party

On March 25, 2013, following the South Carolina Supreme Court's first decision in *Wilson v. Dallas*, filed February 27, 2013,⁷ the AG filed a motion under Rule 21, *South Carolina Rules of Civil Procedure* (" SCRCP") to be dropped as a party to this suit. [Ord. dtd. 5/31/17; Ret].

7

The initial opinion was withdrawn and superseded on May 8, 2013 with *Wilson v. Dallas*, 403 S.C. 11, 743 S.E.2d 746 (2013). The Court is asked to take judicial notice of the decision, as well as the Initial Brief of Respondents, filed 11/22/10; Respondents' Motion to Supplement the Record filed 5/6/11; Appellant's Return to Motion to Supplement, 5/11; and Respondents' Reply filed 6/3/11.

On May 10, 2013 Respondents' counsel filed a Motion to be Relieved as Counsel for the AG. [Mot. Relieve.C.] Counsel also sought a stay of all matters in this case. [Ret. Opp., Mot. Stay. 4/29/2014, p.2].

On April 22, 2014 the AG and other Respondents filed a written motion to stay this case. Appellant opposed the motion. [Ret. Opp., Mot. Stay.]

On March 3, 2016 the circuit court issued a stay in this case pending further order of the court. [Ord. dtd. 3/31/16] . Appellant objected to the stay. [Mot.Alter Stay Ord.]

In March 2016 the case was assigned to the Honorable Doyet A. Early, III, ("Judge Early"), and the stay was lifted. [Ord. Lift/Stay]

On June 7, 2016, Respondents' counsel filed a Notice Withdrawing Motion to be Relieved as Counsel to the AG. [Notice/Withdrawal]

In 2016 and 2017 the AG and other Respondents, though counsel, were involved in substantial discovery. [Tr. 8/29/16, p. 2; p. 4, L4 - L20; p.5, L23 - p.6, L13; p.6, L24 - p. 13, L.1; p. 12, L2 - p.15, L9; p. 16, L3 - p. 18, L3; p. 21, L.5 - p. 25, L.7; p. 25, L. 11 - p. 27, L-3; p. 33, L. 19 - p. 34, L.1;]

In 2016 the AG and other Respondents filed a Motion for Partial Summary Judgment as to Appellant's counterclaims.⁸ [Op. Aff. Smith; Aff.Ruff, 7/19/17; Aff. Appel., 4/28/14; Supp Aff. Appel, 6/2/16; Aff. Appel, mediation 8/13/15; SJ; Op.,Aff.

8

Appellant had previously moved for summary judgment as to the AG and others. [Mot. SJ, AG, 3/11/13]

Smith;] The AG also continued to defend a FOIA⁹ suit transferred from Newberry County and consolidated with this case in 2011. [Ord. Dtd. 11/22/11]¹⁰

On June 14, 2016, the consolidated FOIA suit, on motion of the AG, was dismissed. [Mot. Alter/Amend, Order, Dimissal, dtd. 6/14/16].

On August 29, 2016, a hearing was held on the AG's motion to be dropped as a party under Rule 21. [Ord. 5/31/17, p.2]

By order dated May 31, 2017, the AG's motion to be dropped as a party under Rule 21 was granted. [Ord. dtd. 5/31/17]

On August 2, 2017, Appellant's motion to alter, amend or vacate the order dismissing the AG as a party was denied. [Ord. 8/2/17] It was received by Appellant on August 14, 2017.

The Notice of Appeal was served and filed on September 12, 2017.

9

South Carolina Freedom of Information Act, *S.C. Code Ann.* §30-4-10 et seq. ("FOIA"),

10

The FOIA suit seeking the AG's Litigation Retention Agreement with Sweeny, Wingate and Barrow, PA, was filed in Newberry County in 2011. On motion of the AG, it was transferred to Richland County and consolidated with this case in 2011. It was active until dismissed. [Complaint, FOIA; Ord. 6/14/16; Ord. 11/22/11; Motion AG to Dismiss 9/12/11; Mot. Intervene 10/26/11; Aff., Young, 12/11; Pl. Status Report; 3/28/13; Ltr. Silvernail to Jg. Manning 4/21/15; Ltr. Wingate to Jg. Manning 5/10/13]

Statement of Facts¹¹

On May 8, 2013 the South Carolina Supreme Court voided a 2008 settlement brokered by the AG which dismembered entertainer James Brown's estate plan and threatened the protection of the \$3 million annual copyright royalty stream Brown left his "I Feel Good" charity.¹² *Wilson, supra*.

By May 10, with assistance of the AG, Bauknight had been temporarily reinstated as Brown's fiduciary. Bauknight continues to be Trustee of Respondent Legacy Trust.

On May 12, 2013, the AG and other Respondents told the circuit court in this case:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.

..Therefore, Case 4900 Plaintiffs and Proposed FOIA Interveners respectfully request that [the Wingate & FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.] [Ltr. to Jg. Mg., dtd. 5/12/13]

On May 29, 2013, counsel for Tommie Rae Brown ("Tommie Rae"), Deanna Brown Thomas ("Deanna") and other Respondents asked Judge Early to go *en camera*

¹¹

Appellant incorporates the Statement of the Case in this Statement of the Facts.

¹²

The Court affirmed the lower Court's decision to replace Defendants. The Court voided the fiduciary appointments of Bauknight, but permitted him to reapply.

and hear why he should reinstate the AG's settlement the Supreme Court had just voided. With Bauknight still trustee of the AG's Legacy Trust, the AG expressed his satisfaction that Bauknight had been reappointed to Brown's estate.

On June 13, 2013, at the request of Bauknight, Tommie Rae and other Respondents, Judge Early issued orders excluding Buchanan and Pope from participating in any Aiken County James Brown cases except their own claims cases.[Mot., 6/23/17, p.62]

On August 20, 2013, when asked if Buchanan's and Pope's securing the *Wilson* decision was beneficial to Brown's estate, Bauknight responded under oath:

That's poppycock. Pure speculation from your client. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic].

