

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

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

RECEIVED

JAN 08 2019

SC Court of Appeals

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Appellate Case Nos. 2017-001899 and 2018-002229<sup>1</sup>

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

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**APPELLANT'S REPLY TO RETURN OF RESPONDENTS AND  
LETTER-RETURN OF ATTORNEY GENERAL TO  
APPELLANT'S MOTION FOR EXTENSION OF TIME**

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<sup>1</sup> Appellant is aware from the C-track system that her supplemental Notice of Appeal in Case No. 2017-001899 has been assigned a separate case number. Because certain of the new filings related to the supplemental appeal have been placed under one case number or the other, she files this with reference to both case numbers.

Appellant Adele J. Pope (“Appellant”) submits this reply to the Return of Respondents and the additional letter-return of Respondent Attorney General Alan Wilson (“AG”) to her Motion for Extension of Time in which to file Appellant’s initial brief herein.

**As to Respondents’ Return, filed by Sweeny, Wingate & Barrow, P.C.**

This is an appeal from a final order issued in November 2018, during a stay imposed in the case below by Rule 241 of the South Carolina Rules of Appellate Procedure. Appellate Case No. 2017-001899, to which the stay applied, is an appeal filed September 17, 2017 of an order dismissing the South Carolina Attorney General as a Plaintiff in the case below which the AG and sixteen additional Plaintiffs brought against Robert Buchanan, Jr. and Appellant in May 2010. It is also an appeal of certain interim orders.

Appellant’s motion to lift the automatic stay was denied by a Circuit Court order filed December 8, 2017, attached as Exhibit A, which held in part:

The orders on appeal here are wide-ranging, effecting [sic.] both the inclusion/exclusion of parties to the suit and to the right of the attorneys to represent those parties.

On October 30, 2018 Appellant filed a Supplemental Motion for Limited Lifting of Stay, based primarily on actions taken by a number of the individual Respondents during 2018, and actions taken earlier but revealed in 2018, which demonstrate an effort on their part to deprive the Court of jurisdiction over this appeal and render the material issues in the underlying case moot. That motion seeks to lift the stay for limited purposes, primarily to correct the parties; substitute a proper personal representative for the deceased Venisha Brown; and secure assets of deceased and non-resident individual Plaintiffs over which the Court has had jurisdiction for more than eight

years, but which are now in jeopardy of escaping the jurisdiction, rendering issues in the appeal moot.

Declining to hear the supplemental motion for partial relief from the automatic stay, and without lifting the stay, the Circuit Court issued an order which declined reconsideration of an order granting summary judgment to all Respondents as to Appellant's counterclaims. Those to whom summary judgment was finally granted include at least four Respondents to whom Buchanan and Pope never owed any duty and the deceased Venisha Brown, who could not be found before her death to be deposed. Final summary judgment as to Appellant's counterclaims was also granted to Plaintiff Attorney General after he was dismissed as a party under Rule 21, SCRCF, and to Plaintiff James Brown Legacy Trust, which claims it no longer exists.

The question of whether these seventeen Respondents should have been relieved from default after they failed to timely respond to the same counterclaims is an issue pending before this Court in Case No. 2017-01899. For that reason, Appellant filed the appeal of the summary judgment orders, and related interim orders, as a supplement to Case No. 2017-01899. Plaintiff also sought an extension of forty (40) days to file the initial brief.

To the extent that it was technically incorrect to file a supplemental appeal, rather than a separate appeal, in these intimately-connected pretrial appeals from the same case, the Court of Appeals has now corrected that oversight by assigning a new appellate number, 2018-002229.

Respondents' lengthy return primarily recites their desires not to have to litigate with Appellant any more in this case they filed against Buchanan and Appellant nearly 9 years ago. Despite not having couched their filing as a motion, and not having properly filed any motion, Respondents nonetheless explicitly request that this Court take drastic and unjustified action,

including dismissal and sanctions, against Appellant and her counsel. Because none of these requests has been properly presented, Appellant will respond only briefly to the matters on which Respondents purport to base their opposition to Appellant's simple extension request.<sup>2</sup>

Respondents' primary justification for opposing the extension request appears to be their incorrect and unsupported assertion that only two of the 25 Orders appealed from are appealable. No statute, rule or case is cited in support of their argument, and a review of controlling law shows that none supports the Respondents' argument.

