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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Trial Court Case No. 2008-CP-02-01647

Appellate Case No. 2016-001373

RECEIVED

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SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown

The Estate of James Brown; James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000, by and through its fiduciaries Russell L. Bauknight, Personal Representative and Trustee, and David C. Sojourner, Jr., Limited Special Administrator and Limited Special Trustee, Respondents, and

Tonya Brown a/k/a Sarah LaTonya Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis and Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar, Respondents, and

Daryl Brown and Terry Brown, Respondents below,

Of whom Terry Brown is the Appellant.

RECORD ON APPEAL, VOLUME II OF IV

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State of South Carolina
County of Aiken

Court of Common Pleas

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

) Transcript of Record
) 2008-CP-02-01647
) 2013-CP-02-02849
) 2013-CP-02-02850
) 2013-CP-02-02851

January 14, 2016
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

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Attorney for Stephen Slotchiver

John F. Beach, Esquire
Attorney for David C. Sojourner, Jr.

John Donsbach, Esquire
Attorney for Terry Brown

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Louis Levenson, Esquire
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Matthew Bodman, Esquire
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Alan Medlin, Esquire

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Circuit Court Reporter

I N D E X

WITNESSPAGE**LOUIS LEVENSON**

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1 (The following proceedings were held January
2 14, 2016.)

3 THE COURT: All right. We have scheduled this
4 morning at 11:30 a motion filed by Mr. Beach on
5 behalf of the Estate, Mr. Bauknight, and others for
6 a settlement of a portion of the will contest claim.
7 An opposition has been filed by some of the parties,
8 Mr. Bodman's clients and Mr. Donsbach's clients; is
9 that correct?

10 MR. BEACH: Yes, Your Honor.

11 THE COURT: Any other opposition other than
12 Bodman and Donsbach?

13 MR. BEACH: None, Your Honor.

14 THE COURT: I'll be glad to hear from you.

15 MR. BEACH: Thank you, Your Honor.

16 Judge, I'm John Beach, and I'm here
17 representing the Limited Special Administrator and
18 Limited Special Trustee of the James Brown estate
19 and James Brown trust, who is David Sojourner.
20 We're here today on a joint motion, Judge, because
21 the Estate and five out of the six plaintiffs
22 seeking to set aside James Brown's will and trust
23 have reached a settlement that --

24 THE COURT: Who is not included?

25 MR. BEACH: Well, Daryl Brown and Terry Brown

1 are not included. And the ones who are included,
2 Your Honor, are Yamma Brown Lumar and her two
3 children, Sydney and Carrington; Deanna Brown Thomas
4 and her son Jason; Vanisha Brown and Larry Brown,
5 who are all named beneficiaries in the will. And,
6 as we say, the two remaining named beneficiaries --
7 I'm sorry, Your Honor. And there's also -- Judge,
8 also, Tonya Brown Fegan, who is one of James Brown's
9 grandchildren, is a settling party as well.

10 And when you say remaining parties, Judge, you
11 mean remaining in the undue influence claim?

12 THE COURT: Yes, sir.

13 MR. BEACH: Well, Tommie Rae Brown also has an
14 undue influence claim. And she is actually, out of
15 the six people who are asserting undue influence
16 claims, she's the only remaining one following this
17 settlement.

18 THE COURT: So Daryl and Terry are not part of
19 the suit on the undue influence. So if this is
20 settled, that case is dismissed? That case is --
21 the only posture left on that case will be, I
22 assume, my rulings dealing with the status of
23 Mrs. Brown, his wife, is now in the appellate
24 courts.

25 MR. BEACH: That's correct.

1 THE COURT: And depending on whether or not --
2 if she is declared to be his wife, then, obviously,
3 she has -- I doubt she will continue on with the
4 undue influence claim because she's got her claims
5 as the spouse or of the omitted spouse or the other
6 claim under the probate code.

7 MR. BEACH: One of the advantages that we
8 believe -- of having reached this settlement, Your
9 Honor, advantages to the Estate.

10 THE COURT: But to reach the settlement, I have
11 to sort of go and fly in the face of the Wilson vs.
12 Dallas opinion, which they didn't too much care for
13 our settlement before. How can I ignore the mandate
14 I got from them under the Wilson vs. Dallas case?

15 MR. BEACH: Well, Judge, I do want to address
16 that. And we will -- I will just say that, first of
17 all, Your Honor, this settlement, we're not asking
18 for the Court's approval of the settlement under the
19 same provisions that the Court approved the last
20 settlement, which is, I believe, 110 and 111, Your
21 Honor. We are asking for authorization --

22 THE COURT: To settle a claim.

23 MR. BEACH: -- to settle a claim, Your Honor.
24 And even though we do think that a certain amount of
25 consideration must occur of the underlining facts,

1 this settlement is not the same as the settlement
2 that was reached before, because that settlement
3 would have bound all parties --

4 THE COURT: That was a global settlement which
5 involved the educational trust, everything, Attorney
6 General.

7 MR. BEACH: Right, Your Honor. So there's
8 that.

9 The second thing is, since this settlement only
10 binds the parties to the settlement, it does not
11 bind -- by definition, does not bind Mr. Donsbach's
12 client or Mr. Bell and Bodman's client, Terry or
13 Daryl.

14 THE COURT: What claims do they have? What
15 outstanding claims do they have?

16 MR. BEACH: I'm going to leave that to
17 Mr. Donsbach, Your Honor. But he contends that they
18 have -- I assume have a claim that there's been a
19 violation of the in terrorem clause. They have not
20 asserted any --

21 THE COURT: Well, is that a claim?

22 MR. BEACH: I don't -- I'm going to ask -- I'm
23 going to have Mr. Donsbach answer that, Judge.

24 And before I get on to that, let me just say
25 the final difference here between this settlement

1 and the 2009 settlement that we think is very
2 important is, this settlement leaves the James Brown
3 Estate completely intact; in other words, it doesn't
4 change his estate plan at all, it doesn't require
5 any of the parties to agree or disagree on Tommie
6 Rae Brown's spousal status and, again, it only binds
7 the parties to this settlement. So we believe this
8 settlement is substantially different, materially
9 different, than the one that was reached before, and
10 on its face, is very clearly in the best interest of
11 the Estate. We'll explain a little bit about that.

12 THE COURT: Well, explain to me why it's in the
13 best interest of the Estate. I mean, obviously, I
14 think I can anticipate the argument --

15 MR. BEACH: Sure.

16 THE COURT: -- but I need it on the record.

17 MR. BEACH: Well, Judge, the settlement
18 involves the payment of \$37,500 to each one of the
19 five petitioners who are selling. These are each of
20 five petitioners who are petitioning to set aside
21 James Brown's will and trust. And in exchange for
22 that, they're going to dismiss with prejudice their
23 claims against the Estate, and they're going to
24 withdraw as parties in this proceeding.

25 They are also, as part of that, they're going

1 to preserve whatever interests they have under the
2 will to the personal property. The first portion of
3 the will leaves them each one-sixth interest in the
4 personal property, and whatever right that creates
5 for them, they're retaining that right as a part of
6 this settlement.

7 THE COURT: And they don't release anything
8 under the determination rights, no claim they may
9 have against Ms. Pope.

10 MR. BEACH: That's correct, Your Honor. There
11 are other details in there, and those are two of
12 those details. We believe --

13 THE COURT: Well, the other details involve
14 releases and dismissal of the suit and those sort of
15 boilerplate requirements; is that correct?

16 MR. BEACH: Yes, Your Honor, that's correct.

17 And we'll talk in a minute about why we believe
18 that the Estate is authorized to do this by both the
19 estate documents and the statute. But you've asked
20 for the benefits.

21 Judge, the benefits to the Estate are that this
22 fully resolves five out of the six pending claims
23 that are trying to set this will and trust aside,
24 which would basically end this probate proceeding
25 and cause some other proceeding to have to be

1 initiated.

2 THE COURT: And the one remaining claimant is
3 Mrs. Brown.

4 MR. BEACH: That's correct. We think that
5 there's tremendous value in settling with these five
6 plaintiffs or petitioners, particularly because they
7 are -- as it's very clear, they're the children and,
8 in the case of Ms. Fegan, the grandchild of James
9 Brown. Arguably, they knew James Brown best, they
10 were with him from birth through the time of his
11 passing, they are people who, for the most part,
12 have maintained a connection with the community
13 here, they have a very able attorney in Mr. Levenson
14 and Mr. Barr and Mr. Jenkins who would be pursuing
15 the claim, trying the case, presenting witnesses,
16 and presenting, you know, their own testimony in
17 support of their contention that the will and trust
18 should be set aside. And so --

19 THE COURT: Well, we do have that case under
20 scheduling order, do we not?

21 MR. BEACH: We do, Your Honor. It's scheduled
22 to be tried on May 30th.

23 THE COURT: And what, in your guesstimate,
24 would be the cost to the Estate to manage all of the
25 pretrial discovery and put that case in a posture by

1 way of all of the depositions that would have to be
2 taken, expert witnesses, whatever your may need?
3 Can you give me a guesstimate as to what that
4 expense would be to the Estate?

5 MR. BEACH: Judge, it's going to be a complete
6 guesstimate, Your Honor, but it would be several
7 hundred thousand dollars to get from where we are
8 here through all of the depositions and whatnot and
9 pretrial preparation, additional discovery motions
10 that are pending, probably motions for summary
11 judgment filed by various sides, et cetera, and then
12 going through a trial of the case, which if these
13 five people were still parties, would certainly last
14 for two weeks.

15 THE COURT: I would suspect it would be more
16 than that because then you, obviously, would have
17 appeals involved and -- and I've seen the amount of
18 litigation, the amount of time and effort that's
19 been put in up to date. I don't know how you'd do
20 it for a couple hundred thousand.

21 MR. BEACH: I didn't mean a couple, Your Honor,
22 I said several hundred thousand.

23 THE COURT: I thought you were limiting
24 yourself.

25 MR. BEACH: No, sir. You and I both agree

1 on --

2 THE COURT: In all honesty, it will be
3 substantial.

4 MR. BEACH: Yes, Your Honor, it will be. It
5 secures the prompt and certain resolution of these
6 challenges, which is very important. We've talked
7 about the potential time and expense. The payment
8 that's being made for each one of these challenges
9 of \$37,500 -- Judge, I don't want to minimize that
10 payment, because \$37,500 is a lot of money to
11 anyone.

12 On the other hand, if you were looking at it in
13 context of settlement of five claims that could
14 completely set aside this estate plan, and if you
15 look at the value of the estate, which has been
16 estimated at various times in the record, but to say
17 the least, is several million dollars, a settlement
18 of \$37,500 per claim for these five claims is very
19 reasonable. And one might view it as simply very
20 easily justified by the costs that are going to be
21 saved for it, let alone the fact that it eliminates
22 risk to the Estate that they may prevail and that
23 the estate might end up being set aside.

24 So we believe that those factors, Judge, very
25 favorably position this settlement. The Estate is

1 extremely happy that the parties were all able to
2 get together and agree to it. We began working on
3 this settlement back in July of 2015 with
4 Mr. Levenson's clients, and then a couple months
5 later with Mr. Jenkins' and Mr. Barr's client.

6 We've worked hard on it, all of the settlement
7 parties have worked hard on it, there have been
8 compromises that people have made during the
9 negotiation process that we think have made it a
10 better overall settlement for all involved, and we
11 believe that this settlement is very clearly in the
12 best interest of the Estate, Your Honor.

13 The authority -- the reason we're here asking
14 for the Court's authorization to sign the settlement
15 agreement is when the Court appointed Mr. Bauknight
16 and Mr. Sojourner on October 1st of 2013, the
17 appointment order was very broad in terms of the
18 power, authority, and obligations that it placed on
19 both Mr. Bauknight and Mr. Sojourner.

20 I'm going to read the information that was in
21 that order for Mr. Bauknight. It states that
22 Mr. Bauknight is provided with the full, absolute,
23 and exclusive authority to carry out the estate's
24 administration and the trust's administration in all
25 business matters related thereto, and shall

1 specifically have the authority and power to act on
2 behalf of and bind the estate and the trust for all
3 purposes except as limited by the appointment of the
4 Limited Special Administrator and Limited Special
5 Trustee described below.

6 And then it goes on to say with regard to
7 Mr. Sojourner, he's appointed for the sole,
8 exclusive, and specific purpose of defending the
9 trust and the estate against the claims made in the
10 will and trust challenges until final resolution
11 thereof.

12 And, Judge, we're confident that that -- those
13 charges encompass the power to settle the claim
14 under reasonable terms; on the other hand, they
15 don't expressly state that that power is bestowed on
16 Mr. Sojourner and Mr. Bauknight, and so we're here
17 today to make sure that we have an order that
18 indicates that it does include those things.

19 There's statutory authority that supports this
20 motion, Judge. The first one is in the probate code
21 relating to the will, and that's 62-3-715(8), which
22 authorizes the personal representations to settle
23 claims against the estate. Likewise, Judge, there's
24 a provision in South Carolina Code 15-51-42(a) which
25 states: Only a duly appointed representative as

1 defined in Section 62-1-210(30) shall have the
2 authority to settle wrongful death or survival
3 actions.

4 Similarly in the trust code, Your Honor,
5 there's a provision that makes it clear that
6 trustees have the right to settle, and that's
7 62-7-816(14) which grants trustees the power to pay
8 or contest any claim, settle claim by or against the
9 trust, and release in whole or in part a claim
10 belonging to the trust.

11 The estate documents themselves also include
12 provisions that empower the trustee's or
13 representatives of the estate to settle,
14 particularly, Your Honor, Article X(19) authorizes
15 the trustee in his fiduciary discretion to
16 compromise, adjust, mediate, arbitrate, sue, honor,
17 defend, abandon, or otherwise deal with and settle
18 claims in favor of or against the trust estate as
19 the trustee shall deem best.

20 So, Judge, we feel very confident that the law
21 supports this power to settle. It obviously has to
22 be included in the power to defend in order for that
23 power to be effective. I haven't looked at the
24 numbers recently, but 80 to 90 percent of all cases
25 that are filed in our civil courts in South

1 Carolina, the last time I looked, were settled
2 through some compromise or through some summary
3 proceeding. And so it has to be inherent, but we
4 need an order that expressly states that.

5 Now, Judge, Daryl and Terry Brown fully support
6 the will and the trust. And they oppose the
7 settling parties' claims to have the will and trust
8 set aside, they oppose those claims. They've been
9 supporting the estate plan that was filed, the
10 August 1st, 2000 will and the August 1st, 2000
11 trust.

12 The settlement would result in what one would
13 presume to be a favorable result for Terry Brown and
14 for Daryl Brown, which would be the dismissal with
15 prejudice of five of the six undue influence
16 challenges.

17 THE COURT: The sixth one is on appeal -- well,
18 it's on appeal as to how that goes.

19 MR. BEACH: That's correct.

20 THE COURT: So that's -- all the litigation
21 would sort of be coming to a halt, except for
22 Ms. Pope's outstanding claim and, perhaps, some
23 other administrative matters --

24 MR. BEACH: Yes, Your Honor.

25 THE COURT: -- pending the resolution of the

1 summary judgment order by whichever appellate court
2 hears it.

3 MR. BEACH: And, of course, Mr. Shahid's
4 client, James Brown II, has some additional matters
5 to deal with in his claim.

6 There's some statutory requirements that we
7 need to have the Court address in some fashion
8 dealing with what the Court views the -- whether the
9 Court views the language of the will to purposefully
10 exclude James Brown II as a beneficiary and --

11 THE COURT: That's all matters of law, pretty
12 much, because the contest as to his -- whether or
13 not he's the child, all that's over. So all of the
14 things that were being contested will now come to an
15 end, except for some collateral cleanup matters, and
16 depending on how the Court of Appeals rules on
17 Mrs. Brown's situation, and then, of course, we've
18 still got another claim by Ms. Pope that's not been
19 resolved. So that's where we stand, that's where
20 we'd be, isn't it?

21 MR. BEACH: That's where we'd be if the Court
22 grants this motion, Judge.

23 But Terry Brown and Daryl Brown have contested
24 it. And their position is that the Estate should be
25 forced to continue the litigation against these

1 settling parties through, first, one trial to try to
2 win the undue influence claims, and then if the
3 Estate prevails in that trial, then Terry Brown and
4 Daryl Brown's position is that the Estate should
5 then continue to litigate, filing another claim
6 against these settling parties and arguing that they
7 have violated the in terrorem clause, and to prove
8 that their claims are so frivolous that they violate
9 the in terrorem clauses in the will and trust.

10 The -- now, Judge, if I can, I'd like to talk a
11 little bit about trying to put those positions into
12 context. And then after I've done that, I'd like to
13 sit down and let Mr. Donsbach and Mr. Bodman make
14 whatever arguments they'd like to make, and then the
15 Estate would like to preserve some time to respond
16 specifically to those arguments. But if I could,
17 I'd like to put the whole question of the in
18 terrorem clause into some context here.

19 Judge, in terrorem clauses are generally
20 designed to benefit an estate's residuary
21 beneficiary. Here, the main beneficiaries of this
22 estate are not the settling parties, if you look at
23 the volume of what is left to them by the estate.
24 The main beneficiaries are the two education trusts
25 that James Brown set up as a result of his estate

1 plan; one providing education to James Brown's
2 grandchildren, and another charitable trust that's
3 designed to provide education to the poor and needy.

4 Terry and Daryl Brown seek to use -- or seek to
5 force the Estate to use in the in terrorem clause,
6 not to benefit those education trusts, but solely to
7 benefit themselves. And here is how: They demand
8 that the Estate consider -- expend a considerable
9 amount of money, Judge, to attempt to enforce the in
10 terrorem clause, and whether the Estate wins or
11 loses on that. The interests that are going to be
12 damaged by that, the money that's going to be taken
13 out of the estate to pursue that litigation is going
14 to come not from the personal property that is left
15 one-sixth to Terry Brown and one-sixth to Daryl
16 Brown, that money is going to be coming from the two
17 education trusts that the are the bulk of this
18 estate.

19 Judge, the settlement allows Terry Brown and
20 Daryl Brown to get every single thing that their
21 father, James Brown, left to them in the estate.
22 They get a sixth of the personal property to each of
23 them, and they have the potential of participating
24 in the grandchildren's education fund.

25 The Court really needs to reject their argument

1 that they can somehow force the estate to abandon
2 this settlement and try these undue influence
3 claims, and then if the Estate wins, try a second
4 trial against these five people, or maybe five
5 separate trials against these people, to try to
6 prove that their claims are so frivolous that they
7 violate the in terrorem clause. That must be
8 rejected and it must be rejected because it's only
9 being done to benefit Terry Brown and Daryl Brown,
10 and completely to the detriment of the main
11 beneficiaries of this estate.

12 Judge, the arguments that I believe
13 Mr. Donsbach and Mr. Bodman are going to make here,
14 the ones that you're getting ready to hear, I
15 believe what you're going to hear, Judge, is that if
16 you accept those arguments, this Court must rule
17 that the Estate cannot settle these claims for any
18 amount, even if -- in other words, they're saying
19 that the Estate has no discretion at all here and
20 that the Estate is duty-bound to pursue these
21 people, to try the case for undue influence, and
22 then to pursue them for the violation of the in
23 terrorem clause, Judge. That cannot be the law,
24 Judge, and it is not the law.

25 Your Honor, if the Court has any questions, at

1 this point I'm happy to answer them. But,
2 otherwise, I'd like to preserve some time to respond
3 directly to the specific positions that are going to
4 be asserted to the Court here by Mr. Donsbach and
5 Mr. Bodman.

6 THE COURT: All right. Gentlemen, who wants to
7 go first?

8 MR. DONSBACH: Your Honor, John Donsbach for
9 Terry Brown.

10 Your Honor, this is Wilson v. Dallas II. I
11 don't know how else to say that. That's what this
12 is shaping up to be.

13 THE COURT: How do you say that?

14 MR. DONSBACH: I can say that very easily.
15 Because they want to couch this as a family
16 settlement or some sort of settlement that's outside
17 the rules of 62-3-1102. But part of this settlement
18 agreement is the estate and trust are laying down on
19 the enforcement of the in terrorem clause. That's
20 directly related to their duty and the
21 administration of the estate, and as the settlement
22 agreement related, the estate issues that impacts
23 every beneficiary of this estate. And as such, it's
24 not just a family settlement, as they contend. It
25 is subject to the 62-3-1102 provisions.

1 The Supreme Court said that in Wilson v. Dallas
2 when it sent this case back down. They, in detail,
3 if the Court will go back and review that opinion,
4 reviewed the undue influence claims in this case.
5 They specifically pointed to the lack of evidence on
6 those undue influence claims. They pointed to the
7 fact that discovery and certain things hadn't
8 occurred to even create a good faith probable cause
9 exception to the enforcement of an in terrorem
10 clause.

11 And the worst part about this, Your Honor, we
12 still are in the same position from a discovery
13 perspective as we were in May of 2013. The only
14 difference in this case is they've received four
15 sets of interrogatories from the children and one
16 deposition of the drafting attorney.

17 And let's talk about that deposition with the
18 drafting attorney. It began on November 18th, which
19 was one day after all of these settlement agreements
20 were signed. Now, the Supreme Court in Wilson v.
21 Dallas very clearly laid out that one of the most
22 critical people involved in determining whether
23 there was actually undue influence in executing a
24 will was the testimony of the drafting attorney --
25 they cited the case law in South Carolina relating

1 to that -- yet, in dereliction of their duty as
2 trustees and personal representatives, they settled
3 that claim before they even heard from the drafting
4 attorney.

5 THE COURT: So what do you want us to do; go
6 ahead and try the undue influence claim?

7 MR. DONSBACH: Your Honor, I don't see in this
8 case where a good-faith, probable-cause,
9 challenge-the-in-terrorem-clause has been put forth.

10 THE COURT: You didn't answer my question. You
11 want the litigation to continue?

12 MR. DONSBACH: At this point, Your Honor, I
13 don't see another choice because they have a duty to
14 enforce the will and the trust. There's been no
15 proof in this case and no evidence that that in
16 terrorem clause can be ignored in this will. They
17 have not proven that at all, nor have the other
18 plaintiffs in this case. All they've put forth is
19 speculation.

20 If you read the interrogatories, if you read
21 everything that's been put forth in this case, it's
22 all about how bad Cannon and the prior trustees
23 were. Well, let's not lose sight of the fact that's
24 not undue influence, that's not what undue influence
25 is about. Undue influence is about where a

1 testator's intent is so overridden by threats or
2 coercion or some sort of relationship that that
3 person's estate plan is substituted for the
4 testator's.

5 Well, everything in this case, the discovery,
6 the testimony, the interrogatories, every one of
7 those is clear on what James Brown's intent was as
8 far as his estate plan. He wanted to leave his
9 personal property to his six kids, he wanted to
10 leave -- and educate his grandchildren, and he
11 wanted to leave money for the needy kids of Georgia
12 and South Carolina. That has held consistent in
13 everything we've seen in this case since 1997.

14 THE COURT: Get to the bottom of your argument.
15 Where do you want me to go with it? You want me to
16 continue on with the litigation?

17 MR. DONSBACH: The bottom of the argument is,
18 Your Honor, they have to enforce the in terrorem
19 clause at this point because a good-faith exception
20 has not been presented.

21 THE COURT: In your opinion.

22 MR. DONSBACH: They can't ignore that provision
23 of the will, because here's what's happening:
24 They're trading out one beneficiary's right to
25 receive all of the personal property. Terry Brown

1 would be the sole -- and his children, the sole
2 standing beneficiaries under this will if the in
3 terrorem clause is enforced.

4 THE COURT: If. And if we go through the undue
5 influence and litigation and if it comes out in a
6 certain way and if it does this and if it does that.

7 MR. DONSBACH: Well, Your Honor, right now,
8 it's not an if.

9 THE COURT: What is it?

10 MR. DONSBACH: Russell vs. Wachovia Bank says
11 in terrorem clauses in this state are enforceable.

12 THE COURT: What --

13 MR. DONSBACH: Unless an exception --

14 THE COURT: If certain things happen.

15 MR. DONSBACH: It's up to the plaintiffs to
16 prove that exception, not us. And the plaintiffs
17 have not proven that exception. The petitioners
18 have not proven that they have overcome the in
19 terrorem clause. And as such, they have a duty to
20 enforce the trust and will document as written.
21 They can't ignore the terms of the document.

22 Further, as we cited in our brief under South
23 Carolina law, when the testator's intent is clear
24 and unmistakable, as it is here -- because we've now
25 taken the testimony of the drafting attorney who

1 very clearly said James Brown wanted a terror clause
2 in his documents. He found it a personal affront, I
3 believe was the terminology used, if his documents
4 were challenged, and expected those people to be
5 out.

6 They have a duty to uphold James Brown's intent
7 and desire in his documents. And they tried to
8 settle this case prior to even knowing what that
9 was. And now we have it, and it couldn't be
10 clearer, they've not presented a case to override
11 the in terrorem clause. And they would be breaching
12 their fiduciary duty to the enforcement of these
13 documents if they sell out Terry Brown to put the
14 other children back and pay them to put them back in
15 the same position as if these last nine years never
16 happened, these last nine years of expenses and pain
17 and agony that everybody has been through never
18 occurred. And, oh, by the way, you're going to get
19 paid to do that.

20 In terrorem clauses in this state would be a
21 joke if that's what happens. Everybody would
22 challenge a will with one in it because there's no
23 punishment, there's no penalty. And that's what
24 their duty to enforce is. Yes, they are bound by
25 that; they are fiduciaries. Let's not lose sight of

1 that. This is not a normal plaintiffs-defendants
2 case where the two parties get together and come to
3 a compromise. They're representing fiduciaries who
4 have an obligation to not only one beneficiary for
5 the estate, but all of the beneficiaries for the
6 estate.

7 And in this case, if the in terrorem clause is
8 properly enforced, as it should be, there's only one
9 beneficiary of the personal property, and that's my
10 client. They have a duty to that beneficiary
11 because he would be the sole successor beneficiary.
12 And the law requires them to do what's in the best
13 interest of the successors of the estate, which
14 would be my client, if the documents are properly
15 upheld and enforced.

16 And so, yes, I would argue they cannot settle
17 at this point. And they rush to a settlement on
18 this in the same fashion that the Supreme Court
19 pointed out had occurred in Wilson v. Dallas.
20 That's why this is Wilson v. Dallas II.

21 THE COURT: Thank you. Anything else?

22 Mr. Bodman?

23 MR. BEACH: Your Honor, before Mr. Bodman
24 starts, I've been criticized by my people for not
25 saying that Mr. Levenson will be addressing this as

1 well, and I think Mr. Black has a few points that
2 he'd like to make on behalf of the Estate.

3 THE COURT: Very well.

4 Mr. Bodman?

5 MR. BODMAN: Your Honor, may it please the
6 Court.

7 THE COURT: Yes, sir. How are you today?

8 MR. BODMAN: I'm well, Your Honor. I hope
9 you're doing well.

10 We -- I'm going to take a little different
11 angle. But we, on behalf of Daryl Brown, believe
12 that this settlement and this motion is unjust and
13 unreasonable also. I haven't heard any factual
14 basis -- maybe Mr. Levenson will get to that from
15 his perspective. But I haven't heard any factual
16 basis for this settlement, other than the cost of
17 the litigation ongoing.

18 But, Your Honor, even if this settlement goes
19 through, there's a potential, you're right, Your
20 Honor, depending on how the appellate courts rule,
21 that the litigation could be shortened. But if she
22 is ruled to be the spouse, the undue influence case
23 could still go on, she's still there. There's more
24 discovery to be done, including depositions that
25 have already been scheduled with regard to

1 Mrs. Brown that have nothing to do with the other
2 settling parties.

3 Your Honor, Daryl, for the last three years or
4 so, has supported the will. We have met with
5 attorneys for the Limited Special Administrator,
6 we've supplied them documents that they did not even
7 have, we support the will for the last three years
8 steadfast, and I don't think Mr. Beach would quarrel
9 with anything I'm about to say about that; we have
10 met with them, we have communicated with them, we
11 have supported the will for a period of years. And
12 then as time goes on and it gets closer to a trial
13 next year, they have decided to reward people and
14 pay money to people who oppose the will, yet offer
15 nothing to people who supported the will.

16 We believe that sends a terrible message that
17 you are rewarding people who, for nine years, for no
18 good reason, disregard the wishes of their father,
19 yet do nothing for people who supported the will for
20 years and years and years.

21 We also don't believe this is a family
22 settlement. I've heard that word used and they used
23 it in their brief, although I don't know that it's
24 determinative here, because it favors some people
25 over others, favors some members of the family over

1 other members of the family. We oppose the
2 settlement, we oppose the motion, we oppose the
3 message that it sends to reward people who fought
4 wishes of their father and will, and reward them at
5 the expense of others. Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Beach?

8 MR. BEACH: Your Honor, at this time, I think
9 Mr. Levenson --

10 THE COURT: Mr. Beach, do you want to respond
11 to them? Let me run my courtroom, please.

12 MR. BEACH: I'm sorry. Your Honor, I'd be
13 happy to.

14 Judge, first, and I think really crucially
15 important point, is the estate -- the
16 representatives of the estate have an obligation not
17 just to Terry Brown and Daryl Brown who, admittedly,
18 are beneficiaries in that they have one-sixth of the
19 personal property, but the Estate has an obligation
20 to all of the -- the representatives of the estate
21 have an obligation to all of the beneficiaries of
22 the estate. And primarily, one of the things that
23 is really favoring this settlement and one of the
24 things that has caused the Estate to enter into this
25 settlement is that it completely -- it eliminates

1 the downside of the litigation costs that are
2 associated with these claims that would be solely
3 placed on the education trust and the charitable
4 trust --

5 THE COURT: What if they were successful in
6 their litigation and proved it be executed under
7 undue influence or any of the other channels? Where
8 would we be then?

9 MR. BEACH: Well --

10 THE COURT: You would have an intestate estate,
11 would you? Or would you go back --

12 MR. BEACH: We would have an intestate estate
13 and then there would be nothing that goes to the
14 education funds --

15 THE COURT: Absolutely.

16 MR. BEACH: -- because they wouldn't exist.
17 Although where we probably would be, is we'd be back
18 to 1999 will, which has similar provisions in it as
19 the 2000 will. And we'd have to litigate that
20 entire question under whether that will was procured
21 pursuant to undue influence. And then if that will
22 was, then we -- I don't think there's another will
23 prior to that -- well, there was, actually. Your
24 Honor, there's a 1996 will. Which would -- yeah.
25 And that has as gifts to people who have

1 subsequently passed away and that.

2 So the question is, if -- yes, if they were to
3 win the undue influence claim, then it would be a
4 calamitous result. If they were to lose the undue
5 influence claim, and then regardless of what happens
6 on the in terrorem claim, all of the costs of that
7 would suck money out of the education and the
8 charitable education trusts for the needy and delay
9 the time in which those trusts are actually
10 implemented and start providing the useful services
11 that Mr. Brown envisioned.

12 THE COURT: And the settlement sort of puts all
13 that to rest?

14 MR. BEACH: It does.

15 THE COURT: Move forward with the various
16 trusts, like he wanted, and go down the road until
17 we deal with the decision by the Supreme Court or
18 the Court of Appeals on Mrs. Brown.

19 MR. BEACH: That's correct, Your Honor.

20 And as a final point, Mr. Bodman says that he
21 is the -- and I acknowledge Mr. Bodman and his
22 clients have been very cooperative and helpful
23 because their position has been that the estate
24 should remain intact and should not be set aside for
25 undue influence.

1 THE COURT: And what does the settlement do to
2 that wish?

3 MR. BEACH: Well, a settlement establishes that
4 wish, Your Honor. And it also has a provision that
5 says that not only will these five settling parties
6 not try to set the will aside, but they actually
7 agree to cooperate with the Estate as this matter
8 moves forward.

9 And so contrary to the position that is being
10 placed here, this actually -- this settlement gives
11 the Estate cooperation from, I would argue, the very
12 people who know the most about the inner workings of
13 James Brown's empire and know the most about his
14 testamentary intent.

15 THE COURT: Anything else?

16 MR. BEACH: Judge, there's an awful lot that I
17 have to say in response to Mr. Donsbach's brief, but
18 I think he didn't raise those points, so we'll defer
19 that as well. But I believe Mr. Levenson is
20 prepared to provide information to the Court and
21 Mr. Black would like to make some statements, I
22 believe --

23 THE COURT: I understand.

24 MR. BEACH: And that's what we have for the
25 moment. If we have other items that you'd like for

1 us to address after all of that, we'll be prepared.

2 THE COURT: Thank you.

3 Mr. Black?

4 MR. BLACK: Your Honor, may it please the
5 Court. David Black on behalf of Mr. Bauknight as
6 the PR and Trustee of the Estate of James Brown.

7 Your Honor, this has been going on for nine
8 years. I know this Court is tired of it, the Estate
9 is tired of it --

10 THE COURT: Well, I'm not tired of it, but I
11 certainly understand it's been going on for nine
12 years.

13 MR. BLACK: I'll call it what it is, Your
14 Honor. It's a stickup. Mr. Donsbach and Keniley
15 [phonetic] represent Terry Brown, and they're going
16 to sit here today and say, Your Honor, we have clean
17 hands, we've been supporting the trust and estate
18 this entire time. Your Honor, they haven't.

19 May 26, 2009, Terry Brown, was he a party to
20 that settlement agreement? Absolutely, Your Honor,
21 he was a party to that settlement agreement. Under
22 Mr. Donsbach's logic today, he'd be barred from the
23 in terrorem clause. The Trust and Estate doesn't
24 have the power to do all these things. It's
25 completely illogical, they don't have standing. And

1 at the appropriate time, after Mr. Levenson comes
2 forward, Your Honor, I'll be making a Rule 11
3 sanctions motion asking for fees and costs in
4 relation of everyone responding to this frivolous
5 motion today.

6 Your Honor, in light of the will and trust
7 contest, let's just see what Terry Brown has
8 challenged. Article 21: Should any beneficiary
9 under this evocable trust or grantor's will dated
10 after or even with this trust as referred to herein
11 become an adverse party in any proceeding for the
12 probate of grantor's will or in any manner contest
13 the validity of grantor's irrevocable trust. Well,
14 what did that settlement agreement do? And they're
15 going to sit here today and say this does not comply
16 with Wilson v. Dallas. Talking about a completely
17 different standard.

18 What the Supreme Court was looking at in Wilson
19 v. Dallas was, was there a good-faith controversy.
20 That's what the Court's analysis was getting to. It
21 was not looking at probable cause, the threshold for
22 a lawsuit, good faith. And to sit here and
23 strong-arm the Estate and say we get to litigate
24 into perpetuity is nonsense, Your Honor. And we'll
25 be filing a Rule 11 motion with the Court at the

1 conclusion of Mr. Levenson's testimony. Thank you.

2 THE COURT: Mr. Levenson?

3 MR. LEVENSON: Your Honor, I'm in an unusual
4 position. And I would like, as I understand the
5 mandate of the Supreme Court and, essentially, some
6 of the accusations being made, to be put under oath
7 and to testify, because I believe a record is
8 required here with evidence as the Supreme Court and
9 the Russell case would require, so that should your
10 decision be in favor of supporting this settlement
11 and an appeal be taken, that you would have
12 evidence -- not argument, but evidence in this
13 record to support any decision you would make, if
14 you choose to support the motion made by Mr. Beach
15 on behalf of Mr. Sojourner.

16 And I'm prepared to be put under oath and tell
17 Your Honor that which, evidently, the objecting
18 parties don't recall from the discovery responses
19 that we've provided and the width and breadth of a
20 multiyear investigation that I and my office did to
21 inquire into both before we filed the will contest
22 and after we filed the will contest to support South
23 Carolina 62-7 --

24 THE COURT: So you feel it's appropriate to
25 come up here and testify about everything you've

1 done so that you have all that considered in asking
2 me to approve the settlement?

3 MR. LEVENSON: Yes, sir, I do think it is
4 appropriate. I wish to be put under oath and
5 subject to cross-examination by anyone who wants to
6 ask me any questions about it.

7 THE COURT: Well, all of your interrogatory
8 responses, all of your discovery matters, isn't that
9 part of the record to show --

10 MR. LEVENSON: It is, Your Honor. And that's
11 true. But that is from the perspective of my
12 client. The clients don't know everything that I
13 did, the people I spoke with, notes that I made, the
14 investigation of -- legal and factual investigation
15 that we did from the time of my involvement, which
16 was January 2007 until December of 2007 when we
17 filed the will contest, which was proceeded by
18 rather unique events in Bamberg that Your Honor
19 was -- many of the people who are in this room were
20 not in that room that Your Honor remembers. But the
21 fact is, it's not in this record here with respect
22 to this matter, and the Supreme Court admonished
23 Your Honor. And I believe it's my fault that you
24 didn't have the information that you needed in the
25 settlement that was disapproved in the Supreme Court

1 because I didn't tell this Court when you approved
2 the settlement what I'd like to tell this Court now.

3 THE COURT: Well, it took six days to approve
4 that settlement. How long is it going to take you
5 to testify?

6 MR. LEVENSON: Well, you may recall -- the
7 answer is, a lot less than six days. Maybe an hour
8 or so of Your Honor's precious time that I will --

9 THE COURT: I'm not pressed for time. I can go
10 all day.

11 MR. LEVENSON: I didn't mean that
12 disrespectfully. But I mean that the time that was
13 wasted by the inability to get in the record --
14 well, let me just read Your Honor what the Supreme
15 Court said that I feel would help Your Honor
16 understand.

17 The Supreme Court said: We have substantial
18 concerns about the Circuit Court's findings in this
19 regard relative to approving the settlement of the
20 undue influence claims. Although proof of a claim
21 is not required, we believe something more than a
22 subjective belief or a mere allegation is necessary
23 to avoid the potential forclusion among disinherited
24 or disgruntled family members who wish to dispose
25 the testator's estate plan and substitute with one

1 more to their like.

2 They go on to say, Judge, that there must be
3 some reasonable or substantial basis for the claims
4 advanced by the parties which are surrendered by the
5 agreement.

