

Exhibit O

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

vs.

Estate of James Brown and The James Brown
2000 Irrevocable Trust,

Defendants.

IN THE CIRCUIT COURT

Civil Action No. 2013-CP-02-1337

ORDER

RECEIVED

MAR 04 2019

SC Court of Appeals

Before the Court is a claim filed by Adele J. Pope (“Plaintiff” or “Mrs. Pope”) for the payment of Personal Representative and Trustee commissions and fees (collectively referred to hereinafter as “fees”) allegedly owed to her for her prior work as a Co-Personal Representative and Co-Trustee (“PR/Trustee”) of the Estate of James Brown and The James Brown 2000 Irrevocable Trust (“Estate,” “Trust,” or “Estate and Trust” or “Defendants”). This case was tried non-jury before the Court over the course of several months. Specifically, the Court heard testimony and received evidence on the following days: September 5-7, 2017; December 14-15, 2017; February 20-21, 2018; April 19-20, 2018; May 8-9, 2018; June 4-5, 2018. The Court held closing argument on July 25, 2018. After considering all of the testimony and evidence the Court makes the following findings of fact and conclusions of law.

I.

PROCEDURAL HISTORY AND BACKGROUND OVERVIEW

A. Mrs. Pope’s Initial Role with the Estate and Trust: Appointment as Special Administrator

The late James J. Brown (“Mr. Brown”), a resident of Aiken County, died testate on December 25, 2006. He executed a last will and testament (“Will”) and the Trust on August 1, 2000. The Will was filed with the probate court on January 18, 2007 and immediately admitted to

informal probate. The Will named six children to whom he left his personal and household effects. (Will, p. 4 (Pl. Ex. 3)). The Will poured over the remainder of his Estate into the Trust.

The Trust divides into two Trusts. First, the Brown Family Educational Trust is for the benefit of certain of Mr. Brown's grandchildren and intended to pay their educational expenses. (Trust, p. 4 (Pl. Ex. 2)). Second, the James Brown "I Feel Good" Trust is for the benefit of certain members of the public and intended to provide "tuition, educational expenses, and financial assistance of and for 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 in the State of South Carolina and Georgia." (Trust, pp. 4-5). On January 26, 2007, the probate court removed all matters related to the Estate and Trust to the Aiken County Court of Common Pleas. This Court presided over all matters pertaining to the Estate and Trust of Mr. Brown which were filed in this Court.

Mr. Brown's Will and Trust nominated Albert H. Dallas ("Dallas"), David G. Cannon ("Cannon"), and Alfred A. Bradley ("Bradley") to serve as Co-Personal Representatives of his Estate and Co-Trustees of the Trusts, respectively. (Will, pp. 5-6; Trust p. 5). On January 18, 2007, Dallas, Cannon, and Bradley were informally appointed as Co-Personal Representatives (as the Trust was executed in 2000, they were already serving as Co-Trustees). Immediately following their appointment as Co-Personal Representatives, their authority was challenged.

On January 24, 2007, certain children and grandchildren of Mr. Brown filed a petition seeking the removal of the Co-Personal Representatives and the appointment of a Special Administrator. On February 1, 2007, Tomi Rae Hynie Brown ("Mrs. Brown") filed a petition seeking only the appointment of a Special Administrator. The general bases for the petitions were conflicts of interest between the Co-Personal Representatives and the Estate and Trusts and a

failure to properly manage and preserve the decedent's home. *See generally* Order dated February 19, 2007. This Court denied the removal of the Co-Personal Representatives but granted the petitions to appoint a Special Administrator. *Id.*

On March 12, 2007, this Court issued an Order supplementing its February 19, 2007 Order granting the petition for the appointment of a Special Administrator. *See* Order dated March 12, 2007. In the Order, the Court appointed Mrs. Pope and Mr. Robert L. Buchanan, Jr. ("Mr. Buchanan") to serve as Special Administrators of the Estate. *Id.* Pursuant to the Order, among other tasks, their role was to "monitor, investigate, and oversee the performance by the general Personal Representatives of their duties, and present to the Court any appropriate issues regarding same." *Id.* (¶1).

B. First Report of Special Administrators to Personal Representatives

On June 22, 2007, the Special Administrators issued a report entitled: "First Report of Special Administrators to Personal Representatives." This report listed the various responsibilities that Mrs. Pope identified for the Co-Personal Representatives to undertake when she was a Special Administrator. The lead substantive paragraph reads as follows:

During the first 3 months of their service, the SAs have identified a number of areas in which the PRs and SAs will need to work to achieve the goal of consensus. They are primarily in the areas of preservation and management of the James Brown royalties and songs, and the preservation and protection of Mr. Brown's image and persona.

(First Report to PRs, Def. Ex. 10, p.1).¹

¹ References to PR/Trustee only refer to Mrs. Pope herein for Mr. Buchanan settled all matters with the Estate and Trust in 2012. In connection with his settlement, Mr. Buchanan renounced any right to receive a fee for serving as a Personal Representative of the Estate or Trustee of the Trust.