. . . It blows me away that someone with a law degree can be so dishonest and get away with it. ...

...[Y]our client raped this estate. . . There was no diminished Legacy Trust. That's fabrication from your client. [Depos., BK.]

In August 2013, Peter Afterman,¹³ hired by Bauknight in 2009, helped Tommie Rae and Respondent James B., file Termination Notices with the U.S.

¹³

Afterman's Inaudible Productions was paid more than \$100,000 by Brown's Estate in 2013, and between 2009 and 2015 he claimed on the Inaudible website that he had been hired by the State of South Carolina.

Copyright Office. [Memo. 8/29/16; Aff.11/8/17] They were seeking to secure, between 2015 and 2023, U.S. royalties from more than 90 of the 900 copyrights James Brown gave his "I Feel Good" Charity [Termin. Notice. Tober. Ltr.].¹⁴

In his August 2013 deposition Bauknight was questioned about the \$4.7 million at-death valuation of Brown's music empire (Schedule F, Estate Tax Return) prepared by Philpott, Ball and Werner ("PBW"). Bauknight identified Peter Afterman as the only "person familiar with the estate and the music industry and commonsense view of business and popular culture" he could recall who had consulted with PBW. [Smith op., pp.4,5]

In September 2013 Peter Afterman solicited Respondent Deanna Thomas, and other Respondents as additional clients to attempt to secure royalties from copyrights Brown gave the I Feel Good" charity. [Aff. 11/8/17, p. 4]

In September 2013 Marc Toberoff, Esq., on behalf of Respondent Deanna Thomas and others, objected to the "Tommie Rae Terminations" filed in the

¹⁴

On March 16, 2017, Jonas Herbsman, Esq., Respondents' Termination Rights expert in this case, gave a general description of Sections 17 U.S.C. §203 and §304, the "Termination Rights" provisions of the Federal Copyright Act. Under § 203 and § 304, either thirty-five or fifty-six years after certain transfers of interests in a deceased songwriter's copyright, his or her heirs, under certain circumstances, may terminate the transfers and secure some or all of the U.S. Royalties from the particular copyright for themselves. [Opin. Smith, pp. 25 - 28]

In the AG's 2008 settlement, Respondents Deanna Thomas, and Yamma, Tommie Rae, Daryl, Larry, Terry, Venisha and Tonya Brown advised the Court that they had placed all of their Termination Rights into Respondent James Brown Legacy Trust "Legacy Trust.

Copyright Office. Toberoff asserted that the estate's agent had a conflict of interest in working for Tommie Rae. [Ltr. dtd.] Toberoff also asserted that Tommie Rae and James B. were not heirs of James Brown under the Copyright Act. [Ltr.]

In October 2013 Bauknight was appointed PR/Trustee. David Sojourner, Esq., was appointed special administrator and special trustee ("SA/ST") to protect Brown's estate plan from will/trust challenges and the claims of Tommie Rae and James B.¹⁵ [Aff. 11/8/17, pp. 7, 10]

In October 2013, over objection of Bauknight, a federal court released the Litigation Retention Agreement by which Respondents' counsel contracted to bring this suit. The Agreement was not signed by the AG.¹⁶ [Agmt.]

The Litigation Agreement provides for a 23% - 40% contingency fee, with 10% of the fee related to the charity to be paid to the AG's office. It provides that James Brown's estate will advance costs for all Respondents. [Agmt.]

In 2013 Respondents' counsel returned \$500,000 to Brown's estate. The \$500,000 had been paid to Respondents' counsel in 2012 for Respondents' expert witness costs. [Bauk. Report]

On October 12, 2013, Judge Early approved all payments made to

¹⁵

The Court is asked to take judicial notice of the Brief of Terry Brown in the Tommie Rae spousal appeal, Appellate Case No. 2016-001373.

¹⁶

The AG continued to decline to release the entire contract in the consolidated 2011 FOIA case, and Respondents' counsel continues to assert that it cannot be produced in discovery.

Buchanan and left open the possibility of Buchanan's re-entry into this case.¹⁷

[Ret.Mot.Enforce 5/21/12]

In January 2015 a circuit court order found Tommie Rae to be Brown's spouse. The Order is on appeal by certain Respondents.

In March 2015 the 9th circuit confirmed the standing of the Ray Charles Foundation to protect itself with respect to Copyright Act Termination notices because they affect its royalty stream.¹⁸ *Ray Charles Foundation v. Robinson*, 795 F.3d 1109 (9th Cir. 2015)

In 2015 Tommie Rae was paid \$1 million dollars for what she described as the sale of three of Brown's 900 copyrights. [Memo. 8/29/16, p. 16]

On October 13, 2015, the circuit court granted Respondents' November 2010 Motion for Relief From Default. [Order. 11/13/15]

In two depositions in 2016, the Honorable Henry McMaster, now Governor of South Carolina ("Governor McMaster") testified that he had not authorized this suit to be brought in the name of the AG, and did not authorize Bauknight to bring this suit on behalf of the AG. He testified he learned he was a Plaintiff after leaving office in 2011. [Aff. 11/8/17, pp. 19, 20]

In 2016 the AG, Legacy Trust, and other Respondents moved to consolidate discovery in this case with discovery in Aiken County Case 2013-CP-02-1337

¹⁷

Appellant asked for Buchanan to retain the \$500,000, but to void the settlement [Ret. Mot to Enforce., 5/21/12]

¹⁸

For many years before his death Brown's copyrights produced a royalty stream of about \$3 million each year.

("Aiken 1337").¹⁹ Respondents named as experts in this case the nine experts Bauknight named in Aiken 1337.

