

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2017 JUL -8 PM 5:20
JANETTE M. HOSKINS
CLERK & C.S.

FILED

ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT'S
COUNTERCLAIMS

RECEIVED

DEC 17 2018

SC Court of Appeals

[Handwritten signature]
#1

This matter came before the Court on Monday, August 29, 2016 on the Plaintiffs' Motion for Summary Judgment as to Defendant Pope's Counterclaims in the above-captioned action. Both parties submitted detailed memoranda on this Motion, and the Court heard oral arguments from Mark V. Gende on behalf of the Plaintiffs, and M. Brent McDonald on behalf of Mrs. Pope.

I. LEGAL STANDARD

Pursuant to Rule 56(c), SCRCP, a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).

II. FACTS/BACKGROUND

Plaintiffs brought this action against Defendant Adele Pope by way of a Complaint filed May 19, 2010. Mrs. Pope, a former Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust, had previously been removed from her role as a fiduciary of the Estate and Trust by Order of this Court dated May 26, 2009. Plaintiffs' Complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence. On September 10, 2010, Defendant Pope answered and asserted five counterclaims: Abuse of Process, Civil Conspiracy, Intentional Interference with Contract, Violation of S.C. Code § 62-1-106, and Attorney's Fees pursuant to S.C. Code § 62-7-1004. Plaintiffs filed this Motion for Summary Judgment as to Pope's counterclaims on April 19, 2016 on the grounds that the counterclaims are barred by the doctrine of collateral estoppel based on the Supreme Court's

opinion in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013), which, *inter alia*, affirmed the May 26, 2009 order removing Pope from her role as a fiduciary of the Estate and Trust.

III. WILSON V. DALLAS

As part of its holding in Wilson v. Dallas, the South Carolina Supreme Court affirmed this Court's removal of Pope from her role as a fiduciary of the Estate and Trust. In particular, the Supreme Court found that "the circuit court did not violate the statutory provisions regarding the removal of personal representatives. *Notice and a hearing were provided, and the court had cause to remove [Pope] as it was in the best interests of the estate.*" Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766 (emphasis added). In support of its determination, the Supreme Court cited the following specific examples as grounds for upholding Pope's removal:

We are also aware that Appellants have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, [Defendant Pope] sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. [Defendant Pope] also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. *These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.*

Id. at 448-49, 743 S.E.2d at 766-67 (emphasis added).

By virtue of this holding, Plaintiffs assert that Mrs. Pope is collaterally estopped from contesting the validity of her removal for cause, and that, as a result, her counterclaims fail as a matter of law. Therefore, the Court must first determine whether the elements of collateral estoppel are satisfied such that the issue of Mrs. Pope's removal for cause may not be relitigated in this action thereby mandating that the legal conclusions of the South Carolina Supreme Court

MBC
#3

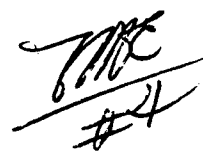
in Wilson v. Dallas be applied in this matter to determining the viability of Mrs. Pope's counterclaims.

IV. COLLATERAL ESTOPPEL

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S. Carolina Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Id. "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." Id. (citing Snaveley v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008)).

In dispensing with the mutuality requirement, our courts have applied collateral estoppel only when the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue. Carolina Renewal, 385 S.C. at 555, 684 S.E.2d at 782. Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim. Laughon v. O'Braitis, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004).

One of the issues on appeal in Wilson v. Dallas was whether the circuit court erred in removing Mrs. Pope from her fiduciary position. The Supreme Court's detailed discussion of the

Handwritten signature and the number 4.

grounds for Mrs. Pope's removal demonstrates that the issue was (1) actually litigated in Wilson v. Dallas and (2) directly determined by the Court in that action. Moreover, adjudication of the validity of Mrs. Pope's removal was (3) necessary to support the judgment in Wilson v. Dallas, which affirmed her removal for cause and established a protocol for the future appointment of fiduciaries. Additionally, our Supreme Court expressly determined that statutory requirements were met in conjunction with Mrs. Pope's removal, and that Mrs. Pope had notice and a hearing on the issue, which demonstrated that Mrs. Pope was afforded a full and fair opportunity to litigate the question of her removal for cause.

Given the foregoing, this Court finds that issues regarding Mrs. Pope's removal for cause were actually litigated, finally determined, and were necessary to support the Court's adjudication of the Wilson v. Dallas appeal. The Court further finds that Mrs. Pope was afforded a full and fair opportunity to litigate the issue of her removal for cause. Accordingly, it is conclusively established in this action that Mrs. Pope was validly removed from her fiduciary roles for cause, and that she is precluded by the doctrine of collateral estoppel from relitigating that issue in the instant case. See Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766.