Respondents appear to concede that Orders 1-2 identified in the Supplemental Notice of Appeal, the summary judgment orders, are undisputedly appealable and that the Notice was timely as to those. The remaining Orders appealed from were interlocutory Orders which could not be immediately appealed after their issuance in this long-running case. These interlocutory Orders are appealed pursuant to S.C. Code Ann. §14-3-430, which provides that intermediate Orders involving the merits of a case may be reviewed along with a final, appealable Order. The Supreme Court has found that for an order to involve the merits of a case, it "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780 (quoting *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)).

The intermediate Orders appealed decided important matters related to discovery, the legality of this lawsuit, and violations of Appellant's rights under the Federal and State Constitutions. These Orders are timely and properly appealed along with the final Orders granting

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<sup>2</sup> While the over-zealous requests for relief lack merit, Appellant respectfully reserves full argument in opposition until such time as there is a properly-presented motion by Respondents and/or the AG.

summary judgment as to all of Appellants' counterclaims prior to the conclusion of discovery and declining to reconsider that decision.

In attacking Appellant's justification for her extension request, Respondents do not deny that at least two individual Respondents, one a minor Plaintiff with no GAL, have escaped the jurisdiction and are living in the United Kingdom. They do not deny that Termination Rights proceeds under Sections 203 and 304 of the Federal Copyright Act which were transferred by a dozen Plaintiffs to Plaintiff James Brown Legacy Trust before this suit was filed, are being disbursed and leaving the jurisdiction as Respondent Legacy Trust claims it no longer exists. Instead they ask this Court to adopt Respondents' assumption that Appellant's pending appeals will not result in any reversal or vacation of the appealed Orders. None of the Respondents is entitled to any such assumption, and Appellant respectfully submits that the request for an extension should be granted as made.

#### **As to the Additional Letter-Return Submitted by AG Wilson**

Although the Return filed by Sweeny Wingate & Barrow, P.C. was submitted on behalf of "Respondents," J. Emory Smith, Esquire also submitted an untimely letter on behalf of the AG. The AG's logic for opposing the extension because it is for some reason moot is unclear from the letter. Appellant submits that her request for an extension is not moot and should be granted.

#### **Service on Counsel of Record**

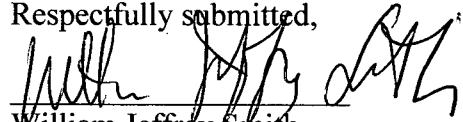
Appellant notes that neither the letter of J. Emory Smith, Esq., nor the Return of all Respondents filed by Sweeny, Wingate and Barrow, P.A. was served on counsel William Jeffrey Smith, Esq., and only the SWB Return was served on Daryl L. Williams, Esq., Both counsel had served their Notice of Appearance as additional counsel in Case No. 2018-002229. Appellant

understands that this may have been an oversight related to the timing of the notice, but asks that they be served in the future.

**Conclusion**

Appellant's motion for extension should be granted as requested.

Respectfully submitted,



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*Attorneys for the Appellant*

**RECEIVED**  
JAN 03 2019  
SC Court of Appeals

January 3, 2019

# Exhibit A

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

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JAN 03 2019

SC Court of Appeals

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RICHLAND COUNTY  
FILED

**ORDER DENYING DEFENDANT'S  
MOTION TO LIFT STAY WHILE ON  
APPEAL**

This matter is before the Court upon the Motion of the Defendant to lift the automatic stay provisions of Rule 241 of the South Carolina Rules of Appellate Procedure. For the reasons set forth herein, the Motion is DENIED.

On September 12, 2017, Defendant filed and served a Notice of Appeal in regards to five orders of this Court. These Orders are as follows:

1. Order of the Honorable Doyet A. Early, III Denying Defendant's Motion to Alter or Amend Order Dropping Attorney General as a Party, dated August 2, 2017 and received by Appellant on August 14, 2017.
2. Order of the Honorable Doyet A. Early, III Granting Attorney General's Motion to be Dropped as a Party, Dated May 31, 2017, and received by Appellant on July 10, 2017.
3. Order of the Honorable Doyet A. Early, III Granting Motion for Protective Order as to Deposition of Attorney General, dated September 21, 2016, filed October 3, 2016 and received by Appellant on September 30, 2016.
4. Order of the Honorable L. Casey Manning Concerning Defendant Adele Pope's Motion to Disqualify Sweeny, Wingate and Barrow, P.A. from Representing the Office of the Attorney General of South Carolina, Enjoining Russell Bauknight from Purporting to Speak for the Office of the Attorney General, and Other Relief, dated and filed July 5, 2015.
5. Order of the Honorable L. Casey Manning Granting Plaintiffs' Motion to Set Aside Entry of Default, dated and filed October 13, 2012.