On May 17, 2016 the AG and others moved for summary judgment as to the counterclaims raised by Buchanan and Pope. [Ret.Mot.SJ]

In 2016 Respondent James B. was awarded approximately \$700,000 in legal and GAL fees from James Brown's estate. [Memo 8/29/16, pp. 16, 17]

On January 2017, Bauknight testified that he had spent millions of dollars in legal fees because of Appellant. He said of the *Wilson* appeal:

You fought something that you shouldn't have fought.
And it's either because of your personal greed or
because of your lack of understanding of what
termination rights are. . . [Memo 11/8/17, p. 24]

At the request of AG and other Respondents, Appellants' 139 boxes of documents compiled in this case were made available for inspection and copying by Respondents' counsel the week of May 1, 2017. [Ord. Prod.]

On March 9, 2017, at the request of the AG and other Respondents, the circuit court issued an order requiring all affidavits filed by Appellant to be filed under seal, and sealing, without review, an Affidavit of Appellant. (Ord. Dtd.3/9/17).

On March 21, 2017 AG Wilson was deposed in Aiken 1337. [Op. Smith, pp. 92-110].

¹⁹

Aiken 1337 was filed by Appellant on June 13, 2013, after she was served on May 29, 2013 by Bauknight, with a Notice of Disallowance With Impending Bar. The Disallowance stated that she was not entitled to be paid for any service under the Will and 2000 Trust of James Brown. The Notice stated that she was required to file a petition within thirty days or forever be barred. The motion to consolidate was denied. [Disallowance]

On March 27, 2017 Appellant's valuation expert Richard B. Alexander, was deposed by Bauknight's counsel in Aiken 1337. [Smith Op., pp 79 - 92]

In March 2017 Respondents' Termination Rights expert Roger Miller confirmed that James Brown's music catalog was "solid gold," and that \$45 million to \$60 million would be expected for the value of copyrights at his death in 2006. [Mot. Dtd. 7/13/17, p. 13, 14]

On April 10, 2017 Appellant's expert Wallace K. Lightsey, Esq. was deposed in Aiken 1337. [Op. Smith, pp. 58 - 77]

On April 11, 2017 Thomas Pope, Esq., who, with Jay Bender, Esq., represented a journalist in certain James Brown matters, was deposed in Aiken 1337. [Op. Smith, pp. 92-109]

On April 14, 2017, Respondents' expert Ellison Thomas, CPA, was deposed.^{20 21}

On April 20, 2017, Respondent Tommie Rae stated in a filing in this case:

²⁰

Thomas had not seen the \$4.7 million appraisal. He was not prepared to discuss the increase in the size of Brown's taxable Grandchildren's Trust resulting from the IRS not challenging Bauknight's change in the value of Brown's Music Empire in the IRS estate tax proceeding from \$84 Million to about \$4.7 million

²¹

Brown's 2000 Trust is divided as of his death between the "I Feel Good" charitable trust and the taxable trust for seven grandchildren, including five Respondents. The division is a "fractional share" based on values as finally determined in James Brown's estate tax proceeding. With Brown's Trust valued at about \$84million in the IRS proceeding about 1/42 of the assets and income go into the taxable Grandchildren's Trust. 41/42 goes to the "I Feel Good" charity. When the value of Brown's music empire was reduced to \$4.7 million, and total assets to approximately \$6 million, in the estate tax proceeding, this shifted about 1/3 of Brown's assets from the charity into the Grandchildren's Trust. [2000 Trust, Art. V]

Ms. Pope's ill-considered appeal of the 2008 settlement agreement cost the charitable trust tens of millions of dollars. In that agreement, as the court is well-aware, Mrs. Brown and the Brown children contributed approximately 50% of all the termination right proceeds to the charitable trust. Because Ms. Pope succeeded in destroying the settlement agreement, the charitable trust lost the right to these tens of millions of dollars of termination rights proceeds. Because Mrs. Brown has now agreed to contribute 65% of her share of the termination rights proceeds, the charitable trust will benefit immensely. It appears, however, that the Brown children's share of the termination rights proceeds will remain irretrievably lost to the charitable trust – thanks to Ms. Pope's appeal. [4/20/17]

By 2017 at least five Respondents had asserted in Court proceedings that Tommie Rae was not Brown's spouse, thus having no Termination Rights. Other suits have been filed related to Respondents.²²

On October 24, 2017, Appellant moved to lift the stay in this case pending this appeal. [Mot.Lift.]

On November 1, 2017, Louis Levenson, Esq., who signed the Wingate contract for nine Respondents, was deposed in Aiken 1337 after being named a witness for Respondents' Estate and 2000 Trust. [Aff. 11/8/17, pp. 5, 6]

On December 6, 2017 Judge Early denied Appellant's motion to lift the stay.

On January 16, 2018 , In the U.S. District Court Case, Central District of

²²

On October 10, 2017 U. S. District Court , District of New Jersey, Civil Docket Case No. 2:17-cv-008102-SDW-CLW was filed by Toby Byron against Terry Brown and his son Forlando Brown ("Forlando"). Byron seeks damages against Forlando for a book contract in 2011 during which time Forlando was doing business as "The James Brown Legacy Foundation." That year Terry had secretly transferred to Forlando his right of first refusal under the AG's settlement to buy Brown's music empire.

California, Civil Docket Case No. 2:18-cv-00307 was filed by Toberoff on behalf of Respondents Deanna Thomas, Tonya Brown, Venisha Brown and others against Respondents Russell Bauknight as PR/Trustee, Sojourner, Tommie Rae and James B.²³

The Complaint asserts that certain Respondents, along with Jeanette Mitchell, Nicole C. Brown, Michael Brown, Ciara Pettit and Cherquarius Williams are biological children or grandchildren of James Brown, with rights as heirs under Sections 203 and 304 of the Copyright Act. The complaint states:

1.2 The termination interest is without doubt *the* most important interest under the Copyright Act, after copyright itself, ... [Compl.CA., pp. 2]

²³ The Court is asked to take judicial notice of this complaint.

