

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

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

Appellant 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.

AMENDED INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities..... iii

Statement of Issues on Appeal.....v

Statement of the Case..... 1

Statement of Facts..... 9

Argument..... 13

I. The lower court erred in granting the Attorney General and other Respondents relief from default as to Buchanan’s and Pope’s counterclaims..... 13

A. This Court’s Standard of Review for Lower Court Order Setting Aside Entry of Default.....13

B. Discussion.....13

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 16

A. This Court’s Standard of Review for the Order Denying Motion to Disqualify and Injunction.....16

B. Discussion.....17

III. The lower court erred in ruling that Attorney General Wilson cannot be deposed in a tort suit the Attorney General brought in 2010.....19

A. The Court’s Standard of Review of Order Preventing Deposition of Attorney General Wilson.....19

B. Discussion.....19

IV. The lower court erred in dismissing the Attorney General as a party under Rule 21 SCRCF23

A. This Court’s Standard Of Review for Order Dropping

Attorney General as a Party Pursuant to Rule 21
SCRCF.....23

B. Discussion.....24

Conclusion 29

TABLE OF AUTHORITIES

CASES

<i>Bage, LLC v. Se. Roofing Co. of Spartanburg, Inc.</i> , 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct. App. 2007).....	13
<i>Balloon Plantation, Inc. v. Head Balloons, Inc.</i> , 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).....	13
<i>Bayle v. S.C. Dep't of Transp.</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001).....	19
<i>Blackmon v. Weaver</i> , 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005)....	17
<i>Branham v. Ford Motor Co.</i> , 390 S.C. 203, 701 S.E.2d 5 (2010)	23, 24
<i>Downey v. Dixon</i> 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct.App. 1987).....	19
<i>Ex Parte Condon v. State</i> , 354 S.C. 634, 583 S.E.2d 430 (2003)	16
<i>First Nat'l Bank of Shawnee Mission v. Roeland Park State Bank & Trust Co.</i> , 357 F.Supp. 708, 711 (D.Kan.1973).....	23
<i>Hallums v. Bowens</i> , 318 S.C. 1, 3, 428 S.E.2d 894 (Ct. App. 1993).....	17
<i>In re Whetstone</i> , 580 S.E.2d 447, 354 S.C. 213 (2003).....	20
<i>In-Tech Mktg. Inc. v. Hasbro, Inc.</i> , 685 F.Supp. 436, 442 n. 19 (D.N.J.1988).....	23
<i>Lawing v. Univar, USA, Inc.</i> , 415 S.C. 209, 225, 781 S.E.2d 548, 556–57 (2015).....	16
<i>Mendelsohn v. Whitfield</i> , 312 S.C. 17, 430 S.E.2d 524 (Ct.App.1993), modified, 312 S.C. 226, 439 S.E. 2d 845 (1994).....	23, 27
<i>Orangeburg Sausage Co. v. Cincinnati Ins. Co.</i> , 316 S.C. 331, 347–48, 450 S.E.2d 66, 75 (Ct. App. 1994).....	16
<i>Richardson v. PV, Inc.</i> , 383 S.C. 610, 682 S.E.2d 263 (2009).....	15
<i>Roberts v. Peterson</i> , 292 S.C. 149, 355 S.E.2d 280 (Ct.App. 1987).....	15
<i>Roche v. Young Brothers, Inc.</i> 318 S.C. 207, 456 S.E.2d 897 (1995).....	14
<i>Samples v. Mitchell</i> , 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997).....	13
<i>Scott v. Greenville Hous. Auth.</i> , 353 S.C. 639, 652, 579 S.E.2d 151, 158	

(Ct.App.2003).....	19
<i>Shaw v. Coleman</i> , 373 S.C. 485, 492, 645 S.E.2d 252, 256 (Ct. App. 2007).....	17
<i>South Carolina v. Eli Lilly and Co.</i> Circuit Court case no.07-CP-42- 1855.....	28
<i>Sundown Operating Co., v. Intedge Indus., Inc.</i> 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).....	14
<i>United States v. Morgan</i> , 313 U.S. 409, 313 U.S. 409 (1941).....	19, 20, 21
<i>Wham v Shearson Lehman Bros.</i> 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989).....	14
<i>White Oak Manor, Inc., v. Lexington Insurance Company</i> , 407 S.C. 1, 753 S.E.2d 587 (2014).....	14
<i>Williams v. Vanvolkenburg</i> , 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).....	13
<i>Wilson v. Dallas</i> , 403 S.C. 411, 743 S.E.2d 746 (2013).....	6, 9, 15, 18, 21, 22, 26, 27
<i>Valentine v. Davis</i> , 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995).....	23, 27