The present Motion was filed on October 24, 2017 with a request for expedited hearing. Defendant subsequently filed an Affidavit of Adele Pope on or about November 8, 2017 and a Reply Memorandum on November 13, 2017. Plaintiffs filed a Memorandum in Opposition on November 10, 2017. A hearing was held on November 14, 2017 where attorneys for Plaintiffs and Defendant were present. Counsel for the Attorney General wrote the Court on November 13, 2017, that he did not believe that the Attorney General was required to respond to the Motion to Lift

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Stay and took no position regarding it because he had been dropped as a party by Order of this Court currently under appeal. The Attorney General was not represented by counsel at the hearing.

**STATEMENT OF LAW**

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision.” SCRAP 241(a). “After the service of the notice of appeal, any party may move for an order lifting the stay in cases which involve the general rule.” SCRAP 241(c)(1). “In determining whether an order should issue pursuant to this Rule, the lower court . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” SCRAP 241(c)(2). The circuit court has discretion whether to lift a stay of a matter pending before the court. *See Carolina Water Service, Inc. v. Lexington County Joint Mun. Water and Sewer Com'n*, 367 S.C. 141, 625 S.E.2d 227 (S.C.App. 2005)(“The primary issue in this case is whether the circuit court erred in lifting the stay as to the Challenge Actions.... Accordingly, the appropriate standard of review is abuse of discretion. An abuse of discretion arises where the [circuit] court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 398, 520 S.E.2d 142.”) *See also Gaddy v. Douglass*, 597 S.E.2d 12 (S.C.App. 2004) (Court of Appeals immediately lifted automatic stay as provided in Rule 225, SCACR.)

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## CONCLUSIONS OF LAW

In her Motion and all supporting documents, Defendant presents no facts and makes no argument based on Rule 241 of the South Carolina Rules of Civil Procedure. The Motion makes no reference to the effect of the particular orders from which the appeal is taken, to the scope of the relief she is seeking or the reasons why such relief is necessary.

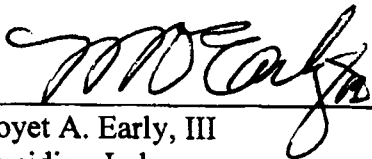
The provisions of Rule 241(a) SCRAP automatically impose a stay as to all matters decided in the orders on appeal. The orders on appeal here are wide-ranging, effecting both the inclusion/exclusion of parties to the suit and to the right of the attorneys to represent those parties. Defendant has not demonstrated that any of the exceptions of 241(b) apply and the Court finds there are none. Thus, this Court finds that the automatic stay applies to all matters being litigated in this case.

Rule 241(c)(2) sets forth considerations under which the automatic stay may be lifted: where it is necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. Defendant has not presented any facts or issues that address these considerations and the Court is not independently aware of any such issues. Thus, this Court finds that there is no basis for lifting of the automatic stay.

Defendant's argument is based entirely on concerns about prejudice that could be caused by delay in proceeding with discovery during the pendency of the appeal. While the Court is mindful of the age of this case desires to see it continue to move forward, the Court can find no legal basis for lifting a stay on this basis. Moreover, the Court finds that there is no prejudice to the Defendant as a result of the stay as the parties have had adequate opportunity to engage in discovery during the pendency of the case.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED that Defendant's Motion to Lift the Automatic Stay during appeal should be DENIED.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Presiding Judge

Dec 6, 2017

STATE OF SOUTH CAROLINA  
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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

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Appellate Case Nos. 2017-001899 and 2018-002229

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v.

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

Of whom Adele J. Pope is Appellant.

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**PROOF OF SERVICE**

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I certify that on January 3, 2019, I have served APPELLANT'S REPLY TO RETURN OF RESPONDENTS AND LETTER-RETURN OF ATTORNEY GENERAL TO APPELLANT'S MOTION FOR EXTENSION OF TIME by hand delivery on counsel listed below:

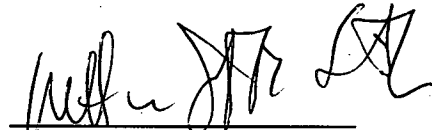
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January 3, 2019

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