6 And they go on to conclude: While we do not
7 believe a full-blown formal investigation is
8 required before compromise may be reached, we
9 believe something more than mere accusation and a
10 subjective opinion of the response -- and they were
11 taking, to some extent, the Attorney General's
12 intents, when they were referring to the response in
13 that case, Judge -- something more than a meer
14 accusation and subjective opinion of the response is
15 necessary to justify Court approval of compromise
16 that seeks to vitiate the decedent's entire estate
17 plan on the face of a vague allegation of undue
18 influence.

19 Judge, my professional reputation is also at
20 stake. I filed that will contest, and I want this
21 Court and anyone else who is listening to know that
22 when we filed it, we had a lot of information that
23 supported it; certainly not enough, perhaps, to
24 prove it by preponderance of evidence at that time,
25 but we also learned, after I filed it on January --

1 excuse me, on December 26th, 2007, we learned
2 fascinating details about substituted documents.

3 You may remember the February 8th, 2008 hearing
4 in Bamberg where, upon cross-examination, Mr. Dallas
5 revealed that the Exhibit B to the trust was a
6 document that he substituted after Mr. Brown's death
7 that Mr. Brown did not sign and he removed the
8 document that Mr. Brown had signed, all of which
9 corroborated that the belief, the reasonable belief
10 that we've already developed through our own
11 investigation.

12 THE COURT: Well, if you want to get under oath
13 and tell that all that --

14 MR. LEVENSON: I do. I do.

15 THE COURT: -- I'll be more than happy to let
16 you.

17 MR. LEVENSON: I do. Because I believe Your
18 Honor was unfairly punished by the Supreme Court for
19 my mistake in not presenting what I'm about the tell
20 this Court and the general public, I'm afraid, what
21 should have been told back in 2008.

22 THE COURT: Come around and be put under oath.
23 Who is going to question you?

24 MR. LEVENSON: Anyone who wants to. But I'm
25 happy to make a statement and then subject myself

1 to --

2 THE COURT: And I'm going to let you make the
3 statement, and then if anybody wants to ask you any
4 questions --

5 MR. LEVENSON: Thank you.

6 MR. DONSBACH: Your Honor, may I, just for the
7 record, make an objection about a lawyer stepping up
8 to testify as a witness in a case that he's
9 representing --

10 THE COURT: Well, give me some precedent that
11 that's inappropriate. Can you?

12 MR. DONSBACH: Off the cuff, no, Your Honor, I
13 can't. I just --

14 THE COURT: I didn't think so. Overruled.

15 MR. DONSBACH: I'm just making an objection for
16 the record.

17 THE COURT: Overruled.

18 LOUIS LEVENSON

19 being first duly sworn, testified as follows:

20 MR. LEVENSON: I do.

21 THE CLERK: Please have a seat.

22 MR. BLACK: Your Honor, I'm not certain of the
23 extent of Mr. Levenson's testimony, but to the point
24 that he gets into something that could be
25 confidential or damaging to the Estate, we do have

1 concerns about the camera being here and the
2 publicity.

3 THE COURT: Well, if we get into something that
4 you think is going to be damaging, you just raise
5 it, and I may ask them to leave.

6 MR. BLACK: Thank you, Your Honor.

7 THE COURT: Mr. Levenson, you may proceed.

8 DIRECT EXAMINATION

9 BY MR. LEVENSON:

10 MR. LEVENSON: Thank you, Your Honor. Judge,
11 my name is Louis Levenson. I'm an attorney at law.
12 I practice in Atlanta, Georgia. Principally, I'm
13 licensed in the state of Georgia since 1998. I've
14 been licensed in the state of South Carolina, I
15 believe, since 1994, but I may be off a year or so
16 on that.

17 Judge, right after the death of Mr. Brown, I
18 was contacted by at least one of the children of
19 Mr. Brown, and other family members then joined, for
20 me to represent them. At that time, there were
21 concerns about the validity of the document. There
22 were also concerns about the validity of some of the
23 transactions that had -- excuse me, the propriety,
24 perhaps, of some of the transactions that had
25 occurred between Mr. Brown and the persons who had

1 controlled or had been involved in most of his
2 business for several years before that, specifically
3 Judge Al Bradley, Mr. Buddy Dallas, and Mr. David
4 Cannon.

5 The family members that hired my office and who
6 signed a fee agreement for my representation were
7 Deanna Brown Thomas, Yamma Brown Lumar, Vanisha
8 Brown, Larry Brown, Daryl Brown, and Terry Brown.
9 In addition to all of those persons signing a fee
10 agreement for me to investigate, also signed that --
11 the other persons who signed that agreement were
12 Tonya Brown, who is a grandchild, Romunzo Brown, who
13 is a grandchild -- biological child of Terry Brown,
14 and Forlando Brown. The scope of the fee agreement
15 was for me to investigate and take action on behalf
16 of those clients.

17 Judge, the issue that I'm going to be talking
18 about is, what did we know at the time of
19 Mr. Brown's death regarding the circumstances of
20 Mr. Brown's condition and the circumstances of his
21 execution of the August 1, 2000 will and the August
22 1, 2000 trust, and what did we learn subsequent to
23 my involvement to support the will contest filed
24 December 26th, 2007?

25 MR. DONSBACH: Your Honor, I'm going to object

1 to this as narrative testimony. There's no direct
2 or cross or anything going on here. This is just a
3 narrative discussion. I mean, this is pretty out of
4 bounds as far as witness evidence and testifying and
5 taking direct exam and examination of witnesses --

6 THE COURT: You're the one who argued they
7 didn't have any basis for the claim, so he's putting
8 up the basis. Overruled.

9 MR. LEVENSON: Judge, at that time, my office
10 read the Russell case, the Judge Russell case, and
11 we were -- it was clear that there was a difficult
12 burden of proof in an undue influence case in the
13 state of South Carolina. We also read carefully the
14 provisions that Mr. Black just read. And we
15 discussed with the clients, and without revealing
16 what the clients said or, perhaps, the advice that I
17 gave them, we discussed carefully the provisions of
18 the in terrorem clause and the application of South
19 Carolina Code 62-7-605 and the good-faith exception
20 to that and that it was necessary to make a
21 good-faith exception.

22 And as the Supreme Court in Wilson v. Dallas
23 says, and I read to Your Honor moments ago: One not
24 need prove the totality of one's claim, quote,
25 although proof of a claim is not required, we

1 believe something more than a subjective belief or
2 mere allegation is necessary to avoid, et cetera.
3 Well, I'm aware of that because I've been involved
4 in other contests similar to this contest in this
5 case and in other courts.

6 So the clients were advised about the risks and
7 what constituted probable cause, which is something
8 more than a mere suspicion as defined in both the
9 criminal and civil cases in South Carolina that I
10 have researched, and I have those cases actually
11 here in the file, Judge, to reflect that I actually
12 have those cases back from 2007 that I looked at
13 when we were doing our homework.

14 Judge, let me start with some things that,
15 obviously, I don't -- it's somewhat of an anomaly.
16 I didn't share with Mr. Bauknight, nor with his
17 counsel, and then did not share with Mr. Beach who
18 is counsel to Mr. Sojourner, the facts -- most of
19 the facts I'm about to tell you because, let's think
20 about it, why would I share with them the evidence
21 that I have that's opposing their claim? I mean,
22 they hadn't asked specific kinds of discovery
23 questions until interrogatories were sent by
24 Mr. Beach pursuant to our contest, I believe, in the
25 fall of 2014. And I have here with me, Judge, which

1 I'd like to file as a matter of record, the
2 interrogatory responses of Deanna Brown Thomas,
3 Yamma Brown, and Larry Brown. And I know they may
4 have been served upon Mr. Beach, but I don't believe
5 they're a matter of evidence in this record. So I
6 have them here to file and, of course, make
7 available to Mr. Donsbach and Mr. Bodman and anyone
8 else who would like to ask me questions about them.

9 THE WITNESS: We'll make them part of the
10 record.

11 MR. LEVENSON: Yes, sir. Thank you.

12 MR. DONSBACH: To note, I believe Mr. Beach
13 filed those on December 28th with --

14 THE COURT: Please stand when you address the
15 Court.

16 MR. DONSBACH: I'm sorry, Your Honor. I
17 believe Mr. Beach filed those on December 28th.

18 THE COURT: Well, if he did or he didn't,
19 they'll be made part of this record.

20 MR. LEVENSON: And I wouldn't have known that
21 because I'm not -- I mean, I didn't know he filed --

22 THE COURT: Move along.

23 MR. LEVENSON: Yes, sir.

24 Judge, I'm -- I will say in general that when a
25 decision was made based on our investigation to --

1 let me say it another way. After we made a decision
2 to file a will contest, an express judgment was made
3 by the clients and direction to me given that at
4 every possible moment, I should attempt to protect
5 the good name and respect the legacy of James Brown,
6 because what I had learned, which was the basis of
7 the undue influence claim, would disparage or could
8 disparage that good name, not to mention the value
9 from a marketing point of view of Mr. Brown's good
10 name for music, movies, licensing, sampling, and
11 other matters that have generated funds for the
12 estate.

13 So I was very careful, and that's why I took
14 myself to task at a record before Your Honor some
15 time ago, that we didn't reveal that information
16 when we settled the case after a six-day hearing
17 where there was testimony in this very courtroom.

18 But the Supreme Court apparently has said,
19 and -- the Supreme Court has clearly said that that
20 information has to be made a part of a record. And
21 so to the extent that I have to do so, I will do so
22 here today.

23 Before we filed our claim, Judge, I met with or
24 spoke with the following persons, and I'll talk
25 specifically about what those persons told me so

1 that Your Honor will -- but I want to tell you who
2 they are first: A woman by the name of Elif
3 Crawford, and she was one of Mr. Brown's secretaries
4 or personal assistants; I spoke with and actually
5 became quite friendly with a gentlemen by the name
6 of Jeff Allen who worked for a company in New York
7 called Universal Attractions. Mr. Allen, along with
8 his either boss or partner, Mr. Bart, were --
9 promoted Mr. Brown and booked Mr. Brown and traveled
10 with Mr. Brown at various times during his
11 performances --

12 MR. DONSBACH: Your Honor, I'm going to object
13 to this and cut off, I think, this whole line of
14 testimony we're about to get on on the grounds of
15 hearsay. I think he's about the tell this Court
16 what other people said or were saying, and I don't
17 think that's admissible in to evidence by
18 Mr. Levenson. I believe those folks need to be here
19 for cross-examination, and they haven't --

20 THE COURT: Apparently you and I aren't
21 listening to the same thing. I hadn't heard a word
22 of what they told him. He's telling me who he
23 talked to. I'm very aware of hearsay testimony, so
24 if he gets into that, I will stop that. But thank
25 you for reminding me.

1 MR. LEVENSON: I also spoke with Tommie Rae
2 Hiney Brown at various times when -- both formally
3 and informally in the presence of her lawyers and at
4 events honoring Mr. Brown. I can remember one
5 specifically in California -- sorry. It was some
6 Hall of Fame -- I'm sorry, Deanna, I can't remember
7 the name of the place where we went. But it was a
8 place where we went and Tommie Rae was there.

9 I would also speak with a particular individual
10 named Loike Yamel [phonetic], a European tour
11 promoter who indicated reasons that Mr. Brown's tour
12 had ended prematurely in July 2000, only weeks, if
13 not days, before he executed the documents that are
14 the subject of the undue influence claim, that --
15 those documents being executed by Mr. Brown on
16 August 1st, 2000.

17 I spoke with Dr. Tommy Richardson, a physician
18 in Atlanta. I spoke with him, actually, several
19 times about Mr. Brown's commitment to drug
20 dependence -- to a facility in Atlanta.

21 MR. BLACK: Your Honor, at this time, if we get
22 into those things, the Estate does have a concern
23 about the James Brown image, the business, and some
24 of the things that could come out damaging the
25 Estate. We'd ask that the media be removed from the

1 courtroom.

2 THE COURT: Well, it may be that we're going to
3 get into sensitive areas. We've got objections
4 about hearsay, we got other objections as to how
5 it's being handled. I may let Mr. Levenson provide
6 his testimony like a de benne esse deposition for
7 the Court's purpose where all of you have the right
8 to ask him any questions you'd like and then we can
9 use that de benne esse testimony to supplement the
10 record for my consideration of Mr. Donsbach's motion
11 as well as Mr. Beech's motion. That may be a better
12 way of doing it than doing it in an open forum where
13 some sensitive matters may be revealed that they
14 need to be subject to be reviewed by the Court.
15 That may be the better way to do it.

16 Any suggests by you, Mr. Black?

17 MR. BLACK: Your Honor, if Mr. Levenson thinks
18 he can streamline his testimony not to talk about
19 some of those issues, we'd be fine with that. But
20 to the extent we're going to get into that, the
21 Court's guidance there may be the best way to do it.

22 THE COURT: Mr. Beach?

23 MR. BEACH: Your Honor, we're in agreement with
24 what Mr. Black just said.

25 THE COURT: Mr. Donsbach?

1 MR. DONSBACH: I'm fine with that process, Your
2 Honor. Once again, I raise and redirect the
3 objections to bringing in evidence or testimony to
4 hearsay when the witnesses aren't here to --

5 THE COURT: Well, he hasn't told me what they
6 said. I understand that.

7 MR. DONSBACH: I know that. I'm suspecting
8 it's coming.

9 THE COURT: Mr. Bodman?

10 MR. BODMAN: I have no objection, Your Honor,
11 with what you have proposed.

12 THE COURT: Which is to do it by way of de
13 benne esse or just to stay away from any --

14 MR. BEACH: I think de benne esse, Your Honor.

15 MR. BLACK: I think that's the way to go, Your
16 Honor.

17 THE COURT: So when could we have that done?
18 When would that suit everybody's timeframe? Today
19 is January 14th. By when?

20 Mr. Levenson, y'all want to do it this
21 afternoon or --

22 MR. LEVENSON: I'm here til whenever, Judge.

23 MR. BLACK: Your Honor, we've marked out our
24 day to be here. We have no problem with doing it
25 that way now while we have everybody's availability.

1 THE COURT: Well, when I meant de benne esse,
2 that would be like doing it by way of like a
3 deposition where I wouldn't necessarily be there,
4 but I'm available to be there, or we can clear the
5 courtroom. I hate to --

6 MR. DONSBACH: Your Honor, I would suggest, if
7 I may, that if we're going to go down that road,
8 that Mr. Levenson produce these documents that he's
9 claiming he -- I'm guessing he's suddenly saying
10 there are things he hasn't produced and didn't tell
11 us in discovery, is what I'm kind of hearing. And
12 so in order to prepare for that type of questioning
13 or to go down that line, I think it would be
14 appropriate that he provide that prior to doing that
15 rather than three seconds before we have to ask a
16 question.

17 THE COURT: Well, he's the one that brought the
18 claim. Obviously, I practiced for a long time. I
19 wouldn't bring a claim until I had investigated it.
20 And, obviously, I'm not going to tell you what I
21 investigated until I'm asked because that's the crux
22 of my claim. He is concerned now, as well as I am,
23 that we should have, perhaps, done this when we had
24 the first resolution.

25 But I don't want to deny anybody putting on the

1 record what they think needs to be to withstand any
2 appellate questioning. I'm just trying to figure
3 out the best way to do it.

4 Mr. Black?

5 MR. BLACK: Your Honor, if there's a way where
6 Mr. Levenson can streamline his testimony to go
7 through some of those areas that we don't get into
8 those issues, it may be that we can use our time
9 today; to the extent we need to do it de benne esse,
10 we do it for those more delicate, confidential
11 issues.

12 THE COURT: All right. Mr. Levenson, do the
13 ones that -- just continue on, Mr. Levenson, without
14 any hearsay testimony and staying away from any
15 controversial areas that would -- and if you want to
16 do that by way of a de benne esse deposition, we can
17 supplement it with that.

18 MR. LEVENSON: Yes, sir.

19 THE COURT: Thank you.

20 MR. LEVENSON: I think I left off with
21 the reference --

22 THE COURT: You left off with --

23 MR. LEVENSON: Dr. Tommy Richardson.

24 I also had numerous meetings and interviews
25 with Reverend Al Sharpton, who I did not know before

1 I became involved in this case because Reverend Al
2 Sharpton is -- was and is -- was a close friend of
3 Mr. Brown, a confidant, and is a close friend and
4 confidant of the clients that I represent --

5 THE COURT: In fact, he was here for some of
6 the early hearings.

7 MR. LEVENSON: He, was Your Honor. And you may
8 or may not have seen, but at various times Mr. --
9 excuse me. Reverend Sharpton has said that James
10 Brown was the father that he, Reverend Sharpton
11 never had.

12 And so, again, without adducing hearsay, I just
13 want Your Honor to know that I had at least a dozen
14 different times that I was in the presence of
15 Reverend Al Sharpton here, in Atlanta, in New York,
16 and at -- I think those are the only three places
17 that I was with him. And at various times he would
18 expound upon, without me telling you what he said,
19 his observations of Mr. Brown during the timeframe
20 that is the subject matter of the undue influence
21 claims.

22 I also had the opportunity to discuss with
23 Mr. Terry Brown and Daryl Brown, when they were my
24 clients, the very matters which they've now
25 contested. I would also -- I have here, Judge --

1 and, again, I'm not -- I think it's in the record.
2 But I want to mention that when we were in Your
3 Honor's court in early December of 2007, it became
4 apparent that the people who were close to Mr. Brown
5 who had a close confidential relationship with
6 Mr. Brown were involved in preparing documents for
7 Mr. Brown to sign, some of which, it turned out, had
8 been signed in blank. I'm referring specifically to
9 a deed. I have a copy of it. I believe the
10 original is in what we refer to as the Herring box,
11 which was the box that Your Honor ordered to be
12 turned over to, I'm not sure, Mr. Bauknight or Adele
13 Pope. It was turned over to someone and became a
14 permanent party evidentiary record of this case. I
15 saw the original, and then, of course, I have a copy
16 of it.

17 Now, admittedly, that document was signed in
18 1999, not in 2000. But there was, based on things I
19 was told by the witnesses that I have discussed with
20 Your Honor, without telling you specifically what
21 they said --

22 THE COURT: As a result of what they told you.

23 MR. LEVENSON: A belief that there was a
24 pattern of signing documents by Mr. Brown without
25 reading them upon the advise of the people who were

1 closest to him in close, confidential relationships.

2 THE COURT: Well --

3 MR. LEVENSON: The same --

4 MR. DONSBACH: Objection --

5 THE COURT: Hold on a second. Don't get into
6 what was told to you --

7 MR. LEVENSON: Yes, sir.

8 THE COURT: -- but as a result of what was
9 told, what decisions did you make?

10 MR. LEVENSON: Yes, sir. If I may, before I
11 get to the decisions, let me say that those people,
12 it turned out during my investigation, had, at
13 various times, contracts, some oral, some written,
14 to receive five percent each or approximately five
15 percent each of Mr. Brown's gross revenue.

16 MR. DONSBACH: Your Honor, I believe he's
17 getting into the content and he's actually
18 presenting his testimony for truth of the matter
19 asserted. This is hearsay.

20 THE COURT: He saw the contracts, I assume.

21 MR. LEVENSON: I have, absolutely. I have them
22 right here in these folders. And, Judge, some of
23 them were already introduced in to evidence in the
24 record in this case at the multitude of hearings
25 we've had before this Court, Bamberg, Barnwell, and

1 here at various times.

2 THE COURT: That's correct.

3 MR. LEVENSON: What I know from the deposition,
4 for example, of a gentleman by the name of Joseph
5 Lizio that I took in New York -- he was an agent or
6 broker for -- I think it was Morgan Stanley, but I'm
7 not certain --

8 THE COURT: And that's in some of the
9 collateral litigations gone on in this case.

10 MR. LEVENSON: That investigation led to a
11 claim being made by Mr. Bauknight's counsel against
12 Morgan Stanley that may -- I think may have been
13 settled already. But what evolved from that was
14 information that, unbeknownst to Mr. Brown, a
15 company by the name of Seventh Decade was set up
16 during Mr. Brown's life where -- and let me get
17 specifics here, Judge, if I may.

18 THE COURT: And it was set up by?

19 MR. LEVENSON: Mr. David Cannon.

20 THE COURT: That's correct.

21 MR. LEVENSON: And from that, starting in
22 approximately 2002 -- excuse me. There was about
23 \$10 million set into that account upon the sale of
24 the -- well, excuse me. That's not correct. Upon
25 the closing in June 1999 of the Pullman -- what's

1 referred to as the Pullman bond deal, a \$5 million
2 check disappeared. I have a copy of a blank check
3 signed for \$5 million with no payee on it --

4 THE COURT: And the Pullman litigation has been
5 fully vetted and, I think, has been resolved
6 favorably to the Estate.

7 MR. BLACK: That's correct, Your Honor.

8 MR. LEVENSON: But my point is, Your Honor, is
9 that that account -- apparently transactions were
10 going on during the period that is the subject of
11 the undue influence claim. And that's what's
12 important to me.

13 THE COURT: And involved --

14 MR. LEVENSON: Huge sums of money.

15 THE COURT: Who were the players?

16 MR. LEVENSON: Huge sums of money that were
17 going out of that account. And, specifically,
18 Mr. Cannon, Mr. Dallas, and Mr. Bradley were the
19 persons who were advising Mr. Brown about transfers
20 from the Morgan Stanley account to, I should say,
21 parts unknown. And I'm looking at the brokerage
22 account statement recapitulation sheet that I
23 prepared based on Morgan Stanley brokerage account
24 statements that I reviewed personally.

25 And by August -- excuse me. By July 31st of

1 2000, the account, which I believe started -- it may
2 have been \$15 million -- even though the bond
3 proceeds were \$26 million, was down to \$11 million.
4 By 2002, the account was closed and the balance of
5 funds was \$2,539,805.40 was transferred into the
6 sole control of Mr. Cannon, all during the lifetime
7 of Mr. Brown.

8 Now, again, transactions were occurring,
9 documents were, as far as I was told by Mr. Lizio in
10 his deposition, without the knowledge of Mr. Brown
11 because Mr. Brown -- excuse me. Mr. Cannon assured
12 Mr. Lizio that Mr. Brown was aware of all of these
13 transactions. It was during this same period --
14 again, I don't -- I'll be happy to talk in more
15 detail in a deposition.

16 But it was during this period that Mr. Brown
17 was experiencing issues that were -- personal issues
18 that were observed by a number of the people who I
19 have identified to the Court as witnesses with whom
20 I've spoken personally and met with personally.
21 Well, not all of them; I can't say I've met with the
22 French promoter, but I did speak to him and took,
23 you know, notes and information about that.

24 Now, admittedly, some of this information came
25 to me, Judge, after we had filed our claim, but the

1 statute of limitations was about to run on that
2 claim, and so we filed the claim to prevent the
3 preclusive effect of the statute of limitations at
4 the last moment, done more or less simultaneously,
5 maybe a few days after Professor Medlin filed the
6 claim with Mr. Rosen on behalf of Tommie Rae Brown.

7 THE COURT: Obviously you learned a lot more
8 after all those claims were filed as the Estate's
9 litigation went on, including testimony from Bamberg
10 and here --

11 MR. LEVENSON: That's correct.

12 THE COURT: -- which led to the criminal arrest
13 of one of the trustees and subsequent sentencing,
14 led to contempt of court, led to all types of
15 information dealing with property in Honduras or
16 wherever, the islands, and on and on.

17 MR. LEVENSON: Yes, sir. And as both Deanna
18 Brown Thomas and Yamma Brown and Larry Brown swore
19 in their discovery response provided to Mr. Beach,
20 there were significant questions about the documents
21 that were presented as the will and the trust.

22 For example -- this is just a few of the issues
23 that raised reasonable suspicion about the possible
24 alteration of the documents after they were being
25 signed. And we already know that Mr. Dallas

1 admitted to this Court under oath in Bamberg that
2 after Mr. Brown's death, he took the signed Exhibit
3 B out and inserted an unsigned Exhibit B, for
4 reasons that are a mystery. But, nevertheless, we
5 know there was admitted alteration of documents
6 which he and the other two personal representatives
7 submitted under oath to this Court in January of
8 2007 to be authentic.

9 We know that the will and trust pages were not
10 numbered or initialed by Mr. Brown or any witness.
11 Now, that may not seem like a big deal to the
12 non-estate practitioner, but it's a deal to me as an
13 estate practitioner, which is to say: A will or a
14 trust that does not bear the signature or the
15 initial of either the settlor of the trust or a
16 testator or a witness is significant when it is
17 viewed in the context of admitted alteration of
18 documents by other persons who were close to
19 Mr. Brown and have a close, confidential
20 relationship with Mr. Brown.

21 There was -- okay. This would go to what I was
22 told by other persons, and I will save that for a
23 different moment.

24 My own clients, including some of the persons
25 who are contesting this motion here today, have told

1 me that Mr. Brown was pathologic --

2 MR. DONSBACH: I'm going to object. He's
3 talking about what people have told him, Your Honor.
4 That's clearly hearsay.

5 MR. LEVENSON: They're parties to the case,
6 Judge.

7 THE COURT: That's right. Go ahead.

8 MR. LEVENSON: Mr. Brown was pathologically
9 afraid of going to jail for tax evasion. And that
10 information came to him, meaning, that pathological
11 fear about going to jail for tax evasion came to him
12 from the very people who I've just described as the
13 appointed personal representatives who were
14 ultimately removed or resigned before Your Honor in
15 2007.

16 They are the same people who convinced
17 Mr. Brown that he was -- this is what my clients and
18 some of the caveators here have said. These are the
19 people who convinced Mr. Brown that he was spending
20 too much money on his own personal lifestyle and
21 should cut back on expenditures, which is actually
22 ludicrous, at a time when they were themselves
23 receiving hundreds of thousands if not millions of
24 dollars of Mr. Brown's money. Let me just repeat
25 that, Judge, in case I'm not clear. The people

1 telling him he would likely go to jail for tax
2 evasion are taking money from him, and not reporting
3 it, I might add, on their own taxes, and putting him
4 in fear that he's going to go to jail so as to get
5 him to do things that -- and this information came
6 mostly from Tommie Rae Brown who is a party.

7 She would tell me and she told my clients that
8 the persons closest to Mr. Brown would come to him
9 at a certain time of the day when they knew that he
10 was -- and I'll say this charitably as possible --
11 under the influence in order to get him to sign
12 documents. They didn't see him in the morning and
13 they didn't see him at noon; they saw him at a time
14 when they, the persons who were closest to him
15 relative to the August 1, 2000 timeframe, knew he
16 could be led to blindly sign anything they presented
17 to him. The same information was given to me by
18 Ms. Crawford who is the person I referred to as his
19 personal secretary or office manager.

20 And it is correct, by the way, there may have
21 been a justifiable basis for Mr. Brown to be fearful
22 because there were large cash transactions going on,
23 both in the touring schedule and in some other areas
24 about which Mr. Brown had a justifiable fear that he
25 was, perhaps, at risk of liability. But all of that

1 was created by the people who were closest to him
2 because they were managing the money.

3 For example, Mr. Bradley, Your Honor may or may
4 not know, was Mr. Brown's out-of-town tour manager
5 during much of this period. And all of the
6 personnel in Mr. Brown's band and entourage were
7 paid in cash, and Mr. Bradley carried the cash,
8 received it -- the protocol in the industry, as I
9 understood from Mr. Allen, the -- Mr. Brown would be
10 paid -- say his fee is \$100,000 for a venue. And
11 I'm just using that as a number, I don't have any
12 specific recollection of the amount Mr. Brown would
13 get.

14 The first 50 percent was paid to Universal
15 Attractions, from which they received their
16 commission. The second 50 percent was paid in cash
17 before Mr. Brown went on stage at the venue, and
18 that was the traditional protocol. And then there
19 was the problem of, you know, how did you carry the
20 cash, sometimes there were problems with the cash
21 coming back in the United States. And the cash was
22 disbursed by Mr. Bradley and Mr. Cannon, and
23 everyone, including my clients who are now -- well,
24 excuse me. My former clients who are now opposing
25 this motion by Mr. Beach were aware that Mr. Brown

1 had significant concerns about the disposition of
2 the cash.

3 I'm trying to find the things that I can move
4 through without violating Your Honor's concerns
5 about adducing hearsay. Respectfully, I'm just
6 trying to explain what I did rather than presenting
7 the hearsay for the truth of the matter. But my
8 goal was to explain to this Court the very careful
9 analysis that my office did in this case, both
10 before we filed the will contest and after we filed
11 the will contest in order to establish probable
12 cause.

13 It may or may not be known to Your Honor -- and
14 it may not have been known to Mr. Brown that
15 Mr. Cannon, who was handling Mr. Brown's finances,
16 had a criminal record and had been convicted of a
17 theft offense involving significant sums of money.
18 In fairness to Mr. Cannon, he was ultimately
19 pardoned by the governor to that offense. But that
20 was a matter I found in the record and brought to
21 the attention of my clients who were not aware of
22 it. And, again, my clients were now concerned and
23 had reasonable belief that the persons who were
24 closest to Mr. Brown around August 1, 2000 were the
25 persons who, perhaps, were not worthy of Mr. Brown's

1 trust.

2 Now, of course, by this point, Mr. Brown was
3 deceased. But the litigants were not aware of the
4 facts that I brought to their attention. And,
5 again, Mr. Cannon was pardoned, so it may not be
6 admissible in evidence with respect to impeaching
7 Mr. Cannon, but it was, nevertheless, a concern that
8 led them to be reasonably suspicious of Mr. Cannon.

9 The -- may I take a moment, Judge, and make
10 sure I covered everything?

11 THE COURT: Well, let's take a quick break for
12 everyone to stretch their legs and you can review
13 the records. We'll stand at ease for about five or
14 ten minutes.

15 (Short break.)

16 THE COURT: Mr. Levenson.

17 MR. LEVENSON: Judge, if I may, just a few more
18 things. And this is not in any chronological order.
19 But I did not -- before we even filed the initial
20 pleadings, my clients hired me, the six initial
21 clients, six children of James Brown plus Forlando
22 and Romunzo and Tonya, which would be a total of
23 nine clients, before we filed any pleadings in this
24 court, in early January of 2007 within, perhaps, a
25 week of Mr. Brown's death, I was aware that there

1 was -- that Judge Rodney Peeples and Strom
2 Thurmond Jr., were representing Mr. Dallas,
3 Mr. Cannon, and Mr. Bradley.

4 And I reached out to them with a letter -- and
5 it's attached to my -- I found it in my preparing
6 for today. It was attached to the petition we filed
7 with this Court back in January of 2007 in which
8 I -- I'm paraphrasing: My clients have some
9 concerns about the absence of accountings since the
10 trust that purports to be the trust in -- key trust,
11 there appear to be no accountings that they've seen,
12 so would you provide us some accountings for the
13 trust activity since the year 2000, and also any
14 other accountings that you may have in your
15 capacities as, you know, either powers of attorney
16 or other fiduciaries for Mr. Brown. And the reason
17 I mention this is because there was a general power
18 of attorney that Mr. Dallas had that we were aware
19 of.

20 It turned out that I came to Aiken and met at
21 Mr. Strom Thurmond, Jr.'s office -- I believe David
22 Miller was there, Judge Peeples was there -- simply
23 to express the concerns and suspicions about the
24 group that had been selected and the -- and asked
25 for some documentation, followed up with additional

1 requests for documentation, received none. And the
2 next information we had was the actual filing of the
3 application for the appointment of the three of
4 those persons as the personal representatives. That
5 resulted in our filing a pleading.

6 My point simply is, Judge, that my clients did
7 not shoot first and name later. Their goal was to
8 aim carefully and to ask for the information that
9 was not provided to them at all.

10 In that regard, Judge, no sooner than they
11 began their pursuit of a concern about the trustees
12 or the personal representatives at that point and
13 trustees during the pendency of the motions for
14 their accounting, and possibly their removal, there
15 was an effort made -- again, only to put an
16 exclamation point on their suspicion, there was an
17 effort made surreptitiously to move the trusts that
18 had been created without their knowledge to Georgia,
19 for reasons, again, that are a mystery.

20 And I have a document here in my file, Judge,
21 dated July 10, 2007, before we filed our will
22 contest, and it's the letter Frank McGehee at Powell
23 Goldstein to Mr. Dallas -- which, frankly, I don't
24 remember how we got our hands on, but we did -- that
25 was to be executed by Mr. Dallas to move the situs

1 of the trust from South Carolina to Georgia.

2 Now, it may very well have been an innocuous
3 event, Judge, but it was done in the context of an
4 effort to remove them here in South Carolina at a
5 time where my clients were already suspicious of the
6 activities and the failure of accountings on the
7 people who were seeking to move the case out of the
8 subject matter jurisdiction of this Court to another
9 state.

10 And the -- with regard to suspicion and
11 reasonable suspicion that -- that gave rise later in
12 December of 2007 to the filing of the will contest
13 by my clients, there was a general concern about the
14 use by Mr. Brown of Mr. Dwayne Herring. And it was
15 not, as the Supreme Court suggested, because
16 Mr. Herring, by this point, had legal issues; it was
17 because this was not a lawyer that Mr. Brown had
18 traditionally used with respect to the management of
19 his affairs. A world renowned lawyer -- I'm sorry,
20 the name escapes me. The case has been going on so
21 long I forget who --

22 MR. BLACK: Leon Friedman, Jay Ross.

23 MR. LEVENSON: No, in Atlanta.

24 MR. BLACK: Joel Katz.

25 MR. LEVENSON: Thank you. Joel Katz. There's

1 a street named after Joel Katz in Atlanta.

2 So Joel Katz was Mr. Brown's -- Mr. Brown may
3 have been Joel Katz's first big client, I think I
4 heard that. Joel Katz was a very close confident of
5 Mr. Brown. Joel Katz and another lawyer whose name
6 I came cross, Mr. Ross from Chicago, and Mr. Leon
7 Friedman from New York were lawyers whose names
8 appeared repeatedly in conversations between me and
9 my clients about lawyers who had represented
10 Mr. Brown for decades, involving business
11 transactions and personal transactions. And upon
12 the death of Mr. Brown, Mr. Dwayne Herring's name
13 appears as the scrivener of the will and trust.

14 Now, there's nothing wrong with a person
15 getting their own lawyer totally different from any
16 lawyer they've ever used. But from the perspective
17 of the reasonable suspicion and belief, that was an
18 additional concern. We later found out that
19 Mr. Herring was not someone that Mr. Brown knew, but
20 someone who had been referred to Mr. Brown through
21 Mr. Dallas.

22 MR. DONSBACH: Your Honor, I'm going to object.
23 I mean, this certainly sounds like hearsay testimony
24 of what other people found out, told him, and what
25 he's learned about. I mean, where are we going with

1 this? It sounds like hearsay to me.

2 THE COURT: It may sound like it, but I'm going
3 to allow him to go along with that.

4 MR. LEVENSON: And I may be wrong; it may have
5 not been Mr. Dallas, it may have been a combination
6 of Mr. Dallas and Mr. Cannon. But the point I'm
7 simply making is, this name, Mr. Herring,
8 pretermittting anything the Supreme Court said in the
9 Wilson case about Mr. Herring's legal problems, he
10 was not someone that was the same family friend that
11 Mr. Friedman, Mr. Ross, and Mr. Katz were that all
12 of the children knew of and had belief that
13 Mr. Brown had confidence in who had, for decades,
14 represented him. And, I might add, Mr. Ross had
15 written one or more wills that the children may have
16 not been aware of, but I learned, during my
17 investigation, that he had written wills for
18 Mr. Brown which would be, I believe, in the 1991 or
19 '92 timeframe, Judge.

20 Anyway, that -- I'm simply trying to give Your
21 Honor a broad overview of some facts and some
22 specifics in a very discreet timeframe that all led
23 to the belief that there was probable cause -- more
24 than just a mere suspicion, a probable cause that
25 that document or documents were not the product of

1 Mr. Brown's voluntary, intelligent, knowing
2 decisions, and then, of course, amplified by the
3 events that followed the death of Mr. Brown and the
4 hearings before Your Honor, which you're very well
5 aware of and are matters in the record.

6 So other than me disclosing the specifics of
7 what Ms. Crawford told me, what Jeff Allen told me,
8 what Tommie Rae told me, Loike Yamel, Tommy
9 Richardson, Reverend Al Sharpton, and my own clients
10 and Mr. Terry Brown and Daryl Brown -- and I want to
11 point out, by the way, as far as Terry and Daryl, we
12 would have lots of family meetings when non-clients
13 were present, sitting around Deanna's and Shawn's
14 dining room table where Reverend Al Sharpton was
15 present. So the concern that this was a violation
16 of some attorney-client confidence is ludicrous,
17 because there were non-clients present when everyone
18 is just knocking around ideas and thoughts about why
19 this would have happened the way it happened.

20 And I tell you that because it was a constant
21 work in progress. You know, Your Honor may not
22 remember but, you know, I had never been in a case
23 of this magnitude, and I also had never been
24 actively practicing in South Carolina. My very
25 first day -- the very first day that I was before

1 Your Honor, there was an allegation that my
2 associate had perpetrated a fraud upon the Court by
3 tendering the affidavit of Mr. Lee, and Your Honor
4 appropriately said we're going to let SLED
5 investigate that matter. So the very first day I'm
6 in Your Honor's court, it is clear that I'm going to
7 have some headwinds in this case.

8 THE COURT: That was back in the Grand Jury
9 room, if I recall.

10 MR. LEVENSON: Yes, sir. So I want Your Honor
11 to know that I proceeded with great caution before I
12 did anything in this court, as I would do in any
13 court, particularly because this case had such
14 attention to it.

15 And, again, for the record, Your Honor
16 ultimately found, upon hearing evidence, there was
17 no impropriety about the affidavit that had been
18 presented by that gentleman, Mr. Lee, and no there
19 was no investigation or any prosecution. But the
20 valuable lesson I learned from that is, you know,
21 measure twice and cut once before you make a
22 mistake.

23 So that's all I have to present at this time.

24 THE COURT: Mr. Black, anything you want to ask
25 him?

1 MR. BLACK: No, Your Honor. Just for the
2 record, I want to make sure that the Court's clear
3 that these are allegations to things that have been
4 said, they're allegations that go to what
5 Mr. Levenson looked at and reviewed in filing his
6 complaint. I know that there are other parties that
7 may want to address him, but as far as
8 Mr. Bauknight, I'm satisfied.