STATUTES

S.C. Code Ann. § 62-1-106 (2013).....	2
---------------------------------------	---

RULES

Rule 21, South Carolina Rules of Civil Procedure.....	6, 9, 23, 24, 27, 29
Rule 55, South Carolina Rules of Civil Procedure.....	13,14
Rule 55(c), South Carolina Rules of Civil Procedure.....	13,14

OTHER AUTHORITIES

U.S. Const., amend 1; U.S. Const., amend. XIV § 1.....	5
U.S. Const., amend. I and amend. XIV, S.C. Constitution, Article 1, § 8.....	17

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 SCRPC?

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 [Complaint; Affidavit of Adele J. Pope (AJP) dated 8/1/11, p.1] Appellant also appeals certain rulings issued prior to the dismissal. [Orders dated August 2, 2017, May 31, 2017, September 21, 2016 of the Honorable Doyet A. Early, II (Judge Early) I; Orders dated October 13, 2015 and July 5, 2012 of the Honorable L. Casey Manning (Judge Manning)]

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 [Complaint, pp. 4,5; Affidavit of AJP dated. 8/1/11, filed 8/2/11, p.1; Affidavit of Buchanan/Pope dated. 9/21/2010, filed 9/28/2010, pp 2 – 10;

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. [Plaintiffs’ Motion dated & filed 8/13/12, p. 2 & Exhibit B; Plaintiffs’ Motion dated & filed 8/23/12, Exhibit A, p. 2-5]

² Buchanan was a party to this suit until July 2012. [Answer and Counterclaim of Buchanan and Pope, dated & filed 9/30/2010; Second Supplemental Memorandum dated & filed 8/27/10, p. 4 & Exhibit A; Motion to Stay dated & filed 11/30/10, pp. 2 – 4 and Exhibits A & B; Defendant Buchanan’s Motion to Compel, dated & filed 7/1/11, pp. 1-3; Motion to Enforce Settlement Agreement, pp. 1, 2 & Exhibit A dated 5/18/12; Return and Objection to Motion to Enforce, dated & filed May 21, 2012; Order of the Hon. G. Thomas Cooper, Jr. (Jg. Cooper), dated and filed 5/12/11; Def. Buchanan’s Memorandum in Support, dated & filed 5/12/11; Transcript, hearing 8/30/2010, p. 5, L. 12 – p. 7, L. 25; p. 17, L 24 – p. 28, L. 2; p. 29, L. 7 – p. 40, L 2, p. 43, L. 7 – p. 46, L. 2; Order of Judge Manning dated 8/30/2010 and filed 8/31/2010 Order of Judge Cooper dated 4/27/11 and filed 4/28/11]

Affidavit, Beth Bauknight, dated & filed 10/1/10, Exhibits A& B; Acknowledgment dated & filed 8/27/10; Response (AJP), dated 11/16/10, filed 12/20/10].

a. Order Granting Plaintiffs' Motion to Set Aside Default

Respondents' Complaint was filed in Richland County on May 19, 2010.³

[Complaint]. The Complaint asserts that by appealing a settlement brokered by the AG in 2008, and other acts, Buchanan and Appellant caused tens of millions of dollars damage to the financial legacy of entertainer James Brown. [Complaint, pp. 1 - 11].

The AG's settlement referenced in the Complaint was approved by the circuit court on May 26, 2009. [Complaint, p. 1]. An appeal of the AG's settlement was pending when this suit was filed. [Complaint, pp.1, 19. Memorandum in Support, dated & filed 8/29/16, pp. 5 - 9].

In their Answer and Counterclaim Buchanan and Pope deny all wrongdoing. [Answer and Counterclaim, pp. 1 - 13]. They assert that the AG's settlement and other actions by Respondents have damaged them and James Brown's estate and 2000 Trust. [Answer and Counterclaim, pp. 13 - 32]. 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"). [Answer and Counterclaim, pp. 27 - 33].

On November 10, 2010, after Respondents failed to timely respond to Buchanan's and Pope's counterclaims, an Affidavit of Default was filed. [Affidavit of Default, dated and filed 11/10/10, pp. 1- 3;].

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. [Summons and Complaint, p.1].

On November 16, 2010, Respondents served a Motion to Set Aside Entry of Default. [Motion to Set Aside Entry of Default, dated and filed 11/16/10, pp. 1- 3; Affidavit of Kenneth B. Wingate, dated and filed 11/16/10; Defendant Pope's Return and Memorandum Opposing Relief from Default dated 4/10/12 and filed 4/12/12]. They also served a proposed Response to Buchanan's and Pope's counterclaim. [Answer to Counterclaim, dated and filed 11/16/10; Order Granting Plaintiffs' Motion to Set Aside Entry of Default, dated and filed 10/13/15].