1. *Identifying the Assets of the Estate, Irrevocable Trust, and the Entities*

On page 2 of the First Report, Mrs. Pope recognized and identified that making a list of the assets of the Estate, Trust, and any entity owned by either was a core function of a Personal Representative. Mrs. Pope went on to expand on that recognition at pages 5-6 of the First Report.

2. *Preservation of the Royalties of Mr. Brown*

On page 3 of the First Report, Mrs. Pope recognized that preservation of the royalties was a critical matter for the Personal Representative. Mrs. Pope went on to expand on that recognition at pages 8-9 of the First Report.

3. *Preservation of the Image, Persona and Likeness of Mr. Brown*

On page 3 of the First Report, Mrs. Pope recognized that preservation of the image, persona, and likeness was a critical matter for the Personal Representative. Mrs. Pope went on to expand on that recognition at page 9 of the First Report.

4. *Revenue Surge from the Death of Mr. Brown*

On page 8 of the First Report, Mrs. Pope acknowledged what is crudely known in the entertainment industry as the “death bump.” The death bump is a phenomenon whereby interest in an artist surges following his or her death, creating economic opportunity to capitalize on the surge. Mrs. Pope noted the following: (1) once the projected budget and other information in the application for 501(c)(3) for the I Feel Good Trust is created; (2) the Inventory and Appraisal of the Estate completed; and (3) the Estate Tax Return (or the extension and drafts) are completed, then these documents will “create a valuable baseline for the actual status of the Estate on Mr. Brown’s death **prior to any surge related to his death.**” (emphasis added).

C. July 27, 2007 Recommendation of Special Administrators

On July 27, 2007, the Special Administrators moved this Court for the temporary removal of one or more of the Personal Representatives of the Estate and one or more of the Trustees of the Trust. The motion followed a review of financial documents tracing a \$900,000 check provided to Mr. Brown as a result of an audit of Polygram Records. Based upon a review of the financial documents, the records showed that in and around the time that Mr. Brown passed away, Mr. Cannon made an improper payment of \$350,000 to his company, DGC Associates, from the \$900,000 check. *See generally* July 27, 2007 Motion and Recommendation of Special Administrators.

D. August 10, 2007 Hearing and Resignation of Cannon

On August 10, 2007, this Court conducted a hearing on the motion of the Special Administrators seeking the temporary removal of one or more of the Co-Personal Representatives and Co-Trustees. At the hearing, Cannon resigned from his positions as Personal Representative and Trustee.

E. August 10, 2007 Order Confirming Cannon Resignation and Limiting Authority of Dallas and Bradley

On August 10, 2007, this Court entered an Order confirming the resignations of Cannon from his fiduciary positions and making the finding that Cannon returned the \$350,000 to the Estate.

In the August 10, 2007 Order, the Special Administrators further identified more items that needed to be completed by the then Personal Representatives of the Estate and Trust (Dallas and Bradley):

Preparing and filing 2006 income tax returns for:

- a. Mr. Brown;
- b. The James Brown Irrevocable Trust;

- c. James Brown Enterprises, Inc.;
- d. James Brown, LLC;
- e. James Brown Royalty Venture I SPC;
- f. Seventh Decade Productions;
- g. Geronimo Music, Ltd.

August 10, 2007 Order, p. 8.

F. September 20, 2007 Motion to Intervene by the South Carolina Attorney General

On September 20, 2007, the South Carolina Attorney General filed a motion to intervene in the general Estate case captioned: *In re: The Estate of James Brown A/K/A James Joseph Brown*, C/A No. 2007-CP-02-122. The Attorney General noted that the case addressed a charitable trust; accordingly, the Attorney General claimed a statutory and common law authority to involve its office with the proceedings. This Court granted the motion.²

G. November 12, 2007 Amended Petition to Remove Personal Representatives by Mr. Levenson

On November 12, 2007, Mr. Louis Levenson, on behalf of Larry Brown, Daryl J. Brown, Deanna J. Brown Thomas, and Yamma N. Brown Lumar, filed an amended motion to remove Dallas and Bradley. The grounds for the petition to remove Dallas and Bradley were generally as follows:

1. Failure to take the necessary precautions regarding personal property and the neglect has likely caused irreversible damage to the personal property. One example cited was that the Personal Representatives digitized 15 boxes of reel to reel masters but then threw away the original boxes. It was further alleged that the remaining masters were "literally on the floor of [Mr.] Brown's home which is not temperature or humidity controlled." See November 12, 2007 Amended Petition to Remove Personal Representatives, at p. 2.
2. Another example of the neglect regarding the personal property addressed a failure to properly secure the record collection, the costumes and clothing, posters and photographs. *Id.* at 3.

² The Georgia Attorney General also filed a motion to intervene, which this Court granted. The Georgia Attorney General later withdrew from the proceedings.