9 THE COURT: Mr. Beach?

10 MR. BEACH: No questions, Your Honor. Thank
11 you.

12 THE COURT: Mr. Donsbach?

13 MR. DONSBACH: Just a few, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. DONSBACH:

16 Q. Mr. Levenson, you were aware of deposition of
17 Dwayne Herring scheduled for November 18th and
18 December 9th; correct?

19 A. Yes, sir.

20 Q. Okay. And you did not attend that deposition
21 on behalf of your clients, did you?

22 A. That's correct.

23 Q. And you were aware that Mr. Herring was the
24 drafting attorney of these documents; correct?

25 A. Yes, sir.

1 Q. And you did not ask Mr. Herring a single
2 solitary question about the execution of the
3 documents and the circumstances surrounding the
4 execution of the documents, did you?

5 A. Well, that's true, because I wasn't there. But
6 my clients had --

7 MR. DONSBACH: I have no further questions,
8 Your Honor.

9 MR. LEVENSON: May I explain my answer?

10 THE COURT: Certainly.

11 MR. LEVENSON: My clients had obtained other
12 counsel. And, Mr. Donsbach, I had interviewed
13 Mr. Herring in that prison years before, personally.

14 THE COURT: Thank you.

15 Anyone else? Professor Medlin?

16 MR. MEDLIN: Your Honor, I'm not sure if we're
17 officially parties here to this or not. But I
18 certainly will tell you we'd like to offer our
19 position, which is we do not object to the proposed
20 settlement.

21 THE COURT: Any questions of this witness?

22 MR. MEDLIN: And as part of that, if it would
23 suit Your Honor, I would like to ask some questions
24 of this witness.

25 REDIRECT EXAMINATION

1 BY MR. MEDLIN:

2 Q. Mr. Levenson, if I recall, you've handled many
3 fiduciary cases in your career --

4 A. Yes, sir.

5 Q. -- is that correct?

6 And, in fact, there was some amazing number
7 that I recall that you told the Judge when he asked
8 all of us back in the spring of 2009 whether we
9 thought this was a complicated case, and it was a
10 large number.

11 A. I do remember his Honor asking all of us that
12 question, yes.

13 Q. And your response was some large number, as
14 I --

15 A. I was the Fulton County guardian and
16 administrator, Fulton County, Georgia, which is a
17 public fiduciary for about ten or so years, which is
18 a position that -- where you receive appointments
19 per the courts in estates that are either
20 unrepresented or where there are conflicts among the
21 contestants such that the judge appoints a neutral
22 fiduciary to administer the estate, whether it's a
23 guardianship, conservatorship, trust, or decedent's
24 estate.

25 Q. And as part of that experience and your

1 sterling performance and reputation, at least in my
2 opinion, you would have run across issues dealing
3 with undue influence and lack of mental capacity,
4 which were often parts of these cases; is that
5 correct?

6 A. I have and I've tried cases to a jury four or
7 five times, I think, on those issues and settled and
8 been involved in and resolved without a jury other
9 similar cases, yes, sir.

10 Q. And before you filed on behalf of your clients
11 the will and trust contest, which came shortly after
12 my client filed her will and trust contest, you had
13 conversations with me at length?

14 A. Yes, sir.

15 Q. And your understanding from both those
16 conversations and your own conversations with Tommie
17 Rae is that she did not pursue any mental capacity
18 claim in her petition because she wanted to honor
19 the reputation of her husband.

20 A. I have a recollection there was a conversation
21 about not pursuing the lack of testamentary capacity
22 issue, but, frankly, I don't remember the specific
23 conversation about why. But that's one of the two
24 general grounds for a caveat, yes.

25 MR. DONSBACH: Your Honor, I'm going to object

1 to this line of questions on the relevance, because
2 what they're asking, it sounds like to me, is
3 whether Mr. Levenson made a good-faith determination
4 of whether he could file these documents or file
5 these claims. And I'd submit to the Court that it's
6 one thing to have evidence or items to be able to
7 bring a claim as a lawyer, that's a low threshold,
8 in my opinion, for a lawyer to be able to bring a
9 claim, because lawyers lose all the time on not
10 having enough evidence.

11 And you can still bring a claim and lose. But
12 what I'm suggesting is the difference here, it
13 sounds like they're going into what it takes to
14 bring a claim or what threshold was necessary for
15 Mr. Levenson to file this claim. And I'd submit to
16 the Court, that's not relevant to the issue whether
17 or not there's a good-faith probable cause issue
18 related to the evidence in this case --

19 THE COURT: Is that the low threshold you're
20 talking about?

21 MR. DONSBACH: I'm talking about the
22 threshold -- no. I'm not talking about that
23 threshold being a low threshold. I'm talking about
24 the threshold to file is a relatively low threshold,
25 but not the threshold to bring the claim here. I

1 believe -- I'm talking about the ethical
2 responsibility of the lawyer to file something
3 versus whether or not the claim rises to a
4 good-faith level with probable cause.

5 I would submit to this Court that a lawyer
6 could file an undue influence claim and lose the
7 good faith with probable cause threshold that --
8 they had -- and they're not -- and they did not
9 commit a bar violation or not -- an ethics
10 violation, but failed the standard of the good-faith
11 probable cause standard.

12 It sounds to me like what they're going into is
13 did he have enough evidence to bring the claim. And
14 I would submit to this Court --

15 THE COURT: Is that a low threshold that you
16 just said?

17 MR. DONSBACH: Your Honor, I'm not going to
18 submit -- I'm not going to --

19 THE COURT: You just said it.

20 MR. DONSBACH: I said I believe that's a lower
21 threshold than a good-faith probable cause threshold
22 for undue influence, because otherwise, you'd never
23 lose a case filing undue influence if all you had
24 was have to have the threshold to file it. You'd
25 win every one of them and get past an in terrorem

1 clause. That can't be the standard.

2 So I'm just suggesting that what -- the
3 testimony they're going through is not relevant to
4 this hearing.

5 THE COURT: Professor Medlin, limit it to any
6 cross-examination on the evidence he had or he
7 suspected he had that warranted him bringing the
8 lawsuit, please.

9 MR. MEDLIN: Well, Your Honor, if I may, I'm
10 simply trying to respond to the objections that
11 Mr. Donsbach and Mr. Bodman raised that there wasn't
12 probable cause in bringing --

13 THE COURT: Well, then ask him the questions in
14 that --

15 MR. MEDLIN: Your Honor, if I may, and I'm
16 sorry to interrupt, that's exactly where I'm
17 heading. I'm just trying to set a predicate for the
18 questions I intend to ask.

19 THE COURT: I understand.

20 MR. MEDLIN: But, Your Honor, I also intend to
21 ask questions about what was discovered after the
22 lawsuit, because that too would go to probable cause
23 also, with your permission.

24 THE COURT: Certainly.

25 BY MR. MEDLIN:

1 Q. Mr. Levenson, is it your understanding and your
2 experience that weakened physical or mental
3 condition can be a factor in undue influence?

4 A. Yes.

5 Q. If I understood you when you testified before,
6 you understood that Dallas, Cannon, and Bradley had
7 great control over Mr. Brown during the later years
8 of his life?

9 A. Yes, in various -- each in different areas,
10 but, yes.

11 Q. And is it your understanding that some of that
12 control was elicited through threats of going to
13 jail?

14 A. Yes.

15 MR. DONSBACH: Your Honor, I'm going to object.
16 I mean, there's no evidentiary foundation for that.
17 There's no -- I mean, it's just --

18 THE COURT: Overruled.

19 Move along.

20 BY MR. MEDLIN:

21 Q. Is it your understanding that even though my
22 client and your clients were, at the time, at odds,
23 and are again after the settlement was overturned,
24 that their understanding of what happened during the
25 later years of Mr. Brown's life was similar with

1 respect to the coercion and threats that were
2 occurring frequently when Mr. Dallas, Cannon, and
3 Bradley were behaving in the way that you've
4 described?

5 MR. DONSBACH: Your Honor, I'm going to object
6 to that question. He just asked what somebody
7 else's understanding -- for him to testify about
8 somebody else's understanding was.

9 THE COURT: That's not how I understood the
10 question. Overruled.

11 You can answer.

12 BY MR. MEDLIN:

13 Q. Mr. Levenson, you've been involved in this case
14 from the start. You probably have more knowledge of
15 everything that's gone on in the case since before
16 the case started. Do you recall that Ms. Pope and
17 Mr. Buchanan sought permission from Judge Early to
18 hire Mr. Gilreath and Mr. Few to pursue claims that
19 Mr. Brown would have because of wrongdoing imposed
20 upon him during his lifetime?

21 A. Yes. And the allegation by Ms. -- Jimmy
22 Gilreath and I communicated about it, was undue
23 influence claim that they pursued -- or there was an
24 allegation, I'm sorry, of undue influence practiced
25 upon Mr. Brown in a nonprobate context relating to

1 other matters between Dallas, Cannon, and Bradley
2 and the Estate.

3 Q. And you have no knowledge that three attorneys
4 in good standing in the state of South Carolina
5 would bring such a claim without satisfying the
6 necessary burden to bring such --

7 MR. DONSBACH: Your Honor, that calls for
8 speculation. He's asking what three attorneys in
9 South Carolina would have -- I mean --

10 THE COURT: Well, I mean, three attorneys
11 brought the case, so I know what the answer is.
12 Sustained. Move along.

13 MR. MEDLIN: Thank you, Your Honor.

14 BY MR. MEDLIN:

15 Q. Mr. Herring --

16 THE COURT: And, I might add, successfully
17 brought the case to a conclusion.

18 Go ahead.

19 Q. Mr. Herring is in jail for murder.

20 A. That's -- I only know what I read and what he
21 told me when I saw him face to face. Yes.

22 THE COURT: That's public knowledge. He is.
23 Public record, convicted.

24 Q. Have you read the Herring deposition or have
25 you in any way looked at the Herring deposition --

1 A. No, sir --

2 Q. -- that Mr. Donsbach --

3 A. -- I have not.

4 Q. -- presented to this Court?

5 Are you aware, from any other review in this
6 case, such as your review of the Herring box, that
7 that file indicates that Mr. Herring communicated
8 with Mr. Brown maybe three times about his estate
9 plan, both the purported '99 estate plan and the
10 2000 estate plan?

11 A. I am, because I asked him about that
12 specifically and about who was present when those
13 conversations took place. That is correct. Because
14 that's a factor -- the presence of persons who might
15 benefit from undue influence is a factor by a jury
16 to be considered as to whether the person who was
17 present received any benefit from the possible
18 exercise of undue influence.

19 Q. Well, how would those three benefit from unduly
20 influencing Mr. Brown's estate plan?

21 A. Well, there was --

22 MR. DONSBACH: I'm going to object, Your Honor.
23 That calls for speculation.

24 Q. What is in the documents that led you and your
25 clients to believe that there was undue influence?

1 Did the 50-percent fee have any part of that
2 determination?

3 A. There was a provision that was very unusual,
4 particularly as a compensation package in any
5 fiduciary relationship, separate and apart from the
6 fact that it was a charitable organization,
7 charitable trust. The charitable trustee's fees are
8 traditionally less than what they would be if it's a
9 non-charitable trust. It was an exorbitant -- let
10 me put it this way: I'd never seen such a provision
11 in any trust or --

12 MR. DONSBACH: Your Honor, I'm going to object
13 to this line of questioning on the grounds that, you
14 know -- I'm not sure if he's qualified to give this
15 testimony. It sounds like we're moving into an
16 expert-type witness rather than layman testimony.

17 THE COURT: Overruled.

18 In fact, the Supreme Court classified it as a
19 generous compensation, I think, was their word. Is
20 that correct?

21 MR. MEDLIN: Yes, Your Honor, which I thought
22 was a generous description by the Supreme Court.

23 BY MR. MEDLIN:

24 Q. You recall that even Ms. Pope's expert,
25 Mr. Roof, testified that he'd not seen a 50-percent

1 gross management fee -- 50 percent of gross income,
2 not net income, from the estate?

3 A. I do recall something like that, yes, sir.

4 Q. And in your review of the Herring box and in
5 your recollection of the testimony previously, is it
6 your understanding that virtually all of the
7 communications between Mr. Herring in the drafting
8 of the document was not with Mr. Brown, but with
9 Mr. Cannon and/or Mr. Dallas?

10 A. Well, I can't say all or virtually all. I just
11 know -- and this is what Mr. Herring told me -- that
12 he had numerous communications with people who were
13 not Mr. Brown, substantive conversation about the
14 content of what he drafted, which is unusual. It's
15 not per se unusual. There are circumstances where a
16 family friend can say my uncle wants a will and this
17 is what I think my uncle wants and would you please
18 draft the will.

19 But that always -- when I'm the scrivener, it
20 always raises concerns in my mind about whether
21 there is some untoward relationship. And so I take
22 special care to examine the capacity of the
23 testator, myself -- and I don't mean just ask
24 questions about who the president of the United
25 States is, but these kind of statutory questions.

1 You know, who are the natural objects of your
2 bounty, tell me in detail what the extent of your
3 estate is, tell me why you're making this
4 disposition of your estate and not the other
5 disposition of your estate, and then I take careful
6 notes, none of which, in my opinion, my conversation
7 with Mr. Herring -- though in fairness to
8 Mr. Herring, he was emphatic, from when I talked to
9 him, that Mr. Brown knew what he was doing.
10 Mr. Herring was not equivocal about that.

11 THE COURT: What did he say about the 50
12 percent gross?

13 MR. LEVENSON: Well, what he said, if I recall,
14 and this was six or seven years ago, Your Honor, was
15 that he was sure that's what Mr. Brown wanted, or
16 words to that effect. But I don't recall that he
17 gave me any specifics.

18 And I would say that if Professor Medlin's
19 question is designed to ask in my experience, what
20 I'm saying is if somebody makes that kind of
21 provision, I'm going to memorialize it in a way
22 that's bulletproof. For example, we had someone who
23 was an elderly person making an estate disposition
24 that was at odds with giving it to the natural
25 objects of his bounties or his heirs, and we

1 videotaped the conversations, with his permission,
2 of course, and the a attestation of the will in the
3 presence of the witnesses, anticipating there was a
4 contest. There was no contest, for the reasons
5 probably that it was clear that he was very emphatic
6 and articulate about what his wishes were.

7 But, you know, my point simply was to Judge
8 Early is this arrangement created the kind of
9 suspicion the lawyer -- none of the Brown class ever
10 heard of or had any dealings with or any
11 relationship with. And that, with the disposition
12 and the relative secrecy that it was conducted, gave
13 them pause to consider another reason to believe
14 that the same people who were taking millions of
15 dollars out of his account without his knowledge
16 were also substituting, in part, their judgment for
17 Mr. Brown's judgment with respect to the will and
18 the trust.

19 BY MR. MEDLIN:

20 Q. And if I recall your testimony correctly, your
21 understanding was Mr. Brown trusted Mr. Friedman,
22 Mr. Ross and Mr. Katz, and you didn't know that he'd
23 ever had Mr. Herring within that circle?

24 A. That is correct. And the other people who were
25 in Mr. Brown's orbit -- and I'm speaking without

1 repeating hearsay at this moment -- I inquired of
2 them, specifically Jeff Allen -- you know, without
3 saying what Mr. Allen said, I inquired of Mr. Allen,
4 who were the people that Mr. Brown would have
5 trusted in this area? And those names, Ross --

6 THE COURT: Don't testify about what he said.

7 MR. LEVENSON: Yes, sir.

8 BY MR. MEDLIN:

9 Q. Mr. Levenson, I imagine you reviewed those
10 documents that purportedly were executed in 1999 and
11 2000?

12 A. The will and trust?

13 Q. The will and trust from both of those years.

14 A. Yes, sir.

15 Q. I'm going to ask you to recollect this. And
16 again, it's been in evidence, so if I may do it this
17 way: The 1999 trust was a revocable trust; correct?

18 A. I think that's correct, yes.

19 Q. And if a trust is revocable, that means
20 Mr. Brown retained complete control of the property
21 and the trust, he could take it back?

22 A. He could undo it, yes, sir.

23 Q. And the 2000 trust was an irrevocable trust?

24 A. Yes.

25 Q. And an irrevocable trust is one that cannot be

1 taken back like a revocable trust; correct?

2 A. That's correct.

3 Q. It's completed transfer that cannot be undone?

4 A. Yes.

5 Q. Do you recall that in the 2000 trust, unlike
6 the 1999 revocable trust, there was a provision that
7 gave Dallas, Bradley, and Cannon 50 percent of the
8 income as a management fee during Mr. Brown's
9 lifetime?

10 A. Yes.

11 Q. So --

12 A. And this, I might add, as I was telling in my
13 earlier testimony, was in addition to this ambiguous
14 five percent or some percentage gross arrangement
15 that each of these three consultants were receiving
16 from all sources of revenue that Mr. Brown was
17 receiving during his lifetime. This is performance
18 revenue, royalties, and so on.

19 Q.. And so if that document accurately reflects
20 Mr. Brown's intent and he understood it, as
21 Mr. Herring testified, then Mr. Brown willingly gave
22 away 50 percent of the gross income from the assets
23 that he put into that trust to those three
24 persons --

25 MR. DONSBACH: I'm going to object to this

1 question.

2 THE COURT: Well, the question hasn't been
3 asked. Hold on until it's been asked.

4 Q. -- while he was alive? That's what the
5 document provides. I'm just asking what the
6 document provides.

7 MR. DONSBACH: His question is what Mr. Brown
8 willingly did. This witness can't testify as to
9 what Mr. Brown willingly --

10 THE COURT: He can rephrase to what the
11 documents show.

12 BY MR. MEDLIN:

13 Q. What the document shows -- if that is
14 Mr. Brown's document, the document shows that 50
15 percent of the gross income from the assets in that
16 trust went to those three persons rather than to
17 Mr. Brown?

18 MR. LEVENSON: May I answer that, Your Honor?

19 A. Yes. That's what the document -- and the
20 document speaks for itself, of course. But, yes,
21 that's what it says.

22 Q. And do you also recall from the 2000 trust, the
23 irrevocable trust, that as to any rights to the
24 property in that trust or the income therefrom, that
25 document purports to give those three persons total

1 control over whether Mr. Brown ever receives a penny
2 during his lifetime?

3 A. Well, actually --

4 MR. DONSBACH: Your Honor, I think the
5 document, as they said, speaks for itself. This
6 line of questioning is not relevant or helpful.
7 I --

8 MR. MEDLIN: Well, Your Honor, we were
9 showing --

10 MR. DONSBACH: -- think the document --

11 THE COURT: Hold on. Hold on.

12 MR. DONSBACH: I think the document is what it
13 is, Your Honor. If they want to put it in evidence,
14 that's what they do. But I think this line of
15 questioning is --

16 THE COURT: Overruled.

17 A. Actually, Professor Medlin, I don't, sitting
18 here today without it in front of me, have
19 recollection of that specific provision. But if I
20 may just add to it, you know, we in 2007 and early
21 part of 2008 -- we, meaning my clients and I and the
22 other people with whom I was consulting -- were
23 constantly perusing that document.

24 I remember we had it blown up in my office in
25 one of those big charts and we would always look at

1 it and -- because like any document you read, you
2 miss something and then you come back to it and say,
3 how could I have missed that?

4 So the answer to your question is, we were
5 constantly -- it was a constant evolution of ideas
6 and concerns about the language of the document
7 because I had, at one point, six clients, and then
8 later, four clients, and each of them would have a
9 question and they'd call me about it. And I'd pull
10 the document up and answer their questions as best I
11 could. But that question-and-answer period was
12 instructed to me because my clients asked excellent
13 questions and it motivated me to be more concerned
14 about some issues that had been raised in the
15 ultimately filed undue influence case.

16 Q. You recall, Mr. Levenson, I believe, in
17 response to my examination of Mr. Dallas, I was told
18 I didn't understand that Mr. Brown was, to
19 paraphrase, a control freak about his property?

20 A. I don't remember that, but -- no, I don't
21 specifically remember that. But I do remember
22 generally that was the representation by Dallas,
23 Cannon, and Bradley about Mr. Brown, yes.

24 Q. Okay. And if the 2000 trust says that despite
25 that understanding that might have been gathered

1 from such testimony and evidence, Mr. Brown instead
2 gave whatever assets were in that trust over to the
3 complete discretion of those three persons who could
4 determine whether he would receive one penny from
5 that for the rest of his life, that that would be
6 part of a probable cause determination?

7 A. Well, it's clearly antithetical to the idea
8 that he would control the world around him with an
9 iron fist, because it's the opposite of it.

10 Q. And although I don't know when I ask this
11 question whether that company was successfully
12 transferred into the 2000 trust, is it your
13 understanding that, at least purportedly, James
14 Brown Enterprises was transferred into that 2000
15 trust?

16 MR. DONSBACH: Your Honor, that calls for a
17 legal conclusion that -- there's no evidence or
18 documents that are being presented to support that.
19 It would be just pure speculation at this point.

20 THE COURT: Well, I don't think it's
21 speculation, because this has been part of this
22 lawsuit and part of these proceedings for a long
23 time. I'm sure you got the documents to back up
24 your --

25 MR. LEVENSON: I've got the two Exhibit Bs, if

1 this is what you're asking me about.

2 Q. Well, this is a Schedule A.

3 A. Schedule A. And then it's a two-page
4 document that -- may I show it to Your Honor?

5 THE COURT: Sure. I think we've seen it.

6 MR. LEVENSON: You have seen it and it's been
7 admitted in to evidence numerous times. But it's a
8 two-page document called the Schedule A, B and C.
9 And I've always had them together because they seem
10 to run together. But this is the document that I
11 was referring to as being the document that,
12 apparently, bore the signature of Dallas, Cannon,
13 Bradley, and Mr. Brown.

14 BY MR. MEDLIN:

15 Q. Schedule A of that document that I believe you
16 have --

17 A. Yes.

18 Q. -- Mr. Levenson, item 2, which is a part of
19 that 2000 irrevocable trust --

20 A. Yes.

21 Q. -- over which Mr. Brown no longer has any
22 control over these assets --

23 A. Yes.

24 Q. -- that document accurately reflects his
25 intent --

1 A. That was his -- JBE, James Brown Enterprises,
2 was Mr. Brown's principal operating entity during
3 his lifetime. All or substantially all of his
4 royalties, his performance revenue, and other income
5 that he received for promotions would be deposited
6 into the JBE account.

7 Q. It would be a significant deference to him and
8 his ability to receive any income if he's put that
9 asset in a trust over which he has no control versus
10 absolute ownership?

11 A. Professor Medlin, I don't know the answer to
12 that question. All I know is that issue raised the
13 concerns of my clients about their father's actions
14 on or around the time August 1, 2000 and the --
15 whether that contributed to or added to their
16 suspicions about the possibility that he was
17 influenced to do things that he would have not
18 otherwise done at a time when he was not as clear as
19 he should have been.

20 Q. And, of course, as Mr. Black pointed out
21 earlier, you'd say that these are just allegations
22 that we were discussing, but that led to a
23 determination of probable cause; is that correct?

24 A. Well, I mean, to the -- yes. Until a jury
25 finds whether the stop light is green or red, it's

1 simply an allegation whether the stop light is green
2 or red. But when six different people tell you that
3 the stop light is one color or the other and no one
4 tells you otherwise, you have more than a mere
5 suspicion; you have compelling, what will ultimately
6 be evidence, admissible evidence to present to a
7 jury.

8 Now, there may be evidence to the contrary;
9 i.e., Mr. Herring. That isn't to suggest that
10 Mr. Herring would not come into this courtroom and
11 say something contrary to what Jeff Allen would say.
12 But that's not -- the test is not whether you
13 prevail Mr. Herring's testimony verses Mr. Allen's
14 testimony; the question is whether you have a
15 good-faith belief that that is factually appropriate
16 and admissible under the rules of evidence in this
17 state.

18 MR. MEDLIN: Thank you, Mr. Levenson.

19 Thank you, Your Honor.

20 THE COURT: All right. You may step down.

21 MR. BEACH: Your Honor, the Estate just wants
22 to make it quite clear that the information that has
23 been provided here is only being provided to show
24 that -- the existence of probable cause. And the
25 fact that we're not cross-examining Mr. Levenson is

1 not an indication that we agree with any of the
2 questions and answers that have been here. And
3 we're certainly reserving our right, if we
4 ultimately try this case, to --

5 THE COURT: I understand. Whatever it's
6 offered for is to simply show that this is what's
7 going to come in to the trial of the case on one
8 side, and if there is a substantial controversy
9 between the two of you, that's what y'all are trying
10 to settle. That's what I was taking it for.

11 All right, gentlemen --

12 MR. DONSBACH: Your Honor, I just wanted to
13 respond to Mr. Black's comments from earlier. I
14 didn't have a chance to respond to those. I had two
15 brief comments on those.

16 The one where he said we're an adverse party in
17 this matter, I'd disagree with that respectfully.
18 We're just asking the Estate to enforce the in
19 terrorem clause.

20 THE COURT: Then what are you? Adverse party
21 or what are you?

22 MR. DONSBACH: We are asking for -- to
23 effectively -- that in terrorem clause is valid and
24 should be enforced. And that's not an adverse party
25 position with the Estate.

1 THE COURT: Thank you.

2 MR. DONSBACH: We're asking them to do their
3 job.

4 THE COURT: Thank you.

5 MR. BLACK: Your Honor, with Rule 11, I want to
6 make sure that what I was talking about and
7 explaining to the Court, reading the in terrorem
8 clause, he's an adverse -- Terry Brown, that is
9 Mr. Donsbach, Mr. Keniley's client, is adverse in
10 that in terrorem clause under the will -- it says:
11 Should any beneficiary -- Terry Brown -- become an
12 adverse party in a proceeding for the probate of my
13 will or in any manner contest the validity of my
14 irrevocable trust, such beneficiary shall forfeit
15 his or her entire interest thereunder, as such
16 interest shall pass to such other beneficiary.

17 They were a party to the settlement agreement.
18 They were a party to the May 26, 2009 settlement
19 agreement, Terry Brown was. That was litigated,
20 that was sent back, and that was a will contest,
21 Your Honor. They can't change those facts.

22 And when we move for Rule 11 sanctions, Your
23 Honor, what the rule says is that the Court can do
24 it on its own. We've been here all day on a motion
25 that his client does not have standing to bring.

1 This is about greed, Your Honor.

2 THE COURT: The motion -- Rule 11 motion is not
3 before me, and I'm not going to take any testimony
4 on it or hear any argument. If you want to file a
5 Rule 11 petition and motion, I'll be glad to hear it
6 at that time.

7 MR. BLACK: Thank you, Your Honor.

8 THE COURT: But that's not before the Court.
9 Professor?

10 MR. MEDLIN: I'm not sure if this is where we
11 are in this proceeding, but at some point at the
12 appropriate time, with your permission, I'd like to
13 make a brief, for me, argument about this issue. I
14 haven't had a chance to do that on behalf of
15 Mrs. Brown.

16 THE COURT: What issue?

17 MR. MEDLIN: About whether this motion should
18 be approved, and responding to Mr. Donsbach and
19 Mr. Bodman --

20 THE COURT: Why would you have standing to do
21 that?

22 MR. MEDLIN: Well, Your Honor, I don't know
23 that I have standing to do that.

24 THE COURT: Well, I don't think you do. I
25 think this is only as to the people who are asking

1 the Court to approve the settlement. I don't know
2 how Tommie Rae Hiney Brown would have standing to
3 comment one way or the other on it. But looks like
4 everything we do here goes to Columbia, so if you
5 want to make a record, I'll take --

6 MR. MEDLIN: Well, again, I don't argue that we
7 have standing in this matter.

8 THE COURT: Then why would you be allowed to
9 make an argument?

10 MR. MEDLIN: Well, because if it's in some way
11 permissible, simply because I'm not sure about the
12 standing issue, to have something on the record.

13 THE COURT: I'm going to find that you don't
14 have standing and I'm going to respectfully deny
15 that request.

16 All right, gentlemen, I'm -- obviously it's an
17 interesting question. I will take it under
18 advisement and try to get a ruling out shortly.

19 Now, housekeeping: Who's in charge, on behalf
20 of the Estate, of the Adele Pope claim on attorneys
21 fees in my court?

22 MR. BLACK: Your Honor, that falls under our
23 umbrella.

24 THE COURT: All right. Would you please, under
25 your umbrella, contact Ms. Pope. I want a status

1 conference scheduled before I put it off for her
2 until after the first of the year. See if it would
3 suit her to do it next week, Tuesday or Wednesday,
4 in Columbia; failing that, the week of the 25th in
5 Barnwell.

6 MR. MEDLIN: Your Honor, I know her counsel is
7 here, Mr. Silvernail. I'm not sure --

8 MR. SILVERNAIL: I do not represent Ms. Pope in
9 any case in Aiken. I represent her in Richland
10 County matters.

11 THE COURT: Who represents her in the Aiken
12 County case?

13 MR. SILVERNAIL: She represents herself, I
14 believe.

15 THE COURT: Thank you very much. If you would
16 contact her, please.

17 And then, Mr. Black, you just contact Marti and
18 y'all get dates we can all work with. We need to
19 bring that to -- go ahead and get that moving now
20 that the first of the year is behind us.

21 MR. BLACK: Thank you, Your Honor. So we're
22 looking at next Tuesday or Wednesday or the week of
23 the 25th in Barnwell?

24 THE COURT: It shouldn't take long. And I'd
25 rather do it on the record for obvious reasons.

1 MR. BLACK: Than you.

2 THE COURT: All right. What motions are
3 pending now in any matter? Mr. Beach? I got some
4 kind of discovery motion not long ago. Is that --

5 MR. BEACH: Yes, Your Honor.

6 THE COURT: Is that dependent on how I rule in
7 this?

8 MR. BEACH: I don't believe they're related,
9 Your Honor. That was in the James Brown II's --

10 THE COURT: With you and Mr. Shahid?

11 MR. BEACH: Yes. And we've asked for some
12 discovery and Mr. Shahid has objected. And we've
13 gone through the process of trying to resolve it,
14 and so we've had to file a motion related to that
15 discovery.

16 THE COURT: All right. Next week in Columbia
17 or the 22nd in Barnwell. I'd rather do it before
18 then. How about the week of the 8th here?

19 MR. BEACH: The week of February 8th, Your
20 Honor?

21 THE COURT: Yes, sometime that week or the week
22 of February 1st. Why don't you get with Mr. Shahid
23 and get that done.

24 MR. BEACH: Yes, sir, Your Honor.

25 (Off-the-record discussions.)

1 THE COURT: We were addressing if we needed to
2 put anything in, mark it as a Court exhibit for
3 Mr. Levenson.

4 MR. LEVENSON: I was given to understand that
5 what I brought to the witness stand as the discovery
6 responses for Larry Brown and Deanna Thomas and
7 Yamma Brown were already filed as a matter of record
8 by Mr. Beach. I did not know that, so to the extent
9 it's already in the record and it's been stipulated
10 to be a matter of evidence for Your Honor's
11 consideration in this motion, then I don't need to
12 resubmit those, unless anyone feels that I do.

13 MR. BEACH: The point that Mr. Levenson just
14 made is crucial. It's stipulated to be a matter of
15 evidence that the Court can consider in ruling upon
16 this motion.

17 THE COURT: Very well.

18 MR. SHAHID: I would say all files.

19 MR. BEACH: Well, I would -- I would --

20 MR. DONSBACH: Depositions or any of the
21 discovery filed with the Court.

22 MR. BEACH: Well, certainly the ones that
23 Mr. Levenson just testified to would be.

24 THE COURT: Sure.

25 MR. DONSBACH: And then Deanna's deposition and

1 Herring's deposition.

2 THE COURT: Herring's deposition has already
3 been made part of it. It's already been submitted.
4 The transcript was submitted to me by someone.

5 MR. DONSBACH: And Deanna's deposition.

6 THE COURT: And Deanna's deposition, exactly.
7 Thank you.

8 (Court's Exhibit No. 1 marked for
9 identification.)

10 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Aiken County, South Carolina, on the 14th of January, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 1, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

May 16, 2016 Hearing Transcript
Pages 344-362

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

3 2008-CP-02-01647

4
5 IN RE:

6 JAMES BROWN ESTATE

7 TRANSCRIPT OF RECORD

8
9 Heard on May 16 2016

10 Aiken, South Carolina

11
12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14
15 APPEARANCES:

16 John F. Beach, Esq.
17 John A. Donsbach, Esq.
18 J. David Black, Esq,
Russell L. Bauknight, Esq.
Adele Pope, Esq.

19
20 (CR NOTE: Other attorneys were in attendance but failed
to give name to CR or note appearance on the record.)

21
22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 3252
25 Aiken, SC 29804-5232

1 ON MONDAY, MAY 16, 2016 AT 1:48 P.M.:

2 THE COURT: Mr. Beach, what's the most
3 efficient way of doing what we got to do?

4 MR. BEACH: Judge, I thought maybe the first
5 thing we should just kind of get out of the way
6 is the motion to stay the scheduling order.

7 THE COURT: Any opposition by anyone?

8 MR. DONSBACH: No, Your Honor.

9 THE COURT: Granted.

10 MR. BEACH: I've got a proposed order,
11 Judge, that I can hand up to you that I think
12 should do the job.

13 THE COURT: I guess what we'll do is wait
14 and see how it goes in the Supreme Court or the
15 Court of Appeals and then we'll -- once we get
16 their decision then we'll regear or regroup to
17 see where we are and then get a scheduling
18 order. Does that suit everybody?

19 MR. BEACH: Yes, Your Honor.

20 THE COURT: All right. The next thing,
21 please.

22 MR. BEACH: Judge, I think the next thing
23 would be Mr. Donsbach's motion on behalf of his
24 client, Terry Brown, to alter or amend the order
25 authorization the selling.

1 THE COURT: Mr. Donsbach, I'll give you 10
2 minutes.

3 I have read your memos, obviously heard all
4 the motions, heard the order, I'm familiar with
5 everything so 10 minutes should be sufficient
6 time.

7 MR. DONSBACH: Yes, Your Honor.

8 John Donsbach representing Terry Brown.

9 Your Honor, what I want to remind this
10 Court is that this was a Rule 6 motion filed by
11 opposing counsel in the party. They seem to
12 imply or want to imply to this Court in the
13 motions that somehow we've opened the door for
14 evidentiary rights or other rights by filing our
15 objection in response. But I would remind this
16 Court that under Rule 6 they're supposed to file
17 all their affidavits, all their evidence,
18 everything with their motion to prove their
19 motion.

20 In this case that did not happen in
21 accordance with the rule. We filed our response
22 pointing out to the Court that they had not
23 provided evidence. They then filed some evidence
24 shortly thereafter in December, presumably
25 counting that as a reply affidavit or something

1 along those lines. They did not then file
2 anything else prior to the hearing which the rule
3 requires any affidavits or other things to be
4 required prior to, two days prior to the
5 hearing. Nothing was provided to counsel.

6 When we got to the hearing, as you will
7 recall, Mr. Levenson decided to testify as an
8 attorney in this matter before the Court. We
9 contend that that was clear error to allow that
10 to happen. It was a violation of, you know,
11 South Carolina Rules of Professional Conduct
12 3.7. There were hearsay rule violations with
13 regard to testimony that he provided. He clearly
14 offered evidence for the truth of the matter
15 asserted which we objected to. We believe there
16 was error in allowing that testimony and then
17 using it in the order.

18 In addition, he testified in narrative form
19 before this Court, arguably in violation of 43(H)
20 which there was no direct, there was no cross.
21 He got on the stand and just started talking
22 which we would contend is a procedural violation.

23 Additionally, we believe the due process
24 violation occurred not only in the South Carolina
25 Constitution but the US Constitution relative to

1 both substantive and procedural due process. The
2 substantive due process rights, clearly my client
3 has an inheritance right that was affected by the
4 Court's settlement on the in terrorem clause and
5 as a result he didn't have a right to adequately
6 defend or challenge Mr. Levenson's testimony or
7 the evidence that was placed before the Court.

8 With regard to procedural due process, no
9 notice was given to my client. He had no
10 adequate opportunity for hearing on the matter.
11 Quite frankly, it was surprise testimony. There
12 was no time to enter evidence to counter it. We
13 had no idea Mr. Levenson was even going to
14 present that testimony that day.

15 The Court in footnote 55 of its opinion
16 indicated that we had adequate opportunity to
17 cross-examine Mr. Levenson at that hearing. We
18 would contend that that was error and we disagree
19 because we had no opportunity to prepare evidence
20 or bring anything in to make the argument against
21 or cross-examine Mr. Levenson with.

22 As I indicated before, the Court then
23 relied on Mr. Levenson's testimony to actually
24 determine that there was probable cause to defeat
25 the in terrorem clause. However, the evidence

1 that we believe the Court relied on was not
2 admissible as a result of being Mr. Levenson's
3 hearsay testimony and other testimony.

4 The Court relied on a discussion of
5 document signings and other things that occurred
6 in a February 8th, 2008, hearing in its order on
7 page 14 of the order. We contend that that is a
8 error with regard to South Carolina Code Section
9 63-3-905 which requires probable cause to exist
10 at the time of instituting the proceeding which
11 means any evidence or anything that was
12 discovered after December 6 -- 26, 2007, could
13 not be used to prove probable cause.

14 This Court put that in its order
15 determining that. It's our contention that
16 probable cause be determined at that point in
17 time back from January 1st of 2007 through
18 December 26 of 2007. We contend that the
19 Levenson testimony as entered did not prove that,
20 did not prove undue influence. If you examine
21 the factors of the undue influence case as laid
22 out in Wilson v. Dallas and many of the other
23 cases under the state law, undue influence was
24 not proven by evidence that was presented to this
25 Court.

1 Specifically there is no evidence before
2 this Court in anything that has been presented
3 that Mr. James Brown's intent was overridden by
4 the parties who have been -- allegedly unduly
5 influenced him. None. Not one piece of evidence
6 that that has occurred.

7 The only piece of evidence before this
8 Court is the drafting attorney's deposition that
9 shows he knew what he was doing. And in fact
10 Mr. Levenson even when he testified up here said
11 he found Mr. Herring's testimony to be emphatic
12 and unequivocal, that there was no undue
13 influence. And that was testimony that
14 Mr. Levenson stated he learned in the summer of
15 2007. So he knew prior to filing his action what
16 was the truth with regard to the attorney
17 drafting testimony.

18 Additionally, he stood before this Court
19 and said one of the reasons he filed that action
20 was because he was running a statute of
21 limitations problem. Well, that's not true, Your
22 Honor.