On December 17, 2012, a hearing was held on the Motion to Set Aside Entry of Default. [Order dated and filed 10/13/15, p.2; Affidavit Pope dated. 7/23/10, filed 8/2/10, pp. 1-9, & Exhibits; Plaintiffs' Motion for Protective Order dated. 8/9/11, filed 8/11/11; Affidavit of Pope dated. 6/2/11, filed 6/3/11; Motion to Compel, dated 5/27/11, filed 6/1/11; Buchanan & Pope Memorandum, dated 5/12/11; Defendant Pope's Return dated 5/18/11, filed 5/19/11]. By order dated October 13, 2015, the circuit court granted Respondents' Motion to Set Aside Entry of Default. [Order dated and filed 10/13/15, p 3].

**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. [Defendant AJP's Motion to Disqualify, etc. dated 5/18/11, filed 5/19/11; Affidavit of Pope Supporting Production before Hearing, dated 8/1/11, filed 8/2/11; Affidavit of Pope dated & filed 5/18/11, pp. 1 - 8, and Exhibit A, *Private Foundation, Copyright Heirs & Musical*

Millionaires, pp. 1 -13; Supplemental Affidavit Supporting Injunction, dated 8/9/12, filed 8/12/12, pp. 1-3, & Exhibits A – F; Pope’s Return to Plaintiff’s Motion to Designate, dated 5/18/11, filed 5/19/11]. The motion also sought to enjoin Russell L. Bauknight from purporting to act as agent for the AG and State of South Carolina. [Motion dated May 18, 2011; Defendants’ Brief in Support of Injunction dated 9/14/11 (presented to Court, but not on e-filing); Supplemental Affidavit of Adele J. Pope Supporting injunction dated 4/9/12 and filed 4/12/12; Plaintiff’s Motion for Protective Order (Lindsey), dated & filed 4/19/11; Pl. amended Motion (Tommie Rae), dated & filed 4/19/11; Pls. Motion for Protective Order (Tommie Rae), dated 5/23/11 & filed 5/26/11, w/ Ex. A only; Plaintiffs’ Motion for Protective Order (Terry Brown), dated 3/23/11, filed 3/26/11, w/ Exhibit A; Affidavit Requesting Deposition Prior to Injunction Hearing, dated 7/1/12; Plaintiffs’ Motion to Strike Affidavit dated 7/18/12, and filed 7/19/12; Affidavit Silvernail dated 5/27/11, filed 6/1/11; Motion to Strike (Terry Brown) dated 12/7/10 & filed 12/9/10].

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. [Motion, 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. [Motion dated 5/18/11, 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. [Motion dated 5/18/11, pp. 2,3; Affidavit of AJP dated 5/18/11; Brief in Support dated 9/14/11; Affidavit of AJP Supporting Production of Legacy Trust Fee Contract with State/AG and Related Documents prior to Hearing on Motion for injunctions, dated 8/1/2011 and filed 8/2/2011].

The motion also asserts that the Wingate contract with the AG is void, and violates Buchanan's and Pope's Due Process⁴ and First Amendment⁵ rights. [Motion dated 5/18/11, pp. 2-4; Affidavit dated 5/18/11; Brief in Support dated 9/14/11; Supplemental Affidavit in Support of Injunction filed 4/12/12].

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 dated 5/18/11, pp. 2-4; Affidavit dated 5/18/11; Supplemental Affidavit, filed 4/12/2012; Brief in Support dated 9/14/2011; Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction, dated July 26, 2011].

A hearing was held on the motion on April 12, 2012. [Order dated 7/5/12]. On July 5, 2012, the circuit court denied the relief sought in the motion. [Order dated 7/5/12; Motion to Vacate, Set Aside, etc. 7/27/12, filed 7/30/12, pp. 1 - 10].

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. [Order Granting Motion for Protective Orders as to Deposition of Attorney

⁴ U.S. Const., amend 1; U.S. Const., amend. XIV § 1.

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

General, dated 9/21/16 filed 10/3/16, 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. [Order Granting Motion for Protective Order as to Deposition of Attorney General, pp.1, 2; Memorandum in Support of Deposition of Attorney General and Opposing Protective Order, dated and filed 8/29/16, pp. 1, 13 -24].