Argument

- I. **The lower court erred in granting the Attorney General and other Respondents relief from default as to Buchanan's and Pope's counterclaims.**

In an order dated October 13, 2015, the lower court set aside the entry of default as to all Plaintiffs under Rule 55 SCRPC. The court held that the Attorney General was never in default, and that Respondents had shown good cause for such relief. The court relied on Rule 55 (c) SCRPC , which states in relevant part that “[f]or good cause shown the court may set aside an entry of default...” The court also relied on *Wham v Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989).

In 2015 our Supreme Court reiterated the standard for a party seeking relief from an entry of default. In *White Oak Manor, Inc., v. Lexington Insurance Company*, 407 S.C. 1, 753 S.E.2d 587 (2014) our Supreme Court ruled as follows:

The standard for granting relief from an entry of default under Rule 55(c) is “mere good cause.” ‘This standard requires a party seeking relief from entry of default under Rule 55 (c) to provide an explanation for the default and give reasons why vacation of the entry of the default would serve the interests of justice.’ *Sundown Operating Co., v. Intedge Indus., Inc.* 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

‘Once a party has put forth a satisfactory explanation for the default, the trial court must consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the Plaintiff if relief is granted.’ *Id.* at 607-608, 681 S.E.2d at 888.

[Emphasis supplied]

Respondents did not meet the first prong of the test. Buchanan's and Appellant's Answer and Counterclaim was timely served on Respondents' counsel at his proper address by hand-delivery. [Aff.Default]. Counsel does not recall receiving the Answer and Counterclaim, but his file contains a copy with his own handwritten notation. [Aff. Wingate]

As explained in *White Oak Manor*, id., a determination of "good cause" under Rule 55, SCRPC, requires first that the defaulting party must provide a justifiable explanation for the default and give reasons why vacation of the default would serve the interests of justice. Respondents' motion does not meet that test.

In *Roche v. Young Brothers, Inc.* 318 S.C. 207, 456 S.E.2d 897 (1995), the Supreme Court ruled that "losing a summons and complaint within the corporation" was not a ground to set aside default. *Id* at 212, 456 S.E.2d at 900. In that case the Supreme Court reinstated the entry of default and remanded the case for a damages hearing.

In *Richardson v. PV, Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009), the Supreme Court held that the insurance company's negligence in failing to timely answer was imputed to the insured, and was not "good cause." The courts have consistently held that "the negligence of an attorney or an insurance company is imputable to a defaulting litigant." *Richardson*, 682 S.E.2d at 267, citing *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct.App. 1987).

Respondents presented no evidence with the filing or at the hearing of a

meritorious defense.²⁴

Had the AG and other Respondents met all other criteria for relief from default, the degree of prejudice to Buchanan and Pope should still have precluded a grant of relief from default.

When this suit was filed, the devaluation to \$4.7 million was already in progress. In addition, Respondent James B. had already filed a Petition for Review of Compensation in Aiken. The only basis for this suit was to damage Buchanan and Pope in order to derail the appeal which became *Wilson*.

The prejudice to the careers of two lawyers when the State's highest legal officer, for seven years, has claimed they have committed the federal felony of overstating the value of the assets of a world-renowned entertainer in sworn IRS filings for the improper purpose of securing a \$5 million commission cannot be overstated.²⁵

24

Respondents Janise and Lindsey Brown saw the Complaint for the first time in 2017, and had no knowledge of any wrongdoing of Pope. Venisha Brown did not appear at deposition, and could not be found by her lawyer in this case. Yet in 2018, she sued Tommie Rae and Bauknight in California. [Complaint, U.S. Dist.Ct. Centr.Dist.CA, No. 2:18-CV-00307]. Jason Brown-Lewis asserts \$100 million is low for Brown's assets. Respondent Legacy Trust (Settlement Entity) represented to the Supreme Court that it holds Termination Rights of at least five Respondents, but now claims it does not exist. [Hg. 5/17/16, pp. 32-35] In 2011, Terry Brown, with Bell, planted the false Grammy © claim noted by the Supreme Court in *Wilson*; has repeatedly changed his sworn testimony; and, with Bell, filed false grievances in two States. [Aff. 11/8/17, p. 6] All Respondents had knowledge, as defined in S.C. Code § 62-7-104 (2013) of the South Carolina Trust Code ("SCTC") of facts found in orders they did not appeal approving the service of Buchanan and Pope

25

In 2017 the AG began taking the position that he is protected for his acts in this suit by prosecutorial immunity. [Supp. Mem. AG]

The finding that the AG was never in default is erroneous. When the AG elects to enter a proceeding, he must abide by the Rules of Civil Procedure. *Ex Parte Condon v. State*, 354 S.C. 634, 583 S.E.2d 430 (2003).

The Order Granting Relief From Default should be reversed. The matter should be remanded for a determination of damages.

II. The lower court erred in failing to disqualify Respondents' counsel from representing the Attorney General and failing to enjoin Bauknight from acting on behalf of the Attorney General.

This is the first case known to Appellant within the State, and perhaps within the nation, where the State/AG, through a private law firm, has joined with private non-residents of the State, including minors without GALs, to bring a tort suit against fiduciaries protecting a 501(c)(3) charity, for the benefit of the individuals. [FOIA Compl.]

Although the AG is not an attorney in the proceeding, the office of the AG – and not the State's general fund – will receive 10% of the legal fees payable to Respondents' counsel related to the charity. [AG Contract, pg.]

Allowing Respondents' counsel to wield the power of the State against Defendants in this case under these facts is inconsistent with all notions of Due Process under the U.S. and South Carolina Constitutions, as well as the separation of powers provisions of the South Carolina Constitution.²⁶ Because the issue is jurisdictional, it may be raised at any time. *Hallums v. Bowens*, 318 S.C 1, 3, 428 S.E.2d 894 (Ct. App. 1993).

²⁶ U.S. Const., amend.I and amend. XIV, S.C. Constitution, Article 1, § 8.

In the two-page order issued on July 5, 2012, the lower court declined to disqualify Respondents' counsel from being sole counsel to the State/AG, and Bauknight from purporting to act "on behalf of the Attorney General of South Carolina."