3. Another example of neglect addressed the mildew at the home. *Id.* at 4.
4. Another example of the neglect addressed a failure to secure the automobiles that were stored at the home. *Id.* at 5.

H. November 19, 2007 Hearing and Order Accepting Resignations of Dallas and Bradley

On November 19, 2007 at a hearing in Bamberg, South Carolina, this Court accepted the resignations of Dallas and Bradley from their fiduciary positions. Following the acceptance of their resignations, this Court appointed Mrs. Pope and Mr. Buchanan as the PR/Trustees. On November 20, 2007, this Court entered an Order memorializing the appointment. *See* November 20, 2007, Order.

I. Mrs. Pope's Compensation as Special Administrator

On January 8, 2008, this Court issued its order approving the Special Administrator fee of Mrs. Pope, plus interest at the rate of 8¾% from March 8, 2008 until paid in full. A portion of her Special Administrator fee was paid by Mrs. Pope during her tenure as Personal Representative, leaving a balance due to her of \$47,972. The unpaid portion of her Special Administrator Fee, including interest, is a part of her Petition in this case. By order entered August 16, 2017, this Court granted summary judgment in favor of Mrs. Pope in connection with her claim for Special Administrator fees in the amount of \$47,972, plus interest at the rate of 8¾% from March 8, 2008 until paid in full. I find that Mrs. Pope is entitled to her Special Administrator fee, including interest until paid in full, but the Special Administrator fee award is not relevant to her claim for fees as Personal Representative of the Estate or Trustee of the Trust.

J. Mrs. Pope's Service as Personal Representative

Mrs. Pope was appointed Personal Representative on November 20, 2007 and was removed for cause on May 26, 2009. *Wilson v. Dallas*, 403 S.C. 411, 448, 743 S.E.2d 746, 766 (2013). One

of Mrs. Pope's first orders of business as a fiduciary was to commence a lawsuit. On November 28, 2007, eight days after her appointment, Mrs. Pope filed a declaratory judgment action against every heir and claimed heir of Mr. Brown. With the exception of Mrs. Brown's spousal claim, prior to any heir filing a lawsuit, Mrs. Pope started the first lawsuit in this Estate. May 8-9 Trial Tr. p. 324, ln. 11-22.

1. *May 20, 2008 First Semi-Annual Report to Devisees, Beneficiaries and Attorney General*

After six months as PR/Trustee, Mrs. Pope issued a report. During the first six months, the report stated that the primary accomplishments were as follows:

1. Central location of many Estate/Trust records.
2. Prevention of sale of Estate/Trust Assets
3. Immediate and Permanent resignations of Cannon, Dallas & Bradley.
4. Return of \$350,000 of the \$900,000 taken from the 2000 Trust in 2006.

First Semi-Annual Report (Def. Ex 11, p.2). The Court notes that items 3 and 4 were accomplished while Mrs. Pope served as Special Administrator and prior to her appointment as PR/Trustee. The First Semi-Annual Report made the following projection for the next 6 months. The projections were directly tied to the sale of Mr. Brown's iconic personal property with the assistance of Christie's auction house (the "Christie's Sale"):

As soon as the Christie's Sale proceeds are received, they hope to do the following:

1. Complete Estate Tax Return by September 25, 2008 and pay the approximately \$500,000 of Estate Taxes and Interest due;

6. Work with entertainment counsel to enhance royalties, image and persona of Mr. Brown (without paying 50% of the gross, as proposed by Dallas, Cannon & Bradley).

Id. at 6.

The First Semi-Annual Report also made the following statements: “The current Trustees have entered into one substantial contract for a Musical Television tribute to James Brown . . . [and] over the next six months, will explore with entertainment counsel future enhancement of Mr. Brown’s royalties, image and persona.” *Id.*

The First Semi-Annual Report also stated in a separate section in all capital letters and in bold print: **REQUEST THAT ATTORNEY GENERAL AND FAMILY EXPLORE SETTLEMENT.** ³ *Id.* at 7. The report then went on to list a number of litigation matters. The report concluded as follows: “While the PR/Trustees are occupied with these necessary suits and the defense of Mrs. Brown’s Estate Plan, they urge the Family Members and the Attorney General to work toward a reasonable resolution of the issues in dispute.” *Id.* at 8.

2. *August 10, 2008 the Parties Settle*

Five of the six children named in the Will and Mrs. Brown held a mediation on August 10, 2008. A settlement agreement was reached and signed by all parties participating in the mediation. The parties to the agreement were: Mrs. Brown, individually and on behalf of her minor child, James Brown II; Larry Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Venisha Brown; Deanna J. Brown; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Daryl J. Brown; Tonya Brown; and the Attorney General, on behalf of the charitable beneficiaries of the Trust. Terry Brown, one of the six children named in the Will, later joined in the settlement agreement. On August 18, 2008, Mrs. Pope filed a motion opposing the settlement agreement even though Mrs. Pope had expressly urged the parties to settle.