On August 29, 2016 a hearing was held on the AG's motion. [Order, p. 1; Tr. 8/29/16, pp. 1, p. 34, L.7 - L. 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. [Order dated 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, the AG filed a motion under Rule 21, *South Carolina Rules of Civil Procedure* ("SCRCP") to be dropped as a party to this suit. [Order Granting Attorney General Alan Wilson's Motion to be Dropped as a Party, dated 5/31/17, p. 2; Status Report of Defendant AJP dated 3/25/13 and filed 4/1/13; Defendant's Supplemental Return to the Attorney General's Motion to be Dropped as a Party, dated April 6, 2017 and filed April 13, 2017; Motion for Summary Judgment, dated & filed 3/11/13; Order of Judge Manning dated & filed 7/5/12 (continuance); Affidavit Supporting Dismissal (Daryl Brown) dated 7/1/12 and filed 7/5/12; Plaintiffs' Motion for Emergency Telephone Hearing, dated & filed 7/18/12, with exhibit A; Order to Conduct Mediation, dated & filed 7/19/2012;

Affidavit of Pope Opposing Motion to Strike Offers of Judgment, dated & filed 8/15/12; Return to Motion (Publicity) dated and filed 8/28/12].

On May 10, 2013 Respondents' counsel filed a Motion to be Relieved as Counsel for the AG. [Motion to be Relieved as Counsel (As to AG Only), dated and filed 5/10/2013; Notice Withdrawing Motion to be Relieved as Counsel dated 6/7/16 and filed 6/15/16, p. 2]. Counsel also sought a stay of all matters in this case. [Letter of SWB to Judge Manning, dated 3/27/13; Status Report dated 3/25/13, p. 3; Return and Opposition dated 3/29/13 & filed 4/1/13].

On April 22, 2014 the AG and other Respondents filed a written motion to stay this case. Appellant opposed the motion. [Motion to Stay, dated 4/22/14 filed 4/23/14; Affidavit of AJP Opposing Stay, dated & filed 4/29/14].

On March 2, 2016, the circuit court issued a stay in this case pending further order of the court. [Affidavit of AJP Supporting Motion to Alter or Amend (Stay Order), p.1]. Appellant objected to the stay. [Mot. Alter Stay Ord., dated 3/7/16, filed 3/8/16; Affidavit Supporting Motion to Alter, Amend, (Stay Order), dated 3/7/16 filed 3/8/16, with Exhibit A]. The stay was lifted. [Order of Judge Early dated 4/8/16, filed 4/13/16].

On June 7, 2016, Respondents' counsel filed a Notice Withdrawing Motion to be Relieved as Counsel to the AG. [Notice dated 6/7/16 filed 6/16/16].

In 2016 and 2017, the AG and other Respondents, though counsel, were involved in substantial discovery. [Plaintiffs' Motion to Strike, dated 2/26/16, filed 3/1/16; Motion to Consolidate cases 4900 and 1337 for Discovery, dated 4/11/16, filed 4/13/16; Memorandum I Support of Plaintiffs' Motion to Consolidate, dated 6/7/16, filed 6/10/16; Scheduling Order of Judge Early, dated 7/25/16, filed 8/5/16; Affidavit of Pope

Supporting Deposition (Janise Brown), etc., dated 8/22/16, filed 8/23/16; Motion for Protective Order (Henry D. McMaster) dated 8/25/16, filed 8/26/16; Motion of Defendant to Dismiss all claims of Plaintiff Venisha Brown Under Rule 41(B), dated 9/14/16, filed 9/19/16; Affidavit of Pope in Support of Motion to Strike Consolidation Motion, dated 5/21/16, filed 5/27/16; Plaintiff's Return and Opposition to Motion to Consolidate, dated 6/6/16 & filed 6/7/16; Motion to Postpone Deposition of Tommie Rae Brown, dated 4/25/16, filed 4/27/16; Transcript, Hearing, 8/29/16, p. 4, L4 - L20; p.5, L23 - p.6, L13; p.6, L24 - p. 13, L.1; p. 14, L2 - p.15, L9; p. 16, L3 - p. 18, L3; p. 21, L.5 - p. 5, L.7; p. 25, L. 11 - p. 27, L-3; p. 33, L. 19 - p. 34, L.1; p. 97, L 6 - p. 114, L. 9, p. 114, L 21 - 25; Order Regarding Motion for Protective Order as to Tommie Rae Brown's Deposition dated 3/9/17; Order Denying Motion to Consolidate Depositions of Experts, dated 2/1/17 and filed on 2/13/17; Affidavit of AJP Opposing Motion of Attorney General Wilson, Russell Bauknight, as Agent for Tommie Rae and others to Stay..., dated April 29, 2014; Opinion/Affidavit of William Jeffrey Smith dated and filed 7/14/17; Affidavit of Harley Ruff, dated 6/23/17 and filed 7/19/17; Plaintiff's Motion to Compel Discovery, filed 1/13/17, with Exhibits; Order Concerning Plaintiff's Motion to Strike January 17, 2017 Affidavit, dated 3/9/17, filed 3/15/17; Affidavit of January 17, 2017 (to be filed under seal; withdrawn from e-filing); Order Denying Motion to Consolidate Depositions of Experts, dated 2/6/17, & filed 2/13/17; Defendant's Motion (Tommie Rae Deposition), dated 3/24/17, filed 3/29/17; Order Regarding Motion for Protective Order as to Tommie Rae Brown's Deposition, dated 3/9/17, filed 3/21/17; Tommie Rae Brown's Return dated 4/20/17, filed 4/25/17; Affidavit, Pope in Support of Motion to Compel (Lindsey Brown), dated 8/22/16, filed 8/23/16, with Exhibits].