It was improper in 2012 for the private Sweeny, Wingate & Barrow, PA to represent the AG while carrying out its duty to Tommie Rae and others seeking to dismember Brown's "I Feel Good" charity. In 2013, after *Wilson*, it was patently improper.

It is unconstitutional and a violation of the State's Separation of Powers Clause for a private law firm to represent the State/AG in a suit over which the AG does not exercise appropriate control; is not named as counsel on the pleadings; but will get ten percent of the fee taken from trustees protecting a charity the AG has a duty to protect. That is the case here.

It is also improper for a private person, without legal written authorization of any kind, to bring and continue for almost eight years a tort suit "on behalf of the Attorney General of South Carolina."

The Order of July 5, 2012, should be reversed. The Wingate Firm should be disqualified from representing the AG in this case. Bauknight should be enjoined from purporting to speak on behalf of the AG. The caption of the case should be adjusted accordingly.

III. The lower court erred in ruling that Attorney General Wilson cannot be deposed in a tort suit the Attorney General brought in 2010.

The lower court order issued on September 21, 2016, states in part:

The *Morgan* rule and its progeny and related cases protect against depositions of high-ranking public officials except under extraordinary circumstances not present here. This deposition would be an undue burden for this reason and those others noted above. . .

...THIS COURT ORDERS that the Motion of the Attorney General be granted and ORDERS that his deposition not be taken in this case.

The order states that *United States v. Morgan*, 313 U.S. 409, 313 U.S. 409 (1941) is consistent with *In re Whetstone*, 580 S.E.2d 447, 354 S.C. 213 (2003) which held that the modern trend of courts is not to allow a judge to testify regarding a case in which he previously presided unless the testimony is: 1) critical; and 2) can be obtained by no other means.

This case is clearly distinguishable from *Whetstone*, in which the judge played a neutral role in the earlier case. In this case, since January 2011, AG Wilson has had direct personal control over his own tort claims; those of Bauknight as his claimed agent; and those of the Legacy Trust he controls through Bauknight.

The AG is directly seeking a tort recovery for the benefit of the Legacy Trust which he claims is private. His office is seeking ten percent of legal fees in a case in which he asserts he is not participating.

Morgan and its progeny are distinguishable because the public officials whose depositions were prohibited had not assumed the direct, personal role the

AG has assumed here.

Governor Henry McMaster gave a deposition in 2016 in this case and an additional deposition in Aiken 1337. AG Wilson himself agreed to be deposed, and was deposed, in Aiken 1337. This was appropriate. Together, these high officials exercised, through Bauknight, effective control over the James Brown's music empire from 2009 until 2013. Today AG Wilson controls this litigation by his control over Bauknight. AG Wilson has control over the Legacy Trust through his 50% vote and his right to remove and replace Bauknight at will. These actions bear no relation to *Morgan*.

Even if *Morgan* were applicable it would be appropriate to depose AG Wilson, a "highly placed executive branch official". Appellant has made a clear showing that the AG's testimony is essential to prevent prejudice or injustice to Appellant, the party requesting the deposition.

Since 2011 AG Wilson has placed the power of the State behind a lawsuit his predecessor AG says he did not authorize. He and Tommie Rae, today, hold 75% voting control of Respondent Legacy Trust. AG Wilson has the absolute right to remove and replace the Trustee. He is responsible for condoning the \$4.7 million value Bauknight used in IRS filings, and the resulting shift of 1/3 of Brown's assets and income from a charitable trust to a taxable one. AG Wilson has used FOIA to prevent release of the handwritten admissions of Tommie Rae that she was married; living with her husband; and possibly pregnant before her bigamous ceremony with James Brown.

AG Wilson does not dispute that on March 6, 2013, Pope met with him;

advised him of the disastrous tax consequences and loss to the needy students of the \$4.7 million value and Bauknight's IRS filings. [Aff.11/8/17, p. 21] He does not deny that after the first *Wilson* decision he was advised both by Appellant and Adam Silvernail, Esq. that the damage to the "I Feel Good" charity by the problematic IRS filings could have been solved by any trustee except Bauknight.

Solicitor General Robert Cook, who was deposed in Aiken 1337, attended the March 2013 meetings. He has testified that he never thought Pope was greedy; that he thought she was competent, and that he thought she was trying to protect the interests of the "I Feel Good" charity. With this testimony from the Solicitor General, only the AG can explain the course he has taken since. [Aff.11/8/17, pp. 29-20]

No testimony other than that of AG Wilson will explain the essential issues of this case. Why did the State/AG begin and continue, with this lawsuit, a relentless attack on PR/Trustees who were conducting a reasonable appeal to protect James Brown's "I Feel Good" Trust as well as his private trust for seven grandchildren? Why did the AG, with no investigation, continue to sue Buchanan and Pope claiming they committed serious tax fraud? Why did the AG continue the attack after March 6, 2013, when the problems caused by the Bauknight/Afterman valuation were personally explained to the AG, his Chief Deputy and the Solicitor General? Why did the AG not take steps to appoint a trustee who, as a result of the *Wilson* decision, could have easily and inexpensively corrected the IRS filings; paid the relatively small estate taxes due; and prevented putting 1/3 of Brown's "I Feel Good" Trust's assets into a trust that will ultimately go to the charity, but be taxed

for more than twenty years?

Increasingly more important is the question of why, in 2017, the AG has continued to be aligned with Tommie Rae. Why has he praised Bauknight while Bauknight allowed Afterman to help Tommie Rae take royalties from the "I Feel Good" charity with defective Termination Notices? And why has the AG allowed Bauknight to spend millions of dollars in legal fees to defeat the claims of Buchanan and Pope while allowing James B. to secure a \$700,000.00 legal and GAL fee?

The AG and Tommie Rae have disparaged Buchanan's and Pope's reputations, careers and standing in the legal community since 2010. The deposition taken of the AG in 2017 in Aiken 1337 was respectful and short. It did not disrupt even half a day of the AG's valuable time or any important State business.