23 Under Dickson versus Dickson the South
24 Carolina Supreme Court in 2005 determined that
25 undue influence does not have a statute of

1 limitations because it's equitable in nature and
2 can be brought at any time.

3 And so, Your Honor, additionally we would
4 argue that the compensation provision that
5 Mr. Levenson said was unusual compensation, the
6 trusts don't say that at all. They require
7 reasonable compensation. We believe the Court
8 erred in determining that that was a factor and
9 aspect in this case.

10 Additionally it was error to allow
11 Mr. Medlin to testify as this Court -- and to
12 take testimony. This Court clearly indicated in
13 the hearing he did not have standing to do so but
14 then surprisingly the Court picked up the
15 questioning and testimony that he elicited while
16 he didn't have standing to be there in its
17 order. And we believe that that was a mistake
18 and an error that should be rectified.

19 And finally, Your Honor, most importantly,
20 this is a settlement that under 62-3-1102 is how
21 it should have been decided. Mr. Beach's memo
22 is incorrect as far as how settlements can
23 occur. The trustee doesn't have that authority.
24 There are two ways beneficiaries can settle cases
25 in South Carolina. One as we all know is under a

1 family private settlement agreement under
2 62-3-912, where all of the family members agree
3 themselves what the statute says. But that
4 didn't happen here.

5 So the only avenue available was to file a
6 62-3-1102 court compromise. And Wilson v. Dallas
7 was very clear that when you file a court
8 compromise you must follow the statute.
9 Specifically headnote six of that case indicates
10 that if it's not followed it's void.

11 And the procedure was not followed here,
12 Your Honor. All of the beneficiaries didn't
13 sign. There was not good faith because we
14 contend there was not probable cause as the
15 Wilson v.-Dallas opinion lays out should exist in
16 order to create consideration for the settlement
17 of an undue influence claim. And that did not
18 happen here. And further, there clearly was not
19 a just and reasonable settlement under 1102
20 because it detrimentally impacted my client with
21 regard to the in terrorem clause and the rights
22 that existed there.

23 And so, Your Honor, we would contend as
24 well this Court made another ruling in footnote
25 10 of its order that said my client violated the

1 in terrorem clause by signing a settlement
2 agreement back in 2009. There was no case law
3 cite. There was no law argued. It was just a
4 footnote cited. And we would that argue that
5 that was error, because if that were true every
6 error in this case violated the in terrorem
7 clause. And they couldn't have even signed that
8 settlement agreement. They should have been
9 pursuing removal or dismissal of those errors
10 from this Estate rather than signing settlement
11 agreements.

12 THE COURT: Thank you. Mr. Beach, 10
13 minutes.

14 MR. BEACH: Your Honor, we've pointed out a
15 couple of times that it isn't necessary to prove
16 undue influence in order to justify the
17 settlements that was reached in this case.

18 Judge, the financial pragmatism of this
19 settlement is overwhelming. Settling these
20 claims for \$37,500 each is so undeniably in the
21 estate's best interests that a careful analysis
22 of a lot of underlying facts wasn't even
23 necessary. Because the truth is, it would be
24 more or less a nuisance settlement when you
25 compare the value of the settlement in terms of

1 saving money for the Estate for having a trial of
2 these cases and you compare the risks of losing
3 the undue influence case with the amount of money
4 that was paid to these individuals, it's an easy
5 decision to see that the settlements were in the
6 best interest of the Estate, Judge.

7 So, I'm not going to go into a lot of the
8 underlying facts but the part of the motion which
9 I think is really sort of the foundation of
10 Mr. Donbach's motion is Terry Brown is asking the
11 Court to change the ruling and then to require
12 the Estate to try the undue influence claims and
13 if the Estate wins the undue influence claims
14 then to have a second trial asserting that the
15 settling parties have violated the in terrorem
16 class and then seeking to win that.

17 Under that proposal the two education
18 trusts that are set up by the Estate would bear
19 the entire financial burden of trying those
20 cases. All the money that comes from the Estate
21 to try those cases, it doesn't come from the
22 personal property which would be the benefit to
23 Mr. Donbach's client. It comes from the residual
24 which all goes to either the grandchildren's
25 trust for their education or the charitable

1 trusts for the education of
2 economically-disadvantaged students in South
3 Carolina and Georgia.

4 So, what Mr. Brown -- so what Terry Brown
5 is asking is for us to go through basically two
6 trials, the outcome of either is unknown, and
7 finance that from the residual which would again
8 be to the detriment of the trusts that were being
9 created.

10 In light of the settlements that we've
11 reached the decision to expend these Estate
12 resources and expose the Estate to the associated
13 risks would really be completely unjustifiable
14 from a fiduciary perspective.

15 But all of that analysis is really
16 secondary because Terry Brown cannot prevail on
17 the foundation of its motion, Judge. The
18 foundation asserts that the Estate has a
19 fiduciary duty to enforce the no-contest clause
20 in favor of Terry Brown and against the other
21 settling parties. He argues that the Estate has
22 an obligation to pursue that and has an
23 obligation to finance it.

24 But the flaw in this argument is that Terry
25 Brown himself could have asserted a breach of the

1 no-contest clause directly against the settling
2 parties and he didn't do it. We know that,
3 Judge, because Russell versus Wachovia, which is
4 the only case that we've been able to find
5 dealing with in terrorem or no-contest clauses in
6 South Carolina in the last 100 years, in that
7 case it shows that the beneficiaries have
8 standing to assert the violation of the
9 no-contest clause themselves directly because
10 that's exactly what happened in that case. And
11 there, Judge Russell, his grandchildren
12 successfully enforced a no-contest clause against
13 Judge Russell's children.

14 Judge, the fact that Terry Brown had the
15 power to seek the enforcement of the no-contest
16 clause eliminates any argument that the Estate
17 has breached its duty by settling and not seeking
18 that enforcement. First, Terry Brown has not met
19 the elements to prevail in a claim that the
20 Estate has breached this fiduciary duty. Judge,
21 the elements -- and I've got cases that I can
22 hand up to support this. But the elements of the
23 breach of fiduciary duty are threefold, Judge:
24 They're existence of a duty; there's breach of
25 the duty; and there's damages proximately caused

1 by the duty. If you can't meet one of those
2 three elements then you can't show your breach
3 fiduciary duty, Judge. That case is RFP
4 Management Company versus Tinsley and Adams which
5 is 399 South Carolina 322. It's a South Carolina
6 Supreme Court case from 2012, Judge.

7 Now, Judge, the two elements that they
8 cannot show are, number one, the existence of the
9 duty. There -- and there's a case that makes it
10 clear that there's no breach of a duty when the
11 contract on which the fiduciary duty is based
12 allows the action complained of. In other words,
13 in this case if the trust and the underlying law
14 allow a fiduciary, the Estate, to settle claims,
15 then settling those claims which is consistent
16 with that cannot be a breach of the fiduciary
17 duty even if there's another option that they
18 have and they chose settlement over the other
19 option. That case is American Bankers Life of
20 Florida versus Frederick, it's 315 South Carolina
21 97. That's a South Carolina Court of Appeals
22 case from 1993.

23 So here the fiduciary's given the right to
24 breach -- I'm sorry. Is given the right to
25 settle claims through the Estate documents. The

1 second problem with their proving this is there
2 are no damages to Terry that are proximately
3 caused by the breach of the alleged duty. In
4 other words, they have to show a breach of --
5 they have to show that they're damaged by the
6 alleged breach.

7 Here because Terry had a right to seek the
8 enforcement of the no-contest clause himself, he
9 can't be damaged because it -- he can't prove
10 that but for the Estate's failure to try the
11 undue influence claim and then try the claim for
12 breach of the no-contest clause he would be
13 damaged. He could have pursued this himself,
14 Judge. And so he can't argue that the Estate's
15 failure to do that has damaged him.

16 And, Judge, the other point on this is we
17 have looked and as far as we've been able to
18 tell, there's not only no case in South Carolina
19 that requires the Estate to pursue a breach of
20 the in terrorem clause in this situation or any
21 situation, there's no case out there that has
22 ever said that is one of the fiduciary duties
23 that the estate would have in this situation. We
24 can't even find a case in the entire United
25 States that holds that, Judge.

1 And one case that Terry Brown cited in his
2 motion doesn't actually hold that. We've looked
3 at it. We've discussed in our memo opposing his
4 motion. And we refer to that for your purposes.

5 So, in the end, Judge, regardless of the
6 underlying facts and the support for this
7 settlement which we think is profound, there's no
8 breach of a fiduciary duty not to assert the in
9 terrorem clause by the Estate because Mr. Brown
10 could have asserted it himself and he failed to
11 do so.

12 THE COURT: Thank you. Brief reply.

13 MR. DONSBACH: Your Honor, I completely
14 disagree with Mr. Beach's comments about them not
15 having a duty. What he is basically telling this
16 Court is we know there's an in terrorem clause in
17 this trust but we don't have to follow it.

18 Why do you put it in the trust then? Why
19 is it there? What he is arguing to this Court is
20 the trustee doesn't have to even follow the in
21 terrorem clause. It doesn't matter that the
22 testator or somebody put it in the document,
23 doesn't matter what their intent is, we can
24 ignore it. That can't be the law, Your Honor.

25 Trust law is clear. They are drafted --

1 trusts and wills are drafted to enforce the
2 testator's intent and desires. It couldn't be
3 any clearer what James Brown was in this case.
4 He wanted it enforced.

5 Further, this in terrorem clause is that
6 one little step further. It says they shall
7 defend and they shall vigorously defend. That's
8 written into these documents. That duty is
9 drafted into these documents.

10 It's not something they can choose to do or
11 not do. It's something they have to do. And so
12 they have that duty. And by not enforcing it or
13 at least requiring probable cause to be proven
14 they've breached that duty. And the damage to my
15 client is the entire value of the personal
16 property because he would be the sole heir
17 standing to receive it.

18 Your Honor, there is a current pending
19 claim for approximately \$800,000 pending against
20 Ms. Pope in damage based on a Christie sale that
21 occurred. That's not a small amount of damage
22 that we're talking about. It's a big number.

23 And so this is not a little bitty issue.
24 Further, if they had such a good undue influence
25 case, why did they settle for \$37,000? If their

1 probable cause was so strong, why did they settle
2 for a pittance statement? And if Mr. Beach was
3 so concerned about his undue influence case and
4 the ability to beat them on that probable cause,
5 how did he beat them down to \$37,000?

6 THE COURT: Thank you. All right. What's
7 next?

8 MR. BEACH: Judge, I believe that's it.

9 THE COURT: All right. Very well. Thank
10 you. I'll get an order out for both of them --
11 on the -- got an order on the first one. Get the
12 order out on this one.

13 MR. BEACH: Thank you, Your Honor.

14 END OF CASE: 2:20 p.m.

15 ***

16 CERTIFICATE OF REPORTER

17 STATE OF SOUTH CAROLINA)

18 COUNTY OF AIKEN)

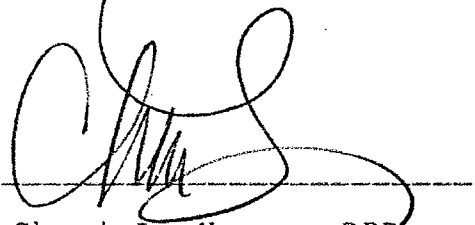
19 I, Cheri L. Young, Registered Professional Reporter
20 and Official Court Reporter for the State of South
21 Carolina, Second Circuit-At Large, do hereby certify that
22 the foregoing proceedings were written stenographically
23 by me using computer-aided translation; further, that
24 the foregoing is a true, accurate and complete record, to
25 the best of my skill and ability, of all the proceedings

1 had and evidence introduced in the hearing of the
2 captioned case, relative to appeal, in the Court of
3 Common Pleas for Aiken County, on the 16th day of May,
4 2016.

5 I do further certify that I am neither of kin,
6 counsel, nor interest to any party hereto.

7 I have hereunder set my hand this 8th day of
8 September, 2016.

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Cheri L. Young, RPR
Official Court Reporter

Joint Motion to Authorize Settlement filed December 7, 2015
Pages 363-432

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
IN RE:)
THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO. 2008-CP-02-1647

**JOINT MOTION TO AUTHORIZE
SETTLEMENT OF BROWN CHILDREN'S
UNDUE INFLUENCE CASES AND TO
DISMISS CASES WITH PREJUDICE**

FILED 12-7-15
[Signature]
Clerk of Court
[Signature]
Deputy Clerk

TO: ALL COUNSEL OF RECORD:

The undersigned will move within ten days or as soon as may be heard for an order

(1) Ruling Russell L. Bauknight, Personal Representative of the Estate of James J. Brown ("Estate") and Trustee of the James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000 ("Trust"), and David C. Sojourner, Jr., Limited Special Administrator of the Estate and Limited Special Trustee of the Trust (collectively, the "Estate"), are authorized and empowered to enter into the two settlement agreements attached hereto as **Exhibits A and B** (the "Settlement Agreements")¹;

2) Entering the Settlement Agreements into the record, in satisfaction of South Carolina Rule of Civil Procedure 43(k); and

(3) Dismissing with prejudice, pursuant to South Carolina Rule of Civil Procedure 41, all claims to set aside the Will and Trust in the Petitions, as amended, filed by Petitioners Tonya Brown, a/k/a Sarah LaTonya Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, and Yamma N. Brown Lumar, individually and on behalf of her

¹ The Settlement Agreements are submitted without Mr. Bauknight's or Mr. Sojourner's signatures pending the Court's authorization. Mr. Bauknight and Mr. Sojourner stand ready and willing to execute the Settlement Agreements following issuance of the Court's order in response to this motion.

minor children Sydney Lumar and Carrington Lumar (collectively, "Petitioners"), and dismissing Petitioners as parties to Civil Action No. 2008-CP-02-1647 (the "Undue Influence Case")².

BACKGROUND

James J. Brown, Jr. ("Decedent") died on December 25, 2006 in the State of South Carolina, leaving a Last Will and Testament and Irrevocable Trust Agreement, dated August 1, 2000 ("2000 Will and Trust").³ On January 18, 2007, an Application for Informal Probate of Will and Appointment of Personal Representative was filed in the Aiken County Probate Court.

On December 26, 2007, Petitioners filed Petitions to Set Aside the Informal Probate of the Last Will and Testament and the Trust Agreement, and on January 24, 2008 Petitioners filed Amended Petitions to Set Aside Informal Probate and Trust Agreement (the "Petitions"). Petitioners asserted the 2000 Will and Trust should be set aside on grounds including: (i) Decedent was unduly influenced; (ii) the Will and Trust are the product of fraud exerted on Decedent; (iii) Decedent lacked testamentary capacity; and (iv) the Trust is illusory.

In July 2015, the Estate and Trust began settlement negotiations with Petitioners Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, and Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, by and through their legal counsel, Louis Levenson. In October 2015, the Estate and Trust began settlement negotiations with Tonya Brown, a/k/a Sarah LaTonya Brown Fegan, by and through her counsel of record, William Joseph Barr, Ittriss J. Jenkins, and Vera Elaine Gilford. These

² The Estate and Trust recognize that this motion will not dispose of the Undue Influence Case in its entirety as Tommie Rae Hynie Brown also has Petitions to Set Aside Probate and Trust Agreement filed on December 20, 2007, which are not resolved by the Settlement Agreements.

³ Decedent also executed a Last Will and Testament and Irrevocable Trust Agreement dated June 15, 1999 (hereinafter, the "1999 Will and Trust").

negotiations culminated in Settlement Agreements with an effective date of November 17, 2015 and November 13, 2015 (**Exhibit A** and **Exhibit B**).

To date, limited written discovery has been conducted between the parties. Certain depositions have been taken and others are scheduled. The parties anticipate extensive additional discovery, including depositions of the parties and potential witnesses. The parties are informed and believe additional discovery will be time-consuming and expensive and that these burdens will significantly fall upon the Estate and Trust.

LEGAL ANALYSIS

I. BAUKNIGHT AND SOJOURNER, JR. HAVE AUTHORITY TO SETTLE WILL AND TRUST CHALLENGES ON BEHALF OF THE ESTATE AND TRUST WITHOUT COURT APPROVAL.

This Court's order appointing Mr. Bauknight as Personal Representative of the Estate and Trustee of the Trust granted unto Mr. Bauknight "full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business and matters related thereto" *See* Interim Order, filed October 1, 2013, at p. 19, ¶ 1 ("Appointment Order"). The Appointment Order granted Mr. Bauknight "the authority and power to act on behalf of, and bind, the Estate and Trust for all purposes, except as limited by the appointment of the Limited Special Trustee and Limited Special Administrator" *Id.*

The Appointment Order appointed Mr. Sojourner as LSA of the Estate and as LST of the Trust Agreement and specifically authorized Mr. Sojourner to "defend[] the Trust and the Estate against the claims made in the Will and Trust Challenges until final resolution thereof." *See* Appointment Order at pp. 19-20. "This interim appointment [was] made with the requirement that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight [and] shall act with sole and absolute authority in his limited capacity" *Id.* at p. 20.

The Appointment Order does not expressly list the power to settle claims as one of the powers given to the Estate. However, the Estate is informed and believes such power is inherent in Estate's authority, and is supported by South Carolina law.

Specifically, section 62-3-715(8) of the South Carolina Probate Code authorizes a personal representative to "settle claims" against the estate⁴. The South Carolina Trust Code contains a similar provision in Section 62-7-816(14) (granting trustees with the power to "pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust").

Consistent with this statutory authority, Decedent's Irrevocable Trust Agreement authorizes the trustee, in its fiduciary discretion, to "compromise, adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best." See Irrevocable Trust Agreement, August 1, 2000, at Article X(19).

Section 62-3-105 of the South Carolina Probate Code provides: "Persons interested in decedents' estates may apply to the court for . . . orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article" S.C. Code Ann. § 62-3-105 ("Proceedings affecting devolution and administration; jurisdiction of the subject matter"). This statutory provision enables estate representatives, including personal representatives and trustees, to request rulings from the Court to assist in administering estates and trusts.

Pursuant to this Section, the undersigned seek an order of the Court authorizing and empowering the Estate and Trust, through its fiduciaries, Mr. Bauknight and Mr. Sojourner, to

⁴ See also S.C. Code Ann. § 15-51-42(A) ("Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions.").

enter the Settlement Agreements. There are no other Estate or Trust representatives that would otherwise have the capacity to enter into agreements on behalf of the Estate and Trust.

Moreover, the Settlement Agreements fully resolve pending claims that, if successful, would significantly alter or invalidate Decedent's estate plan. Mr. Bauknight and Mr. Sojourner are informed and believe the Settlement Agreements are in the best interest of the Estate and Trust as they secure a prompt resolution of the Petitioners' challenges to the validity of the Will and Trust, save potential time, expenses, and resources of the Estate and Trust, and reduce the expenditure of judicial time and resources.

II. RULE 43(K), SCRPC, ESTABLISHES A PROCEDURE TO BIND THE PARTIES TO THE TERMS OF A SETTLEMENT AGREEMENT BY ENTERING THE SETTLEMENT INTO THE RECORD.

South Carolina Rule of Civil Procedure 43(k) provides:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

Section XVIII of the Brown Children Settlement Agreement and Section XVII of the Fegan Settlement Agreement state:

The Parties consent to the entry of this Agreement into the record through submission by any Party or their counsel to the Court and agree that such submission will fully satisfy the requirements set forth in Rule 43(k) of the *South Carolina Rules of Civil Procedure*, and, in particular, those necessary to make this Agreement binding and enforceable.

Pursuant to these rules and Settlement Agreement provisions, the undersigned hereby submit the Settlement Agreements into the record and request the Court review them, order that Mr. Bauknight and Mr. Sojourner possess the authority to enter into the Settlement Agreements on behalf of the Estate and Trust, and rule that the Settlement Agreements fully resolve Petitioner's claims to set aside the Will and Trust.

III. BASED ON THE SETTLEMENT AGREEMENTS NEGOTIATED BETWEEN THE PARTIES, THIS COURT SHOULD DISMISS PETITIONERS' CLAIMS WITH PREJUDICE PURSUANT TO RULE 41, SCRPC.

The attached Settlement Agreements completely dispose of Petitioners' claims to set aside the Estate and Trust. Based on the clear terms of the Settlement Agreements and pursuant to Rule 41, SCRPC, Petitioners and the Estate and Trust seek to have Petitioners' claims dismissed with prejudice. This motion is supported by the consent orders to dismiss the case with prejudice signed by Petitioners and attached hereto as Exhibits C and D⁵.

Because not all parties to the above-captioned action stipulate as to the dismissal of the Petitioners' claims, the parties to the Settlement Agreements seek an order of the Court dismissing Petitioners' claims with prejudice, pursuant to Rule 41(a)(2), SCRPC.

The effect of the settlements upon those represented by Mr. Bauknight and Mr. Sojourner are just and reasonable, and the Settlement Agreements are in the best interest of the Estate and Trust. Moreover, under South Carolina's public policy, "family settlements are favored by the courts[.]" *Dibble v. Dibble*, 248 S.C. 165, 171, 149 S.E.2d 355, 358 (1966). Accordingly, the undersigned respectfully request an order dismissing with prejudice all challenges to the validity of the Estate and Trust asserted by Petitioners, including without limitation those set forth in the Petitions filed on December 26, 2007, as amended on January 24, 2008.

CONCLUSION

For the foregoing reasons, the undersigned respectfully request an order:

- (1) Ruling Russell L. Bauknight, as Personal Representative of the Estate and Trustee of the Trust, and Dave C. Sojourner, Jr., as Limited Special Administrator of the Estate and

⁵ The Consent Orders of Dismissal are submitted without Mr. Bauknight's or Mr. Sojourner's signatures pending the Court's authorization. Mr. Bauknight and Mr. Sojourner stand ready and willing to execute the Consent Orders of Dismissal following issuance of the Court's order in response to this motion.

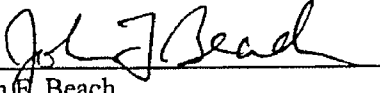
Limited Special Trustee of the Trust, are authorized and empowered to enter into the Settlement Agreements with Petitioners pursuant to the South Carolina Probate Code, South Carolina Trust Code, and the Irrevocable Trust Agreement, u/a/d August 1, 2000;

(2) Entering the Settlement Agreements into the record, in satisfaction of South Carolina Rule of Civil Procedure 43(k);

(3) Dismissing, with prejudice pursuant to Rule 41, SCRCP, the Petitions, including all claims contained therein, filed by Petitioners on December 26, 2007, as amended on January 24, 2008 and dismissing Petitioners as parties to Civil Action No. 2008-CP-02-1647.

[SIGNATURES ON FOLLOWING PAGE]

WE SO MOVE AND CONSENT


John F. Beach

Lyndey Ritz Zwing
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1501 Main Street, Fifth Floor
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*Counsel for David C. Sojourner, Jr., as
Limited Special Administrator of the Estate
of James J. Brown, Jr., and Limited Special
Trustee of the Irrevocable Trust Agreement,
w/a/d August 1, 2000*

WE SO MOVE AND CONSENT

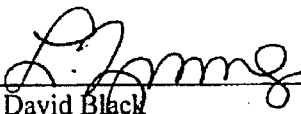
 /LL with consent
Louis Levenson

Levenson & Associates
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Facsimile: (404) 659-1355
louis@levensonlaw.com

*Counsel for Vanisha Brown, Larry Brown,
Deanna J. Brown Thomas, Jason Brown
Lewis, and Yamma N. Brown Lumar,
individually and on behalf of her minor
children Sydney Lumar and Carrington
Lumar*

December 4, 2015.

WE SO MOVE AND CONSENT

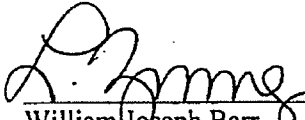
 /JDB with consent
J. David Black

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*Counsel for Russell L. Bauknight, as
Personal Representative of the Estate of
James J. Brown, Jr. and Trustee of the
Irrevocable Trust Agreement, w/a/d August
1, 2000*

WE SO MOVE AND CONSENT

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 /WJB with consent
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Vera Elaine Gilford
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Miami, Florida 33101
Telephone: (305) 877-9470
veragilford@yahoo.com

*Counsel for Petitioner Tonya Brown,
a/k/a Sarah LaTonya Brown Fegan*

EXHIBIT A

Settlement Agreement effective November 17, 2015 executed by Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis and Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar

FILED 12.7.15
[Signature]
CLC.P. & G.S.
[Signature]
Deputy Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is made and entered as of 11/17/15, 2015 (the "Effective Date") by Petitioners, **Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, their successors, heirs, agents, and assigns (hereinafter "Petitioners"); the Estate of James Brown, by and through its Personal Representative and Special Administrator, Russell L. Bauknight and its Limited Special Administrator, David C. Sojourner, Jr., ("Estate"); and the James Brown Irrevocable Trust, established by the Irrevocable Trust Agreement dated August 1, 2000, by and through its Trustee and Special Trustee, Russell L. Bauknight and its Limited Special Trustee, David C. Sojourner, Jr., ("Trust")** (all parties to this Agreement collectively referred to as the "Parties").

Recitations

A. WHEREAS James Brown, Jr. ("Decedent") died on December 25, 2006 in the State of South Carolina, leaving a Last Will and Testament and Irrevocable Trust Agreement, dated August 1, 2000 ("2000 Will and Trust").¹ Petitioners are acknowledged by Decedent as his children in the 1999 and 2000 Will and Trust. An Application for Informal Probate of Will and Appointment of Personal Representative was filed on January 18, 2007.

B. WHEREAS on December 26, 2007, Petitioners filed Petitions to Set Aside the Informal Probate of the Last Will and Testament and the Trust Agreement, and on January 24, 2008 Petitioners filed Amended Petitions to Set Aside Informal Probate and Trust Agreement (the "Petitions"), civil action number 2008-CP-02-01647 (the "Litigation"). In the Petitions,

¹ Decedent also executed a Last Will and Testament and Irrevocable Trust Agreement dated June 15, 1999 (hereinafter, the "1999 Will and Trust").

Petitioners assert the 2000 Will and Trust should be set aside on several grounds (Petitioner's "Claims"), including without limitation: (i) Decedent was unduly influenced; (ii) the Will and Trust are the product of fraud exerted on Decedent; (iii) Decedent lacked testamentary capacity; and (iv) the Trust is illusory.

C. WHEREAS Decedent's 1999 and 2000 Will (Paragraph X) and Decedent's 1999 and 2000 Trust (Article XXI) both contain *in terrorem* or "no contest" clauses and pursuant to such clauses the Personal Representatives of the Estate and Trustees of the Trust responded to Petitioners' Petitions, denying all allegations, seeking an order disinheriting Petitioners from the Estate and Trust, and seeking to have the 2000 Will and Trust probated.

D. WHEREAS limited written discovery has been conducted between the parties pursuant to a scheduling order issued by the Court of Common Pleas and the parties anticipate extensive discovery, including depositions of the parties and potential witnesses, and therefore, the parties are informed and believe that additional discovery will be time-consuming and expensive.

E. WHEREAS the Parties now seek to mutually and voluntarily end the pending Litigation before the initiation of additional litigation, including written discovery and lengthy depositions, which will undoubtedly vastly increase costs and expenses for Petitioners and the Estate and Trust.

NOW THEREFORE, in consideration of the mutual agreements and undertakings set forth herein, the sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

I. Releases

I.A. Release and Discharge of Bauknight and Sojourner.

For the consideration set forth herein, Petitioners, their attorneys, accountants, agents, representatives, and servants, hereby release and forever discharge 1) Russell L. Bauknight, individually, and in his capacity as Personal Representative and Special Administrator of the Estate, and Trustee and Special Trustee of the Trust, together with his attorneys, accountants, agents, employees, partners, and associates; and 2) David C. Sojourner, Jr., individually and in his capacity as Limited Special Administrator of the Estate and Limited Special Trustee of the Trust, together with his attorneys, accountants, employees, partners, and associates from all claims, demands, obligations, actions, and causes of actions, whether known or unknown, of any kind whatsoever, existing as of the Effective Date of this Agreement, including without limitation all claims for breach of any duty, fiduciary or otherwise, they owe or may have owed directly or indirectly to Petitioners, their attorneys, accountants, agents, employees, partners, and associates.

I.B. Release and Discharge of the Estate and Trust.

For the consideration set forth herein, Petitioners, their attorneys, accountants, agents, employees, partners, and associates, hereby release and forever discharge the Estate and Trust and all fiduciaries of the Estate and Trust (except as specifically set forth herein in Paragraph IV.C) from all claims, demands, obligations, actions, and causes of actions, whether known or unknown, of any kind whatsoever, existing as of the Effective Date of this Agreement. This release expressly excludes the matters set forth in Paragraphs III and IV (below), which Petitioners do not release, as more fully set forth therein.

I.C. Dismissal with Prejudice of all Challenges to Will and Trust

For the consideration set forth herein, Petitioners, their attorneys, accountants, agents, representatives, and servants, hereby relinquish all challenges, claims, counterclaims and/or defenses they may have to the validity and/or enforceability of the 2000 Will and/or Trust, as well as to the 1999 Will and/or Trust, including without limitation claims asserted in, or in any way related to, the aforesaid Litigation. As part and parcel of this release, Petitioners agree not to participate in and/or support, directly or indirectly, any other party or parties' challenges to the validity and/or enforceability of the 2000 Will and/or Trust and/or the 1999 Will and/or Trust. Petitioners agree that if one or both of the 1999 Will and Trust or the 2000 Will and Trust are held by the Court to be valid, Petitioners will not object to such validity, move to vacate, move to modify, and/or appeal the Court's finding in any way.

In furtherance of this release, Petitioners agree to immediately dismiss their Claims and the Litigation as a whole, with prejudice, execute the Consent Order of Dismissal attached hereto as Exhibit 1, and take whatever action and/or sign whatever documents are necessary to dismiss with prejudice the Claims and/or challenges they have asserted in the Litigation.

This Agreement does not require Petitioners to withdraw from Case Nos. 2013-CP-02-02849, 02850, or 02851 (the "Other Estate Litigation"). The Estate and Trust do not and will not represent Petitioners' interests in connection with the Other Estate Litigation and will not seek court authorization to do so.

LD. Release and Discharge of Petitioners.

For the consideration set forth herein, the Estate and Trust hereby release and forever discharge Petitioners, their attorneys, accountants, agents, employees, partners, and associates, from all claims, counterclaims, demands, obligations, actions, and causes of actions, whether

known or unknown, existing as of the Effective Date of this Agreement, related to any interest Petitioners may have or assert in the Estate or Trust.

The Parties expressly exclude from this release and discharge the Debt and related May 20, 2008 Security Deed and Note ("Note") between the Estate and Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Yamma N. Brown Lumar, Daryl J. Brown, and Tonya Brown for the property located at 2506 Parkway Drive, Augusta, Georgia 30904. This Agreement does not affect either the Estate's rights or the Petitioners' obligations reflected therein.

II. Warrant of Non-assignment.

Petitioners hereby expressly affirm and warrant they have not assigned, pledged, encumbered, disclaimed or otherwise transferred any interest as a beneficiary of the 1999 Will and Trust or the 2000 Will and Trust and/or any claims or interests released by this Agreement.

III. Claims to Personal Property

Petitioners retain their rights and claims to the Estate's personal property as expressly provided in the 1999 and 2000 Will, Paragraph I ("General Bequest of Personal and Household Effects with a Mandatory Memorandum").

IV. Exclusions from Release and Discharge

Notwithstanding the forgoing releases set forth in Section I, the Parties agree those releases do not release the following claims, which Petitioners expressly reserve and maintain.

IV.A. Rights as Intestate Heirs

Petitioners are not releasing their claims or rights as intestate heirs and specifically retain their rights to claim as intestate heirs if the Court finds that the Decedent died intestate or that any portion of Decedent's estate passes through intestacy.

IV.B. Claims to Educational Funds

The Parties acknowledge that nothing herein shall act in any way to release any claims and/or any interests their children may have in receiving proceeds for educational expenses from the Brown Family Education Trust Agreement and/or any trust fund that may exist under James Brown's 1999 and/or 2000 Will and Trust for the purpose of supporting the education of Grandchildren of James Brown ("Brown Family Education Trust"). Payments from the Brown Family Education Trust to its beneficiaries shall be determined and made pursuant to the terms of the Trust, but the Parties agree qualifying claims for education expenses that were incurred prior to the Effective Date shall be given equal consideration to qualifying claims for education expenses that are incurred following the Effective Date.

IV.C. Copyright Termination Rights

Petitioners do not in any way settle, release, waive, or encumber any rights or interests that they may have with respect to termination rights under the Copyright Act, 17 U.S.C. §§ 203(a), 304(c), 304(d) regarding James Brown's music and/or any other intellectual property rights.

IV.D. Claims against Adele Pope

Petitioners do not release any and all claims they have against Adele Pope.

V. Exchange of the Monetary Consideration for the Settlement

In consideration of the foregoing release and discharge and upon the execution of this Agreement, the Estate agrees to the exchange of consideration in the total amount of One Hundred Fifty Thousand (\$150,000.00) Dollars (the "Settlement Sum"), to be provided to Petitioners as follows:

V.A. One-Time Payment: The Estate agrees to pay or cause to be paid within thirty (30) days of the Effective Date, or, if applicable, the Court's approval of this

Settlement, whichever is later, the following one-time payments, such payments made through a single check in the amount of \$150,000, payable to the "Louis Levenson Escrow Account on behalf of Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, and Yamma N. Brown Lumar, Jason Brown Lewis, Sydney Lumar, and Carrington Lumar":

V.A.1. A single, lump-sum payment of One Hundred Forty Seven Thousand and No/100 Dollars (\$147,000.00), collectively to **Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, and Yamma N. Brown Lumar;**

V.A.2. A single, lump-sum payment of One Thousand and No/100 Dollars (\$1,000) to Jason Brown Lewis;

V.A.3. A single, lump-sum payment of One Thousand and No/100 Dollars (\$1,000) to Yamma N. Brown Lumar, for the benefit of her minor child Sydney Lumar; and

V.A.4. A single, lump-sum payment of One Thousand and No/100 Dollars (\$1,000) to Yamma N. Brown Lumar, for the benefit of her minor child Carrington Lumar.

VI. Settlement Contingent upon Settlement with Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

The Parties agree this Settlement is expressly contingent upon the Estate and Trust entering into a binding settlement with Tonya Brown, a/k/a Sarah LaTonya Brown Fegan on the same terms as set forth herein, with monetary consideration in the amount of \$37,500.

VII. Adequate Consideration – Denial of Liability

The Parties agree and acknowledge that the releases and payments set forth in this Agreement will constitute full, complete, final, and binding compromise and satisfaction of the pending Litigation, and shall not be considered an admission of any liability by any of the Parties.

The Parties specifically deny any liability, fault, responsibility, or wrongdoing and assert that no past or present wrongdoing, fault, responsibility or liability on the part of any of the Parties shall be implied by the releases and negotiations contained in this Agreement. The Parties further agree they are entering into this Agreement to eliminate any cost of potential claim(s) or actions asserted by the Parties related to or in any way arising out of the Litigation and/or other released matters.

The Parties agree and acknowledge this Agreement and the settlement represented by this Agreement do not establish or constitute evidence that any Party or Parties are a prevailing party in the Litigation or any other litigation involving the Estate.

VIII. Covenant Not to Sue

Petitioners further covenant that they, individually or collectively, on behalf of their heirs, assigns, successors, agents, and/or anyone acting on their behalf, will not initiate, participate in, file or assert any action, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against the Estate or Trust, or any individual representing the Estate or Trust, in any capacity, for any event, transaction, or occurrence related to or arising from the past conduct arising out of or related to the aforesaid Litigation. This covenant not to sue is intended to have the broadest interpretation possible and

shall absolutely prohibit Petitioners from any further action or proceeding against the Estate or Trust, or any individual representing the Estate or Trust.

IX. Cooperation on Potential Court Approval

Should the Court require this Settlement be submitted to the Court for approval or should the LSA in his sole discretion determine Court approval is in the best interest of the Estate, the Parties agree to support approval of this Agreement through appropriate documentary filings and/or testimony as the Court and/or LSA may reasonably direct and that, in such event, this Agreement is expressly contingent upon such Court approval.

X. Representation of Comprehension of Document

In entering into this Agreement, each Party agrees such Party is aware of and assumes the legal, insurance, and tax consequences this Agreement may have upon such Party, that the terms of this Agreement have been completely read by the Parties, that each Party has discussed this Agreement with such Party's attorney; and that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

XI. Change of Law or Facts

All Parties hereto expressly acknowledge that other, new, or supplemental facts, information, and/or causes of action that either may now exist or that may arise or become known in the future could cause them to evaluate the underlying facts or their positions differently than as of the Effective Date of this Agreement. Each Party expressly agrees, and specifically assumes the risk, that if facts, information, and/or causes of action related to the matters covered by this Agreement are found hereafter to be other than, in addition to, or different from, the facts, information, and/or causes of action now believed or assumed to be true by either or all parties, this Agreement shall nonetheless remain in full force and effect.

XII. Non-Reliance

No Party relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, except as expressly provided for herein.

XIII. Documents

The Parties agree to cooperate fully and to execute any supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, including but not limited to:

XIII.A. Motion to Dismiss the Claims and the Litigation as a whole, with prejudice;

XIII.B. Consent Order of Dismissal (attached hereto as Exhibit 1);

XIV. Governing Law

This Agreement is entered into in the State of South Carolina, and the Parties hereby agree that it shall be construed and interpreted in accordance with the laws of South Carolina.

XV. Counterparts

The Parties agree that this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XVI. Modifications

This Agreement may not be altered, amended or modified, except in a suitable writing signed by each of the Parties.

XVII. Duty to Cooperate

Petitioners specifically acknowledge and agree that they will cooperate with the Estate and Trust in any and all continuing matters and proceedings concerning the Estate and Trust of James Brown and will reasonably and timely respond to all requests of the Estate and Trust. Petitioners specifically further acknowledge and agree that they will not cooperate with Adele J. Pope, Albert H. Dallas, David G. Cannon, Joel A. Katz, Tommie Rae Hynie Brown, or Frank Copsidas in any and all continuing matters and proceedings concerning the Estate and Trust of James Brown.