In 2016 the AG and other Respondents filed a Motion for Partial Summary Judgment as to Appellant's counterclaims.⁶ [Hearing, 8/29/16, p. 41, L 13 - p. 49, L. 21; p. 76, L 13 - p. 77, L 13; p. 92, L 7 - L 18; p. 97, L. 6 - p. 114, L9; Motion to Alter, dated 7/13/17, filed 7/14/17].

On August 29, 2016, a hearing was held on the AG's motion to be dropped as a party under Rule 21. [Transcript Hearing, pp. 4, L 4 - 20; p. 6, L 14 - p. 11, L 18; p. 12, L 24 - p. 15, L 16; p. 16, L. 23 - p. 18, L 8; p. 23, L 13 - p. 24, L. 25 p. 25, L 20 - p. 29, L 4; p. 33, L 19 - p. 34, L 1; p. 35, L 19 - p. 37- L 20; p. 41, l 13 - p. 49, L 21; p. 97, L 6 - p. 114, L. 9, p. 114, L 21 - 25; Order of 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. [Order dated 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. [Order 8/2/17] Appellant received it on August 14, 2017.

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

Statement of Facts⁷

On May 8, 2013 the South Carolina Supreme Court issued its final decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). [Order dated 5/31/17, p. 2]. By May 10, 2013, Bauknight had been temporarily reinstated as Brown's fiduciary. He continues to be Trustee of Respondent Legacy Trust. [Complaint, p. 2].

⁶ Appellant had previously moved for summary judgment as to the AG and others. [Mot. SJ, AG, 3/11/13].

⁷ Appellant incorporates the Statement of the Case in this Statement of the Facts.

On May 29, 2013, counsel for Tommie Rae Brown (“Tommie Rae”), Deanna Brown Thomas (“Deanna”) and other Respondents announced to Judge Early their intention to reinstate the AG’s settlement the Supreme Court had just voided. [Motion to Alter, Amend, dated and filed 7/19/2017, p. 26, ¶142 - 146].

On June 13, 2013, at the request of Tommie Rae and other Respondents, Judge Early issued orders excluding Buchanan and Pope from participating in any Aiken County case except their own claims cases. [Motion to Alter, Amend, dated 7/19/17, pp. 26, 27; Defendant/Counterclaim Plaintiff AJP’s Motion to Alter, Amend dated 7/13/17, filed 7/14/17, p. 62].

In August 2013, Tommie Rae and Respondent James B. filed Termination Notices with the U.S. Copyright Office. 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 [Motion to Alter, Amend, dated. 7/19/17, pp. 38 - 40].

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”). [Smith Opinion, pp. 4 - 7]. 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 Opinion pp.4- 5].

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 dated 11/13/15].

In deposition testimony 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. [Motion to Alter/Amend, dated 7/19/17, pp. 2 - 5].

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 (“Aiken 1337”). [Motion to Consolidate, Cases 4900 and 1337 for Purposes of Discovery, dated 4/11/16, filed 4/13/16; Order Denying Motion dated 2/6/17, filed 2/13/17].

On May 17, 2016 the AG and others moved for summary judgment as to the counterclaims raised by Buchanan and Pope. [Motion to Alter/Amend, dated 7/13/17, p. 2].

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].

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. [Order Compelling Production, dated. 3/7/17, pp. 2].

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. [Order Concerning Plaintiff’s Motion to Strike January 17, 2017 Affidavit, dated 3/9/17 and filed on 3/15/17].