³ At the time the report was filed, Mrs. Brown and the children named in the Will (with the exception of Terry Brown) had filed petitions to set aside the Will and Trust.

K. The Settlement Proceedings

On November 25, 2008, the court held a hearing in which the settling parties disclosed the terms of the settlement agreement on the record and reported they were ready to move forward with a hearing regarding its approval. Under the terms of the settlement agreement, each of the settling parties agreed to dismiss all Will and Trust challenges—the only challenges that were filed. The parties agreed that Mrs. Brown was the surviving spouse of Mr. Brown and that the six children named in the Will were his children. Mrs. Brown further agreed to dismiss her spousal claims. The Settlement Agreement created an entity which would receive all of Mr. Brown's probate and non-probate assets (the Settlement Entity). Additionally, the family members increased the Settlement Entity's size and worth by contributing the proceeds from their federal copyright termination rights to it. After Terry Brown later joined in the settlement, the charitable beneficiaries owned a 47.5 percent equity interest (however, it held a 50% voting interest) in the Settlement Entity and the other settling parties shared the remaining 52.5 percent equity interest. The settlement agreement also included a provision addressing the removal of Mrs. Pope and replacing her with a professional fiduciary.

The court commenced a hearing on January 30, 2009, which spanned seven non-consecutive days. Specifically, the hearing was held on January 30, 2009; March 4, 5, 6, 25, and 26, 2009; and April 6, 2009. Mrs. Pope testified in opposition to the settlement agreement. She presented the testimony of a tax law expert. She did not present the testimony of a copyright law expert. She did not present any expert in the field of entertainment law or in the entertainment business.

Pursuant to S.C. Code Ann. § 62-3-1102, this Court approved the settlement agreement as it found that it: (1) resolved multiple good-faith controversies, and (2) was just and reasonable.

The Court issued its order approving the settlement agreement and removing Mrs. Pope as PR/Trustee on May 26, 2009. Mrs. Pope appealed the order approving the settlement, and removing her from her fiduciary positions.

L. Motion for Payment of Fees and Creditor Claim

On June 24, 2009, Mrs. Pope filed a motion seeking payment of fees. Subsequently, on July 14, 2009, she provided an affidavit in which she set forth the basis for the entitlement to her claimed fees. In this filing, Mrs. Pope submitted an accounting of her time spent working for the Estate and Trust. On July 17, 2009, Mrs. Pope filed a creditor's claim against the Estate and Trust. The Estate and Trust took no action on these filings during the pendency of her appeal of the settlement agreement, and her removal from her fiduciary positions.

M. Wilson v. Dallas

On May 8, 2013, the Supreme Court handed down its ultimate opinion reviewing this Court's order approving the settlement agreement. The Supreme Court reversed the settlement but affirmed Mrs. Pope's removal for cause. *Wilson v. Dallas*, 403 S.C. 411, 448, 743 S.E.2d 746, 766 (2013). As a result, all settled litigation returned to the Aiken County Court of Common Pleas.

N. Pope v. Estate of Brown, C/A No. 2013-CP-1337

After the remittitur was issued in *Wilson v. Dallas*, on May 29, 2013, the Estate served Mrs. Pope with a notice of disallowance of her creditor's claim for her claimed fees. On June 8, 2013, Mrs. Pope then filed the subject action in the form of a 63-page complaint. The complaint named the current Personal Representative and Trustee, Russell L. Bauknight, *both* individually and in his fiduciary capacities. The complaint sought, among other relief, payment of Mrs. Pope's alleged fees, to void the appointment of the current Personal Representative and Trustee, the removal of the current Personal Representative and an accounting of the administration of the

current Personal Representative; and the appointment of a Special Administrator and Special Trustee for litigation and management of the Estate and Trust.

1. *Mrs. Pope's Complaint is Dismissed and Subsequent Appellate Litigation*

In response to the complaint, the Defendants filed a Rule 12(b)(6), SCRCF, motion to dismiss the complaint, with the sole exception of Mrs. Pope's fee claim. One of the primary grounds for the motion to dismiss was that Mrs. Pope did not have standing to assert any of the other claims alleged in the complaint. On January 7, 2014, this Court entered an order granting the motion to dismiss. Upon granting the motion to dismiss, the only issue for determination was Mrs. Pope's claim for fees. Mrs. Pope appealed this Court's Order.

2. *Supreme Court Issues a Stay*

During the pendency of the appeal of the Order dismissing the non-fee claims in the Complaint, on February 19, 2015, the Supreme Court issued a stay regarding all proceedings in the Aiken County Circuit Court involving the Estate and Trusts of Mr. Brown and the marital status of Mrs. Brown. Pursuant to that stay, this Court provided a status report to the Supreme Court.