This Court is not persuaded by Mrs. Pope's argument that the doctrine of judicial estoppel precludes Plaintiffs' collateral estoppel arguments. Mrs. Pope bases her judicial estoppel argument primarily on various statements made by the Plaintiffs in conjunction with various filings in this Court some of which was filed years before the Supreme Court's decision in Wilson v. Dallas. One of the essential elements of judicial estoppel is that the inconsistent statements are made as part of an intentional effort to mislead the court. See Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004). The Court finds that Plaintiff's assertions were not made in an intentional effort to mislead the Court, but rather are consistent with the positions taken by

Handwritten signature and initials, possibly "JME" and "#5", in the bottom right corner.

the Plaintiffs in this extremely complex matter. Mrs. Pope's judicial estoppel argument confuses Plaintiffs' positions as to its *claims* and Plaintiffs' position as to her *counterclaims*. For example, Plaintiffs argued in conjunction with their April 8, 2011 Motion to Stay that the outcome of Wilson v. Dallas had no bearing on the Plaintiffs' intention to pursue their *claims*. In this Motion for summary judgment, Plaintiffs assert that Wilson v. Dallas is dispositive of Pope's *counterclaims*. Thus, there is no inconsistency in Plaintiffs' positions.

Having determined that the elements required for the application of collateral estoppel are met, the Court now examines the effect of Wilson v. Dallas on Mrs. Pope's counterclaims in this action.¹

V. COUNTERCLAIMS

A. Abuse of Process

Mrs. Pope's first counterclaim is for abuse of process. The essential elements of abuse of process are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the conduct of the proceeding. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions

¹ The Court is aware of an order granting summary judgment to Forlando Brown, a grandson of the entertainer, James Brown, in the federal matter styled Forlando J. Brown v. Adele J. Pope, Case No. 3:08cv00014-WOB (D.S.C. 2014). While Forlando Brown is not a litigant in this instant action, the federal court's Order granting summary judgment to Mr. Brown is instructive to this Court. See Court's Memorandum Opinion and Order, Id. As in the instant case, the Forlando Brown Order arises out of a claim for breach of fiduciary duty, *inter alia*, against Mrs. Pope regarding her activities while a personal representative and trustee of the Estate of James Brown. The Order also deals with the exact same counterclaims that Mrs. Pope has made in the instant case. The Order also discusses the ruling of the South Carolina state trial court removing Mrs. Pope as personal representative and trustee of the Estate of James Brown. The Order also discusses the South Carolina Supreme Court's holding in Wilson v. Dallas, affirming the state trial court's removal of Mrs. Pope. The Order ultimately grants summary judgment to Forlando Brown on all of Mrs. Pope's counterclaims. While the federal court's specific analysis of each cause of action necessarily differs from the instant action, in part because the plaintiffs are different, there are significant and relevant similarities. This Court finds the federal judge's statements of South Carolina law in the Order to be correct and his assessments of each cause of action to be persuasive.

TMP
#6

388 S.C. 394, 403, 697 S.E.2d 551, 555–56 (2010). “An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process. However, there is no liability when the process has been carried to its authorized conclusion, even though with bad intentions.” First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 74–75, 451 S.E.2d 907, 914 (Ct. App. 1994). “The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself.” Id. “Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required.” Hainer v. Am. Med. Int’l, Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997).

Furthermore, “[a]n abuse of process action may lie if a party prosecutes an ‘*entire lawsuit*’ for collateral purposes.” Food Lion, Inc. v. United Food & Commercial Workers Int’l Union, 351 S.C. 65, 74, 567 S.E.2d 251, 255 (Ct. App. 2002) (emphasis added). Further, “liability exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its *sole or paramount reason for acting*.” Id. at 75, 567 S.E.2d at 256 (emphasis added).

Pope’s Counterclaim alleges that she is “informed and believe[s] that Plaintiffs have maliciously commenced this legal action for an ulterior purpose of forcing Defendants to abandon or dismiss the appeal of the May 26, 2009 order of the Circuit Court of Aiken County approving a settlement desired by Plaintiffs.” Counterclaim ¶ 78. However, Wilson v. Dallas confirms that the Plaintiffs had legitimate grounds for bringing suit against Pope. Specifically, the Supreme Court held that “the court had cause to remove [Pope] as it was in the best interests of the estate.” Id. at 448, 743 S.E.2d at 766. The Supreme Court also cited multiple specific examples in support of Mrs. Pope’s removal which are quoted above, all of which demonstrate a legitimate legal basis for the Plaintiffs’ commencement of this action. Notably, the findings by