The AG allowed his deposition to be taken in 1337 even though he was not a party²⁷. He is a Plaintiff in this case. He is the only person who controls the Legacy Trust, the primary beneficiary of the claims stated in the Complaint.²⁸

The order directing that the AG not be deposed should be reversed. He

²⁷

The AG and other Respondents, sixteen of whom are not parties in Aiken 1337, moved to consolidate discovery in this case and Aiken 1337. The motion was denied prior to the AG's deposition in Aiken 1337. [Ret. Mot. Consol.]

²⁸

In FOIA cases the AG and Bauknight have claimed the Legacy Trust has not existed since May 8, 2013. The AG's and Bauknight's position is different in this case. In 2016 the Legacy Trust, along with the AG, moved for summary judgment as to Appellant's counterclaims. In 2016 Tommie Rae's lawyer not only asserted that the Legacy Trust exists, but that Bauknight should be "knighted" for the work that he has done for its beneficiaries. [Aff. 11/8/17, p. 24]

should be deposited at a mutually convenient time.

IV. The lower court erred in dismissing the Attorney General as a party under Rule 21 SCRPC.

Since May 19, 2010 the AG, with others, has used this case as the launch pad to attack the two James Brown fiduciaries who challenged the AG's claimed right to take personal control of James Brown's assets; give \$20 million of Brown's assets to Tommie Rae; and declare her Brown's spouse, dismembering the plan to protect Brown's "I Feel Good" charity from dissipation by the improper exercise of Termination Rights under Sections 203 and 304 of the Copyright Act.

By September Bauknight had hired a dozen lawyers to secure James Brown's assets for the AG's Legacy Trust.²⁹ The Legacy Trust beneficiaries are Tommie Rae, six Will contestants, and a new charity the AG will create. [Aff. 11/8/17, p. 24]

In September 2009 Tommie Rae's lawyer spoke for the AG and settling parties who were trying to stop an appeal that threatened the \$40 million the AG's settlement gave them:

WE'RE UNANIMOUS ...THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT...THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES." [Tr. Hg. 9/09, Case 1647]

An order secured by the AG and settling parties to prevent any payment to Buchanan and Pope did not stop the appeal which would become *Wilson v.*

²⁹ Respondent Legacy Trust is also known as the "Settlement Entity."

Dallas.³⁰

In March 2010 Tommie Rae's lawyer informed Buchanan's counsel that the AG had already hired the firm of Kenneth Wingate, Esq., and if Buchanan and Pope did not drop the appeal of the AG's settlement, they would be sued.

On May 19, 2010 the AG, Bauknight "on behalf of the Attorney General of South Carolina," the AG's Legacy Trust and the remaining Respondents sued Buchanan and Pope. [Compl., p.1]

The AG's complaint asserts that Buchanan and Pope are both greedy and incompetent. It asserts they did not understand Termination Rights or tax issues facing Brown's estate and 2000 Trust. It even accuses Buchanan and Pope of the federal felony of overstating the value of Brown's assets to the IRS for the purpose of obtaining a \$5 million commission. [Comp.]

Since May 2013 this lawsuit has continued to be the AG's platform to discredit Buchanan and Pope as Tommie Raw and the Will contestants seek to reinstate the AG's 2008 settlement.

In August 2010 the AG and Bauknight told the Court of Appeals they expected an appraisal within a few weeks. They asserted it would show Brown's assets at less than \$12 million. It, in fact, was approximately \$4.7 million.

The \$4.7 Million appraisal secured by Bauknight, with Afterman as the music industry "expert", arrived in September 2010. [Mot.59/SJ Ord., p. 45] The AG and Bauknight agreed not to reveal it to the Supreme Court until a time a time of their

³⁰

James Richardon, Esq., served *pro bono publico* as lead counsel on the appeal.

choosing. [Wilkins email]

The AG's December 22, 2010 Initial Brief praised Bauknight, but did not reveal the appraisal had arrived.³¹

In January 2011 the IRS did not challenge Bauknight's claim that Brown's music empire, formerly reported at \$84 million, should be reduced to \$4.7 million.

The IRS closing letter, because of a carefully crafted "fractional share" formula in Brown's 2000 Trust, shifted about 1/3 of Brown's assets and income from the charitable "I Feel Good" Trust into the taxable Grandchildren's Trust. [2000 Trust, Article V] This created unnecessary taxable income which will be trapped in the Grandchildren's taxable trust for more than twenty years, with most taxed at the 35% rate.^{32 33}

On December 22, 2010, the AG's Initial Brief in *Wilson v. Dallas*³⁴ asserted that under the Settlement Tommie Rae contributes "her half of the Termination rights" to the Legacy Trust. [Initial Brie, pg. 3]. Under a section entitled Federal

³¹

The Court is asked to take judicial notice of Respondents' Initial Brief and Final Brief in *Wilson*.

³²

Under Brown's estate plan, the education trusts for the seven grandchildren terminate at age 35. The funds then go into the "I Feel Good" Trust. Even though the "I Feel Good" charity ultimately receives the assets, the Trust is subject to income tax.

³³

Had the \$84 million value reported by Buchanan and Pope remained in place, only about 1/42 of Brown's assets would have gone into the taxable Grandchildren's Trust, and 41/42 into the charity.

³⁴ Appellant asks that the Court take judicial notice of this document.

Copyright Termination Rights, the AG asserted that Tommie Rae and the five will contestants were all heirs to the Copyright termination rights under federal law, and had contributed their Termination Rights “and any proceeds to be derived from them” to the Legacy Trust. [Brief, pg. 33]. The AG said:

Had the statutory heirs not agreed to contribute these rights to the settlement entity,³⁵ the Charitable beneficiaries could never have received any benefits from Termination rights. [Respondent’s Brief, pg. 33]

In April 2011, in response to the AG’s announcement of the devaluation of Brown’s assets to \$12 million, Smith and Pope wrote *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown “I Feel Good” Trust doesn’t...*³⁶ [Priv.Fdns.]