On June 10, 2015, the Supreme Court lifted the stay and issued a number of opinions and orders regarding Mrs. Pope. In the Order lifting the stay, the Supreme Court noted that it "greatly appreciates the attention" this Court "paid to the management of these complicated and contentious matters." *Ex parte: Adele J. Pope, et al.*, Appellate Case Nos. 2013-001649, 2014-000250, 2014-001279, 2009-142286, Supreme Court Order, June 10, 2015 (Def. Ex. 114). The Supreme Court further instructed this Court to "continue as expeditiously as possible [to resolve the cases] as set forth in the status report and in accordance with this Court's opinion in *Wilson v. Dallas.*" *Id.*

The Order lifting the stay also admonished Mrs. Pope to cease her interference with the Estate and Trust. The Supreme Court stated that: “Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown . . . in which she clearly has no standing. We caution Pope that continued attempts to involve herself in the resolution of the Estate and Trust may result in *contempt charges*. *Id.* (emphasis added).

3. *The Order Dismissing the Complaint is Affirmed and Discovery Commences*

On June 10, 2015, in addition to the order lifting the stay, the Supreme Court affirmed this Court’s order dismissing all non-fee claims in Mrs. Pope’s complaint. Following the issuance of the remittitur, the parties engaged in a round of helpful but ultimately unsuccessful Rule 56 motions practice. Afterwards, on February 11, 2016, this Court entered a scheduling order in this case. One of the first issues addressed in the scheduling order was the identification of expert witnesses.

In her expert witness disclosure statement, Mrs. Pope identified twenty-two (22) individuals that would appear as experts at the trial, including herself and her husband.

In Defendant’s expert witness disclosure statement, they identified nine (9) individuals that would appear as experts at the trial.

During the course of discovery, thirty-seven (37) depositions were taken. Mrs. Pope noticed twenty-five (25) of these depositions. The Defendants noticed twelve (12) of these depositions.

4. *The Case is Transferred to the Non-Jury Docket*

On July 31, 2017, Defendants filed a motion to transfer this case to the non-jury docket. The motion demonstrated that a claim for PR/Trustee fees is equitable. Under South Carolina law,

equitable claims are tried to a court and not a jury. Mrs. Pope opposed the motion. The Court transferred the case to the non-jury docket.

O. The Case is Tried Before this Court

On September 5, 2017 the trial in this matter began. The Court took testimony and received evidence during the following dates. September 5-7, 2017; December 14-15, 2017; February 20-21, 2018; April 19-20, 2018; May 8-9, 2018; June 4-5, 2018. The Court held closing argument on July 25, 2018. Mrs. Pope put up her case in chief. The Defendants put up a defense. And, Mrs. Pope exercised her right to put up a rebuttal case.

1. *Mrs. Pope's Case in Chief*

Mrs. Pope's case-in-chief spanned from September 5-7, 2017. The witnesses put up by Mrs. Pope's included the following: Mrs. Pope; James Richardson (By Deposition); Roger Miller (Defendant's Copyright and Termination Rights Expert by Deposition); Steve Johnson (Fiduciary Expert By Deposition); William Sellars (Estate Accountant By Deposition).

2. *The Defendant's Defense*

The Defendant's defense spanned from December 14-15, 2017; February 20-21, 2018, and April 19-20, 2018. The witnesses put up by Defendants included the following: Ellison Thomas (Accounting Expert); Russell Bauknight; Bradley Sharp (Valuation Expert); Louis Levenson; Jonas Herbsman (Celebrity Musician Estate Administration and Entertainment Expert); Mark Hobbs (Tax Expert); Jeffrey Smith; Raymond Gonzales (By Deposition); Laura Woolley (Celebrity Estate Auction Expert); Roger Miller (Copyright and Termination Rights Expert); Tiffany Provence (Probate and Fiduciary Administration, Litigation and Compensation Expert).

3. *Mrs. Pope's Rebuttal Case*

Mrs. Pope's rebuttal case spanned from May 8-9, 2018 and June 4-5, 2018. The witnesses put up during the rebuttal were Mrs. Pope and Steven Johnson, who testified as an expert in fiduciary administration. Mrs. Pope attempted to present R.B. Alexander as an expert witness to support her valuation of the Estate and Trust. This Court excluded Mr. Alexander from testifying, finding that he was unqualified to render a valuation opinion pursuant to *Watson v. Ford Motor Co.*, 389 S.C. 434, 449-53, 699 S.E.2d 169, 177-79 (2010).

4. *The Court's Note on Witnesses and Depositions*

Mrs. Pope identified twenty-two (22) individuals that would appear as expert witnesses at this trial, and two of these individuals in Mrs. Pope's expert witness disclosure included herself and her husband. Moreover, Mrs. Pope deposed a number of individuals from the South Carolina Attorney General's Office, taking the position that these individuals were witnesses in this case. At trial, however, no one from the Attorney General's office appeared as a witness. Further, from her list of twenty-two expert witnesses, Mrs. Pope offered four witnesses and only one was found qualified to testify in Court—Mr. Steven Johnson.