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be "T. Pope" with a large flourish, and the initials "AP" are written below it.

the Supreme Court coincide with allegations in Plaintiffs' Complaint. See, e.g., Compl. ¶¶ 18.e., 18.h., 18.p.i-iii. Therefore, Wilson v. Dallas establishes as a matter of law that the Plaintiffs had ample legitimate grounds upon which to bring suit alleging breach of fiduciary duty against Mrs. Pope

Critical to the "willful act" element of Pope's claim for abuse of process is a "malicious misuse or perversion of the process for an end not lawfully warranted". Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967) (use of a warrant of arrest to extort money constitutes malicious use of process); see also Pallares v. Seinar, 407 S.C. 359, 373, 756 S.E.2d 128, 134 (2014) (filing a petition to seek the commitment of a neighbor to a mental institution without statutory authority constitutes malicious use of process). By contrast, "[t]he mere commencement of a civil action by the service of a summons, as required by the Code, cannot amount to the tort known as abuse of process." Russell v. Risher, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978).

While Mrs. Pope claims that the Plaintiffs threatened this suit during negotiations prior to its filing in the hopes of obtaining Pope's abandonment of her appeal of the Court's May 26, 2009 Order, the South Carolina Supreme Court has found that it is not unusual for parties to demand more than they are entitled to receive during negotiations, or to try to resolve all outstanding claims at one time. See Russell v. Risher, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978). Therefore, even if Mrs. Pope did prove Plaintiffs' sought though pre-suit negotiations to have her abandon her appeal, such a tactic, as matter of law, would not amount to the sort of willful act required to support an abuse of process claim. Moreover, as discussed above, the grounds enumerated by the Supreme Court for Mrs. Pope's removal for cause demonstrate that the Plaintiffs' pursuit of this action is not a willful act through which process has been

Handwritten signature and initials, possibly "MR" and "#8", in the bottom right corner of the page.


misapplied or abused, but a legitimate action based on allegations that have been, in part, determined in the holding of Wilson v. Dallas.

Moreover, since it is a legal requirement that the collateral objective or ulterior purpose must be the *sole, paramount* or *primary* reason for bringing the action, as a matter of law Mrs. Pope is not able, under any factual scenarios, to meet this burden. See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002). Wilson v. Dallas provides ample legal justification for Plaintiffs' claims. Therefore, even if Plaintiffs had the motive of seeking to dissuade her from the appeal, that alleged ulterior purpose would not be the *sole, paramount, or primary* reason for Plaintiffs' claims because the South Carolina Supreme Court has confirmed that Plaintiffs have various legitimate concerns as to Mrs. Pope's administration of the Estate and Trust. It is these legitimate concerns, *inter alia*, that form the basis of Plaintiffs' claims.

Accordingly, the Court finds that summary judgment is appropriate as to Mrs. Pope's counterclaim for abuse of process.

B. Civil Conspiracy

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2011). The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005). It is essential that the moving party prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil

Handwritten signature and the number 9.

conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct .App. 1986).

Initially, the Plaintiffs’ prosecution of this suit for breach of fiduciary duty is not an “unlawful enterprise.” In fact, as set forth above, Wilson v. Dallas establishes that the Plaintiffs have numerous good faith grounds for bringing this lawsuit.

Next, even if no unlawful enterprise exists, our Supreme Court has held that the tort of civil conspiracy can arise where one party to the alleged conspiracy has justifiable grounds for an action, but others join in the act who do not have the same justification. See Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719, 724 (1942) (noting that “where an act done by an individual, though harmful to another, is not actionable because justified by his rights, yet the same act becomes actionable when committed in pursuance of a combination of persons actuated by malicious motives and not having the same justification as the individual”). This Court finds that all of the Plaintiffs have the same justification for participating in this suit because, at the time this action was commenced, all of the Plaintiffs were parties to the same settlement agreement. Each named plaintiff is either included in the Settlement Agreement that was the subject of this Court’s May 26, 2009 Order, or is an entity that was to be created by the agreement. Because the Plaintiffs were bound together by this agreement they necessarily had the same justification for bringing this suit against Defendant Pope. While Wilson v. Dallas ultimately abrogated the settlement agreement, that is irrelevant to this analysis because, at the time of the filing of this suit, all of the Plaintiffs had the same justification for suing Mrs. Pope, which was based on their participation in the agreement.