XVIII. Enforceability

The Parties agree that this Agreement is a binding legal document pursuant to Sections 62-3-101, *et seq.* of the *South Carolina Probate Code*. The Parties hereby consent to the entry of this Agreement into the record through submission by any Party or their counsel to the Court and agree that such submission will fully satisfy the requirements set forth in Rule 43(k) of the *South Carolina Rules of Civil Procedure*, and, in particular, those necessary to make this Agreement binding and enforceable.

If any provision of this Agreement is held to be unenforceable, such holding shall not affect the enforceability of any other provision of the Agreement.

XIX. Acknowledgement

THE PARTIES AGREE AND ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT CAREFULLY, FULLY UNDERSTAND ITS TERMS, AND ARE ENTERING INTO THIS AGREEMENT VOLUNTARILY, OF THEIR OWN FREE WILL, AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT OR INTIMIDATION OF ANY KIND OR TYPE WHATSOEVER.

WHEREFORE, the Parties acknowledge that this Agreement is meant as a full and final settlement; that the Parties voluntarily agree to the terms set forth herein, and that they freely and without reservation or duress enter into this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE

(1 of 7)

I So Agree and Release:

Deanna Brown Jones (Attorney In Fact) for
Vanisha Brown
Vanisha Brown

Date:

11/6/15

Witness

[Signature]

Witness

Martha Seales

As Counsel for Vanisha Brown and not as a Party to the Agreement

Louis Levenson

Counsel for Vanisha Brown

[Signature] 11/17/15

STATE OF GEORGIA
COUNTY OF RICHMOND

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENT:

1. I, Verisha Brown, grant unto the said Deanna B. Thomas residing at 3031 Silver Bluff Rd Aiken, SC 29803, as my lawful ATTORNEY-IN-FACT the full power to make savings or checking deposits, withdrawals, or other necessary banking transactions according to his discretion. I further authorize him to open or close accounts that may be necessary, to have the authority to enter my safe deposit box or boxes and to do whatever other acts might be necessary to carry on my personal affairs and business affairs in connection with any matters as I would do if I were personally present.

2. I grant unto the said Deanna B. Thomas the full power and authority to list, sell, or contract to sell any property, real or personal, specifically including, but not limited to stocks, bonds, securities or other assets, wherever located and of whatever kind and nature, that I may own or that I may have or claim an interest in, and furthermore that this power and authority may be carried without the requirement of any bond, surety, appraisal, return, accounting, publication or Order of any Court or tribunal. I further grant unto the said Deanna B. Thomas the full power and authority to list, sell or contract to sell any business interest I may hold.

3. If I have omitted any property or right I may have in the paragraphs above, it is my intention by this paragraph and by this entire document taken as a whole to grant unto my said attorney in fact the full power to do whatever she in her discretion determines is necessary with respect to my assets. I specifically authorize my attorney in fact to hire any attorneys, accountants, bookkeepers or others to provide assistance to my attorney in fact to manage and control my financial affairs and I further authorize my attorney in fact to pay such individuals from my funds in such amounts as my attorney in fact deems necessary and proper. My attorney in fact is authorized to hire medical, psychological and/or psychiatric specialists to evaluate and/or treat me for any

problems or conditions that my attorney in fact, in her sole discretion, believes are necessary and furthermore, my attorney in fact may pay such professionals or medical practitioners from my funds.

4.

I grant unto my said attorney in fact Deanna B. Thomas the full power to place any funds she deems necessary into his business or personal account or other account and to draw therefrom for my needs as she deems appropriate. If such account or accounts are not available or are otherwise inappropriate, then I authorize my said attorney to make whatever arrangements she deems necessary to carry out my wishes and conduct my financial, business and personal affairs.

5.

I hereby authorize my said attorney Deanna B. Thomas to pay from my assets or from whatever source she desires all of my debts that have matured or that may mature as time goes on. Furthermore, she shall pay all lawful bills for medical expenses, room, board, upkeep and assistance, including medical and para-medical treatment, and, furthermore, shall have the authority to incur bills, charges, expenses and costs and may pay same on my behalf when she so desires. My said attorney shall have the authority to pay all taxes, liens and any other charges against me or against my estate that may already be in existence or that may come into existence.

6.

My said attorney shall have the full power to collect any amounts due to me or to my estate including, but not limited to, accounts receivable, debts from others, Social Security payments, SSI payments, if applicable, and any other amounts that may become due as time goes on.

7.

It is understood and agreed that my attorney in fact shall have the authority to retain legal counsel for me and to pay said counsel any amount that is reasonable for the services rendered.

8.

My said attorney shall have the full authority to obtain from any person or persons any documents, papers, instruments or other data in the possession of another that I own or have an interest or claim in and such person or persons having possession of same shall deliver to my said attorney the requested materials.

9.

I authorize my attorney in fact to repay to herself any amounts that she may have advanced to this point in time or any amounts that may be advanced in the future for professional, legal, medical or other services retained by my attorney in fact, though such may have been done before the execution by me of this document.

10.

I hereby grant this power of attorney to the said Deanna B. Thomas only during my lifetime; this power and authority terminating upon my death or the death of _____, whichever comes first. Further, this Power of Attorney may be revoked by me at any time in writing upon my giving written notice to my attorney in fact. In the event that a guardianship of person and/or property is filed by any person as against me, then, in that event, pursuant to OCGA 29-5-2(c)(1), I hereby nominate Deanna B. Thomas to serve as such a guardian of my person and/or conservator.

11.

Generally, I do hereby grant unto my said attorney in fact the full power and authority in and about the premises; and generally to do and to perform all and every act and acts, thing and things, device and devices in the law whatsoever needful and necessary to be done in and about the premises; and for me and in my name to do, execute and perform, as largely and amply, to all intents and purposes, as I might or could do if I were personally present; and an attorney, or attorneys under me for the purposes and purposes aforesaid to make and substitute, hereby ratifying and confirming all that my said attorney in fact or substitute shall lawfully do by virtue hereof.

12.

This Power-of-Attorney shall become effective, in whole or in part only if I lack sufficient understanding or capacity to make responsible decisions concerning my person and/or my property (or I am incapable of communicating such decisions) by reason of one or more of the following infirmities:

- o Mental Illness
- o Advanced Age
- o Mental disability
- o Physical illness or disability

As declared either:

a.) by a physician licensed to practice under Chapter 34 of Title 43 of the Official Code of Georgia Annotated (O.C.G.A.) or a psychologist licensed to practice under Chapter 39 of Title 43 of the O.C.G.A.;

or

b.) A Court of competent jurisdiction.

13.

This Power-of-Attorney shall terminate and be without effect in the event that a physician or psychologist, as defined in Paragraph 12 above, or a court of competent jurisdiction determines that the disability or incapacity which activated the Power has been removed.

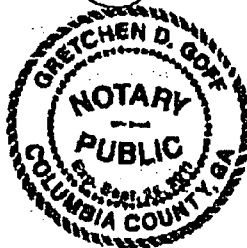
IN WITNESS WHEREOF, I have hereunto set my hand and seal IN TRIPLICATE,

this _____ day of _____, 2008

Deanna B. Thomas [Signature]
Witness

Sworn to and subscribed before
me this 15th day of MAY 2008

[Signature]
NOTARY PUBLIC (SEAL)



SIGNATURE PAGE
(2 of 7)

I So Agree and Release:

Larry Brown
Larry Brown

Date: 11-9-15

Rose Thomas
Witness

Nicole Williams
Witness

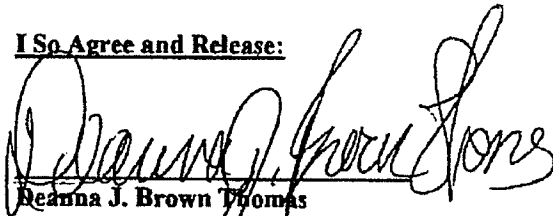
As Counsel for Larry Brown and not as a Party to the Agreement

[Signature] 11/17/15
Louis Levenson
Counsel for Larry Brown

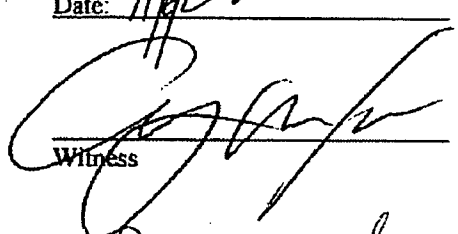
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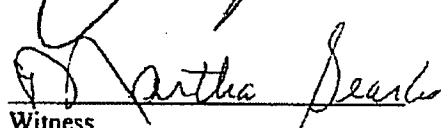
(3 of 7)

I So Agree and Release:

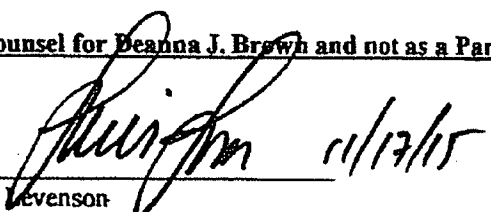

Deanna J. Brown Thomas

Date: 11/15


Witness


Witness

As Counsel for Deanna J. Brown and not as a Party to the Agreement

 11/17/15
Louis Levenson
Counsel for Deanna J. Brown Thomas

SIGNATURE PAGE

(4 of 7)

I So Agree and Release:

Jason Brown-Lewis
Jason Brown Lewis

Date: 11-6-15

[Signature]
Witness

Martha Seale
Witness

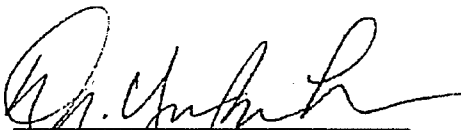
As Counsel for Jason Brown Lewis and not as a Party to the Agreement

[Signature] 11/17/15
Louis Levenson
Counsel for Jason Brown Lewis

SIGNATURE PAGE

(5 of 7)

I So Agree and Release:

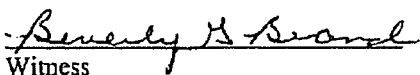


Yamma N. Brown Lumar, individually
and on behalf of her minor children
Sydney Lumar and Carrington Lumar

Date: 11/6/15

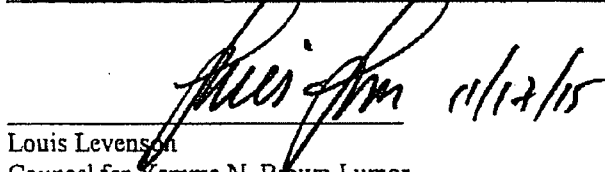


Witness



Witness

As Counsel for Yamma N. Brown and not as a Party to the Agreement



Louis Levenson
Counsel for Yamma N. Brown Lumar,
individually and on behalf of her minor children,
Sydney Lumar and Carrington Lumar

SIGNATURE PAGE

(6 of 7)

I So Agree:

**Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James
J. Brown, Jr., and Trustee and Special Trustee of the
Irrevocable Trust Agreement, u/a/d August 1, 2000**

Date: _____

Witness

Witness

As Counsel for Russell L. Bauknight and not as a Party to the Agreement

**J. David Black
Counsel for Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James J. Brown, Jr.,
and Trustee and Special Trustee of the Irrevocable Trust
Agreement, u/a/d August 1, 2000**

SIGNATURE PAGE

(7 of 7)

I So Agree:

David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr.,
and as Limited Special Trustee of the Irrevocable
Trust Agreement, u/a/d August 1, 2000

Date: _____

Witness

Witness

As Counsel for David C. Sojourner, Jr. and not as a Party to the Agreement

John F. Beach
Counsel for David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr., and
Limited Special Trustee of the Irrevocable Trust Agreement,
u/a/d August 1, 2000

EXHIBIT B

Settlement Agreement effective November 13, 2015 executed by Tonya Brown a/k/a Sarah LaTonya Brown Fegan

FILED
12.7.15
L. J. Rodas
DC, C.P. & G.S.
Mita Kincaid
Deputy Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is made and entered as of November 13, 2015 (the "Effective Date") by Petitioner, Tonya Brown, a/k/a Sarah LaTonya Brown Fegan her successors, heirs, agents, and assigns (hereinafter "Petitioner"); the Estate of James Brown, by and through its Personal Representative and Special Administrator, Russell L. Bauknight and its Limited Special Administrator, David C. Sojourner, Jr., ("Estate"); and the James Brown Irrevocable Trust, established by the Irrevocable Trust Agreement dated August 1, 2000, by and through its Trustee and Special Trustee, Russell L. Bauknight and its Limited Special Trustee, David C. Sojourner, Jr., ("Trust") (all parties to this Agreement collectively referred to as the "Parties").

Recitations

A. WHEREAS James Brown, Jr. ("Decedent") died on December 25, 2006 in the State of South Carolina, leaving a Last Will and Testament and Irrevocable Trust Agreement, dated August 1, 2000 ("2000 Will and Trust").¹ Petitioner is the natural child of Decedent's son Teddy Brown (deceased). An Application for Informal Probate of Will and Appointment of Personal Representative was filed on January 18, 2007.

B. WHEREAS on December 26, 2007, Petitioner filed Petitions to Set Aside the Informal Probate of the Last Will and Testament and the Trust Agreement, and on January 24, 2008 Petitioner filed Amended Petitions to Set Aside Informal Probate and Trust Agreement (the "Petitions"), civil action number 2008-CP-02-01647 (the "Litigation"). In the Petitions, Petitioner asserts the 2000 Will and Trust should be set aside on several grounds (Petitioner's "Claims"), including without limitation: (i) Decedent was unduly influenced; (ii) the Will and

¹ Decedent also executed a Last Will and Testament and Irrevocable Trust Agreement dated June 15, 1999 (hereinafter, the "1999 Will and Trust").

Trust are the product of fraud exerted on Decedent; (iii) Decedent lacked testamentary capacity; and (iv) the Trust is illusory.

C. WHEREAS Decedent's 1999 and 2000 Will (Paragraph X) and Decedent's 1999 and 2000 Trust (Article XXI) both contain *in terrorem* or "no contest" clauses and pursuant to such clauses the Personal Representatives of the Estate and Trustees of the Trust responded to the Petitions, denying all allegations, seeking an order disinheriting Petitioner from the Estate and Trust, and seeking to have the 2000 Will and Trust probated.

D. WHEREAS limited written discovery has been conducted between the parties pursuant to a scheduling order issued by the Court of Common Pleas and the parties anticipate extensive discovery, including depositions of the parties and potential witnesses, and therefore, the parties are informed and believe that additional discovery will be time-consuming and expensive.

E. WHEREAS the Parties now seek to mutually and voluntarily end the pending Litigation before the initiation of additional litigation, including written discovery and lengthy depositions, which will undoubtedly vastly increase costs and expenses for Petitioner and the Estate and Trust.

NOW THEREFORE, in consideration of the mutual agreements and undertakings set forth herein, the sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

I. Releases

I.A. Release and Discharge of Bauknight and Sojourner.

For the consideration set forth herein, Petitioner, her attorneys (in their representative capacity as counsel for Petitioner only), accountants, agents, representatives, and servants,

hereby release and forever discharge 1) Russell L. Bauknight, individually, and in his capacity as Personal Representative and Special Administrator of the Estate, and Trustee and Special Trustee of the Trust, together with his attorneys, accountants, agents, employees, partners, and associates; and 2) David C. Sojourner, Jr., individually and in his capacity as Limited Special Administrator of the Estate and Limited Special Trustee of the Trust, together with his attorneys, accountants, employees, partners, and associates from all claims, demands, obligations, actions, and causes of actions, whether known or unknown, of any kind whatsoever, existing as of the Effective Date of this Agreement, including without limitation all claims for breach of any duty, fiduciary or otherwise, they owe or may have owed directly or indirectly to Petitioner, her attorneys, accountants, agents, employees, partners, and associates.

I.B. Release and Discharge of the Estate and Trust.

For the consideration set forth herein, Petitioner, her attorneys (in their representative capacity as counsel for Petitioner only), accountants, agents, employees, partners, and associates, hereby release and forever discharge the Estate and Trust and all fiduciaries of the Estate and Trust (except as specifically set forth herein in Paragraph III.C) from all claims, demands, obligations, actions, and causes of actions, whether known or unknown, of any kind whatsoever, existing as of the Effective Date of this Agreement. This release expressly excludes the matters set forth in Paragraphs III (below), which Petitioner does not release, as more fully set forth therein.

I.C. Dismissal with Prejudice of all Challenges to Will and Trust

For the consideration set forth herein, Petitioner, her attorneys, accountants, agents, representatives, and servants, hereby relinquish all challenges, claims, counterclaims and/or defenses they may have to the validity and/or enforceability of the 2000 Will and/or Trust, as

well as to the 1999 Will and/or Trust, including without limitation claims asserted in, or in any way related to, the aforesaid Litigation. As part and parcel of this release, Petitioner agrees not to participate in and/or support, directly or indirectly, any other party or parties' challenges to the validity and/or enforceability of the 2000 Will and/or Trust and/or the 1999 Will and/or Trust. Petitioner agrees that if one or both of the 1999 Will and Trust or the 2000 Will and Trust are held by the Court to be valid, Petitioner will not object to such validity, move to vacate, move to modify, and/or appeal the Court's finding in any way.

In furtherance of this release, Petitioner agrees to immediately dismiss her Claims and the Litigation as a whole, with prejudice, execute the Consent Order of Dismissal attached hereto as Exhibit 1, and take whatever action and/or sign whatever documents are necessary to dismiss with prejudice the Claims and/or challenges she has asserted in the Litigation.

This Agreement does not require Petitioner to withdraw from Case Nos. 2013-CP-02-02849, 02850, or 02851 (the "Other Estate Litigation"). The Estate and Trust do not and will not represent Petitioner's interests in connection with the Other Estate Litigation and will not seek court authorization to do so.

LD. Release and Discharge of Petitioner.

For the consideration set forth herein, the Estate and Trust hereby release and forever discharge Petitioner, her attorneys, accountants, agents, employees, partners, and associates, from all claims, counterclaims, demands, obligations, actions, and causes of actions, whether known or unknown, existing as of the Effective Date of this Agreement, related to any interest Petitioner may have or assert in the Estate or Trust.

The Parties expressly exclude from this release and discharge the Debt and related May 20, 2008 Security Deed and Note ("Note") between the Estate and Vanisha Brown, Larry Brown,

Deanna J. Brown Thomas, Yamma N. Brown Lumar, Daryl J. Brown, and Tonya Brown for the property located at 2506 Parkway Drive, Augusta, Georgia 30904. This Agreement does not affect either the Estate's rights or the Petitioner's obligations reflected therein.

II. Warrant of Non-assignment.

Petitioner hereby expressly affirms and warrants she has not assigned, pledged, encumbered, disclaimed or otherwise transferred any interest as a beneficiary of the 1999 Will and Trust or the 2000 Will and Trust and/or any claims or interests released by this Agreement.

III. Exclusions from Release and Discharge

Notwithstanding the forgoing releases set forth in Section I, the Parties agree those releases do not release the following claims, which Petitioner expressly reserves and maintains.

III.A. Rights as Intestate Heir

Petitioner is not releasing her claims or rights as an intestate heir and specifically retains her right to claim as intestate heir if the Court finds that the Decedent died intestate or that any portion of Decedent's estate passes through intestacy.

III.B. Claims to Educational Funds

The Parties acknowledge that nothing herein shall act in any way to release any claims and/or any interests she or her children may have in receiving proceeds for educational expenses from the Brown Family Education Trust Agreement and/or any trust fund that may exist under James Brown's 1999 and/or 2000 Will and Trust for the purpose of supporting the education of Grandchildren of James Brown ("Brown Family Education Trust"). Payments from the Brown Family Education Trust to its beneficiaries shall be determined and made pursuant to the terms of the Trust, but the Parties agree qualifying claims for education expenses that were incurred

prior to the Effective Date shall be given equal consideration to qualifying claims for education expenses that are incurred following the Effective Date.

III.C. Copyright Termination Rights

Petitioner does not in any way settle, release, waive, or encumber any rights or interests that she may have with respect to termination rights under the Copyright Act, 17 U.S.C. §§ 203(a), 304(c), 304(d) regarding James Brown's music and/or any other intellectual property rights.

III.D. Claims against Adele Pope

Petitioner does not release any and all claims she has against Adele Pope.

IV. Exchange of the Monetary Consideration for the Settlement

In consideration of the foregoing release and discharge and upon the execution of this Agreement, the Estate agrees to the exchange of consideration in the total amount of Thirty Seven Thousand Five Hundred (\$37,500.00) Dollars (the "Settlement Sum"). The Estate agrees to pay the Settlement Sum by check delivered to Itriss Jenkins within thirty (30) days of the Effective Date, or, if applicable, the Court's approval of this Settlement, whichever is later.

V. Settlement Contingent upon Settlement with Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar

The Parties agree this Settlement is expressly contingent upon the Estate and Trust entering into a binding settlement with Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar on the same terms as set forth herein, with total monetary consideration in the amount of \$150,000.

VI. Adequate Consideration – Denial of Liability

The Parties agree and acknowledge that the releases and payments set forth in this Agreement will constitute full, complete, final, and binding compromise and satisfaction of the pending Litigation, and shall not be considered an admission of any liability by any of the Parties.

The Parties specifically deny any liability, fault, responsibility, or wrongdoing and assert that no past or present wrongdoing, fault, responsibility or liability on the part of any of the Parties shall be implied by the releases and negotiations contained in this Agreement. The Parties further agree they are entering into this Agreement to eliminate any cost of potential claim(s) or actions asserted by the Parties related to or in any way arising out of the Litigation and/or other released matters.

The Parties agree and acknowledge this Agreement and the settlement represented by this Agreement do not establish or constitute evidence that any Party or Parties are a prevailing party in the Litigation or any other litigation involving the Estate.

VII. Covenant Not to Sue

Petitioner further covenants that she, individually or collectively, on behalf of her heirs, assigns, successors, agents, and/or anyone acting on her behalf, will not initiate, participate in, file or assert any action, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against the Estate or Trust, or any individual representing the Estate or Trust, in any capacity, for any event, transaction, or occurrence related to or arising from the past conduct arising out of or related to the aforesaid Litigation. This covenant not to sue is intended to have the broadest interpretation possible and

shall absolutely prohibit Petitioner from any further action or proceeding against the Estate or Trust, or any individual representing the Estate or Trust.

VIII. Cooperation on Potential Court Approval

Should the Court require this Settlement be submitted to the Court for approval or should the LSA in his sole discretion determine Court approval is in the best interest of the Estate, the Parties agree to support approval of this Agreement through appropriate documentary filings and/or testimony as the Court and/or LSA may reasonably direct and that, in such event, this Agreement is expressly contingent upon such Court approval.

IX. Representation of Comprehension of Document

In entering into this Agreement, each Party agrees such Party is aware of and assumes the legal, insurance, and tax consequences this Agreement may have upon such Party, that the terms of this Agreement have been completely read by the Parties, that each Party has discussed this Agreement with such Party's attorney; and that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

X. Change of Law or Facts

All Parties hereto expressly acknowledge that other, new, or supplemental facts, information, and/or causes of action that either may now exist or that may arise or become known in the future could cause them to evaluate the underlying facts or their positions differently than as of the Effective Date of this Agreement. Each Party expressly agrees, and specifically assumes the risk, that if facts, information, and/or causes of action related to the matters covered by this Agreement are found hereafter to be other than, in addition to, or different from, the facts, information, and/or causes of action now believed or assumed to be true by either or all parties, this Agreement shall nonetheless remain in full force and effect.

XI. Non-Reliance

No Party relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, except as expressly provided for herein.

XII. Documents

The Parties agree to cooperate fully and to execute any supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, including but not limited to:

XI.A. Motion to Dismiss the Claims and the Litigation as a whole, with prejudice;

XI.B. Consent Order of Dismissal (attached hereto as Exhibit 1);

XIII. Governing Law

This Agreement is entered into in the State of South Carolina, and the Parties hereby agree that it shall be construed and interpreted in accordance with the laws of South Carolina.

XIV. Counterparts

The Parties agree that this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XV. Modifications

This Agreement may not be altered, amended or modified, except in a suitable writing signed by each of the Parties.

XVI. Duty to Cooperate

Petitioner specifically acknowledges and agrees that they will cooperate with the Estate and Trust in any and all continuing matters and proceedings concerning the Estate and Trust of James Brown and will reasonably and timely respond to all requests of the Estate and Trust. Petitioner specifically further acknowledges and agree that they will not cooperate with Adele J. Pope, Albert H. Dallas, David G. Cannon, Joel A. Katz, Tommie Rae Hynie Brown, or Frank Copsidas in any and all continuing matters and proceedings concerning the Estate and Trust of James Brown.

XVII. Enforceability

The Parties agree that this Agreement is a binding legal document pursuant to Sections 62-3-101, *et seq.* of the *South Carolina Probate Code*. The Parties hereby consent to the entry of this Agreement into the record through submission by any Party or their counsel to the Court and agree that such submission will fully satisfy the requirements set forth in Rule 43(k) of the *South Carolina Rules of Civil Procedure*, and, in particular, those necessary to make this Agreement binding and enforceable.

If any provision of this Agreement is held to be unenforceable, such holding shall not affect the enforceability of any other provision of the Agreement.

XVIII. Acknowledgement

THE PARTIES AGREE AND ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT CAREFULLY, FULLY UNDERSTAND ITS TERMS, AND ARE ENTERING INTO THIS AGREEMENT VOLUNTARILY, OF THEIR OWN FREE WILL, AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT OR INTIMIDATION OF ANY KIND OR TYPE WHATSOEVER.

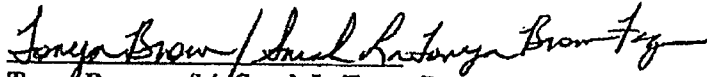
WHEREFORE, the Parties acknowledge that this Agreement is meant as a full and final settlement; that the Parties voluntarily agree to the terms set forth herein, and that they freely and without reservation or duress enter into this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

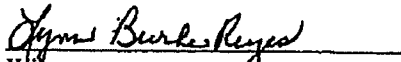
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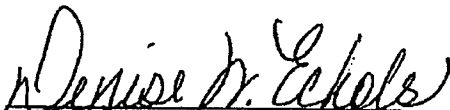
(1 of 3)

I So Agree and Release:


Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

Date: 11/13/2015


Witness


Witness

As Counsel for Tonya Brown, a/k/a LaTonya Brown Fegan and not as a Party to the Agreement


Idriss J. Jenkins
Counsel for Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

SIGNATURE PAGE

(1 of 3)

I So Agree and Release:

Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

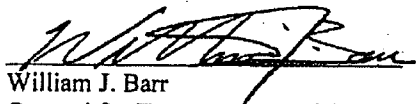
Date: _____

Witness

Witness

As Counsel for Tonya Brown, a/k/a LaTonya Brown Fegan and not as a Party to the Agreement

Ittriss J. Jenkins
Counsel for Tonya Brown, a/k/a Sarah LaTonya Brown Fegan



William J. Barr
Counsel for Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

SIGNATURE PAGE
(2 of 3)

I So Agree:

**Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James
J. Brown, Jr., and Trustee and Special Trustee of the
Irrevocable Trust Agreement, u/a/d August 1, 2000**

Date: _____

Witness

Witness

As Counsel for Russell L. Bauknight and not as a Party to the Agreement

**J. David Black
Counsel for Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James J. Brown, Jr.,
and Trustee and Special Trustee of the Irrevocable Trust
Agreement, u/a/d August 1, 2000**

SIGNATURE PAGE

(3 of 3)

I So Agree:

David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr.,
and as Limited Special Trustee of the Irrevocable
Trust Agreement, u/a/d August 1, 2000

Date:

Witness

Witness

As Counsel for David C. Sojourner, Jr. and not as a Party to the Agreement

John F. Beach
Counsel for David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr., and
Limited Special Trustee of the Irrevocable Trust Agreement,
u/a/d August 1, 2000

EXHIBIT C

Consent Order to Dismiss Claims of Petitioners Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis and Yamma N. Brown Lumar, Individually and on behalf of her minor children Sydney Lumar and Carrington Lumar With Prejudice

FILED 1277 15

L. J. Anderson
CLERK OF COURT

Anita Knaeuper
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO. 2008-CP-02-1647
	)	
	)	CONSENT ORDER TO DISMISS CLAIMS
	)	OF PETITIONERS VANISHA BROWN,
	)	LARRY BROWN, DEANNA J. BROWN
	)	THOMAS, JASON BROWN LEWIS,
	)	AND YAMMA N. BROWN LUMAR,
IN RE:	)	INDIVIDUALLY AND ON BEHALF OF
	)	HER MINOR CHILDREN SYDNEY LUMAR
THE ESTATE OF JAMES BROWN	)	AND CARRINGTON LUMAR WITH
A/K/A JAMES JOSEPH BROWN	)	PREJUDICE
	)	

This matter is before the Court upon the joint motion to dismiss filed by Petitioners Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, and Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar ("Petitioners"); Respondent the Estate of James Brown ("Estate"), by and through its Personal Representative and Special Administrator Russell L. Bauknight and its Limited Special Administrator, David C. Sojourner, Jr.; and Respondent the James Brown Irrevocable Trust, established by the Irrevocable Trust Agreement, dated August 1, 2000 ("Trust"), by and through its Trustee and Special Trustee, Russell L. Bauknight and its Limited Special Trustee, David C. Sojourner, Jr. (Petitioners, Estate and Trust, collectively, the "Moving Parties").

The Moving Parties request and consent that this Court dismiss with prejudice Petitioners' Petition to Set Aside Informal Probate and Petition to Set Aside Trust Agreement filed on December 26, 2007, and amended January 24, 2008 ("Petitions"), together with all related claims or causes of action asserted by Petitioners to set aside the Will and/or Trust, pursuant to Rule 41 of the *South Carolina Rules of Civil Procedure*. The Moving Parties agree to bear their own costs and expenses associated with this action.

Based on the motion and consent of the Moving Parties, the Court hereby grants the Joint Motion to Dismiss. Accordingly, all claims asserted by Petitioners in the Petitions, together with all related claims or causes of action asserted by Petitioners to set aside the Will and/or Trust, are hereby dismissed with prejudice, and Petitioners are hereby dismissed as parties to the above-captioned action.

IT IS SO ORDERED.

Doyet A. Early III, Circuit Court Judge
Second Judicial Circuit

November ____, 2015.

_____, South Carolina.

[SIGNATURES OF MOVING PARTIES AND COUNSEL ON FOLLOWING PAGES]

SIGNATURE PAGE

(1 of 7)

I So Move and Consent:

Deanna B. Thomas (Attorney In Fact) for
Vanisha Brown
Vanisha Brown

Date: 11/6/15

Louis Levenson

Counsel for Vanisha Brown

STATE OF GEORGIA
COUNTY OF RICHMOND

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENT:

1.
I, Veronica Brown, grant unto the said Deanna B. Thomas residing at 831 Silver Bluff Rd Aiken, SC 29803, as my lawful ATTORNEY-IN-FACT the full power to make savings or checking deposits, withdrawals, or other necessary banking transactions according to his discretion. I further authorize him to open or close accounts that may be necessary, to have the authority to enter my safe deposit box or boxes and to do whatever other acts might be necessary to carry on my personal affairs and business affairs in connection with any matters as I would do if I were personally present.

2.
I grant unto the said Deanna B. Thomas the full power and authority to list, sell, or contract to sell any property, real or personal, specifically including, but not limited to stocks, bonds, securities or other assets, wherever located and of whatever kind and nature, that I may own or that I may have or claim an interest in, and furthermore that this power and authority may be carried without the requirement of any bond, surety, appraisal, return, accounting, publication or Order of any Court or tribunal. I further grant unto the said Deanna B. Thomas the full power and authority to list, sell or contract to sell any business interest I may hold.

3.
If I have omitted any property or right I may have in the paragraphs above, it is my intention by this paragraph and by this entire document taken as a whole to grant unto my said attorney in fact the full power to do whatever she in her discretion determines is necessary with respect to my assets. I specifically authorize my attorney in fact to hire any attorneys, accountants, bookkeepers or others to provide assistance to my attorney in fact to manage and control my financial affairs and I further authorize my attorney in fact to pay such individuals from my funds in such amounts as my attorney in fact deems necessary and proper. My attorney in fact is authorized to hire medical, psychological and/or psychiatric specialists to evaluate and/or treat me for any

problems or conditions that my attorney in fact, in her sole discretion, believes are necessary and furthermore, my attorney in fact may pay such professionals or medical practitioners from my funds.

4.

I grant unto my said attorney in fact Deanna B. Thomas the full power to place any funds she deems necessary into his business or personal account or other account and to draw therefrom for my needs as she deems appropriate. If such account or accounts are not available or are otherwise inappropriate, then I authorize my said attorney to make whatever arrangements she deems necessary to carry out my wishes and conduct my financial, business and personal affairs.

5.

I hereby authorize my said attorney Deanna B. Thomas to pay from my assets or from whatever source she desires all of my debts that have matured or that may mature as time goes on. Furthermore, she shall pay all lawful bills for medical expenses, room, board, upkeep and assistance, including medical and para-medical treatment, and, furthermore, shall have the authority to incur bills, charges, expenses and costs and may pay same on my behalf when she so desires. My said attorney shall have the authority to pay all taxes, liens and any other charges against me or against my estate that may already be in existence or that may come into existence.

6.

My said attorney shall have the full power to collect any amounts due to me or to my estate including, but not limited to, accounts receivable, debts from others, Social Security payments, SSI payments, if applicable, and any other amounts that may become due as time goes on.

7.

It is understood and agreed that my attorney in fact shall have the authority to retain legal counsel for me and to pay said counsel any amount that is reasonable for the services rendered.

8.

My said attorney shall have the full authority to obtain from any person or persons any documents, papers, instruments or other data in the possession of another that I own or have an interest or claim in and such person or persons having possession of same shall deliver to my said attorney the requested materials.

9.

I authorize my attorney in fact to repay to herself any amounts that she may have advanced to this point in time or any amounts that may be advanced in the future for professional, legal, medical or other services retained by my attorney in fact, though such may have been done before the execution by me of this document.

10.

I hereby grant this power of attorney to the said Deanna B. Thomas only during my lifetime; this power and authority terminating upon my death or the death of _____, whichever comes first. Further, this Power of Attorney may be revoked by me at any time in writing upon my giving written notice to my attorney in fact. In the event that a guardianship of person and/or property is filed by any person as against me, then, in that event, pursuant to OCGA 29-5-2(c)(1), I hereby nominate Deanna B. Thomas to serve as such a guardian of my person and/or conservator.

11.

Generally, I do hereby grant unto my said attorney in fact the full power and authority in and about the premises; and generally to do and to perform all and every act and acts, thing and things, device and devices in the law whatsoever needful and necessary to be done in and about the premises; and for me and in my name to do, execute and perform, as largely and amply, to all intents and purposes, as I might or could do if I were personally present; and an attorney, or attorneys under me for the purposes and purposes aforesaid to make and substitute, hereby ratifying and confirming all that my said attorney in fact or substitute shall lawfully do by virtue hereof.

12.

This Power-of-Attorney shall become effective, in whole or in part only if I lack sufficient understanding or capacity to make responsible decisions concerning my person and/or my property (or I am incapable of communicating such decisions) by reason of one or more of the following infirmities:

- o Mental Illness
- o Advanced Age
- o Mental disability
- o Physical illness or disability

As declared either:

a.) by a physician licensed to practice under Chapter 34 of Title 43 of the Official Code of Georgia Annotated (O.C.G.A.) or a psychologist licensed to practice under Chapter 39 of Title 43 of the O.C.G.A.;

or

b.) A Court of competent jurisdiction.

13.

This Power-of-Attorney shall terminate and be without effect in the event that a physician or psychologist, as defined in Paragraph 12 above, or a court of competent jurisdiction determines that the disability or incapacity which activated the Power has been removed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal IN TRIPPLICATE,

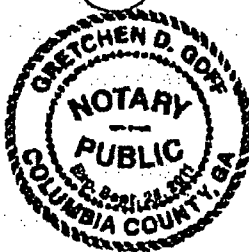
this _____ day of _____, 2008

Deanna B. Thomas
Witness

[Signature]

Sworn to and subscribed before
me this 15th day of MAY 2008

[Signature]
NOTARY PUBLIC (SEAL)



SIGNATURE PAGE
(2 of 7)

I So Move and Consent

Larry Brown
Larry Brown

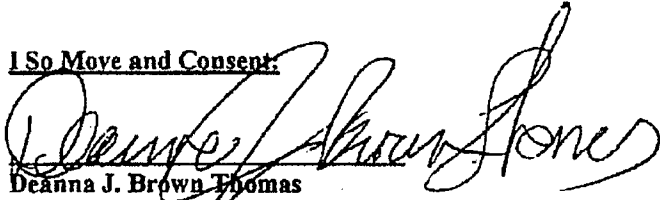
Date: 11-9-15

Louis Levenson 11/17/15
Louis Levenson
Counsel for Larry Brown

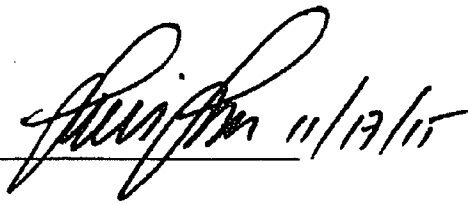
SIGNATURE PAGE

(3 of 7)

I So Move and Consent:


Deanna J. Brown Thomas

Date: 11/6/15


Louis Levenson

Counsel for Deanna J. Brown Thomas

SIGNATURE PAGE

(4 of 7)

I So Move and Consent:

Jason Brown-Lewis
Jason Brown Lewis

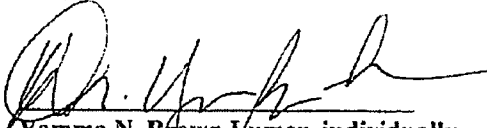
Date: 11-6-15

Louis Levenson 11/13/15
Louis Levenson
Counsel for Jason Brown Lewis

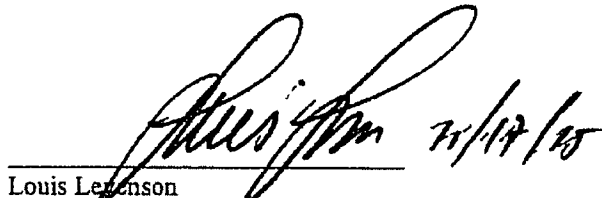
SIGNATURE PAGE

(5 of 7)

I So Move and Consent:


Yamma N. Brown Lumar, individually
and on behalf of her minor children
Sydney Lumar and Carrington Lumar

Date: 11/6/15


Louis Levenson
Counsel for Yamma N. Brown Lumar,
individually and on behalf of her minor children,
Sydney Lumar and Carrington Lumar

SIGNATURE PAGE

(6 of 7)

I So Move and Consent:

**Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James
J. Brown, Jr., and Trustee and Special Trustee of the
Irrevocable Trust Agreement, u/a/d August 1, 2000**

Date: _____

**J. David Black
Counsel for Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James J. Brown, Jr.,
and Trustee and Special Trustee of the Irrevocable Trust
Agreement, u/a/d August 1, 2000**

SIGNATURE PAGE

(7 of 7)

I So Move and Consent:

**David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr.,
and as Limited Special Trustee of the Irrevocable
Trust Agreement, u/a/d August 1, 2000**

Date: _____

**John F. Beach
Counsel for David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr., and
Limited Special Trustee of the Irrevocable Trust Agreement,
u/a/d August 1, 2000**

EXHIBIT D

**Consent Order to Dismiss Claims of Petitioner Tonya Brown a/k/a Sarah LaTonya Brown
Fegan With Prejudice**

FILED 12-7-15
Liz Hadard
CLCP & GS
Junita Kinne
Deputy Clerk

**THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN**

Record on Appeal, Volume II, Page 426

related claims or causes of action asserted by Petitioner to set aside the Will and/or Trust, are hereby dismissed with prejudice, and Petitioners are hereby dismissed as parties to the above-captioned action.