Mrs. Pope's valuation witness (Mr. Alexander) was disqualified from providing expert opinion testimony. In addition, Mrs. Pope identified Mr. Smith as an expert witness in copyright and termination rights. Mrs. Pope hired Mr. Smith during her administration to advise on those issues. The Defendants called Mr. Smith as a fact witness to establish his lack of qualifications to provide this advice to the Estate and Trust. On cross-examination, counsel for Mrs. Pope sought to qualify Mr. Smith as an expert in copyright and termination rights. The Defendants objected to Mr. Smith offering opinion testimony, and this Court sustained the objection. February 20-22 Transcript, p. 145, ln. 8- p. 146, ln. 20. Mrs. Pope also attempted to offer *herself* as an expert

witness at trial. The Court sustained Defendants' objection to Mrs. Pope offering expert testimony in her case. September 5-7 Trial Transcript, pp. 24, ln. 25 – p. 27, ln. 15.

The Court again notes that thirty-seven (37) depositions were taken in advance of trial, with Mrs. Pope noticing twenty-five (25) of these depositions. The Defendants believed they needed to take twelve (12) depositions based upon the representations from Mrs. Pope in discovery. Against the backdrop of the number of witnesses Mrs. Pope put up in her case—two live witnesses and four witnesses by deposition—the inescapable conclusion is that this case was extremely expensive, and unnecessarily so, for the Estate and Trust to defend.

5. *Mrs. Pope Caused Undue Delay in this Case*

Mrs. Pope has claimed that Defendants have engaged in undue delay in this case. The Court rejects that claim and finds that Defendants have not been a source of undue delay. Indeed, the Court finds that Mrs. Pope has caused undue delay through unreasonable settlement demands and that her actions required Defendants to resolve this case through a trial. Def. Ex. 116 (demanding \$19,000,000.00 to settle); *see also Wilson*, 403 S.C. at 448–49, 743 S.E.2d at 766–67 (noting the “\$5 million in fees [sought] for services as fiduciaries for a relatively short interval of time”). Defense Exhibit 116 is a non-privileged settlement offer that Mrs. Pope made on September 6, 2017 during the trial of this case. Mrs. Pope demanded \$9 million for herself and \$10 million for the Pope Brown Foundation, a charity that Mrs. Pope is affiliated with that is completely unrelated to the entertainer James Brown. May 8-9 Transcript, p. 309, ln.19- p. 310, ln.1; p. 310, ln.10-14; *see also* Plaintiff's Motion for Directed Verdict filed June 14, 2018, referring to Pope's settlement demand as the “\$19 million solution.”

6. *Mrs. Pope Has Engaged in a Pattern of Personal Attacks*

Mrs. Pope has engaged in a pattern of personal attacks on the South Carolina Attorney General, both former Attorney General and current Governor Henry D. McMaster and current Attorney General Alan M. Wilson, as well as Assistant Deputy Attorney General C. Havird "Sonny" Jones, Jr. and other attorneys in that office. These disparaging personal attacks grew to include the other parties in the James Brown litigation and their counsel, and ultimately this Court. This Court has presided over all matters involving the Estate and Trust since Mr. Brown's death on December 25, 2006. These personal attacks have occurred at many of the motions hearings and in the trial of this case. A few examples:

"Your honor, the \$4.7 million valuation was fabricated by counsel." May 8-9 Transcript, p. 36, ln. 2-3.

"I learned it because -- the Attorney General of South Carolina breached his duty and entered into an inappropriate collusion between Sonny Jones and Tommie Rae's lawyers to raid the "I Feel Good" Trust. June 4-5 Transcript, p. 43, ln.16-20 (referring to then Attorney General McMaster, Senior Assistant Attorney General Sonny Jones and Alan Medlin and Robert Rosen, attorneys for Tommie Rae Brown, the surviving spouse of James Brown).

"I do not -- I believe that -- that Sonny Jones and Alan Medlin coopted the authority of the Attorney General of South Carolina while he wasn't looking, for the sole purpose of sullyng me." May 8-9 Transcript, p. 177, ln. 25 - p. 178, ln. 3 (referring to then Attorney General McMaster, Assistant Attorney General Sonny Jones and Alan Medlin and Robert Rosen, attorneys for Tommie Rae Brown, the surviving spouse of James Brown).

Q: The Supreme Court noted that you were seeking a \$5 million fee for a relatively short period of time and that was one of the grounds for removal in this case, isn't that true?

A: That was one of the false claims that was made by the attorney general because the attorney general knew -- he knew because he had filed the documents in this case. And again, it was made by other people, but the damage was the attorney general of South Carolina, the highest officer of this estate accusing us of wanting a \$5 million commission on what he said was a \$5 million estate." Pope Cross-Examination, May 8-9 Transcript, p. 181, ln. 3-13.