TMC
#10

While a lawful act can become a civil conspiracy when pursued primarily to injure a third party, Wilson v. Dallas confirms that there are were justifiable grounds for each of the Plaintiffs to seek damages for Pope's alleged breaches of fiduciary duty. See Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986) (“[T]he essential consideration is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the *primary purpose* or object of the combination is to injure the plaintiff.”) (emphasis added). Thus, Wilson v. Dallas makes evident that the Plaintiffs' suit was not brought for the *primary purpose* of injuring or causing special damages to Mrs. Pope, but rather for the pursuit of the Plaintiffs' stated claims. Accordingly, summary judgment is appropriate as to Mrs. Pope's claim for civil conspiracy.

C. Intentional Interference with Contract

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: 1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury. Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). Pope's claim fails because her appointment as Personal Representative and Trustee was made pursuant to statute, and thus does not sound in contract. See S.C. Code § 62-3-701; -613; § 62-7-701; 812). Similarly, the Court's January 8, 2009 Order awarding her fees was grounded in South Carolina law, specifically citing Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989). Thus, both Pope's tenure as a fiduciary of the Estate and

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be "TAE" with "#11" written below it.

Trust and the Court's Order awarding her attorney's fees are unquestionably not contractual in nature, but are rather orders of the court grounded in the Court's authority pursuant to statute and case law.

Our Supreme Court, and other courts, has consistently held that “[c]ourts cannot create contracts for the parties”. Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 472, 377 S.E.2d 343, 347 (Ct. App. 1988); see also Terminix Int'l, Inc. v. Rice, 904 So. 2d 1051, 1057 (Miss. 2004) (“A scheduling order is not a contract between the parties, but rather an order of the court.”); Boston Prop. Exch. Transfer Co. v. Iantosca, 720 F.3d 1, 12 (1st Cir. 2013) (holding that an order assigning one party's legal claims to another “was not a contract” where the compelled assignor “did not bargain for, offer, or accept the assignment order, which was imposed on it over its strong objection.”); Lueck's Home Imp., Inc. v. Seal Tite Nat., Inc., 142 Wis. 2d 843, 848, 419 N.W.2d 340, 342 (Ct. App. 1987) (“[A] restitution consent order is not a contract”); Goldberg v. Trakas, 206 F. Supp. 867, 869 (E.D.S.C. 1962) ([A]n order of the Court issued by consent of the parties is not to be deemed a contract”); Ketab Corp. v. Mesriani Law Grp., No. CV1407241RSWLMRWX, 2016 WL 911816, at 2 (C.D. Cal. Mar. 7, 2016) (dismissal of contract claims including intentional interference with contractual relations was appropriate where the claims were based on a settlement order because a “Settlement Order is a court order, and not a contract.”).

Further, Pope's appointment by the court did not create a “contract” based on an attorney-client relationship. Ordinarily, the relationship between the attorney and client is one of contract, either express or implied. However, courts have differentiated between a traditional contractual attorney-client relationship and one based upon court appointment. See e.g., American Mut. Liab. Ins. Co. v. Superior Court, 113 Cal.Rptr. 561, 570 (1974) (“*Save where*

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be "M. H." with "12" written below it.

appointed by court, the relationship of attorney and client is created by contract.”) (emphasis added). In Moore v. McComsey, 459 A.2d 841, 844 (1983), the Superior Court of Pennsylvania held that an inmate could not bring a breach of contract claim against his court-appointed public defender because “there was no contract of employment between [inmate] and trial counsel, for counsel had been court appointed.” Similarly, in Grand Blanc Landfill, Inc. v. Swanson Environmental, Inc., 505 N.W.2d 46, 48–9 (1993), the court held that the court’s act of appointing an expert did not give rise to a contract because the required contractual elements were not met.

In the present case, Mrs. Pope cannot prevail on an intentional or tortious interference with contract claim because no contract was created between Mrs. Pope and the Estate and Trust. Analogous to the Moore case, Mrs. Pope was appointed by the court; therefore, the relationship between Mrs. Pope and the Estate and Trust was not a contractual one. See 459 A.2d 841. Additionally, like the expert in Grand Blanc Landfill, Mrs. Pope’s court-appointed status and the court order concerning fees do not adequately satisfy the elements required to form a valid contract. See 505 N.W.2d 46. As a result, Mrs. Pope did not have a contractual relationship with the Estate and Trust, and certainly not with the court, and, thus, her counterclaims for intentional and tortious interference with contract fail as a matter of law.

Given the foregoing, summary judgment is appropriate as to Mrs. Pope’s claim for Intentional Interference with Contract.