IT IS SO ORDERED.

Doyet A. Early III, Circuit Court Judge
Second Judicial Circuit

November ____, 2015.

_____, South Carolina.

[SIGNATURES OF MOVING PARTIES AND COUNSEL ON FOLLOWING PAGES]

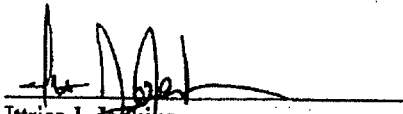
SIGNATURE PAGE

(1 of 3)

I So Move and Consent:


Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

Date: 11/13/2015


Ittriss J. Jenkins
Counsel for Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

SIGNATURE PAGE

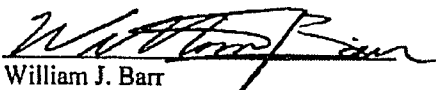
(1 of 3)

I So Move and Consent:

Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

Date: _____

Ittriss J. Jenkins
Counsel for Tonya Brown, a/k/a Sarah LaTonya Brown Fegan


William J. Barr
Counsel for Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

SIGNATURE PAGE
(2 of 3)

I So Move and Consent:

**Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James
J. Brown, Jr., and Trustee and Special Trustee of the
Irrevocable Trust Agreement, u/a/d August 1, 2000**

Date: _____

**J. David Black
Counsel for Russell L. Bauknight, as Personal Representative
and Special Administrator of the Estate of James J. Brown, Jr.,
and Trustee and Special Trustee of the Irrevocable Trust
Agreement, u/a/d August 1, 2000**

SIGNATURE PAGE
(3 of 3)

I So Move and Consent:

**David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr.,
and as Limited Special Trustee of the Irrevocable
Trust Agreement, u/a/d August 1, 2000**

Date:

John F. Beach
**Counsel for David C. Sojourner, Jr., as Limited Special
Administrator of the Estate of James J. Brown, Jr., and
Limited Special Trustee of the Irrevocable Trust Agreement,
u/a/d August 1, 2000**

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

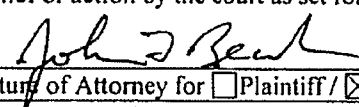
IN RE:

THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN,

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-02-1647

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Mary Frances G. Jowers, Bar No. Address: PO Box 11549, Columbia, SC 29211 phone: 803-734-3996 fax: e-mail: other:	Defendant's Attorney: John F. Beach, Bar No. 595 Address: 1501 Main St., 5 th Floor, Columbia, SC 29201 phone: 803-343-1269 fax: 803-799-8479 e-mail: john.beach@arlaw.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Joint Motion to Authorize Settlement of Brown Children's Undue Influence Cases and to Dismiss with Prejudice Estimated Time Needed: 2 hours Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant December 2, 2015 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: 12-7-15
CLERK'S VERIFICATION Collected by: _____ ☒ MOTION FEE COLLECTED: <u>OK #400675</u> ☐ CONTESTED - AMOUNT DUE: <u>rcpt</u> Date Filed: <u>12-7-15</u> DCCP & GS <u>Anita Knoesele</u> Deputy Clerk	

Appellant's Response to Joint Motion to Authorize Settlement filed December 28, 2015
Pages 433-445

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	Case No. 2008-CP-02-1647
IN RE: THE ESTATE OF JAMES BROWN	)	
a/k/a JAMES JOSEPH BROWN	)	RESPONSE TO JOINT MOTION TO
	)	AUTHORIZE SETTLEMENT OF
	)	BROWN CHILDREN'S UNDUE
	)	INFLUENCE CASES AND TO DISMISS
	)	CASES WITH PREJUDICE
_____	)	

TO: All Counsel of Record

Terry Brown, by an through his undersigned counsel, hereby responds to and opposes the Joint Motion to Authorize Settlement of Brown Children's Undue Influence Cases and to Dismiss Cases with Prejudice of David C. Sojourner, Jr. as Limited Special Administrator of the Estate of James J. Brown, Jr. and Limited Special Trustee of the Irrevocable Trust Agreement, u/a/d August 1, 2000, Russell L. Bauknight, as Personal Representative of the Estate of James J. Brown, Jr. and Trustee of the Irrevocable Trust Agreement, u/a/d August 1, 2000, Vanisha Brown, Larry Brown, Deanna J. Brown, Jason Brown Lewis, and Yamma Brown Lumar, individually and on behalf of her minor children Sydney Lamar and Carrington Lumar, and Tonya Brown a/k/a Sarah LaTonya Brown Fegan. In response and opposition to the same

Terry Brown hereby shows the following:

FACTUAL BACKGROUND

As the Court is more than aware, litigation has been pending in this matter for more almost nine (9) years as a result of the groundless undue influence estate challenges and filings

C O P Y
ORIGINAL FILED
DEC 28 2015 *1240*
AIKEN COUNTY
CLERK OF COURT

12/23/15

made by several of the decedent's children and alleged spouse¹. Specifically, it these contesting children, who now jointly motion for settlement, that filed groundless undue influence challenges to the Last Will and Testament dated August 1, 2000 ("Will") and Irrevocable Trust dated August 1, 2000 ("Trust") of the decedent. The Will and Trust contain in terrorem clauses that preclude the above named beneficiaries from receiving any assets of the estate or trust.

Terry Brown and his heirs are the only beneficiaries that have consistently and publically supported the Will and Trust for the last nine (9) years. They have never challenged the Will or Trust. As a result of the proposed settlement that the parties now seek to have approved, Terry Brown and his heirs would be injured by the Personal Representative and Trustee if this Court approves the proposed settlement. The Personal Representative and Trustee have a duty to enforce the in terrorem clauses and act impartially among the beneficiaries. Failure to do so rewards the bad acts of the children, their heirs, and alleged spouse who challenged the Will and Trust. These individuals have caused nine (9) years of pain, suffering, litigation and expense in this matter. Rewarding such groundless undue influence claims is not only unjust but unfathomable. Decedent would not "feel good" as a result of these proceedings. To the contrary, this is exactly what the decedent did not want.

The Personal Representative and Trustee have a duty of impartiality and fiduciary duty not to favor or injure beneficiaries of the Estate or Trust. Failing to enforce the in terrorem clauses in this matter, breaches both of these duties and unfairly punishes the only beneficiaries that have not challenged the Will and Trust. Rewarding such action with monetary compensation and then placing the challenging heirs back in the same position as if they had

¹While this Court has ruled that Tommie Rae Hynie Brown is the spouse of the decedent, Terry Brown along with numerous other Appellants have currently disputed this issue with appeals filed before the South Carolina Court of Appeals.

never challenged the estate plan with the only non-contesting beneficiaries is unconscionable and legally indefensible.

LEGAL ANALYSIS

I. The Personal Representative and Trustee have a duty to enforce the in terrorem clause.

Terry Brown acknowledges that South Carolina law allows both a Personal Representative and Trustee to settle and compromise claims. However, such authority does not extend to circumstances where to do so would be a breach of fiduciary duty by such Personal Representative and Trustee to beneficiaries of the Estate and Trust. South Carolina law requires a Personal Representative to act as follows:

A personal representative is a fiduciary who shall observe the standards of care described in Section 62-7-804.² A personal representative has a **duty** to settle and distribute the estate of the decedent **in accordance with the terms of a probated and effective will** and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. **He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.** (Emphasis added.)

S.C. Code Ann. § 62-3-703.

Similarly, a Trustee under South Carolina law has a fiduciary duty to administer a trust as follows:

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

S.C. Code Ann. § 62-7-804.

Both the Will and Trust in this instance contain an in terrorem clause. Item X of the Will provides:

² Section 62-7-804 requires the Personal Representative to adhere to the "prudent person" rule provided for by Trustees.

Provisions as to any Contest of My Estate Plan. Should any beneficiary under this Will or my Irrevocable Trust, and as amended, dated prior to or of even date with this Will and as referred to herein, become an adverse party in a proceeding for the probate of my Will or in any manner contest the validity of my Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased me. Furthermore, any person not provided for in this Will, my Irrevocable Trust or other such instrument, whether or not claiming to be a beneficiary or party in interest, shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of my estate, as I herewith disclaim and disinherit any such persons. Any such alleged claim shall be considered an affront to my wishes and **shall be challenged as such by my fiduciaries.** (Emphasis added.)

Item XXI of the Irrevocable Trust states:

Provisions as to any Contest of Grantor's Estate Plan. Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary or party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such persons. Any such alleged claim shall be considered an affront to Grantor's wishes and **shall be vigorously challenged as such by his fiduciaries.** (Emphasis added.)

"In general, clauses in a will designed to penalize beneficiaries for contesting a will or instituting other proceedings relating to the estate are valid and enforceable." Russell v. Wachovia Bank, N.A., 370 S.C. 5, 12, S.E.2d 722, 725 (2006). "Consequently, we find that the no-contest clauses in both the will and trust are valid and enforceable. To hold otherwise would undermine Testator's intent." Id. at 16. As a result of the Russell decision, "in terrorem" clauses in South Carolina in both wills and trusts are enforceable. The only exception to enforceability of in terrorem clauses in South Carolina occurs where a challenger of a will or revocable trust files such challenge in good faith with probable cause. See S.C. Code Ann. § 62-3-905 and § 62-7-605. No evidence that such exception applies in the current matter exists.

The Personal Representative and Trustee would be in breach of their fiduciary duty in the instant action if this Court approves the proposed joint settlement motion. Failure to enforce the in terrorem clause in a matter which presents with no evidence of a good faith challenge with probable cause not only flies in the face of common sense but is directly contrary to the provisions contained in the Will and Trust. The decedent indicated that his Personal Representative and Trustee "shall" challenge such actions. Nowhere in the documents does it say lay down and settle. Further, there is no evidence or indication of a good faith challenge with probable cause in this matter. In fact, the parties even admit in their motion that "limited written discovery has been conducted between the parties". See. Joint Motion p. 3. Terry Brown is only aware of one deposition taken in the last three years in this matter, which was that of the drafting attorney H. Dewain Herring, whose testimony further bolstered the idea that there was no undue influence in the execution of the Will and Trust, and certainly indicated what the decedent's intent was related to the enforcement of the in terrorem clauses.³ As a result of little or no discovery occurring, the Personal Representative and Trustee have no idea whether a good faith challenge with probable cause exists. Worse yet, all parties fail to cite any evidence or facts in the joint motion which would prove that the undue influence claims in this matter were brought in good faith with probable cause. As a result, it is questionable whether a controversy exists that can be settled. Further, such settlement is clearly not just and reasonable in light of the circumstances. Finally, it is disingenuous for either the Personal Representative and Trustee to argue that entering the settlement would be a savings to the Estate or Trust related to litigation since Tommie Rae Hynie Brown's undue influence claim has not been settled and the same discovery and depositions are still necessary.

³ At the time of filing this response Terry Brown had not received the deposition transcript of H. Dewain Herring taken on December 9, 2015.

Terry Brown also believes the Trustee of the irrevocable Trust in this matter does not have the luxury of a relying on the exception to the enforcement of an in terrorem clause if a beneficiary brings a good faith claim with probable cause. No statutory grounds exist for the Trustee to apply a good faith probable cause exception to an irrevocable trust in South Carolina. The only statutory provisions that relate to in terrorem clauses in South Carolina for trusts are those related to revocable trusts. See. S.C. Code Ann. §62-7-605. Such section does not include irrevocable trusts. The Trust in this matter was clearly an irrevocable trust. As a result, there is no good faith claim with probable cause exception for irrevocable trusts.

"A trust is voidable to the extent its creation was induced by fraud, duress, or undue influence" S.C. Code Ann. § 62-7-406. As a result, any filing against an irrevocable trust would be a breach of the in terrorem clause and must be enforced by the Trustee. Irrevocable trust beneficiaries are not afforded a similar good faith with probable cause exception under the South Carolina law. They must prevail on an action under S.C. Code Ann. § 62-7-406. Otherwise, a contesting beneficiary should be excluded from a trust when they challenge it and their action under S.C. Code Ann. § 62-7-406 fails. The Trustee's failure to enforce the in terrorem clause in this case would be a breach of his fiduciary duty and must not be allowed by this Court. Even if this Court were to read a good faith exception into the law, the Trustee, or any of the parties for that matter, like the Personal Representative, has put no such evidence forward to invoke the exception to enforcement of in terrorem clauses.

The South Carolina Supreme Court in Wilson v. Dallas specifically addressed the lack of evidence in this matter as it related to the ability of the beneficiaries in this matter to invoke the good faith with probable cause exception to enforcement of in terrorem clauses in the Will and Trust. The South Carolina Supreme Court, in a rather lengthy discussion, noted:

The circuit court's scant references to alleged improprieties in the handling of Brown's will, while troubling, do not bear directly on the issue of whether Brown's desires for the disposition of his estate were overborne to such an extent that the resulting distribution was not the product of his own free will. In particular, although the circuit court focused on the later imprisonment of the attorney who drafted the will, the imprisonment was for a crime totally unrelated to his services as an estate planner. This fact has no bearing on the execution of Brown's testamentary documents and sheds no light on whether Brown's will was somehow overcome at the time he signed the documents finalizing his estate plan.

Similarly, the fact that one provision regarding management fees in the trust could be deemed 'generous' would support at most reformation of the document, but would not justify the complete destruction of Brown's estate plan.

All indications in the record are that Brown was of sound mind and strong physical constitution until the time of his death, as he had only recently returned from touring and was making preparations for future performances when he suddenly became ill and passed away.

It appears Brown painstakingly developed his estate plan over the course of several years, and in various drafts, including the will in dispute here, Brown made it clear that he intended the bulk of his estate to be used for the education of disadvantaged youths, as he had provided for his family members during his lifetime. His estate documents explicitly state that he had named all of those he wished to be the beneficiaries of his estate, and that any further claimants, including future spouses or those purporting to be heirs, were purposefully excluded. Another strong indicator of Brown's intent is his inclusion of no-contest clauses in both his will and trust.

The record contains numerous references to the fact that Brown repeatedly made his intentions known during his lifetime to his family, friends, and business associates, and he had even met with family members not too long before his unexpected death and had reaffirmed his intentions in this regard. Brown had a reputation as a strong-willed individual who did not take orders from others, and he made his desires abundantly clear during his lifetime. We find there is no reasonable basis for the undue influence claim asserted here other than as a means to dismantle Brown's estate plan. The result is to enable those who were disinherited to obtain Brown's assets to the detriment of the charitable entity that Brown so fervently desired. Because he knew that it would be a source of dispute, Brown went to remarkable lengths to protect his right to designate the appropriate legacy for his life's work, including having numerous provisions in his estate documents and informing family members of his intentions in advance. We see no reasonable or substantial basis to support a good faith finding here.

The AG acknowledged during oral arguments in this matter that he undertook no inquiry into the undue influence claims of the Respondents and the circumstances surrounding Brown's execution of his will. (citations omitted)

Wilson v. Dallas, 403 S.C. 411, 437-440 (2013)

As noted above, the South Carolina Supreme Court was particularly troubled by the lack of evidence of any undue influence that would support a claim and allow for settlement of the action at hand. Amazingly, in the almost three (3) years since the issuance of this opinion, there is no more evidence than existed at the time the South Carolina Supreme Court entered its opinion in Wilson v. Dallas. Incredibly, there is actually more evidence that it was clearly the decedent's intent to exclude the beneficiaries if they challenged the documents.⁴ The drafting attorney made this clear in his deposition of December 9, 2015.⁵ Unbelievably, after the drafting attorney made it clear that the decedent's intent with the in terrorem clause was to exclude all heirs and their beneficiaries that challenge the will, LSA's counsel began asking questions which could only be described as an attempt to assist the contesting parties with an end run on the in terrorem clause. Such actions directly subverted the decedent's intent and wishes with regard to the in terrorem clauses which were confirmed clearly and convincingly by the drafting attorney, H. Dewain Herring at the December 9, 2015 deposition.⁶

II. Failure to enforce the in terrorem clauses would be a breach of fiduciary duty because it fails to carry out the decedent's intent.

A paramount duty of all Personal Representatives and Trustees is to carry out the intent of the Testator or Settlor. As noted above the Personal Representative and Trustee have a duty to follow the terms of a will and trust in accordance with S.C. Code Ann. § 62-3-703 and S.C. Code § 62-7-804. Both documents contain an "in terrorem" clause. The beneficiaries of both documents have violated the same by filing claims that only some of the beneficiaries and parties now propose to settle. Both documents state that it was Testator's intent to enforce the in terrorem clauses in the event of a challenge to such documents. The Trust goes one step further

⁴ Id.

⁵ Id.

⁶ Id.

when it requires the Trustee to “vigorously” enforce such provision. The drafting attorney, H. Dewain Herring, testified at deposition that it was clearly decedent’s intent to have these clauses enforced and all heirs who filed any such challenge were to be disinherited.⁷ As such, the Personal Representative and Trustee have a duty to enforce these provisions.

Further, a Personal Representative and Trustee cannot determine whether probable cause exists to challenge a will or trust. This is an issue that is left to a Court as a matter of law if there are no genuine issues of fact or a jury if there are disputed facts. As such, any settlement when there has been a challenge to the Will and Trust documents when all beneficiaries are not in agreement to such settlement would be a violation of the fiduciary duties required of such individuals.

Finally, the drafting attorney, H. Dewain Herring, at deposition on December 9, 2015, indicated that it was the decedent’s intent to exclude all children and such children’s heirs with the in terrorem clauses in the Will and Trust.⁸ S.C. Code Ann. 62-2-601 states:

(A) The intention of a testator as expressed in the testator’s will controls the legal effect of the testator’s dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

(B) Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous, to conform the terms to the testator’s intention if it is proved by clear and convincing evidence that the testator’s intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement.

Based on the above law, the evidence presented by the testimony of decedent’s drafting attorney provides clear and convincing evidence that it was decedent’s intent to exclude children and their heirs that challenged the will. The Personal Representative and Trustee have a duty and obligation to uphold this intent (as the Will and Trust directly instruct them to

⁷ Id.

⁸ Id.

do) which would include seeking reformation of the document to incorporate such intent, if necessary and appropriate. To date, they have failed to do so. In fact, they did exactly the opposite in their line of questing after learning of the decedent's intent, as it related to the in terrorem clause, at deposition.⁹

The South Carolina Supreme Court noted that reformation of the documents in this matter was a possibility when it stated: "Similarly, the fact that one provision regarding management fees in the trust could be deemed 'generous' would support at most reformation of the document, but would not justify the complete destruction of Brown's estate plan." Wilson v. Dallas, 403 S.C. at 438. Further, South Carolina has clearly adopted the position that terms of the will can even be unambiguous but still allow for reformation to enforce a decedent's clear and convincing intent.¹⁰ Under S.C. Code Ann. 62-2-601, a will can be reformed if it is proven by clear and convincing evidence that a mistake was made in the will, such that it does not reflect the testator's intent. As a result, in South Carolina extrinsic evidence is admissible for the purpose of rebutting the rules of construction. A drafting attorney's testimony, as we have here, is one of the best types of extrinsic evidence as such individual will clearly and convincingly know the decedent's intent.

The failure of the Personal Representative to address the issue of reformation and intent of the decedent as it relates to the in terrorem clauses in light of the most recent testimony in this matter by the drafting attorney, H. Dewain Herring, is troubling. If ever there was a case where a court should look to the decedent's intent, this case is it. The beneficiaries who filed an unjustified and groundless undue influence claim have created, to

⁹ Id.

¹⁰ For a full discussion on this issue see the article entitled "Coming to Terms with the Uniform Probate Code's Reformation of Wills, 64 S.C. L. Rev. 403 (2012)

date, NINE (9) YEARS of litigation costs, expense and suffering by the non-contesting heirs. If ever there was a case to enforce the principals of law delineated in S.C. Code Ann. § 62-2-601(B), this case is it. If these principals do not apply in this case, they will never apply in the State of South Carolina. This is particularly true when one considers that the fact that Terry Brown, the only non-contesting heir, would be the sole heir named in the Will eligible to receive the personal property under the Will and his children would be two of a much smaller class of possible beneficiaries of the Trust with enforcement of the in terrorem clauses based on the decedent's intent. If this statute was not designed to protect innocent non-contesting parties, Terry Brown fails to see any situation where a party would be protected by the reformation doctrine.

In accordance with Section 62-2-601(B), the Court must interpret the in terrorem clauses to exclude all children and their descendants that challenge the Will and Trust as this was the intent of the decedent which was unmistakably and abundantly clear after deposing the drafting attorney on the issue of the in terrorem clauses. Any other result would be unjust and fail to enforce the decedent's intent. Further, failure to enforce the in terrorem clauses rewards bad behavior by granting the beneficiaries who challenged the Will and Trust a windfall at the expense of the one child and his descendants who supported the Will and Trust. South Carolina law and equity demand a different result.

III. Failure to enforce the in terrorem clauses breaches the Trustee duty to be impartial among the beneficiaries.

S.C. Code Ann. § 62-7-803 requires a trustee to act impartially when it states: "If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests."

Further, a Personal Representative has a duty to act in a manner that is in the "best interests of

the successors to the Estate.” In this instance, the failure to enforce the in terrorem clauses in accordance with the decedent’s intent and wishes is not in the best interests of the beneficiaries of the Trust or the successors to the Estate under the Will. Nor is it acting impartially by the Trustee. As a result under the proposed settlement agreement, the beneficiaries who have been nothing but supportive are injured and the ones who committed the bad acts are rewarded. This result cannot and should not occur. The Court has the full power to correct this injustice and should by requiring the Personal Representative and Trustee to enforce the in terrorem clauses and deny the joint motion for settlement.

IV. This Court cannot approve this settlement as there is no good faith claim that results in just and reasonable settlement.

As the South Carolina Supreme Court has already noted once in this matter¹¹, to support a settlement claim, there must be a good faith controversy and that the effect of the settlement agreement will be “just and reasonable.” S.C. Code Ann. § 62-3-1102 (3) states:

(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement.

As noted above, there is no possible way the proposed settlement is just and reasonable when it injures the one beneficiary and his heirs who have supported the Will and Trust for the last nine (9) years and rewards the heirs who have filed groundless undue influence claims. The South Carolina Supreme Court has given this Court direction and guidance on settlements in this

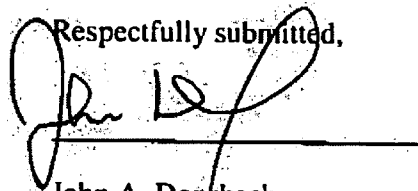
¹¹ See. *Wilson v. Dallas*, 403 S.C. 411, 442-447 (2013).

matter.¹² As with the last settlement attempt in this matter, this one fails for similar reasons that the South Carolina Supreme Court has already delineated in its prior ruling of Wilson v. Dallas.

CONCLUSION

Based on the foregoing, Terry Brown respectfully asks this Court deny the Joint Motion for Settlement and further enter an Order directing the Personal Representative and Trustee to properly enforce the in terrorem clauses as they are required to do in accordance with the decedent's intent and terms of the Will and Trust.

This 23 day of December, 2015.

Respectfully submitted,


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¹² Id.

Appellant's Amended Response to Joint Motion to Authorize Settlement filed
December 30, 2015
Pages 446-461

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN RE: THE ESTATE OF JAMES BROWN
a/k/a JAMES JOSEPH BROWN

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case No. 2008-CP-02-1647

) AMENDED RESPONSE TO JOINT
) MOTION TO AUTHORIZER
) SETTLEMENT OF BROWN
) CHILDREN'S UNDUE INFLUENCE
) CASES AND TO DISMISS CASES
) WITH PREJUDICE

C O P Y
ORIGINAL FILED

DEC 30 2015 / 10
aw

TO: All Counsel of Record

AIKEN COUNTY
CLERK OF COURT

Terry Brown, by and through his undersigned counsel, hereby amends his response and opposition to the Joint Motion to Authorize Settlement of Brown Children's Undue Influence Cases and to Dismiss Cases with Prejudice of David C. Sojourner, Jr. as Limited Special Administrator of the Estate of James J. Brown, Jr. and Limited Special Trustee of the Irrevocable Trust Agreement, u/a/d August 1, 2000, Russell L. Bauknight, as Personal Representative of the Estate of James J. Brown, Jr. and Trustee of the Irrevocable Trust Agreement, u/a/d August 1, 2000, Vanisha Brown, Larry Brown, Deanna J. Brown, Jason Brown Lewis, and Yamma Brown Lamar, individually and on behalf of her minor children Sydney Lamar and Carrington Lamar, and Tonya Brown a/k/a Sarah LaTonya Brown Fegan. In response and opposition to the same Terry Brown hereby shows the following:

FACTUAL BACKGROUND

As the Court is more than aware, litigation has been pending in this matter for almost nine (9) years as a result of the groundless undue influence estate challenges and filings made by

several of the decedent's children and alleged spouse¹. Specifically, it is these contesting children, that now jointly motion for settlement, who filed groundless undue influence challenges to the Last Will and Testament dated August 1, 2000 ("Will") and Irrevocable Trust dated August 1, 2000 ("Trust") of the decedent. The Will and Trust contain in terrorem clauses that preclude the above named beneficiaries from receiving any assets of the estate or trust.

Terry Brown and his heirs are the only beneficiaries that have consistently and publically supported the Will and Trust for the last nine (9) years. They have never challenged the Will or Trust. As a result of the proposed settlement that the parties now seek to have approved, Terry Brown and his heirs would be injured by the Personal Representative and Trustee if this Court approves the proposed settlement. The Personal Representative and Trustee have a duty to enforce the in terrorem clauses and act impartially among the beneficiaries. Failure to do so rewards the bad acts of the children, their heirs, and alleged spouse who challenged the Will and Trust. These individuals have caused nine (9) years of pain, suffering, litigation and expense in this matter. Rewarding such groundless undue influence claims is not only unjust but unfathomable. Decedent would not "feel good" as a result of these proceedings. To the contrary, this is exactly what the decedent did not want.

The Personal Representative and Trustee have a duty of impartiality and fiduciary duty not to favor or injure beneficiaries of the Estate or Trust. Failing to enforce the in terrorem clauses in this matter, breaches both of these duties and unfairly punishes the only beneficiaries that have not challenged the Will and Trust. Rewarding such action with monetary compensation and then placing the challenging heirs back in the same position as if they had

¹While this Court has ruled that Tommie Rae Hynie Brown is the spouse of the decedent, Terry Brown along with numerous other Appellants have currently disputed this issue with appeals filed before the South Carolina Court of Appeals.

never challenged the estate plan with the only non-contesting beneficiaries is unconscionable and legally indefensible.

LEGAL ANALYSIS

I. The Personal Representative and Trustee have a duty to enforce the in terrorem clause.

Terry Brown acknowledges that South Carolina law allows both a Personal Representative and Trustee to settle and compromise claims. However, such authority does not extend to circumstances where to do so would be a breach of fiduciary duty by such Personal Representative and Trustee to beneficiaries of the Estate and Trust. South Carolina law requires a Personal Representative to act as follows:

A personal representative is a fiduciary who shall observe the standards of care described in Section 62-7-804.² A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate. (Emphasis added.)

S.C. Code Ann. § 62-3-703.

Similarly, a Trustee under South Carolina law has a fiduciary duty to administer a trust as follows:

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

S.C. Code Ann. § 62-7-804.

Both the Will and Trust in this instance contain an in terrorem clause. Item X of the Will provides:

² Section 62-7-804 requires the Personal Representative to adhere to the “prudent person” rule provided for by Trustees.

Provisions as to any Contest of My Estate Plan. Should any beneficiary under this Will or my Irrevocable Trust, and as amended, dated prior to or of even date with this Will and as referred to herein, become an adverse party in a proceeding for the probate of my Will or in any manner contest the validity of my Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased me. Furthermore, any person not provided for in this Will, my Irrevocable Trust or other such instrument, whether or not claiming to be a beneficiary or party in interest, shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of my estate, as I herewith disclaim and disinherit any such persons. Any such alleged claim shall be considered an affront to my wishes and **shall be challenged as such by my fiduciaries.** (Emphasis added.)

Item XXI of the Irrevocable Trust states:

Provisions as to any Contest of Grantor's Estate Plan. Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary or party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such persons. Any such alleged claim shall be considered an affront to Grantor's wishes and **shall be vigorously challenged as such by his fiduciaries.** (Emphasis added.)

"In general, clauses in a will designed to penalize beneficiaries for contesting a will or instituting other proceedings relating to the estate are valid and enforceable." Russell v. Wachovia Bank, N.A., 370 S.C. 5, 12, S.E.2d 722, 725 (2006). "Consequently, we find that the no-contest clauses in both the will and trust are valid and enforceable. To hold otherwise would undermine Testator's intent." Id. at 16. As a result of the Russell decision, "in terrorem" clauses in South Carolina in both wills and trusts are enforceable. The only exception to enforceability of in terrorem clauses in South Carolina occurs where a challenger of a will or revocable trust files such challenge in good faith with probable cause. See S.C. Code Ann. § 62-3-905 and § 62-7-605. No evidence that such exception applies in the current matter exists.

The Personal Representative and Trustee would be in breach of their fiduciary duty in the instant action if this Court approves the proposed joint settlement motion. Failure to enforce the in terrorem clause in a matter which presents with no evidence of a good faith challenge with probable cause not only flies in the face of common sense but is directly contrary to the provisions contained in the Will and Trust. The decedent indicated that his Personal Representative and Trustee "shall" challenge such actions. Nowhere in the documents does it say lay down and settle. Further, there is no evidence or indication of a good faith challenge with probable cause in this matter. In fact, the parties even admit in their motion that "limited written discovery has been conducted between the parties". See. Joint Motion p. 3. Terry Brown is only aware of one deposition taken in the last three years in this matter, which was that of the drafting attorney H. Dewain Herring, whose testimony further bolstered the idea that there was no undue influence in the execution of the Will and Trust, and certainly indicated what the decedent's intent was related to the enforcement of the in terrorem clauses.

Specifically, H. Dewain Herring stated that idea for developing the estate plan as was ultimately signed and drafted began in 1997 as noted by his own personal notes of such meeting.³ Further with regard to Mr. Brown's ability to be influenced, Mr. Herring emphatically stated:

Well, the -- okay. From the time that I met James Brown he really impressed me -- or my impression of him was that he was a man that was in charge. He wanted to be in charge, and he was in charge, and if you didn't know that he was in charge he'd tell you. Everyone that I ever met with or talked with or just saw in passing going through his organization, a lot of people, he was clearly the man and was very respectful. Everyone in the organization was, as a matter of fact. Everyone referred to each other as Mr. or Ms. or Mrs. I mean, it was a titled existence, very polite.

³ Depo. H. Dewain Herring dated November 18, 2015 (52:1-25, 53:1-25, 54:1-25, 55:1-25, 56:1-25, Exhibit 8) and December 9, 2015 (400:10-25, 401:1-25, 402: 1-7, Exhibit 8)

But he was -- he was -- he was not -- not a dictator, but he was a -- he was the boss. He was the man in charge and he could express himself very clearly, briefly, sometimes bluntly, and he wasn't really challenged a great deal when he got down to making his point. And he -- I thought he always knew what he wanted. He commanded respect. He didn't demand respect, he commanded respect. There's a difference to me.

And if I might, I will say that the first time I met him personally -- I'd seen him before in concert, but we were in a room a little smaller than this waiting on him. And so he comes in and he's got -- like I say to myself that he -- he made his entrance, and dressed in all black, shoes, pants, shirt, hair fixed to -- you know, I mean, he was an immaculate person, but -- gold medallion and such. But it was like he has arrived. You know, here's the man. And everybody kind of sat up a little bit, came to attention and, if you will, he held court.

It was a very giving, exchanging type thing. I mean, nobody was intimidated, but I thought he -- he knew what he wanted and he went about his business. He didn't tarry.⁴

When further asked about his understanding of Mr. Brown's capacity and ability to execute an estate plan, Mr. Herring stated:

Q. And you indicated that you'd met James Brown several times in this case?

A. Yes, Sir.

Q. Both professionally and then several times socially as well, correct?

A. Well, yes, but -- yes. I mean, it was like at birthdays parties that he would have in Augusta from different times, yes.⁵

...

Q. Okay. And let -- let me rephrase that. What -- what concerns, if any, did you have after those numerous meetings with Mr. Brown about mental capacity?

A. I didn't have any.

Q. What about physical capacity?

A. I didn't have any.

Q. Okay. And in developing Mr. Brown's estate plan were there ever any times that you were concerned about that?

⁴ Depo. H. Dewain Herring November 18, 2015 (78:1-25, 79:1-13)

⁵ Depo. H. Dewain Herring December 9, 2015 (503:25, 504: 1-7)

A. No, Sir.⁶

Finally, when asked if the documents represented Mr. Brown's intent Mr. Herring stated, "Absolutely, Yes."⁷ When asked who had the final say as to the content and final draft Mr. Herring responded, "Mr. Brown...."⁸ When asked who made the final decision to sign the documents, Mr. Herring stated, "He did." (referring to Mr. Brown)⁹

With regard to the in terrorem clause, Mr. Herring stated clearly and convincingly what Mr. Brown's intent was as it related to such clauses. He noted:

Q. Let me ask you this. Based on your understanding of this clause and your understanding of his intent, what would happen if one of the heirs challenged this plan?

A. They should forfeit whatever interest they would have under it. It would be left to them.

Q. Okay. Would that include their decedents as well?

A. Yes, sir.

Q. Okay. So the intent was that it would exclude children and all of their decedents if they challenged?

...

THE WITNESS: Well, if -- yes, sir. And, you know, it would just stand to reason that if the child contest was not provided for and forfeits that child's interest because of that contest there is nothing for that heir to receive.

Q. What about a child's children? Could that child challenge and his children receive it?

...

The Witness: I would think that they would be

⁶ Id. at (504:18-25, 505:1-3)

⁷ Id. at (506:9)

⁸ Id. at (514:17)

⁹ Id. at (516:14)

Q. Would be included or –

A. Defeated. Excluded.

Q. Was that the intent here?

...

The Witness: Yes, sir. A – a contest was a contest, was an affront to Mr. Brown's wishes, and if someone chose to do that they had a choice. You could contest it. If it were possible for you to be – to prevail the law would speak to that. If you did not prevail obviously you would forfeit. And part of the intent was that if you even contested it, period, from the get-go, I mean, initially, that said, okay, I'm going to file this document to this will and I'm out. It was an automatic exclusion, if you will. That was the intent.

Q. And it's your understanding based on years of practice in drafting that this provision does that, that it excludes both child –

A. I created that and drafted that provision and that's what it intended to be and I hope I did a good job with it.¹⁰

The foregoing testimony points to complete and utter lack of undue influence and clear and convincing intent as it relates to the in terrorem clauses. Based on the little bit of discovery that has occurred so far, the Personal Representative and Trustee have no idea whether a good faith challenge with probable cause exists. Worse yet, all parties fail to cite any evidence or facts in the joint motion which would prove that the undue influence claims in this matter were brought in good faith with probable cause. As a result, it is questionable whether a controversy exists that can be settled. Further, such settlement is clearly not just and reasonable in light of the circumstances. Finally, it is disingenuous for either the Personal Representative and Trustee to argue that entering the settlement would be a savings to the Estate or Trust related to litigation since Tommie Rae Hynie Brown's undue influence claim has not been settled and the same discovery and depositions are still necessary.

¹⁰ Id. at (524:15-25, 525:1-2, 4-11, 13-18, 20-25)

Terry Brown also believes the Trustee of the irrevocable Trust in this matter does not have the luxury of a relying on the exception to the enforcement of an in terrorem clause if a beneficiary brings a good faith claim with probable cause. No statutory grounds exist for the Trustee to apply a good faith probable cause exception to an irrevocable trust in South Carolina. The only statutory provisions that relate to in terrorem clauses in South Carolina for trusts are those related to revocable trusts. See. S.C. Code Ann. §62-7-605. Such section does not include irrevocable trusts. The Trust in this matter was clearly an irrevocable trust. As a result, there is no good faith claim with probable cause exception for irrevocable trusts.

“A trust is voidable to the extent its creation was induced by fraud, duress, or undue influence” S.C. Code Ann. § 62-7-406. As a result, any filing against an irrevocable trust would be a breach of the in terrorem clause and must be enforced by the Trustee. Irrevocable trust beneficiaries are not afforded a similar good faith with probable cause exception under the South Carolina law. They must prevail on an action under S.C. Code Ann. § 62-7-406. Otherwise, a contesting beneficiary should be excluded from a trust when they challenge it and their action under S.C. Code Ann. § 62-7-406 fails. The Trustee’s failure to enforce the in terrorem clause in this case would be a breach of his fiduciary duty and must not be allowed by this Court. Even if this Court were to read a good faith exception into the law, the Trustee, or any of the parties for that matter, like the Personal Representative, has put no such evidence forward to invoke the exception to enforcement of in terrorem clauses.