On March 27, 2017 Appellant’s valuation expert Richard B. Alexander, was deposed by Bauknight’s counsel in Aiken 1337. [Smith Opinion/Affidavit, 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. [Motion dated 7/13/17, p. 13, 14; Motion to Alter, dated 7/13/17, p. 145; Motion to Alter, Amend, dated 7/19/17, p. 51, 52].

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

On April 11, 2017 Thomas Pope, Esq., was deposed in Aiken 1337. [Opinion/Affidavit, Smith, pp. 92-109].

On April 14, 2017, Respondents' expert Ellison Thomas, CPA, was deposed. [Opinion/Affidavit, Smith, pp. 46 - 57].

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

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 precedes, 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. [Tommie Rae Brown's Return in Opposition to Defendant/Counterclaim Plaintiff AJP's Motion dated 4/20/17 and filed on 4/25,17, p 4, footnote1].

By 2017 some Respondents had asserted that Tommie Rae was not Brown's spouse, thus having no Termination Rights. [Motion dated 7/13/17, p. 66; Smith Opinion/Affidavit, pp. 19, 34].

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.

A. This Court's Standard of Review for Lower Court Order Setting Aside Entry of Default

A court may set aside an entry of default if good cause is shown. Rule 55(c), SCRPC. Whether good cause is established is left to the sound discretion of the lower court. *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). An abuse of discretion arises if the lower court's decision is controlled by an error of law or is without evidentiary support. *Bage, LLC v. Se. Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct. App. 2007). A failure to exercise discretion amounts to an abuse of that discretion. *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997). When a trial judge is vested with discretion but his ruling reveals no discretion was in fact exercised, an error of law has occurred. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990). In determining whether to set aside an entry of default, the factors the lower court "should consider are: (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." *Bage* at 472, 646 S.E.2d at 161.

B. Discussion

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. [Affidavit of Default; Motion to Set Aside Default]. Counsel does not recall receiving the Answer and Counterclaim, but his file contains a copy with his own handwritten notation. [Affidavit of Kenneth B. Wingate].

As explained in *White Oak Manor, id.*, a determination of “good cause” under Rule 55, SCRCP, 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, 212, 456 S.E.2d 897, 900 (1995),

the Supreme Court ruled that “losing a summons and complaint within the corporation” was not a ground to set aside default. 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. [Affidavit, Wingate].

Had the AG and other Respondents met all other criteria for relief for 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. [Memorandum, 8/29/16; Motion, dated 7/13/17, pp.15, 16]. In addition, Respondent James B. had already filed a Petition for Review of Compensation in Aiken. [Motion to Dismiss, dated 6/22/10; Motion filed 11/19/10; Order Denying Defendants’ Motion for Change of Venue, dated 11/8/10, filed 11/9/10]. 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.⁸ [Motion of Pope, dated 5/28/15, filed 5/29/15; Affidavit Pope, dated 5/28/15, filed 5/29/15, p 1-3].

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). [Defendant Pope's Supp. Memorandum in Opposition, with Exhibit A, filed 2/6/15].

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.

A. This Court's Standard of Review for the Order Denying Motion to Disqualify and Injunction

A circuit court's ruling on a motion to disqualify a party's attorney is reviewed for an abuse of discretion. See *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 347-48, 450 S.E.2d 66, 75 (Ct. App. 1994) (finding no abuse of discretion in the circuit court's ruling disqualifying an attorney from acting as an advocate but allowing the attorney to act as a witness). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or is not supported by the evidence." *Lawing v. Univar, USA, Inc.*, 415 S.C. 209, 225, 781 S.E.2d 548, 556-57 (2015).

⁸ In 2017 the AG began taking the position that he is protected for his acts in this suit by prosecutorial immunity. [Defendants Supp. Return, dated 4/6/16, filed 4/13/17].

“Actions for injunctive relief are equitable in nature.” *Shaw v. Coleman*, 373 S.C. 485, 492, 645 S.E.2d 252, 256 (Ct. App. 2007). When reviewing actions in equity, this Court may “correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence.” *Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005).

B. Discussion

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. [Plaintiffs’ Memorandum in Opposition to Defendants’ Motion to Dismiss, filed 8/27/10, pp. 3 - 5; Second Supp. Motion to Dismiss, dated and filed 8/27/10, p. 3- 4; Complaint, pp. 1 - 3].

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. [Motion dated 7/19/17, pp. 7,8].

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.⁹ 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).

⁹ 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." [Order dated 7/15/12]

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. [Answer and Counterclaim of Buchanan and Pope, pp. 1 – 5,13, 24, 25; Second Supp. Memorandum in Support of Dismissal of Complaint, dated & filed 8/27/10; Respondents 1st Interrogatories, dated 11/16/10, filed 12/9/10].