“No, we created a huge fund and sadly, the Attorney General did nothing about it and sat by and refused to correct Sonny Jones as he committed perjury and helped Mr. Bauknight help Tommie Rae take U.S. Royalties again from -- more than a million dollars already to her.” June 4-5 Transcript, p. 27, ln. 23- p.28, ln. 2 (accusing Assistant Attorney General Sonny Jones of perjury in filings before the Supreme Court).

The Court: Who perpetrated the fraud on the Supreme Court?

Ms. Pope: The Attorney General of South Carolina and the Estate. The other people agreed with those figures. They were false.

The Court: The Estate is represented by who?

Ms. Pope: Nexsen Pruet.

The Court: Billy Wilkins?

Ms. Pope: Yep – I’m sorry. Yes, sir. Aug. 15, 2017 Transcript of Motions Hearing, p. 62, ln. 4- 12 (accusing William W. “Billy” Wilkins, former Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, of fraud on the South Carolina Supreme Court).

“Unfortunately, the Supreme Court’s June 10th Order was based on false representations by Judge Early. I don’t believe they were intentional, but they were false. Judge Early told the Court he had never heard even a whisper of settlement. The truth is in open court on May 29th of 2009 – 2013, Mr. Medlin and Mr. Levenson had openly, in open court, told Judge Early they wanted to go in-camera and reinstate the very settlement that had just been overturned by remittitur just a day or two earlier.” June 4-5 Transcript, p. 39, ln. 12-20.

II. APPLICABLE LAW

The South Carolina Supreme Court’s decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), is the law of the case and this Court is bound by that decision. *Wilson v. Dallas* affirmed Mrs. Pope’s removal for cause as PR/Trustee and stated the following grounds for their holding: (1) Mrs. Pope had “sought \$5 million in fees for [her] services as [a] fiduciar[y] for a relatively short interval of time”; (2) Mrs. 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 [Mrs. Pope's] own attorneys' fees"; and (3) Mrs. Pope "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 [Mrs. Pope] that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf." *Id.* at 448–49, 743 S.E.2d at 766–67. The Court stated "[t]hese actions and the extreme discord between the parties convince us that [Mrs. Pope's] continued service as fiduciar[y] is not in the best interest of the estate." *Id.*

The removal of a personal representative constitutes grounds—within the discretion of the trial judge—to deny compensation. *See, e.g., In re Manville's Will*, 111 N.Y.S.2d 267, 269 (Sur. Ct. 1952) (denying compensation to removed fiduciary and holding that "[o]rdinarily, any conduct which would justify removal from office is an adequate ground for the denial of commissions"); *see also See Matter of Estate of Stone*, 236 Mont. 1, 5-6, 768 P.2d 334, 336-37 (1989) (denying compensation to personal representative who was removed for cause); *Estate of Rothko*, 84 Misc. 2d 830, 379 N.Y.S.2d 923 (Sur. Ct. 1975), decree modified sub nom. *Will of Rothko*, 56 A.D.2d 499, 392 N.Y.S.2d 870 (1977), *aff'd* sub nom. *Matter of Rothko's Estate*, 43 N.Y.2d 305, 372 N.E.2d 291 (1977) (denying compensation to coexecutors of the estate of a leading abstract expressionist painter after coexecutors were removed as fiduciaries for engaging in acts of disloyalty during negotiations for disposition of paintings in estate through art dealer); *Matter of Gould's Estate*, 547 S.W.2d 863 (Mo. Ct. App. 1977) (stating where attorney's conduct as executor is improper and his conduct as attorney is wrong, he is properly removed from those positions and denied all compensation).

"Compensation is due to him who serves, not to him who destroys." *McGallagher v. Estate of DeGeer*, 934 So.2d 391, 402 (Ala. Civ. App. 2005) (quoting *Webb v. Webb*, 33 So. 909,

926 (Ala. 1948)). Accordingly, when a personal representative causes harm to the estate through negligence or a breach of fiduciary duty, denial of compensation is the appropriate remedy. *See Matter of Estate of Stone*, 768 P.2d 334, 336 (Mont. 1989) (holding that a personal representative may be denied compensation when the personal representative's negligence causes harm to the estate); *see also Matter of Estate of Thacker*, 358 N.W.2d 342, 347 (Mich. App. 1984) (holding same); *In re Estate of Arnsdorff*, 615 S.E.2d 758, 760 (Ga. App. 2005) (holding that "the trial court is authorized to deny compensation to [a personal representative] who breaches his fiduciary duty to the estate or its beneficiaries."); *McGallagher*, 934 So.2d at 402 (holding that a personal representative who "is unfaithful . . . and fails in his fidelity . . . forfeits the right to compensation."); *In re Estate of Davis*, 217 P.3d 133, 136–37 (Ok. App. 2008) (holding that a court "may surcharge a personal representative's fee . . . when the representative breaches his or her fiduciary duty."); *In re Istocin's Estate*, 190 A. 382, 386 (Sup. Ct. Penn. 1937) (holding that a personal representative who is guilty of gross negligence in dealing with assets of the estate may be denied all compensation for services).