D. Violation of 62-1-106 (Fraud and Evasion)

Section 62–1–106 of the South Carolina Code (2009) provides:

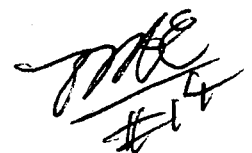
Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be "T. Pope" and the initials below it are "T.P.".

person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Mrs. Pope's counterclaim under § 62-1-106 alleges that "all Plaintiff's had knowledge that the heirs of James Brown should be properly determined" and that "an improper determination of heirs would damage the Estate/2000 Trust under the Federal Copyright Act." Counterclaim ¶ 99-100. Pope's counterclaim alleges that the Attorney General failed to address the heirs issues, "leaving to Defendants the protection of the Estate/2000 Trust under the Federal Copyright Act." Counterclaim ¶ 101. It is further alleged that "the Attorney General and some of the Plaintiffs stipulated to what is, upon information and belief, an incorrect determination of heirs." Counterclaim ¶ 102. The counterclaim concludes that "Plaintiffs intended for this known incorrect determination to be relied on and acted on by the Court and the Court and others have relied on such representations, *proximately causing injury to the Estate, 2000 Trust, and Defendants.*" Counterclaim ¶ 104. While the counterclaims make a cursory mention of injury to the Defendants, it appears to the Court from the preponderance of the contentions of Mrs. Pope's Counterclaims cited above that her claims under § 62-1-106 are actually claims for damages to the estate and not to her as an individual.

Mrs. Pope unquestionably lacks standing to assert claims on behalf of the Estate and Trust following the South Carolina Supreme Court's decision in Wilson v. Dallas since she ceased to be a fiduciary of the Estate and Trust on May 26, 2009. Accordingly, her counterclaim under § 62-1-106 fails as a matter of law.

Handwritten signature and initials, possibly "JAC" and "H/4", in the bottom right corner.

Additionally, Pope claims the Attorney General failed to address certain issues regarding the correct heirs to the Estate in Aiken County case 2008-CP-02-0872. According to Pope, the Attorney General entered into an agreement on August 10, 2008 regarding the identity of heirs. Pope claims this stipulation of heirs was incorrect. However, Pope's Counterclaim was filed on September 10, 2010, and therefore this cause of action, even if she was able to assert it, fails due to the operation of the two-year statute of limitations set forth in § 62-1-106.

Accordingly, summary judgment is also appropriate as to Pope's § 62-1-106 claim.

E. Attorney's Fees pursuant to S.C. Code § 62-7-1004

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct. App. 2005). S.C. Code Ann. § 62-7-1004 provides that "[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy."

This Court is not persuaded that this breach of fiduciary duty action is "a judicial proceeding involving the administration of a trust". While the Plaintiffs will seek to prove their allegations of breach of fiduciary duty in the alleged actions or inactions of Mrs. Pope during her period of administration, the action has nothing to do with the actual administration of a trust. No decision in this action will effect, change, or guide the administration of the Brown Trust and Estate. Therefore, as a matter of law, Mrs. Pope's 62-7-1004 claim is barred.

However, even assuming that this case could be construed broadly as one "involving the administration of a trust," Pope cannot show that an award of attorney's fees would be required by "justice and equity." Pope was removed from her fiduciary role by the court for cause and

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be "J. Pope" and the initials below it are "J.P."

such removal was upheld by the Supreme Court in Wilson v. Dallas. Therefore, justice and equity could not require Pope's attorney's fees to be paid in this matter pursuant to § 62-7-1004. Moreover, there are no considerations of justice or equity that outweigh the well-established American rule requiring Mrs. Pope to bear her own legal fees in her defense, just as the Plaintiffs must bear their own legal fees in the prosecution of their claims. See Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007) ("It is well known that equity follows the law.").

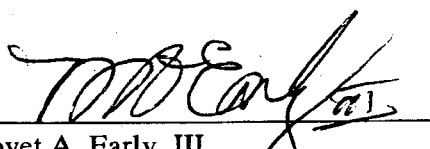
Moreover, Mrs. Pope has claims pending in Aiken Case 1337, which seek the same relief in whole or in part and she cannot maintain actions for the same relief in two separate courts. See Rule 12(b)(8), SCRPC.

VI. CONCLUSION

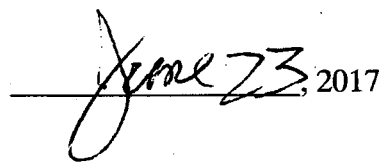
Based on the foregoing, Mrs. Pope's counterclaims are barred by collateral estoppel based on the Supreme Court's holding in Wilson v. Dallas.

Therefore, it is ORDERED that the Plaintiffs' Motion for Summary Judgment as to Defendant Pope's counterclaims is hereby GRANTED.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge



June 23, 2017