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.

A. This Court's Standard of Review for the Order Preventing Deposition of Attorney General Wilson

"The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion.... An abuse of discretion occurs when there is no evidence to support the trial judge's factual conclusion or when the ruling is based upon an error of law." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001) (internal citations omitted). This standard of review should be coupled with the law related to discovery that "[t]he gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party." *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (Ct.App.2003). "The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required." *Downey v. Dixon* 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct.App. 1987).

B. Discussion

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. [Ord. Dated 9/21/16]

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. [Memorandum in Support of Deposition dated & filed 8/29/16]

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. [Complaint; Plaintiffs' Motion for Protective Order dated 11/23/15, filed 12/1/15; Affidavit Pope, dated & filed 8/13/15 (re: Mediation) Plaintiff's Motion to Compel, dated 2/25/13, filed 2/27/13; Plaintiffs' Motion for Exception, dated 8/4/15, filed 8/6/15 (mediation); Plaintiffs' Motion (Deanna Brown Thomas), dated & filed 3/4/13; Proof of ADR, dated 10/30/15, filed 11/10/15]. His office is seeking ten percent of legal fees in a case in which he asserts he is not participating. [Motion, dated. 7/13/17, pp. 3, 4]. *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. [Affidavit Pope, dtd/ & filed 8/13/15 (re: Mediation) Plaintiff's Motion to Compel, dated 2/25/13, filed 2/27/13; Plaintiff's Motion for Exception, dated 8/4/15, filed 8/6/15 (mediation); Plaintiff's Motion (Deanna Brown Thomas), dated & filed 3/4/13; Proof of ADR, dated 10/30/15, filed 11/10/15].

Governor Henry McMaster testified in depositions in 2016. [Motion to Alter, dated 7/13/17, p. 3]. Together, McMaster and AG Wilson exercised, through Bauknight, effective control over the James Brown's music empire from 2009 until 2013. [Affidavit, dated 5/28/15, filed 5/29/14]. 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. [Motion dated 7/13/17, pp. 11 - 12]. 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. [Motion dated. 7/13/17, p. 3]. 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 damage. 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. [Motion dated 7/19/17, p. 13, ¶ 80]

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. [Motion dated 7/13/17, p. 31]. 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. [Motion, dated 7/13/17, p. 20, 31].

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 the AG has continued to be aligned with Tommie Rae. Why has he praised Bauknight while Bauknight, who 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? [Motion to Alter, dated 7/13/17].

The AG and Tommie Rae have disparaged Buchanan's and Pope's reputations, careers and standing in the legal community since 2010. 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. [Complaint, pp. 1 - 12].

The order directing that the AG not be deposed should be reversed. He should be deposed at a mutually convenient time.

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

A. This Court's Standard Of Review for Order Dropping Attorney General as a Party Pursuant to Rule 21, SCRPC.

"Rule 21 deals with situations where the absence of a necessary party or the misjoinder of parties in the action would warrant the dismissal of the suit." *Valentine v. Davis*, 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995) citing *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). "Trial judges in South Carolina have the authority to realign parties. Beyond a court's inherent authority to manage and conduct a trial, our Rule 21, SCRPC, regarding joinder of parties is identical to the federal rule, Rule 21, FRCP." See *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010). Federal courts rely on Rule 21 as authority to realign parties. *Id* citing *In-Tech Mktg. Inc. v. Hasbro, Inc.*, 685 F.Supp. 436, 442 n. 19 (D.N.J.1988) (noting that Rule 21 "permits [the District] Court, *sua sponte* to realign *any* party at *any* time"); *First Nat'l Bank of Shawnee Mission v. Roeland Park State Bank & Trust Co.*, 357 F.Supp. 708, 711 (D.Kan.1973) (noting that the District Court "may order a realignment of the parties 'on such terms as are just'" pursuant to Rule 21).

The South Carolina Supreme Court has recognized the authority of a trial court to realign parties “at any stage of the action.” *Branham*, 701 S.E.2d 5. “The decision whether to realign the parties lies within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion and resulting prejudice.” *Id.*

The issue in the present case is that the Rule 21, SCRCF, the Rule relied upon by the lower court, standard of review is inapplicable because Rule 21, SCRCF does not provide any authority for the relief sought by the Respondent.