The South Carolina Supreme Court in Wilson v. Dallas specifically addressed the lack of evidence in this matter as it related to the ability of the beneficiaries in this matter to invoke the good faith with probable cause exception to enforcement of in terrorem clauses in the Will and Trust. The South Carolina Supreme Court, in a rather lengthy discussion, noted:

The circuit court's scant references to alleged improprieties in the handling of Brown's will, while troubling, do not bear directly on the issue of whether Brown's desires for the disposition of his estate were overborne to such an extent that the resulting distribution was not the product of his own free will. In particular, although the circuit court focused on the later imprisonment of the attorney who drafted the will, the imprisonment was for a crime totally unrelated to his services as an estate planner. This fact has no bearing on the execution of Brown's testamentary documents and sheds no light on whether Brown's will was somehow overcome at the time he signed the documents finalizing his estate plan.

Similarly, the fact that one provision regarding management fees in the trust could be deemed 'generous' would support at most reformation of the document, but would not justify the complete destruction of Brown's estate plan.

All indications in the record are that Brown was of sound mind and strong physical constitution until the time of his death, as he had only recently returned from touring and was making preparations for future performances when he suddenly became ill and passed away.

It appears Brown painstakingly developed his estate plan over the course of several years, and in various drafts, including the will in dispute here, Brown made it clear that he intended the bulk of his estate to be used for the education of disadvantaged youths, as he had provided for his family members during his lifetime. His estate documents explicitly state that he had named all of those he wished to be the beneficiaries of his estate, and that any further claimants, including future spouses or those purporting to be heirs, were purposefully excluded. Another strong indicator of Brown's intent is his inclusion of no-contest clauses in both his will and trust.

The record contains numerous references to the fact that Brown repeatedly made his intentions known during his lifetime to his family, friends, and business associates, and he had even met with family members not too long before his unexpected death and had reaffirmed his intentions in this regard. Brown had a reputation as a strong-willed individual who did not take orders from others, and he made his desires abundantly clear during his lifetime. We find there is no reasonable basis for the undue influence claim asserted here other than as a means to dismantle Brown's estate plan. The result is to enable those who were disinherited to obtain Brown's assets to the detriment of the charitable entity that Brown so fervently desired. Because he knew that it would be a source of dispute, Brown went to remarkable lengths to protect his right to designate the appropriate legacy for his life's work, including having numerous provisions in his estate documents and informing family members of his intentions in advance. We see no reasonable or substantial basis to support a good faith finding here.

The AG acknowledged during oral arguments in this matter that he undertook no inquiry into the undue influence claims of the Respondents and the circumstances surrounding Brown's execution of his will. (citations omitted)

Wilson v. Dallas, 403 S.C. 411, 437-440 (2013)

As noted above, the South Carolina Supreme Court was particularly troubled by the lack of evidence of any undue influence that would support a claim and allow for settlement of the action at hand. Amazingly, in the almost three (3) years since the issuance of this opinion, there is no more evidence than existed at the time the South Carolina Supreme Court entered its opinion in Wilson v. Dallas. Incredibly, there is actually more evidence that it was clearly the decedent's intent to exclude the beneficiaries if they challenged the documents as noted in the above deposition excerpts. The drafting attorney made this clear and convincing in his deposition of December 9, 2015.¹¹ Unbelievably, after the drafting attorney made it clear that the decedent's intent with the in terrorem clause was to exclude all heirs and their beneficiaries that challenge the will, LSA's counsel began asking questions which could only be described as an attempt to assist the contesting parties with an end run on the in terrorem clause.¹² Such actions directly subverted the decedent's intent and wishes with regard to the in terrorem clauses which were confirmed clearly and convincingly by the drafting attorney, H. Dewain Herring at the December 9, 2015 deposition.¹³

II. Failure to enforce the in terrorem clauses would be a breach of fiduciary duty because it fails to carry out the decedent's intent.

A paramount duty of all Personal Representatives and Trustees is to carry out the intent of the Testator or Settlor. As noted above the Personal Representative and Trustee have a duty to follow the terms of a will and trust in accordance with S.C. Code Ann. § 62-3-703 and S.C. Code § 62-7-804. Both documents contain an "in terrorem" clause. The beneficiaries of both documents have violated the same by filing claims that only some of the beneficiaries and parties now propose to settle. Both documents state that it was Testator's intent to enforce the in

¹¹ Id.

¹² Id. at (541:25, 542:1 through 555:14)

¹³ Id. at (524:15-25, 525:1-2, 4-11, 13-18, 20-25)

terrorem clauses in the event of a challenge to such documents. The Trust goes one step further when it requires the Trustee to “vigorously” enforce such provision. The drafting attorney, H. Dewain Herring, testified at deposition that it was clearly decedent’s intent to have these clauses enforced and all heirs who filed any such challenge were to be disinherited.¹⁴ As such, the Personal Representative and Trustee have a duty to enforce these provisions.

Further, a Personal Representative and Trustee cannot determine whether probable cause exists to challenge a will or trust. This is an issue that is left to a Court as a matter of law if there are no genuine issues of fact or a jury if there are disputed facts. As such, any settlement when there has been a challenge to the Will and Trust documents when all beneficiaries are not in agreement to such settlement would be a violation of the fiduciary duties required of such individuals.

Finally, the drafting attorney, H. Dewain Herring, at deposition on December 9, 2015, indicated that it was the decedent’s intent to exclude all children and such children’s heirs with the in terrorem clauses in the Will and Trust.¹⁵ S.C. Code Ann. 62-2-601 states:

(A) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

(B) Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous, to conform the terms to the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement.

Based on the above law, the evidence presented by the testimony of decedent’s drafting attorney provides clear and convincing evidence that it was decedent’s intent to exclude children and their heirs that challenged the will. The Personal Representative and Trustee

¹⁴ Id.

¹⁵ Id.

have a duty and obligation to uphold this intent (as the Will and Trust directly instruct them to do) which would include seeking reformation of the document to incorporate such intent, if necessary and appropriate. To date, they have failed to do so. In fact, they did exactly the opposite in their line of questing after learning of the decedent's intent, as it related to the in terrorem clause, at deposition.¹⁶

The South Carolina Supreme Court noted that reformation of the documents in this matter was a possibility when it stated: "Similarly, the fact that one provision regarding management fees in the trust could be deemed 'generous' would support at most reformation of the document, but would not justify the complete destruction of Brown's estate plan." Wilson v. Dallas, 403 S.C. at 438. Further, South Carolina has clearly adopted the position that terms of the will can even be unambiguous but still allow for reformation to enforce a decedent's clear and convincing intent.¹⁷ Under S.C. Code Ann. 62-2-601, a will can be reformed if it is proven by clear and convincing evidence that a mistake was made in the will, such that it does not reflect the testator's intent. As a result, in South Carolina extrinsic evidence is admissible for the purpose of rebutting the rules of construction. A drafting attorney's testimony, as we have here, is one of the best types of extrinsic evidence as such individual clearly and convincingly knew the decedent's intent.

The failure of the Personal Representative to address the issue of reformation and intent of the decedent as it relates to the in terrorem clauses in light of the most recent testimony in this matter by the drafting attorney, H. Dewain Herring, is troubling. If ever there was a case where a court should look to the decedent's intent, this case is it. The

¹⁶ Id. at (541:25, 542:1 through 555:14)

¹⁷ For a full discussion on this issue see the article entitled "Coming to Terms with the Uniform Probate Code's Reformation of Wills, 64 S.C. L. Rev. 403 (2012)

beneficiaries who filed an unjustified and groundless undue influence claim have created, to date, NINE (9) YEARS of litigation costs, expense and suffering by the non-contesting heirs. If ever there was a case to enforce the principals of law delineated in S.C. Code Ann. § 62-2-601(B), this case is it. If these principals do not apply in this case, they will never apply in the State of South Carolina. This is particularly true when one considers the fact that Terry Brown, the only non-contesting heir, would be the sole heir named in the Will eligible to receive the personal property under the Will and his children would be two of a much smaller class of possible beneficiaries of the Trust with enforcement of the in terrorem clauses based on the decedent's intent. If this statute was not designed to protect innocent non-contesting parties, Terry Brown fails to see any situation where a party would be protected by the reformation doctrine.

In accordance with Section 62-2-601(B), the Court must interpret the in terrorem clauses to exclude all children and their descendants that challenge the Will and Trust as this was the intent of the decedent which was unmistakably and abundantly clear after deposing the drafting attorney on the issue of the in terrorem clauses. Any other result would be unjust and fail to enforce the decedent's intent. Further, failure to enforce the in terrorem clauses rewards bad behavior by granting the beneficiaries who challenged the Will and Trust a windfall at the expense of the one child and his descendants who supported the Will and Trust. South Carolina law and equity demand a different result.

III. Failure to enforce the in terrorem clauses breaches the Trustee duty to be impartial among the beneficiaries.

S.C. Code Ann. § 62-7-803 requires a trustee to act impartially when it states: "If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests."

Further, a Personal Representative has a duty to act in a manner that is in the “best interests of the successors to the Estate.” In this instance, the failure to enforce the in terrorem clauses in accordance with the decedent’s intent and wishes is not in the best interests of the beneficiaries of the Trust or the successors to the Estate under the Will. Nor is it acting impartially by the Trustee. As a result under the proposed settlement agreement, the beneficiaries who have been nothing but supportive are injured and the ones who committed the bad acts are rewarded. This result cannot and should not occur. The Court has the full power to correct this injustice and should by requiring the Personal Representative and Trustee to enforce the in terrorem clauses and deny the joint motion for settlement.

IV. This Court cannot approve this settlement as there is no good faith claim that results in just and reasonable settlement.

As the South Carolina Supreme Court has already noted once in this matter¹⁸, to support a settlement claim, there must be a good faith controversy and that the effect of the settlement agreement will be “just and reasonable.” S.C. Code Ann. § 62-3-1102 (3) states:

(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement.

As noted above, there is no possible way the proposed settlement is just and reasonable when it injures the one beneficiary and his heirs who have supported the Will and Trust for the last nine (9) years and rewards the heirs who have filed groundless undue influence claims. The South Carolina Supreme Court has given this Court direction and guidance on settlements in this

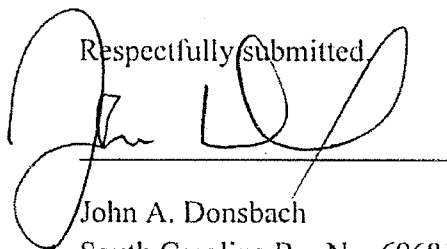
¹⁸ See. Wilson v. Dallas, 403 S.C. 411, 442-447 (2013).

matter.¹⁹ As with the last settlement attempt in this matter, this one fails for similar reasons that the South Carolina Supreme Court has already delineated in its prior ruling of Wilson v. Dallas.

CONCLUSION

Based on the foregoing, Terry Brown respectfully asks this Court deny the Joint Motion for Settlement and further enter an Order directing the Personal Representative and Trustee to properly enforce the in terrorem clauses as they are required to do in accordance with the decedent's intent and terms of the Will and Trust.

This 30 day of December, 2015.

Respectfully submitted


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¹⁹ Id.

Appellant's Motion to Alter, Amend and Reconsider filed March 4, 2016
Pages 462-505

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
IN RE:)
)
The Estate of James Brown a/k/a)
James Joseph Brown)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2008-CP-02-1647

**RESPONDENT TERRY BROWN'S MOTION
TO ALTER, AMEND AND RECONSIDER**

TO: ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as he may be heard, Respondent Terry Brown will move the Court in accordance with Rule 59(a), (b) and (e) and 60(a) and (b) of the South Carolina Rules of Civil Procedure, for an order altering, amending, and/or reconsidering the Order Authorizing Settlement of The Brown Children's Undue Influence Cases and Dismissing Cases With Prejudice ("Settlement Order").

Respondent Terry Brown received notice of entry of the Settlement Order dated February 24, 2016 by electronic mail from the Court on February 24, 2016, a copy of such Settlement Order is attached as Exhibit A.

The Motion is based upon all memorandum of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all common and statutory law, and such other evidence this Court may consider. Additionally, this motion adopts and incorporates all previous filings by Respondents and parties in this matter which include: 1) Respondent's Response to Joint Motion for Settlement dated December 23, 2015 and Amended Response to Joint Motion for Settlement filed on December 30, 2015; 2) all arguments made before the Court on January 14 2016 by Respondents; 3) all Motions to Alter, Amend, and Reconsider and Memorandums, Affidavits and Exhibits in Support of such Motions filed by any and all

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Respondents; 4) Deposition Transcript of Deanna Brown Thomas dated October 31, 2007; 5) Deposition Transcripts Vol. I and Vol II of H. Dewain Herring, Jr. dated November 18, 2015 and December 9, 2015, respectively; 6) Yamma Brown's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents, dated May 23, 2014; 7) Deanna Brown Thomas's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents dated June 2, 2014; Tommie Rae Brown's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents dated September 14, 2015; and 8) Larry Brown's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents dated October 19, 2015.

ARGUMENT WITH LAW AND ANALYSIS

As the Court is more than aware, litigation has been pending in this matter for almost nine (9) years as a result of the groundless undue influence estate challenges and filings made by several of the decedent's children and alleged spouse¹. Specifically, it is these contesting children, that now jointly motion for settlement, who filed groundless undue influence challenges to the Last Will and Testament dated August 1, 2000 ("Will") and Irrevocable Trust dated August 1, 2000 ("Trust") of the decedent. The Will and Trust contain in terrorem clauses that preclude the above named beneficiaries from receiving any assets of the estate or trust.

Terry Brown and his heirs are the only beneficiaries that have consistently and publically supported the Will and Trust for the last nine (9) years. They have never challenged the Will or Trust. As a result of the proposed settlement that the parties now seek to have approved, Terry

¹While this Court has ruled that Tommie Rae Hynie Brown is the spouse of the decedent, Terry Brown along with numerous other Appellants have currently disputed this issue with appeals filed before the South Carolina Court of Appeals.

Brown and his heirs would be injured by the Personal Representative and Trustee if this Court approves the proposed settlement. The Personal Representative and Trustee have a duty to enforce the in terrorem clauses and act impartially among the beneficiaries. Failure to do so rewards the bad acts of the contesting children, their heirs, and alleged spouse who challenged the Will and Trust. These individuals have caused nine (9) years of pain, suffering, litigation and expense in this matter. Rewarding such groundless undue influence claims is not only unjust but unfathomable. Decedent would not "feel good" as a result of these proceedings. To the contrary, this is exactly what the decedent did not want and why in terrorem clause concepts were developed.

The Personal Representative and Trustee have a duty of impartiality and fiduciary duty not to favor or injure beneficiaries of the Estate or Trust. Failing to enforce the in terrorem clauses in this matter, breaches both of these duties and unfairly punishes the only beneficiaries that have not challenged the Will and Trust. Rewarding such action with monetary compensation and then placing the challenging heirs back in the same position as if they had never challenged the estate plan with the only non-contesting beneficiaries is unconscionable and legally indefensible.

LEGAL ANALYSIS

James Joseph Brown ("Mr. Browns") died Christmas day 2006. Mr. Brown left a Will and Irrevocable Trust. Last Will and Testament dated August 1, 2000 ("Will") and Irrevocable Trust dated August 1, 2000 ("Trust") which were very specific as to Mr. Brown's intentions for the disbursement of his assets.

The Will, dated August 1, 2000, devised all of his personal and household effects to six adult named children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Darryl J. Brown, Larry Brown and Terry Brown. Mr. Brown left the remainder of his estate to The James Brown 2000 Irrevocable Trust via a pour-over provision in his Will. Brown created the 2000 Irrevocable Trust under separate agreement, also dated August 1, 2000, as part of his estate plan to provide financial assistance for the education of his grandchildren and disadvantaged youths.

Upon Mr. Brown's death, the principal and income contained in the Trust, as augmented by Mr. Brown's General estate, was to be divided, by its terms, into two "shares" or subtrusts:

- (1) The Brown Family Educational Trust ("Family Trust"), which was capped in the amount of \$2 million for tax purposes and designated for the education of Mr. Brown's grandchildren; and
- (2) The James Brown "I Feel Good" Trust ("Charitable Trust"), which Mr. Brown declared "shall be used solely for the tuition, educational expenses, and financial assistance of . . . poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia."

Mr. Brown's Will and Trust each contained a no-contest clause, which provided that any beneficiary who challenged the Will or the 2000 Irrevocable Trust "shall forfeit his or her entire interest thereunder." Mr. Brown noted in both documents that the persons described therein, i.e. the six named children and their legitimate issue, comprised "the entire class . . . acknowledge[d] to be [his] heirs and issue." Mr. Brown expressly disavowed any other potential beneficiaries, stating, "I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not." Mr. Brown stated any person not provided for in his Will or Trust "whether or not claiming to be a beneficiary, party in interest, or

otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of [his] estate as he herewith disclaims and disinherits any such person.”

Mr. Brown stated that any challenges by such persons to the disposition of his estate or the validity of the documents would “be considered an affront to [his] wishes,” and “shall be vigorously challenged as such by his fiduciaries.”

On December 21, 2007, five of the six adult children Mr. Brown named in his Will, along with their children, brought actions to set aside the Will and Trust so that Mr. Brown’s estate would pass to them directly, intestate, based on undue influence. Other children, not named in Mr. Brown’s will also brought actions so that Mr. Brown’s estate would pass to them directly, intestate, based on undue influence. Respondent Terry Brown refused to bring action against his father’s Will and Trust and fired the attorney representing the contesting children prior to them instituting the action. Respondent Terry Brown wanted his father’s wishes as outlined above to be honored.

The Honorable Court should reconsider, alter and/or amend its ruling for the following reasons:

1. This Honorable Court erred in determining that the Settlement Order was approved in accordance with South Carolina Code §62-3-105 and that South Carolina Code §62-3-1101 did not apply. See. Settlement Order, p. 2; Wilson V. Dallas, 403 S.C. 411 (2013). The South Carolina Supreme Court in Wilson v. Dallas, clearly determined that any settlement agreement reached involving an estate controversy had to be approved in accordance with South Carolina Code §62-3-1101. This case clearly involves the settling of undue influence claims and

other issues related to an estate controversy. As such, it was error for this Court to determine that South Carolina Code §62-3-105 rather than South Carolina Code §62-3-1101 applied.

2. The Honorable Court erred when it determined that South Carolina Code §62-3-1101 did not apply because the Settlement Order would only be binding on the moving parties when in fact the Settlement Order directly impacted the inheritance rights of Respondent Terry Brown (a non-moving party) by affirming his siblings rights to share in the personal property of the estate and approving avoidance of the in terrorem clauses in both the Will and the Trust which is the settlement of an estate controversy or item related to an estate that requires approval under South Carolina Code §62-3-1101. Contrary to this Honorable Court's contention in its Settlement Order, this ruling does amend or change the distribution schemes in this estate by placing all of the siblings back in a position to receive personal property under the will and determining that the in terrorem clause will not be enforced. See Settlement Order p. 5-7. As a result of failing to comply with South Carolina Code §62-3-1101, the Settlement Order approved by this Court is void. See Wilson v. Dallas, 403 S.C. 411, 426 (2013) (citing In re Estate of Riley, 228 Ariz. 382, 266 P.3d 1078, 1080 (Ariz. Ct. App. 2011)).

3. This Honorable Court erred by focusing on alleged bad character of the trustees and their compensation as opposed to whether contesting children provided evidence of undue influence that Mr. Brown did not intend to leave his personal and household effects to six adult named children and the remainder of his estate to The James Brown 2000 Irrevocable Trust via a pour-over provision in his Will as part of his estate plan to provide financial assistance for the education of his grandchildren and disadvantaged youths. There is no evidence before the court

or in the record that this was not Mr. Brown testamentary intent. In fact, the drafting attorney and contesting children confirmed that was Mr. Brown's intent.² It was error to rule otherwise.

4. This Honorable Court erred in not considering Deanna's deposition wherein she concurred that it was her father's intent to leave his estate to provide financial assistance for the education of his grandchildren and disadvantaged youths. Deanna provided a deposition on October 31, 2007 less than two (2) months prior to contesting her father's Will and Trust on the ground of undue influence seeking for the Will and Trust to pass to her and her siblings intestate and not to provide financial assistance for the education of his grandchildren and disadvantaged youths as Mr. Brown wished. Deanna, in her deposition, only disputed who was appointed trustees. As the following testimony reflects, she did not object to the terms of the will or trust as not being her father's wish, desire and intent and confirmed Mr. Brown was of sound mind when the documents were executed:

Q. Do you understand that to have been the last will and testament of your father?

A. Yes

Q. Do you believe your father had full capacity when he executed that document?

A. Yes

Q. Do you have any reason to believe that he did not have full capacity when he executed his last will and testament?

A. Not to my knowledge.

Q. Do you have any problem with the will?

A. No, I don't have a problem with the will, no.

² Deanna Depo, pages 14 through 23; 56 through 58; 61 through 66; 147 through 148; Larry Brown's Responses to LSA Ints. and RFP Response 10 (4); Yamma Brown's Responses to LSA Ints. and RFP Response 10(4); Depo. H. Dewain Herring dated November 18, 2015 (52:1-25, 53:1-25, 54:1-25, 55:1-25, 56:1-25, Exhibit 8, (78:1-25, 79:1-13)) and December 9, 2015 (400:10-25, 401:1-25, 402: 1-7, Exhibit 8, 524:15-25, 525:1-2)

Q. Do you—is it within your interest to follow your father's wishes as are contained in the will?

A. Yes³

Q. Do you have any—can you articulate any other problem you have with the trust document other than the decision your father made as to the three trustee?

A. No

Q. Other than the selection that your father made of Cannon, Bradley and Dallas as trustees, are you willing to cooperate with all of the terms of the James Brown Irrevocable Trust?

A. I can't say fully, but most of, yes.

Q. What parts of the James Brown irrevocable trust would you not want to cooperate with other than the selection of the trustees?

A. Other than that—

Q. Yes

A. —I can't think of anything right now.⁴

Q. You're aware of an audiotape that's been given to the news?

A. yes

Q. Have you heard the audiotape?

A. yes

Q. Do you believe that audiotape is in fact your Dad's voice?

A. Yes⁵

Q. In that tape he talks about his desires for his legacy and his estate; is that correct?

A. He mentions that he wants to see poor children taken care of and given an opportunity that he didn't have. . . .

³ Deanna Depo, 16: 5-19

⁴ Id. at 22: 2-16.

⁵ Id. at 56.

Q. Do you have any disagreement with seeing his words of looking out for poor children implemented?

A. No, I do not.⁶

Q. Do you believe that the last will and testament that you saw in December of 2006 does fulfill what he represented to you that you and the other children would be taken care of?

A. Yes⁷

* * *

Q. Let's just say what do you want to see the Trust to be doing right now?

A. Providing the educational money for his grandchildren and a criteria put into place for needy children.⁸

* * *

Q. Just thinking out loud, who do you think would be best to carry out these wishes?

A. Other than me and my brothers and sisters, I don't know.

Q. Would that be your preference that the brothers and sisters carry it out?

A. I know that – I know that we want what Dad wanted. And we know these children can be blessed and that's who – you know, that's who should be blessed, people who can't afford it .⁹

* * *

Q. You said your father was a generous man.

A. Yes

Q. That's certainly clear. What was his heart on the topic of education for poor people, poor children?

A. He wanted to be able to assist poor children getting an education.¹⁰

⁶ Id. at 57:3-16.

⁷ Id. at 65: 14-18.

⁸ Id. at 155: 7-12.

⁹ Id. at 148: 17-25, 149: 1.

¹⁰ Id. at 146: 6-11.

5. This Honorable Court erred in not considering the massive damage caused by the Will and Trust contests over the last nine (9) years when it approved a settlement that unconscionably rewarded the contesting beneficiaries in direct contradiction of the directives contained in James Joseph Brown's Will and Trust. There can be no greater example of the desirous effect of an in terrorem clause. Such clauses are there to prevent wasteful litigation seeking to destroy the testator's intent. This Court is fully aware of the extent of the litigation, the massive expense taxed to the estate and Trust, not to mention the uncountable nameless, faceless disadvantaged children whose lives were forever changed because the contesting children desired to destroy Mr. Brown's legacy and testamentary intent and instead direct the financial windfall to themselves. They now seek to settle for a pittance and receive according to the Will as if nothing ever happened. Additionally this Court should acknowledge the admitted fact that the contesting children have taken no depositions, asked no questions of the Will and Trust drafting attorney, provided no documentation supporting their position and merely provided uncorroborated allegations in interrogatory responses.

6. This Honorable Court erred in not considering the admittedly limited discovery performed by the Personal Representative and Limited Special Administrator, Trustee and Limited Special Trustee. There was only one deposition taken, however, the settlements were executed prior to its taking. The contesting children have neither taken any depositions nor made any attempt to schedule depositions and merely provided interrogatories filled with allegations.¹¹ No actual evidentiary documents have been submitted into evidence by the contesting children, the PR/Trustee, or LSA/LST supporting undue influence and probable cause of the same.

¹¹ Deanna, Yamma and Larry Responses to LSA Req. for Int. and RPD

7. It was error for this Honorable Court to allow the testimony of Louis Levenson, Esq. ("Levenson") and rely on his testimony in support of the Settlement Order on numerous grounds:

- a. Allowing his testimony was a violation of South Carolina Rules of Civil Procedure 6(d) as no affidavit of Levenson was presented with the Joint Motion alerting Respondent to the fact that Levenson would be testifying at the hearing and thereby giving Respondent an opportunity to provide opposing affidavits or prepare for such testimony ("Ambush Testimony"). This was an abuse of discretion.
- b. Allowing testimony of Levenson was a violation of the SCACR 407 (3.7) as he is still counsel of record and an advocate in this matter ("Party Attorney Biased Testimony"). It was error not to disqualify him as a witness at the time of objection. As noted in comment 2 to such rule "The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation." As such, Counsel's objection to Louis Levenson testifying should have been sustained.
- c. Allowing the testimony of Levenson without: 1) any prior notice of such testimony; 2) adequate opportunity to prepare or be heard; 3) the right to introduce evidence in rebuttal of a "surprise" witness; 4) the right to **meaningfully confront and adequately** cross examine a witness was a violation of both substantive due process and procedural due process in accordance with S.C. Rule of Civil Procedure 6(d), U.S. Const. Amend. XIV, §1, and S.C. Const. Art. I, §3. The result was prejudice to Respondent as this

Court has relied almost solely on such testimony in its Settlement Order. Allowing the testimony of Levenson, and then relying on it, resulted in a taking of Respondent's property rights in the form of a reduced inheritance by not requiring the fiduciaries in this matter to enforce the in terrorem clauses in the Will and Trust. As a result, such actions deprived Respondent of due process to have a property right (i.e. his right to an inheritance) adequately adjudicated and were error("Due Process Violation Testimony"). See. Moore v. Moore, 376 S.C. 467 (2008); State v. Brown, 178 S.C. 294 (1935); South Carolina Dep't of Health & Environmental Control v. Armstrong, 293 S.C. 209 (1987); State v. Fussell, 299 S.C. 162 (1989) (making findings without evidentiary support is an abuse of discretion).

- d. The testimony of Levenson was inadmissible hearsay which was relied on by this Court in making its determination in the Settlement Order which was prejudicial to Respondent and an abuse of discretion("Hearsay Testimony"). See. Allegro, Inc. v. Scully, 409 S.C. 392 (2014).
- e. Allowing Levenson to testify in narrative format was a violation of due process and SCRPC Rule 43(h) related to the examination of witnesses("Narrative Testimony"). There was no counsel examining Levenson. As a result, a proper record based on direct, cross-examine and objections was unable to be adequately created. Further, his narrative testimony was clearly prejudicial as this Court spent five pages of the twenty pages of its Settlement Order referencing the same. Such result was error and prejudicial to Respondent.

- f. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony that Mr. Levenson testified it became apparent to his clients in December 2007 that certain people who were close to Decedent, and who also held confidential relationships with him,¹² were involved in preparing documents for Decedent to sign.¹³
- g. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson testified that some of the witnesses he interviewed were also aware of contracts, some oral and some written, prepared by Messrs. Cannon, Dallas, and Bradley which purported to give them each five percent of Decedent's gross revenue.¹⁴
- h. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Mr. Levenson was informed there was a pattern of Messrs. Cannon, Dallas, and Bradley asking Decedent to sign blank documents without reading them.¹⁵
- i. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay

¹² January 14, 2016 Hearing Transcript, 81:5-10.

¹³ Id. at 55:2-16.

¹⁴ Id. at 56:10-15.

¹⁵ Id. at 55:23; 56:1.

Testimony and Narrative Testimony regarding his [Levenson's] discussions with Tommie Rae Brown, he was informed Ms. Brown had allegedly observed Decedent signing documents during instances when he was under the influence of certain controlled substances.¹⁶

- j. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Ms. Brown also told him [Levenson] that Messrs. Cannon, Dallas, and Bradley would visit Decedent at home during times of the day when they allegedly knew he was under the influence of substances in order to get him to sign documents.¹⁷
- k. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony that Ms. Brown accusations were purportedly corroborated by Ms. Elif Crawford, Decedent's personal assistant or secretary.¹⁸
- l. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when he testified his clients were informed and believed at the time they filed the subject Petitions that

¹⁶ Id. at 63:7-19.

¹⁷ Id.

¹⁸ Id.

Decedent did not read many of the documents he signed and/or was incapable of understanding or reading the documents due to his altered condition.

1. As aforementioned, Deanna in her deposition just a month and a half prior to the filing of the undue influence claim testified that she believed her father to be of sound mind when he executed the Will and Trust.

m. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony that such information, when set alongside information Levenson obtained from Dr. Richardson and Loric Yanel, painted a troubling picture from the perspective of Levenson's clients in 2007. Dr. Richardson informed Levenson about Decedent's commitment to a facility in Atlanta, Georgia for alleged substance dependence.¹⁹ Mr. Yanel further indicated Decedent's European tour ended prematurely in July 2000 because of Decedent's behavior during the tour caused by his alleged substance dependence.²⁰

n. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson testified that after 1999, but before approximately 2002 or 2003, large sums of money were being transferred from Decedent's Morgan Stanley account upon the sole

¹⁹ Id. at 49:17-20.

²⁰ Id. at 49:9-16.

authorization of Mr. Cannon.²¹ Levenson stated that by 2002, Decedent's Morgan Stanley account had lost significant value due to transfers by Mr. Cannon.²² These transactions were believed by Levenson and his clients, to have all occurred under the direction of Mr. Cannon and without the direct knowledge of Decedent.²³

- o. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson also recounted details regarding alleged substituted and/or altered documents.²⁴ For example, Mr. Dallas testified during a hearing on February 8, 2008 before this Court that a document attached as Exhibit B to Decedent's 2000 Irrevocable Trust was a document Mr. Dallas himself substituted *after* Decedent's death.²⁵ This testimony corroborated the belief by Mr. Levenson's clients that Decedent's "confidantes" were substituting their judgment for that of Decedent and that Decedent had been unduly influenced.

1. As aforementioned, Deanna in her deposition just a month and a half prior to the filing of the undue influence claim testified that she did not contest or question her father's testamentary intent to leave his

²¹ Id. at 58:16-24.

²² Id. at 58:25; 59:7.

²³ Id. at 59:8-13.

²⁴ Id. at 60:22; 61:20.

²⁵ Id. at 60:25; 61:4.

personal and household effects to six adult named children and the remainder of his estate to The James Brown 2000 Irrevocable Trust as part of his estate plan to provide financial assistance for the education of his grandchildren and disadvantaged youths.

- p. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson further testified regarding discussions he had with his own clients, including, in 2007, Terry Brown and Daryl Brown.²⁶ His clients allegedly informed Levenson their father was pathologically afraid of going to jail for tax evasion.²⁷ Decedent's alleged fear of going to jail for tax evasion was purportedly encouraged or unnecessarily emphasized by Messrs. Cannon, Dallas, and Bradley.²⁸ Levenson stated his clients believed Messrs. Cannon, Dallas, and Bradley were, on the one hand, informing Decedent he would likely go to jail for tax evasion while, at the same time, allegedly stealing money from him, and not reporting it on their own taxes.²⁹

1. Deanna in her deposition just a month and a half prior to the filing of the undue influence claim testified that she was unaware of any tax issues

²⁶ Id. at 54:22-25.

²⁷ Id. at 61:21; 63:6.

²⁸ See. id.

²⁹ Id.

her father had. To which client is Levinson assessing such uncorroborated statements.

Q. Were you aware of any difficulty he had with the IRS?

A. No, not—not to my knowledge. (Denna Depo, 111:13-15).

q. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson further testified regarding his clients' concern about Decedent's engagement of Mr. H. Dwaine Herring, Esquire, for the purpose of preparing Decedent's 1999 and 2000 Will and Trust.³⁰ Levenson testified his clients' were concerned because Mr. Herring had not been a lawyer their father had traditionally used with respect to the management of his business or legal affairs.³¹ Levenson testified his clients believed Mr. Herring was an attorney who had been referred to Decedent through Messrs. Dallas or Cannon and therefore the circumstances of his employment by Decedent were suspicious to Petitioners.³² This does not provide grounds for probable cause.

³⁰ Id. at 69:10-14.

³¹ Id. at p. 71:7-19; 69:16; 70:18 (stating Decedent had previously retained Joel Katz, Jay Ross, and Leon Friedman and testifying: "there's nothing wrong with a person getting their own lawyer totally different from any lawyer they've ever used.") Id. at 88:20; 89:5.

³² Id. at 70:18-21.

- r. This Honorable Court erred in relying on Louis Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Mr. Levenson testified he interviewed Mr. Herring in 2007³³ and learned that although Mr. Herring had communicated with Decedent himself on a few occasions, Messrs. Cannon, Dallas, and/or Bradley were present when those conversations took place, further corroborating Petitioners' belief that their father had been unduly influenced with respect to signing the 1999 and 2000 Wills and Trust Agreements.³⁴ At least Deanna, Larry and Darryl agreed with and supported their father's intent to help educate his grandchildren and disadvantaged youths.
- s. Allowing the Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony of Levenson and then relying on it resulted in a taking of Respondent's property rights in the form of a reduced inheritance by not requiring the fiduciaries in this matter to enforce the in terrorem clauses in the Will and Trust. See. U.S. Const. Amend. XIV, §1, and S.C. Const. Art. I, §3.

8. This Honorable Court erred when it failed to consider the LSA made no effort to corroborate the allegations made by the contesting children. In fact, Petitioners specifically

³³ Id. at 75:12-13.

³⁴ Id. at 84:5-18; 86:10; 88:18.

acknowledged to the Court that the Levinson testimony was just that, ALLEGATIONS not evidence.³⁵

9. This Honorable Court misconstrued Respondent's argument when it determined that Respondent Terry Brown sought compensation for his support of the Will and Trust. See Settlement Order p. 6. Respondent's position was to require the respective fiduciaries to perform their fiduciary duties and uphold the in terrorem clause as the documents specifically and explicitly require. The will states: "Any such alleged claim shall be considered an affront to my wishes and **shall be challenged as such by my fiduciaries.**" The Trust is even more emphatic when it states: "Any such alleged claim shall be considered an affront to Grantor's wishes and **shall be vigorously challenged as such by his fiduciaries.**" These clauses place unequivocal duties on the Personal Representative and Trustee to defend the in terrorem clauses.

10. This Honorable Court erred in footnote 10 of the Settlement Order when it determined that Respondent would be in violation of the in terrorem clause for signing the 2009 settlement agreement that was struck down as illegal by the South Carolina Supreme Court. As a result, such settlement agreement failed as it was illegal, lacked consideration and was rescinded thereby making the settlement agreement void ab initio and a nullity. See Crowe v. Cherokee Wonderland, Inc., 379 F.2d 51 (1967) (failure of consideration nullifies a contract); Groesbeck v. Marshall, 44 S.C. 538 (1895) (contract based on illegal consideration is null and void); Rice & Santos, Inc. v. Jones, 279 S.C. 201 (1983) (rescission occurs where the parties are returned to the status quo). Further, execution of the 2009 settlement agreement logically cannot be a violation of an in terrorem clause because such a result would mean that no document involving an in terrorem clause could ever be settled if litigation arose over estate documents because signing a

³⁵ Id. at 74:1-7.

settlement agreement would violate the clause. Additionally, the other siblings, who have been rewarded by this Court's Settlement Order, signed the same 2009 settlement agreement. Footnote 10 of this Court's Settlement Order places the Trustee and Personal Representative in quandary (which proves that it is incorrect). If signing the 2009 settlement agreement is a breach, the Trustee and Personal Representative should never have filed the motion that led to the Settlement Order. They should have instead pursued all of the siblings in violation of the in terrorem clause. Failure to do anything else would be a breach of fiduciary duty. That means this Settlement Order approving the settlement with the five (5) children and their heirs is a breach if this Honorable Court's footnote 10 is correct. As a result, such assertion cannot be correct. Signing a settlement agreement is not a breach of an in terrorem clause. This Honorable Court clearly erred when it determined that signing a settlement agreement was a breach of an in terrorem clause. Additionally, this Honorable Court erred in the interpretation of the enforcement of the in terrorem clause. The LSA has consistently argued that only the challenging parties would be impacted by the in terrorem clause (Depo. H. Dewain Herring December 9, 2015 (541:25, 542:1 through 555:14)). Forlando Brown and Ramunzo Brown, Terry Brown's children, who are also represented by Respondent's counsel, never signed a settlement agreement or filed a challenge in this matter. Based on the LSA's consistent interpretation of the in terrorem clauses, the LSA should be defending them as they are Terry Brown's heirs who would take if he did indeed "challenge" the estate plan. Failure to do so is breach of fiduciary duty, duty of impartiality and duty of loyalty. See S. C. Code §62-7-804 and §62-3-703. The Court should rectify such breaches by requiring the enforcement of these clauses and it was error not to do so.