Private Foundations demonstrated how the combination of the AG’s incorrect heirs determination and Bauknight’s devaluation to \$12 million would leave the “I Feel Good” charity with almost nothing. It also discussed general strategies for charities owning copyrights to follow to protect themselves from attempts by claimed heirs to exercise Termination Rights. [Priv.Fdns, pp. 1-11]

In May 2011, after the final briefs were filed in *Wilson*, the AG and others filed a motion to supplement the record with the claimed \$4.7 million value.

³⁵ The “Legacy Trust” and “Settlement Entity” are the same.

³⁶

Private Foundations was based on the AG’s initial claim of a \$12 million value. The following year Grinblat published *Nine Ways to Avoid Copyright Terminations*, Parts 1& 2, providing strategies to stop Termination Rights claims.

[Ret.Mot.Supp.] For nearly seven years they have used the claim that Buchanan and Pope want a \$5 Million commission from a \$5 Million estate to attack and discredit Buchanan and Pope in multiple court proceedings.

To date, no court has been told of the millions of dollars in income tax generated by the devaluation of Brown's music empire to \$4.7 Million.

Since 2011 the AG and Bauknight have worked together to prevent release in discovery or under FOIA of the documents which show the damage caused by the AG to Brown's charity, and to Buchanan and Pope in this suit. Those documents are the AG's contract with the Wingate firm to bring this suit; the \$4.7 million valuation; Tommie Rae's handwritten admissions that she was not Brown's spouse; and a secret 2011 amendment to the AG's Legacy Trust which put Terry Brown in a position to exercise his right of first refusal to buy James Brown's music empire.³⁷

On November 1, 2011, at oral argument in *Wilson*, the AG supported Bauknight's claim that Tommie Rae's elective share was a "slamdunk" and incorrect claims about Federal Copyright Act Termination Rights. Bauknight claimed that if the AG's settlement were not approved 75% of the "I Feel Good" Charity's income would be lost as a result of the Termination Rights owned by Tommie Rae and the

37

The Legacy Trust amendment of December 2010 was not disclosed by the AG and Bauknight. It was revealed by Forlando when he became disgruntled that Bauknight would not consider what he claimed was a potential \$200 Million sale of Brown's assets. The December 2011 Legacy Trust Amendment was signed by Governor McMaster just before he left office, but circulated to the settling parties on January 18, 2011, by AG Wilson's Sr. Assistant Havird "Sonny" Jones.

Will contestants. [Aff.AJP, dtd. 8/13/15]

In May 2012 the AG filed a Motion to Enforce Settlement against Buchanan. [Ret.Mot.Enf.Settlmnt, 5/12] The settlement required Buchanan, in order to be paid \$500,000 by Brown's estate, to release his counterclaims against all Respondents; do nothing to help Appellant protect the "I Feel Good" charity; and not file a Petition for Rehearing when the *Wilson* decision was issued.³⁸

In 2012 the AG supported vicious attacks on Appellant when she sought to void 2008 *ex parte* gag orders preventing discussion or release of copies of Tommie Rae's handwritten admissions that she was not married to Brown. That year, the AG's counsel issued a subpoena for the sources and notes of a journalist who wrote about an interview with a "longtime friend" of James Brown discussing Tommie Rae's admissions.³⁹ [Mot.Publicity; Explosive Interview]

In October 2012, the AG's Chief Deputy and other AGs attended the first mediation in this case. [Med.Rpt.]

Before the mediation, the AG moved to strike, and filed, Offers of Judgment made to the AG, some minors, and others, to let them out of this suit. [Offers., Jmt. Mot Strike.]

On March 6, 2013, after the first *Wilson* decision, the AG met with Pope, the AG's Chief Deputy and the Solicitor General. The serious problems and damage

³⁸

Appellants supported the payments to Buchanan, but asked that the settlement be voided as a violation of the AG's public duty to the "I Feel Good" charity. [Ret.Motion.Enforce.Settlment]

³⁹ After media criticism, the AG directed that the subpoena be withdrawn.

to needy students of the Bauknight \$4.7 Million value and need to correct IRS filings were discussed.⁴⁰ Later that week, Pope and Adam Silvernail, Esq., met with the Chief Deputy and Solicitor General to discuss the same issues.⁴¹ [Memo, 8/29/16, pp. 17, 18]

In March 2013 the AG called Appellant to say he was getting out of this case. He told the same thing to the Supreme Court. Within days of the final decision in *Wilson* on May 8, 2013, however, the AG had helped reinstate Bauknight. By May 12 the AG had asked to stay this case while matters were concluded in Aiken.

On May 29, 2013, Tommie Rae's lawyer and Levenson announced to Judge Early their intention to reinstate the AG's settlement. With Bauknight, they asked that Buchanan and Pope not be allowed to participate in James Brown hearings. The AG expressed his pleasure that Bauknight had been reinstated.

After the May 2013 announcement to Judge Early of the intention to reinstate the AG's settlement, the AG and Bauknight increased their attacks on Appellant. Even though Judge Early approved Buchanan's service and payment, Bauknight has refused for almost nine years to pay Appellant even her \$47,000 Special Administrator fee earned in 2007. [Memo. 11/8/17, pp. 1-16]

⁴⁰

The reduction from \$84 million to \$4.7 million reduced annual required scholarship payouts for needy students from more than \$3 million a year to \$50,000 or less.