B. Discussion

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. [Ans. of AJP to First Interrogatories of Plaintiff, dated 11/10/10; Plaintiffs’ Motion for Direction from the Court Concerning Potential Prejudicial Trial Publicity, dated 8/23/12; Plaintiffs’ Motion to Strike Defendants’ Offers of Judgment; Letter of SWB to Judge Manning; Plaintiffs’ Memorandum in Opposition to Defendants’ Motion to Dismiss, filed 8/27/10; Motion to Alter, dated 7/13/17, pp. 2- 70].

The AG’s complaint asserts that Buchanan and Pope are both greedy and incompetent. [Complaint, pp. 2 - 12]. It asserts they did not understand Termination Rights or tax issues facing Brown’s estate and 2000 Trust. [Complaint, pp. 4 - 11]. 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. [Complaint, p. 9].

Since May 2013 this lawsuit has continued to be the AG's platform to discredit Buchanan and Pope as Tommie Rae and the Will contestants seek to reinstate the AG's 2008 settlement. [Letter SWB to Judge Manning, dated March 27, 2013; Motion to be Relieved as Counsel; Notice of Withdrawal of Motion; Motion to Alter, dated 7/13/17, pp. 2- 70].

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...*¹⁰ [Second Supplemental Memorandum in Support of Dismissal, dated 8/27/10, pp. 1-4; Affidavit of AJP Supporting Disqualification, Exhibit A, *Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust doesn't..., p. 1 - 12*].

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. [*Private Foundations*, pp. 1-12].

Since 2011 the AG and Bauknight have worked together to prevent release in

¹⁰ *Private Foundations* was based on the AG's initial claim of a \$12 million value. [Second Supplemental Memorandum in Support, dated 8/27/10, pp1-4]

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. [Affidavit of AJP Opposing Stay...and Supporting Summary Judgment Requiring A.G. Wilson to Comply With FOIA, dated 4/24/14, pp. 1 - 46, and Exhibit A, Letter to AG Wilson and others].

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. [Plaintiff's Motion Pretrial Publicity, *Explosive Interview*].

In October 2012, the AG's Chief Deputy John W. McIntosh, C. H. Jones, Esq., and Mary Frances Jowers, Esq., attended the first mediation in this case. [Proof of ADR, dated 10/22/12, filed 10/19/12, p. 1].

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. [Plaintiffs' Motion to Strike Offers of Judgment].

On March 6, 2013, after the first *Wilson* decision, the AG met with Pope. The serious problems and damage to needy students of the Bauknight \$4.7 Million value and need to correct IRS filings were discussed. [Memorandum, 8/29/16, pp. 17, 18] 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. [Motion to Alter, 7/13/17, p. 20]. On October 22, 2015, the Chief Deputy and three Assistant AGs attended the second mediation in this case. [Proof ADR, 10/30/15].

In 2016 the AG and Respondents tried to consolidate discovery in this case with Appellant's claims case. [Return to Motion to Consolidate]. The AG, with others, moved for partial Summary Judgment. [Motion to Alter, Amend, 7/13/17]. 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. [Hearing, August 29, 2016, p. 44, L 9 - p. 49, L 2; p. 97, L 6 - p. 103, L. 22].

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. [Motion pope, dated 5/28/15, filed 5/29/15, pp. 7 – 10]. The AG was seeking partial summary judgment as to Appellant's counterclaims against him. [Motion to Alter, dated 7/13/17, pp. 2-70].

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.” [Memo. 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.” [Memorandum dated. 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 AG has allowed the State’s mighty power to be applied to damage Buchanan and Appellant in this suit. 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. [Motion to Alter, dated 7/13/17, pp. 12-22]

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,



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May ____, 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 Circuit Court Judge

Appellant 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

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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served Appellant's Amended Initial Brief by US Mail on May 22 2018

via to all counsel listed below:

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May 22, 2018
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May 22, 2018

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Via Hand-Delivery

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

Re: Russell Bauknight, *et. al.* vs. Adele J. Pope
Appellate Case No. 2017-001899

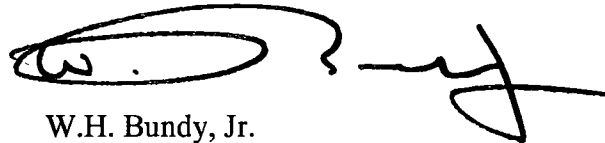
Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of Appellant's Amended Initial Brief, Appellant's Designation of Matter to be Included in the Record on Appeal and Proof of Service of the same upon all counsel of record.

Please file the original and return a file stamped copy to our courier.

I thank you for your attention to this matter, and as always, please do not hesitate to call me should you require anything further.

Sincerely,



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WHB/kjw

cc: *via US Mail*

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