11. The Court erred when it determined that Petitioners' had probable cause to file the undue influence claim as there is actually no evidence as to all of the elements of undue

influence. Undue influence requires the proof that the influence destroyed the free agency of the maker and prevented the maker to exercise judgment and free choice. See. Wilson v. Dallas, 403 S.C. 411, 437 (2013). Further, it requires actual force and coercion. Id. Inferences are not enough. Id. Finally, and most importantly, the influencing individuals must have replaced the Testator's intent and desires with their own. Id. The evidence presented in this matter does not reflect these elements were ever met or occurred at any point in time. Further, the evidence that was relied on by this Honorable Court was inadmissible on several grounds chief among them is that it is hearsay evidence that clearly prejudiced the Respondent as this Honorable Court relied solely on such testimony. See. Order p. 10-14. This Honorable Court and Petitioners specifically cited to no other evidence in the record in support of the contention that probable cause existed. As such, this Honorable Court's determination that probable cause existed is error as there is no proof that there was probable cause as to all of the elements of undue influence.

12. The Court erred when it determined that a probable cause exception exists for irrevocable trusts in South Carolina. See. South Carolina Code §62-3-905 and §62-7-605 (dealing with wills and revocable trusts). No such corresponding statute exists for irrevocable trusts, which is the type of trust at issue in this matter.

13. This Honorable Court erred in determining that there was probable cause to challenge the documents. In fact, the evidence reflects that no undue influence occurred and therefore probable cause did not exist.³⁶

³⁶Deanna Depo, pages 14 through 23; 56 through 58; 61 through 66; 147 through 148; Larry Brown's Responses to LSA Ints. and RFP Response 10 (4); Yamma Brown's Responses to LSA Ints. and RFP Response 10(4); Depo. H. Dewain Herring dated November 18, 2015 (52:1-25, 53:1-25, 54:1-25, 55:1-25, 56:1-25, Exhibit 8, (78:1-25, 79:1-13)) and December 9, 2015 (400:10-25, 401:1-25, 402: 1-7, Exhibit 8, 524:15-25, 525:1-2)

14. Failure to continue the enforcement of the in terrorem clause by the Personal Representative and Trustee, which specifically and explicitly require such enforcement, was a breach of fiduciary duty by such fiduciaries that this Honorable Court should have remedied by requiring enforcement of the same. See, S. C. Code §62-7-804 and §62-3-703; Doolittle v. Exchange Bank, 241 Cal. App. 4th 529 (2015) (A Trustee is under a duty to enforce an in terrorem clause in a trust when such duty is specifically required by the trust language until such time as a party challenging meets the burden of proof that they had probable cause to bring the claim. The court also ruled that the trust should pay for the defense of such challenge regardless of the economic disadvantage that might be placed on different beneficiaries of the trust because it was the Settlor's express directive in the trust terms to enforce the in terrorem clause.)

15. As noted hereinabove, it was error for this Court to determine in footnote 55 that Respondents had an adequate and meaningful opportunity to cross-examine Louis Levenson. No notice was given that an attorney acting as an advocate in the case would become a witness. No opportunity given for counsel to adequately and meaningfully prepare for cross-examination or prepare rebuttal or other evidence to use in cross-examination. In short, due process failed. Counsel raised this issue as well as many others related to the process. See, January 14, 2016 Hearing Transcript, 41:6-17; 43:25; 44:1-8; 48:12-25; 51:1-8; 52:6-25; 53:1-3; 70:22-25; 71:1-3; 85:12-17; 91:2-11.

16. Approval of the Settlement should be voided as it is not reasonable and just in accordance with S.C. Code §62-3-1102(3).

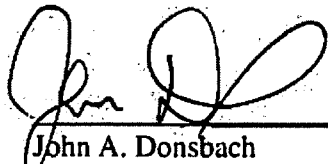
17. It was error to allow Mr. Medlin to be involved in the proceeding in any fashion as this Honorable Court determined that he did not have standing to be involved in the motion hearing. See, Id. at 100:1-25; 101:1-25.

For the foregoing reasons, Respondent Terry Brown respectfully requests that this Court grant this Motion to Alter, Amend and Reconsider, deny Petitioners' Motions.

Under Rule 11, SCRCP, the undersigned affirms consultation with opposing counsel would serve no useful purpose.

This 4th day of March, 2016.

Respectfully submitted.



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO. 2008-CP-02-1647
	)	
IN RE:	)	ORDER AUTHORIZING SETTLEMENT OF
	)	THE BROWN CHILDREN'S UNDUE
THE ESTATE OF JAMES BROWN	)	INFLUENCE CASES AND DISMISSING
A/K/A JAMES JOSEPH BROWN	)	CASES WITH PREJUDICE
	)	

This matter is before the Court on a joint motion filed by the Estate of James Brown ("Estate") and James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000 ("Trust"), by and through its fiduciaries, Russell L. Bauknight, Personal Representative and Trustee ("Bauknight"), and David C. Sojourner, Jr., Limited Special Administrator and Limited Special Trustee ("Sojourner") (collectively, the "Fiduciaries"), and Petitioners Tonya Brown, a/k/a Sarah LaTonya Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, and Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar ("Petitioners") (collectively the "Moving Parties").

The Moving Parties request an order confirming the authority of the Estate and Trust to enter into two settlement agreements with Petitioners which would dispose of Petitioners' challenges to the Will and Trust (the "Settlement Agreements"); entering the Settlement Agreements into the record, in satisfaction of Rule 43(k), SCRCP; dismissing with prejudice all challenges to the Will and Trust filed by Petitioners, as amended, pursuant to Rule 41(a)(2), SCRCP; and dismissing Petitioners as parties to the above-captioned action.¹

¹ This Order does not dispose of all claims to set aside the Will and Trust, as Tommie Rae Brown also has Petitions to Set Aside Informal Probate and to Set Aside the Trust Agreement, filed on December 20, 2007, which are not resolved by the Settlement Agreements and will continue under this case caption.

Daryl Brown and Terry Brown were the only parties who filed oppositions to the Joint Motion. See Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015, and Amended Response of Terry Brown, filed on or about December 30, 2015.

The Court conducted a hearing on the Joint Motion on January 14, 2016 in Aiken, South Carolina. During the hearing, the Court heard oral argument from counsel for all parties and received sworn testimony from counsel for Petitioners, Mr. Louis Levenson.

DISCUSSION

I. BAUKNIGHT AND SOJOURNER, AS REPRESENTATIVES OF THE ESTATE AND TRUST, HAVE AUTHORITY TO ENTER INTO THE SETTLEMENT AGREEMENTS.

The Moving Parties sought confirmation pursuant to S.C. Code Ann. Section 62-3-105² that Mr. Bauknight, as Personal Representative and Trustee, and Mr. Sojourner, as Limited Special Administrator and Limited Special Trustee, had authority to enter into the Settlement Agreements on behalf of the Estate and Trust.

On October 1, 2013, the Court appointed Messrs. Bauknight and Sojourner as fiduciaries of the Estate and Trust (the "Appointment Order"). The Appointment Order does not expressly list a power to settle claims; however, the Court finds such power is inherent in both the Appointment Order and applicable legal authority.³ In addition, Decedent's Irrevocable Trust Agreement, Article X(19), authorizes the trustee, in his fiduciary discretion, to "compromise,

² This statutory provision enables estate representatives, including personal representatives and trustees, to request rulings which assist in the administration of estates and trusts. The Court finds the Joint Motion is appropriately asserted under this statute.

³ See S.C. Code Ann. § 62-3-715(8) (authorizing a personal representative to "settle claims" against the estate); S.C. Code Ann. § 15-51-42(A) ("Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions"); and S.C. Code Ann. § 62-7-816(14) (granting trustees with the power to "pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust").

adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.” The Court finds there are no other fiduciaries or representatives with capacity to enter into agreements on behalf of the Estate and Trust. Therefore, the Court confirms that Messrs. Bauknight and Sojourner are duly authorized to enter into the Settlement Agreements on behalf of the Estate and Trust.⁴

This Court confirms that Messrs. Bauknight and/or Sojourner are empowered to bind the Estate and Trust to the subject Settlement Agreements, as well as resolve, in whole or in part, other Will and Trust Challenges, so long as the fiduciary determines such agreements to be appropriate and in the best interests of the Estate and Trust.⁵

II. THE SETTLEMENT AGREEMENTS ARE IN THE BEST INTERESTS OF THE ESTATE AND TRUST.

Based on the Court’s review of the pleadings, affidavits of record, transcripts of depositions, and discovery submitted by the parties, and after considering the testimony of Louis Levenson, Esquire, counsel for Petitioners, the Court finds the Settlement Agreements to be appropriate and in the best interests of the Estate and Trust.

As a preliminary matter, the Settlement Agreements fully resolve pending claims that, if successful, would significantly alter or invalidate Decedent’s 2000 estate plan. The Court is informed that discovery is ongoing—limited written discovery has been conducted between the parties and certain depositions have been taken with others being scheduled. The Parties have informed the Court that additional discovery will be time-consuming and extremely expensive.

⁴ The Court notes that because the Joint Motion was not filed pursuant to Section 62-3-1101 of the Probate Code, and the Court is not being asked to “approve” the Settlement Agreements, the Settlement Agreements are not binding on parties other than the Moving Parties.

⁵ Messrs. Bauknight and Sojourner are free to seek guidance from the Court pursuant to S.C. Code Ann. § 62-3-105 with regard to future settlement agreements, but are not required to do so.

In addition, the LSA pointed out during the hearing that if Petitioners were successful on their claims, and Decedent's 2000 Will and Irrevocable Trust Agreement were set aside or invalidated, the Court would then have to consider the enforceability and validity of Decedent's prior estate plans, such as the 1999 estate plan consisting of a will and revocable trust agreement. Trying the current undue influence cases, seeking to set aside the 2000 estate plan of Decedent, and if successful, subsequently seeking to enforce the in terrorem clauses against Petitioners, will cost the Estate and Trust substantial legal fees, will require lengthy discovery, and will involve at least a week, if not more, of judicial resources for trial. If the 2000 Will and Trust are overturned, additional estate litigation involving Decedent's prior estate plans will result. Undoubtedly, additional trials on the enforceability and validity of prior estate plans, such as Decedent's 1999 estate plan, will be as costly if not more so. Settlement at this stage saves substantial estate and trust assets and eliminates all risks to the Estate and Trust that Petitioners might succeed in setting aside Decedent's estate plan.

The Settlement Agreements also have the beneficial effect of eliminating challenges asserted by Petitioners, Decedent's children, who have intimate and deep personal knowledge of Decedent, his testamentary intentions, and the manner in which he operated his businesses. The Estate and Trust's settlements with these Petitioners are also valuable because of Petitioners' close connection to the local community and personal relationships with key witnesses. Furthermore, Petitioners have agreed, through the express terms of their Settlement Agreements, to support the LSA in his ongoing defense of the Estate and Trust in other still-pending Will and

Trust Challenge actions.⁶ Petitioners' support is in addition to the already-existing, and acknowledged,⁷ support of the Estate and Trust by Terry Brown and Daryl Brown.

For these reasons, the Court finds the Settlement Agreements are in the best interests of the Estate and Trust to the extent they secure a prompt, certain, and favorable resolution of the Petitioners' challenges to the validity of the Will and Trust, save potential time, expenses, and resources of the Estate and Trust, and reduce the expenditure of judicial time and resources. The Estate and Trust's one-time payment of \$37,500 to each Petitioner, while undisputedly valuable to Petitioners, is easily justified when compared to the foreseeable litigation costs and risk to the Estate and Trust if these actions were tried before a jury.

Daryl Brown argued in his opposition to the Joint Motion that the Settlement Agreements are unfair because they purportedly reward children of Decedent who opposed Decedent's will and trust instrument whereas Daryl "gets nothing" in spite of his "support" for these instruments and aide to the Estate and Trust since Decedent's death.⁸ Daryl Brown asked "[a]t a minimum," for "payment equal to that given to [Petitioners]."⁹ Because this Court does not have authority in the context of the Joint Motion before the Court to order the Estate and Trust to compensate Daryl Brown for his alleged support¹⁰ of Decedent's testamentary instruments, the Court

⁶ See Tommie Rae Brown's undue influence action (C/A No. 2008-CP-02-01647); Tommie Rae Brown's elective share and omitted spouse actions (C/A Nos. 2013-CP-02-02849 and -02850); and James Brown II's omitted child claim (C/A No. 2013-CP-02-02851).

⁷ See Transcript of Hearing, January 14, 2016, at p. 16, lines 5-11, p. 24, line 24 – p. 25, line 3, p. 26, lines 11-19; p. 27, lines 7-15; p. 29, lines 3-15

⁸ See Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015 ("[T]he proposed settlement rewards bad behavior and punishes those named in the will who supported the will.").

⁹ *Id.*

¹⁰ The Court notes that Daryl Brown contested the validity of the 2000 Will and Trust in this litigation as a named plaintiff. Daryl and Terry Brown were both parties to the 2009 settlement agreement, which purported to overturn the 2000 Will and Trust and replace that estate plan with a different one. Daryl and Terry Brown also advocated

declines to address Daryl's request for compensation as it appears improper. For that same reason, Terry Brown's arguments, to the extent they seek compensation for his past support of the Will and Trust, are improper and the Court declines to address those requests for compensation. The Estate and Trust's failure to compensate Terry Brown and Daryl Brown does not constitute reasonable grounds to prohibit the Moving Parties from entering into the Settlement Agreements.

Terry Brown asserted during the hearing the South Carolina Supreme Court would reverse the Settlement Agreements for the same reasons it reversed the 2009 Compromise Agreement in 2013. *See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Settlement Agreements presently before the Court are substantively and materially different from the 2009 Compromise Agreement and therefore the Supreme Court's concerns about the 2009 Compromise Agreement are not a concern here. First, in 2009, the moving parties asked the Court to approve the Compromise Agreement pursuant to S.C. Code Ann. § 62-3-1101. Here, the Moving Parties have not asked the Court to "approve" the Settlement Agreements and, in fact, the Settlement Agreements bind only the Moving Parties.

Second, and more importantly, the 2009 Compromise Agreement materially changed, and effectively rewrote, Mr. Brown's estate plan and therefore strayed from the testamentary intentions of Decedent. For example, the 2009 Compromise Agreement (a) purported to settle all will and trust challenges, including those filed by alleged heirs of Decedent who were not acknowledged in the Will or Trust, (b) acknowledged Tommie Rae Brown as Decedent's

approval of the Settlement Agreement as parties in *Wilson v. Dallas*. Daryl and Terry were either adverse parties in a proceeding for the probate of the Decedent's Will and Trust and/or contested the validity of the Decedent's Will and Trust. Their own insistence that the in terrorem clause be exercised against anyone challenging the Will and Trust, if accepted by the Court, would place a similar duty upon the Estate and Trust to enforce the in terrorem clause against Daryl and Terry Brown.

"surviving spouse," and (c) awarded Tommie Rae Brown and the six children named in the Will a significant portion of Decedent's Estate. In addition, the 2009 Compromise Agreement called for the creation of a new trust to be known as the James Brown Legacy Trust designed to "receive, hold, manage and be authorized to sell the James Brown Assets."

The Settlement Agreements presently before the Court do not in any way alter, modify, or amend the terms or distribution scheme of Decedent's Will or Trust. They do not purport to resolve all pending Will and Trust Challenge cases and do not alter the testamentary intentions of Decedent. Rather, they resolve pending challenges to set aside Decedent's estate plan brought only by Petitioners through the Estate and Trust's payment of what the Court considers to be a "nuisance value" settlement. The Settlement Agreements leave intact Decedent's express intention to devise all of his tangible personal property to certain named heirs. The Settlement Agreements do not disturb Decedent's express intention of pouring over all remaining Estate assets into an irrevocable trust designed to benefit the education of his grandchildren and qualified poor and financially needy children seeking education in Georgia and South Carolina.

Rule 43(k), SCRCP, enables the Court to bind parties to a private settlement agreement by entering the settlement in the record. In Section XVIII of the Brown Children Settlement Agreement and Section XVII of the Fegan Settlement Agreement, Petitioners consented to submit the Settlement Agreements to the Court pursuant to the procedures set forth in Rule 43(k), SCRCP. Accordingly, the Court confirms that (i) Messrs. Bauknight and Sojourner have authority to enter into the Settlement Agreements, and further finds that (ii) the Settlement Agreements are appropriate and in the best interests of the Estate and Trust, and (iii) based on the consent of all Moving Parties, the Court hereby incorporates the Settlement Agreements into the

record in the above-captioned action. These Settlement Agreements are therefore binding on all Moving Parties pursuant to Rule 43(k), SCRCP.

III. SETTLEMENT IS NOT BARRED BY THE FIDUCIARIES' FAILURE TO ENFORCE THE IN TERROREM CLAUSES BECAUSE THERE IS RECORD EVIDENCE THAT PETITIONERS HAD PROBABLE CAUSE TO FILE THE UNDUE INFLUENCE ACTIONS.

The Moving Parties' Joint Motion was opposed by only Daryl Brown and Terry Brown, both of whom are acknowledged children of Decedent and are specifically named in Decedent's testamentary instruments. Both oppositions center around an argument that settlements with challenging parties contradict the *in terrorem* clauses, or "no contest" clauses, contained in Will (*see* 2000 Last Will and Testament at Item X) and Trust (*see* 2000 Trust at Article XXI) and therefore should not be permitted by this Court.¹¹ Terry Brown also goes as far as to say the Estate and Trust's failure to enforce the *in terrorem* clauses may amount to a breach of fiduciary duty.¹²

There is no dispute by any of the parties that *in terrorem* clauses are enforceable in the State of South Carolina. *See Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 12, 633 S.E.2d 722, 725 (2006). However, such clauses need not be invoked and cannot act as a bar to a petitioner's recovery where the petitioner has probable cause to contest the testamentary instruments. *See* S.C. Code Ann. § 62-3-905, 62-7-605.

As established above, the Court has already concluded the Fiduciaries have authority to enter into the Settlement Agreements and, further, the Settlement Agreements are in the best

¹¹ *See* Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015 ("Th[e] proposed settlement is in contradiction of the In Terrorem clause contained in the will."), and Amended Response of Terry Brown to Joint Motion filed on or about December 30, 2015 at pp. 3-11 (arguing the personal representative and trustee have a duty to enforce the *in terrorem* clauses).

¹² *See* Amended Response of Terry Brown to the Joint Motion at § 3.

interests of the Estate and Trust. In addition, sufficient evidence exists in the record which would have enabled Messrs. Bauknight and Sojourner to reasonably conclude probable cause existed in relation to Petitioner's Will and Trust Challenges.

In *Wilson v. Dallas*, the Supreme Court addressed what it perceived as a lack of evidence in the matter as it related to the ability of Petitioners to invoke the good faith, probable cause exception to enforcement of in terrorem clauses in Decedent's Will and Trust. *Wilson v. Dallas*, 403 S.C. at 437-440, 743 S.E.2d at 760-762. The Supreme Court stated:

Although proof of a claim is not required, we believe something more than a subjective belief or a mere allegation is necessary to avoid the potential for collusion among disinherited or disgruntled family members who wish to dispose of the testator's estate plan and substitute it with one more to their liking.

Id. at 436, 743 S.E.2d at 760.

The Supreme Court further defined its analysis as follows:

However, it is universally acknowledged that full proof of the asserted claims is not required because the *reason d'être* for the [family settlement] statute is to dispense with the necessity of litigating the case on the merits. The circuit court's duty was not to decide the ultimate question of the merits of the undue influence and other claims; rather, the statutory standard is whether the proposed compromise agreement resolves a good faith controversy and whether the agreement is just and reasonable. (citations omitted).

Id.

The Supreme Court's analysis in *Wilson v. Dallas* focused on whether a good faith controversy existed sufficient to justify a settlement "that seeks to vitiate the decedent's entire estate plan." *Id.* at 440, 743 S.E.2d at 762 (citations omitted). The standard necessary for approval of the May 26, 2009 Compromise Agreement, as addressed in *Wilson v. Dallas*, is higher than the one necessary for the Court to grant the present motion. In contrast to the May 26, 2009 Compromise Agreement addressed by the Supreme Court, the settlements presently before the Court do not rewrite or modify any term of the 2000 Will and Trust. Rather, the

settlement agreements simply allow the Petitioners to drop their Will and Trust challenges against the Estate and Trust in exchange for monetary payments from the Estate and Trust. Requiring the Moving Parties to litigate this matter into perpetuity would serve no useful purpose other than to unnecessarily prolong costly litigation. Such result would be unjust and harmful to the Estate and Trust.

At oral argument on the Moving Parties' Joint Motion, Mr. Louis Levenson, counsel for Petitioners,¹³ testified regarding his efforts to investigate Petitioners' claims prior to their filing of the Petitions in the undue influence actions in order to establish probable cause to challenge the estate plan. His testimony is sufficient to establish the existence of a good faith controversy as to whether Petitioners had probable cause to initiate the above-captioned legal actions and helps to establish that the Settlement Agreements are just and reasonable.

Mr. Levenson testified he conducted an extensive investigation before he filed the claims at issue.¹⁴ As a part of that investigation, Mr. Levenson interviewed the following persons: Elif Crawford, one of Decedent's secretaries¹⁵; Jeff Allen, Decedent's booking agent for shows and tours on behalf of Universal Attractions¹⁶; Tommie Rae Brown, Decedent's alleged surviving spouse¹⁷; Loic Yanel, a European tour promoter¹⁸; Dr. Tommy Richardson, a physician in

¹³ Mr. Levenson testified that his original clients included Deanna Brown Thomas, Yamma Brown Lumar, Vanisha Brown, Larry Brown, Daryl Brown, Terry Brown, Tonya Brown, Romunzo Brown, and Forlando Brown. *See* Hearing Transcript, January 14, 2016, at p. 43, lines 5-16.

¹⁴ *Id.* at p. 43, lines 17-24, p. 71, line 20 – p. 72, line 5.

¹⁵ *Id.* at p. 48, lines 2-4, p. 63, lines 7-19.

¹⁶ *Id.* at p. 48, lines 4-11, p. 64, lines 3-13.

¹⁷ *Id.* at p. 49, lines 1-8, p. 62, line 16 – p. 63, line 19.

¹⁸ *Id.* at p. 49, lines 9-16, p. 59, lines 16-23.

Atlanta, Georgia¹⁹; Reverend Al Sharpton, a close friend and confidante of Decedent²⁰; and Joseph Lizzio of Morgan Stanley in New York, New York, who acted as an agent or broker for Decedent.²¹ Mr. Levenson also discussed the factual foundation of Petitioners' claims with his clients, including Terry Brown and Daryl Brown.²²

Mr. Levenson testified it became apparent to his clients in December 2007 that certain people who were close to Decedent, and who also held confidential relationships with him,²³ were involved in preparing documents for Decedent to sign.²⁴ These persons included David Cannon, Albert Bradley, and Buddy Dallas.²⁵ One such purported document, allegedly prepared by Messrs. Cannon, Bradley and Dallas, was a blank deed.²⁶ Mr. Levenson testified that some of the witnesses he interviewed were also aware of contracts, some oral and some written, prepared by Messrs. Cannon, Dallas, and Bradley which purported to give them each five percent of Decedent's gross revenue.²⁷ Mr. Levenson was informed there was a pattern of Messrs. Cannon, Dallas, and Bradley asking Decedent to sign blank documents without reading them.²⁸ This pattern appears to be indirectly corroborated by claims of alleged wrongdoing brought on behalf

¹⁹ *Id.* at p. 49, lines 17-20, p. 53, line 23; p. 72, line 9.

²⁰ *Id.* at p. 53, line 24 – p. 25, line 11.

²¹ *Id.* at p. 57, lines 3-7, p. 59, lines 8-13.

²² *Id.* at p. 54, lines 22-25.

²³ *Id.* at p. 81, lines 5-10 (testifying Messrs. Cannon, Dallas, and Bradley had "great control over [Decedent] during the later years of his life ... in various – each in different areas....").

²⁴ *Id.* at p. 55, lines 2-16.

²⁵ *Id.* at p. 58, lines 15-21.

²⁶ *Id.*

²⁷ *Id.* at p. 56, lines 10-15.

²⁸ *Id.* at p. 55, line 23 – p. 56, line 1.

of the Estate against Messrs. Dallas, Cannon, and Bradley through the Estate and Trust's legal counsel.²⁹

From Mr. Levenson's discussions with Tommie Rae Brown, he was informed Ms. Brown had allegedly observed Decedent signing documents during instances when he was under the influence of certain controlled substances.³⁰ Ms. Brown also told Mr. Levenson that Messrs. Cannon, Dallas, and Bradley would visit Decedent at home during times of the day when they allegedly knew he was under the influence of substances in order to get him to sign documents.³¹ This information was purportedly corroborated by Ms. Elif Crawford, Decedent's personal assistant or secretary.³² Based on such information, Mr. Levenson testified his clients were informed and believed at the time they filed the subject Petitions that Decedent did not read many of the documents he signed and/or was incapable of understanding or reading the documents due to his altered condition.

Such information, when set alongside information Mr. Levenson obtained from Dr. Richardson and Loric Yanel, painted a troubling picture from the perspective of Mr. Levenson's clients in 2007. Dr. Richardson informed Mr. Levenson about Decedent's commitment to a facility in Atlanta, Georgia for alleged substance dependence.³³ Mr. Yanel further indicated Decedent's European tour ended prematurely in July 2000 because of Decedent's behavior

²⁹ *Id.* at p. 82, line 13 p. 83, line 17.

³⁰ *Id.* at p. 63, lines 7-19.

³¹ *Id.*

³² *Id.*

³³ *Id.* at p. 49, lines 17-20.

during the tour caused by his alleged substance dependence.³⁴ This European tour allegedly ended only weeks, if not days, before he executed the August 1, 2000 Will and Trust which are the subject of the undue influence claims.³⁵

Mr. Levenson took Mr. Joseph Lizzio's deposition on or about September 21, 2007.³⁶ Based on the deposition testimony, an entity allegedly incorporated by Mr. Cannon during Decedent's lifetime, Seventh Decade, purportedly transferred approximately \$2.5 million dollars from Decedent's Morgan Stanley account into Seventh Decade's corporate account.³⁷ It was during this same time period that a \$5 million check, signed by Decedent, disappeared.³⁸ Mr. Levenson testified that after 1999, but before approximately 2002 or 2003, large sums of money were being transferred from Decedent's Morgan Stanley account upon the sole authorization of Mr. Cannon.³⁹ Mr. Levenson stated that by 2002, Decedent's Morgan Stanley account had lost significant value due to transfers by Mr. Cannon.⁴⁰ These transactions were believed by Mr. Levenson and his clients, to have all occurred under the direction of Mr. Cannon and without the direct knowledge of Decedent.⁴¹

³⁴ *Id.* at p. 49, lines 9-16.

³⁵ *See id.*

³⁶ This sworn testimony led to a claim being made by the Estate's Trustee and Personal Representative against Morgan Stanley for breaches of fiduciary duty. *Id.* at p. 58, lines 4-6.

³⁷ *See* Hearing Transcript, January 14, 2016, at p. 57, line 3 – p. 60, line 16. Mr. Levenson testified as to additional transfers from Decedent's Morgan Stanley account, totaling upwards of \$10-15 million dollars. *Id.* at p. 58, line 8 – p. 59, line 7.

³⁸ *Id.* at p. 58, lines 1-3.

³⁹ *Id.* at p. 58, lines 16-24.

⁴⁰ *Id.* at p. 58, line 25 – p. 59, line 7.

⁴¹ *Id.* at p. 59, lines 8-13.

Mr. Levenson also recounted details regarding alleged substituted and/or altered documents.⁴² For example, Mr. Dallas testified during a hearing on February 8, 2008 before this Court that a document attached as Exhibit B to Decedent's 2000 Irrevocable Trust was a document Mr. Dallas himself substituted *after* Decedent's death.⁴³ This testimony corroborated the belief by Mr. Levenson's clients that Decedent's "confidantes" were substituting their judgment for that of Decedent and that Decedent had been unduly influenced.

Mr. Levenson further testified regarding discussions he had with his own clients, including, in 2007, Terry Brown and Daryl Brown.⁴⁴ His clients allegedly informed Mr. Levenson their father was pathologically afraid of going to jail for tax evasion.⁴⁵ Decedent's alleged fear of going to jail for tax evasion was purportedly encouraged or unnecessarily emphasized by Messrs. Cannon, Dallas, and Bradley.⁴⁶ Mr. Levenson stated his clients believed Messrs. Cannon, Dallas, and Bradley were, on the one hand, informing Decedent he would likely go to jail for tax evasion while, at the same time, allegedly stealing money from him, and not reporting it on their own taxes.⁴⁷

Mr. Levenson further testified regarding his clients' concern about Decedent's engagement of Mr. H. Dwaine Herring, Esquire, for the purpose of preparing Decedent's 1999 and 2000 Will and Trust.⁴⁸ Mr. Levenson testified his clients' were concerned because Mr.

⁴² *Id.* at p. 60, line 22 – p. 61, line 20.

⁴³ *Id.* at p. 60, line 25 – p. 61, line 4.

⁴⁴ *Id.* at p. 54, lines 22-25.

⁴⁵ *Id.* at p. 61, line 21 – p. 63, line 6.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at p. 69, lines 10-14.

Herring had not been a lawyer their father had traditionally used with respect to the management of his business or legal affairs.⁴⁹ Mr. Levenson testified his clients believed Mr. Herring was an attorney who had been referred to Decedent through Messrs. Dallas or Cannon and therefore the circumstances of his employment by Decedent were suspicious to Petitioners.⁵⁰ Mr. Levenson testified he interviewed Mr. Herring in 2007⁵¹ and learned that although Mr. Herring had communicated with Decedent himself on a few occasions, Messrs. Cannon, Dallas, and/or Bradley were present when those conversations took place, further corroborating Petitioners' belief that their father had been unduly influenced with respect to signing the 1999 and 2000 Wills and Trust Agreements.⁵²

Mr. Levenson also testified about an alleged provision in Decedent's 2000 Irrevocable Trust Agreement which provided an unusual compensation package for the trustees, including, Messrs. Dallas, Cannon, and Bradley, after Decedent's death.⁵³ Mr. Levenson indicated he had never seen such a high compensation provision in any trust or charitable trust he has ever been involved with, despite his extensive experience handling fiduciary cases during his career.⁵⁴

⁴⁹ *Id.* at p. 71, lines 7-19; p. 69, line 16 – p. 70, line 18 (stating Decedent had previously retained Joel Katz, Jay Ross, and Leon Friedman and testifying: "there's nothing wrong with a person getting their own lawyer totally different from any lawyer they've ever used. But from the perspective of the reasonable suspicion and belief, that was an additional concern."); *id.* at p. 88, line 20 – p. 89, line 5.

⁵⁰ *Id.* at p. 70, lines 18-21.

⁵¹ *Id.* at p. 75, lines 12-13.

⁵² *Id.* at p. 84, lines 5-18; p. 86, line 10 – p. 88, line 18.

⁵³ *Id.* at p. 85, lines 3-11; p. 90, lines 5-24, p. 91, lines 13-21.

⁵⁴ *Id.* at p. 76, line 2 – p. 77, line 9 (testifying he served as the Fulton County, Georgia, guardian and administrator, a "public fiduciary" position for approximately 10 years; tried probate and estate contests to a jury four or five times, etc.).

Based on the foregoing evidence and testimony, the Court finds sufficient evidence and issues of fact exist in the record to support the Fiduciaries' conclusion that a genuine dispute existed regarding Petitioner's good faith and/or probable cause to initiate the actions challenging the Will and Trust. Accordingly, this Court finds the existence of a good faith controversy as to whether Petitioners had probable cause to initiate the above-captioned legal actions and the Settlement Agreements are just and reasonable.

Terry Brown has asserted the Petitioners did not have probable cause to challenge the validity of the Will and Trust, and, therefore, the Court must deny the Joint Motion and find the Fiduciaries have breached their fiduciary duties by entering into the Settlements and not seeking to enforce the in terrorem clauses. Terry Brown has submitted evidence, including sworn deposition testimony, in support of his assertions and has explained at length, in written submissions to the Court and his counsel's arguments on January 14, 2016, why he contends the evidence before the Court establishes Petitioners' challenges to the Will and Trust were not supported by probable cause.

As explained above, a finding by the Court on the merits of the issue of probable cause is unnecessary to support the Court's conclusion that the Settlements are just, reasonable, and in the best interests of the Estate and Trust, or the Court's decision to grant the present motion. The Court's findings set forth in other parts of this Order fully support and justify the Court's ruling. However, because Terry Brown has placed the merits of this issue squarely before the Court and because he has asserted grave allegations of wrongdoing by the Fiduciaries, the Court has spent considerable time reviewing the evidence and considering the arguments of the Parties with regard to the issues Terry Brown has raised.

Based upon the Court's review of the evidence submitted by the Parties, which include discovery responses, several hundred pages of sworn deposition testimony, and sworn testimony presented by Mr. Levenson at the January 14, 2016 hearing, the Court finds Petitioners had probable cause to bring their challenges against the Will and Trust.⁵⁵ The Court further finds the Fiduciaries, in negotiating the Settlements and submitting them to the Court, have not violated any fiduciary duties to the Estate, Trust, or beneficiaries. Indeed, the Court finds these Settlements constitute an appropriate exercise of discretion by Messrs. Bauknight and Sojourner for the reasons explained elsewhere in this order.

The LSA also argued that enforcement of the in terrorem clauses, while potentially benefiting Terry Brown and Daryl Brown, would have resulted in a significant financial detriment to the beneficiaries of Decedent's Irrevocable Trust. It is undisputed that fiduciaries of an estate and trust are under a duty of loyalty to act in the best interests of the beneficiaries. *See* S.C. Code Ann. §§ 62-1-201, 62-7-703, 62-7-802; *Yates v. Yates*, 292 S.C. 49, 354 S.E.2d 800 (Ct. App. 1987) (citing *Ramage v. Ramage*, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984) (trustees are under duty of loyalty to administer trust property solely in beneficiary's interest)). "That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental." *Witherspoon v. Stogner*, 182 S.C. 413, 414, 189 S.E.2d 758, 759 (1937). This duty includes the duty to administer the trust expeditiously for the benefit of the beneficiaries and a continuing duty to administer the trust according to the objectives of the trustor. *See id.* at §§ 62-7-301, 62-7-305; *see also Ex parte Wheeler v. Estate of Green*, 381

⁵⁵ Counsel for the opposing parties, Terry Brown and Daryl Brown, had an adequate opportunity to cross-examine Mr. Levenson during the January 14, 2015 hearing on this Joint Motion. *See generally* Hearing Transcript, January 14, 2016. Counsel for Terry Brown availed himself of this opportunity by asking Mr. Levenson a series of questions pertaining to his involvement during the deposition of H. Dewain Herring in November and December 2015. *Id.* at p. 74, line 16 – p. 75, line 8.

S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). The South Carolina Probate and Trust Codes require a fiduciary to act impartially. See S.C. Code Ann. § 62-7-803 ("If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.")

The LSA argued, pursuant to these statutory provisions and jurisprudence, the Fiduciaries had an obligation to consider *all beneficiaries* of Decedent's Estate and Trust in determining whether a potential settlement with Petitioners was appropriate and in the best interests of the Estate and Trust. In coming to their conclusion, the Fiduciaries determined that should the Estate and Trust be forced to continue to litigate against Petitioners, the costs of defense would be placed directly upon the shoulders of the residual beneficiary of Decedent's Estate and Trust, the James Brown "I Feel Good" Charitable Trust.

The Court agrees with the LSA's arguments. Under these circumstances, continuing litigation, including defending the Estate and Trust against the undue influence actions and then, separately, seeking to enforce the in terrorem clauses, would be extraordinarily costly to the Estate and Trust. These costs would be disproportionately borne by the charitable trust and would, under Daryl Brown's and Terry Brown's own arguments, benefit only two named beneficiaries, Daryl Brown and Terry Brown, who apparently seek to gain a windfall from their father's estate.⁵⁶ Under their counsel's own analysis the in terrorem clause should be enforced against them as well. The Court finds that such unbalance and inconsistent legal positions are not in the best interests of the Estate and Trust and that it would be inequitable to require the Estate and Trust to continue to defend these actions in such an unbalanced and partial manner.

⁵⁶ As discussed in footnote 10, above, both Daryl and Terry Brown have served the role of "adverse parties in a proceeding for the probate of Grantor's Will" or beneficiaries who "in any manner contest the validity of Grantor's Irrevocable Trust." See, 2000 Will, Article X and 2000 Trust, Article XXI.

IV. GROUNDS EXIST FOR DISMISSAL OF THESE ACTIONS WITH PREJUDICE.

The Moving Parties provided the Court consent orders signed by Petitioners in which Petitioners consent to dismissal of their claims with prejudice.⁵⁷ Based on the foregoing findings, including that the Settlement Agreements are appropriate and in the best interests of the Estate and Trust, the Court finds a complete dismissal with prejudice of all challenges to the validity of the Will and Trust filed by Petitioners, including without limitation those set forth in the Petitions filed on December 26, 2007, as amended on January 24, 2008, is just and proper. Pursuant to Rule 41(a)(2), SCRCP, Petitioner's challenges shall be dismissed with prejudice and Petitioners shall be dismissed as parties to the Undue Influence Case.

CONCLUSIONS

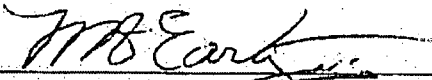
The Court hereby grants the Moving Parties' motion in its entirety and orders as follows:

- (1) The Court confirms that Russell L. Bauknight, as Personal Representative of the Estate and Trustee of the Trust, and Dave C. Sojourner, Jr., as Limited Special Administrator of the Estate and Limited Special Trustee of the Trust, are authorized and empowered to enter into the Settlement Agreements with Petitioners;
- (2) The Settlement Agreements are in the best interests of the Estate and Trust;
- (3) The Settlement Agreements shall be and hereby are expressly incorporated into the record, in satisfaction of Rule 43(k), SCRCP; and
- (4) All challenges to the Will and Trust filed by Petitioners, including those filed on December 26, 2007, as amended on January 24, 2008, are hereby dismissed with prejudice

⁵⁷ The Moving Parties' federal termination rights and interests under the Copyright Act are expressly excluded from the Settlement Agreement, as are any claims regarding the disposition of educational funds and personal property under the Will and Trust.

pursuant to Rule 41(a)(2), SCRPC, and Petitioners are hereby dismissed as parties to Civil
Action No. 2008-CP-02-1647.

IT IS SO ORDERED.



Doyet A. Early III, Circuit Court Judge

Barniberg, South Carolina

February 24, 2016.