⁴¹

In depositions in Aiken 1337, the AG had no memory of the content of the meeting, but did not challenge Appellant's recollection. [Aff. 11/8/17, pp. 20, 21] Solicitor General Robert Cook testified that he believed Pope to be competent and concerned for the charity. He did not believe her to be greedy. [Aff. 11/8/17, pp. 19, 20]

By the end of 2013 Afterman was helping Tommie Rae try to take the "I Feel Good" Trust's copyrights; Bauknight was paying Afterman from Brown's estate; and the AG was continuing to praise Bauknight. [Memo. 11/8/17, p.4]

On October 22, 2015, the Chief Deputy and three Assistant AGs attended the second mediation in this case. [Proof ADR, 10/30/15]

By 2015 Sojourner had taken one deposition and charged \$1.4 million. Tommie Rae was declared Brown's spouse without his proffering her handwritten admissions. Tommie Rae had been paid \$1 Million on what she called the "sale" of three James Brown copyrights. [Memo. 11/8/17, p. 9]

In 2016 the AG and Respondents tried to consolidate this case with Appellant's claims case, which she was pursuing *pro se*. The AG, with others, moved for partial Summary Judgment. The AG's motion seeking partial summary judgment and his motion seeking to be dropped as a Plaintiff under Rule 21 SCRPC were heard the same day.

Rule 21, in relevant part, states:

Rule 21
MISJOINDER AND NON-JOINDER OF PARTIES

...Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.

At the time the AG was dismissed, discovery was proceeding. The AG had designated nine expert witnesses; a scheduling order was in effect; and the AG was seeking partial summary judgment as to Appellant's counterclaims against him.

Rule 21 SCRPC deals with situations where the absence of a necessary

party or misjoinder of parties in the action would warrant dismissal of the suit. *Mendelsohn v. Whitfield*, 312 S.C. 17, 430 S.E.2d 524 (Ct. App. 1993), modified, 312 S.C. 226, 439 S.E. 2d 845 (1994). That is not the case in this suit.

As stated in *Valentine v. Davis*, 460 S.E.2d 218 (1995), the rules of civil procedure should not be tortured in such a way as to correct misjudgments in strategic positions. In 2010 the AG, with others, made the strategic decision to file this suit and attack Buchanan and Pope to try to stop the *Wilson* appeal.

In a sharp 2010 memorandum opposing Buchanan's and Pope's Motion to Dismiss, the AG claimed he was a proper party to help "seek redress for the substantial injury done to the financial legacy of one of South Carolina's most famous and generous icons, the late James Brown." [Mem. p. 1] He claimed the damage caused by Buchanan and Pope "could be in the tens of millions of dollars", and that Buchanan's and Pope's damage "threatens the fulfillment of the very legacy they were charged with protecting." [Memo. dtd. 8/27/10, p.2]

The AG claimed that this Richland County case was not substantially similar to the four James Brown cases then pending in Aiken. [Memo, pp. 5 - 8].

The AG challenged Buchanan's and Pope's "general contention that the AG is exceeding his statutory and constitutional authority by being a plaintiff in a private tort suit." [Memo. Pp. 8 - 12]. The AG said Judge Early, in approving the settlement, "plainly ruled that the Attorney General has the very authority and standing that Defendants seek to deny." [Memo. p. 2]

The Attorney General characterized Buchanan's and Pope's assertion that Bauknight was an improper agent for the AG as part of their "tireless effort to

prevent the approval of the Settlement Agreement,” an argument, they asserted, Buchanan and Pope , “pursued and lost.” [Memo. Pp. 8, 9]

The AG asserted that his right to engage the Wingate firm had been resolved in his favor by *South Carolina v. Eli Lilly and Co.* Circuit Court case no. 07-CP-42-1855.

For more than seven years, the Attorney General has allowed the State’s mighty power to be applied to damage Buchanan and Appellant in this suit. This suit, today, is why Bauknight asserts his right to withhold even Pope’s Court-ordered SA fees earned in 2007.

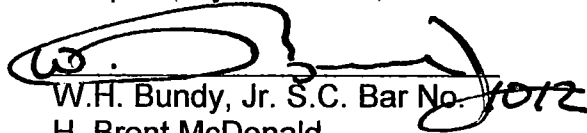
The AG has participated in or condoned the devaluation of Brown’s music empire to \$4.7 million. He has failed to correct tax filings which will cause millions of dollars in unnecessary damage to the ‘I Feel Good’ charity. He has helped conceal evidence that Tommie Rae was not Brown’s spouse. And he has turned this case into a FOIA graveyard.

The lower court misapplied Rule 21 when it dismissed the AG as a Plaintiff and counterclaim Defendant in this suit. Even if Rule 21 could be read to apply, dismissal in this case would be unjust. The order dismissing the AG as a Party should be reversed.

Conclusion

For the reasons stated herein, the Court should reverse the lower court's order dismissing the AG as a Plaintiff; reverse the order granting Respondents relief from default; disqualify the Wingate firm as counsel for the AG; enjoin Bauknight from asserting that he is acting on behalf of the AG and State; and remand the matter to the circuit for action consistent with these rulings.

Respectfully submitted,



W.H. Bundy, Jr. S.C. Bar No. 1012
H. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Road
Summerville, South Carolina 29485
Telephone (843) 492-4134
Fascimile (843) 712-7318
walter@bundymcdonald.com

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernailfirm.com

Attorneys for Appellant

January 29, 2018

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning**

Appellate Case No.: 2017-001899

RECEIVED

JAN 29 2018

SC Court of Appeals

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

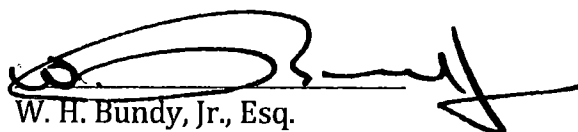
Adele J. Pope and Robert L. Buchanan, Jr., Defendants. Of

whom Adele J. Pope is Appellant

PROOF OF SERVICE

I certify that on January 29, 2018, I have served Initial Brief of Appellant by hand delivery on counsel listed below:

Kenneth B. Wingate, Esquire Mark V. Gende, Esquire Joseph O. Thickens, Esquire Sweeny, Wingate & Barrow, P.A. 1515 Lady Street Columbia, SC 29201	J. Emory Smith, Jr., Esquire Office of the Attorney General 1000 Assembly Street Columbia, South Carolina 29201
--	--



W. H. Bundy, Jr., Esq.
M. Brent McDonald, Esq.
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

and

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

Attorneys for the Appellant