A claim for personal representative fees and commissions is a matter in equity. *In the Matter of Estate of Kay*, 423 S.C. 476, 480, 816 S.E.2d 542, 545 (2018).

S.C. Code § 62-3-719 entitled "Compensation of Personal Representative" applies to Mrs. Pope's request for a Personal Representative fee in this case. It provides:

(a) Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

(b) Additionally, a personal representative may receive not more than five percent of the income earned by the probate estate in which he acts as fiduciary. No such additional commission is payable by an estate if the probate judge determines that a personal representative has acted unreasonably in the accomplishment of the assigned duties, or that unreasonable delay has been encountered.

(c) The provisions of this section do not apply in a case where there is a contract providing for the compensation to be paid for such services, or where the will otherwise directs, or where the personal representative qualified to act before June 28, 1984.

(d) A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(e) If more than one personal representative is serving an estate, the court in its discretion shall apportion the compensation among the personal representatives, but the total compensation for all personal representatives of an estate must not exceed the maximum compensation allowable under subsections (a) and (b) for an estate with a sole personal representative.

(f) For purposes of this section, "probate estate" means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy. This subsection is intended to be declaratory of the law and governs the compensation of personal representatives currently serving and personal representatives serving at a later time.

S.C. Code Ann. § 62-3-719(a) (2009 & Supp. 2017).

S.C. Code § 62-7-708 entitled "Compensation of Trustee" applies to Mrs. Pope's fee request for a Trustee's fee in this case. It provides:

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

S.C. Code § 62-3-703(a) entitled “General Duties; relation and liabilities to persons interested in the estate; standing to sue” applied to Mrs. Pope’s service as Personal Representative in this case. At the time of her service, that statute provided:

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 62-7-933. 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.

S.C. Code § 62-7-933 entitled “Uniform Prudent Investor Act” applies to Mrs. Pope’s service as Personal Representative and Trustee in this case. Section 62-7-933(C)(1) provides:

A trustee shall invest and manage trust assets as a prudent investor 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 § 62-7-801 entitled “Duty to Administer Trust” applies to Mrs. Pope’s service as Personal Representative and Trustee in this case. It provides:

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this article.

S.C. Code § 62-7-802(a) entitled “Duty to Loyalty” applies to Mrs. Pope’s service as Personal Representative and Trustee in this case. It provides:

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

S.C. Code § 62-7-803 entitled “Impartiality” applies to Mrs. Pope’s service as Personal Representative and Trustee in this case. It provides:

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.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

When a PR/Trustee seeks fees for the partial administration of an estate and trust, the Court is tasked with determining reasonable compensation. Determining reasonable compensation involves an inquiry into the quality of a PR/Trustee's service during the partial administration. The requirements of a PR/Trustee are well known and fixed: marshal, preserve, and manage the assets and do so in a prudent and expeditious manner. Consequently, the Court's reasonable compensation analysis looks to the manner in which the PR/Trustee accomplished these tasks.

The Court's reasonable compensation analysis looks to the specific facts of each estate and trust. That an estate and trust includes copyrights from a world famous entertainer, lacks cash due to preexisting debts, or is embroiled in substantial amounts of post-death litigation does not alter the obligations of a PR/Trustee. Rather, from a reasonable compensation analysis, these are just background facts which forms the Court's legal analysis. The ever-present obligations to marshal, preserve, and manage the assets and to do so in a prudent and expeditious manner remain the same.

A compensation analysis for a PR/Trustee's service tied to the valuation of an estate and the income of an estate also exists. S.C. Code Ann. § 62-3-719(a)-(b) (2009). Under this statutory framework, a PR is entitled to be paid up to 5% of the value of a probate estate and 5% of the income of an estate.

**MRS. POPE'S APPOINTMENT
AND THE COURT'S DECISION**

This Court appointed Mrs. Pope with the enthusiastic support of almost all involved in the James Brown Estate. All believed that Mrs. Pope's reputation as an estate and trust practitioner would translate into her acting as a prudent and competent fiduciary for this Estate and Trust. The evidence and testimony demonstrated that Mrs. Pope failed in her obligations to marshal, preserve,

and manage the assets and to do so in a prudent and expeditious manner. The Court finds that Mrs. Pope breached her fiduciary duties to the Estate and Trust. Further, with respect to the date of death valuation of the Estate, the Court finds that Mrs. Pope arrived at a valuation without a proper appraisal.

Mrs. Pope became a Special Administrator three months after Mr. Brown passed away. She served in that capacity for eight months prior to being elevated, by her appointment as PR/Trustee. Her prior work as a Special Administrator demonstrates to the Court that Mrs. Pope was well aware of what was required of her as a PR/Trustee. Her Special Administrator report and the orders she submitted for the Court make this conclusion inescapable. Because Mrs. Pope was appointed PR/Trustee after serving as a Special Administrator for eight months, in addition to the other reasons discussed herein, I find that Mrs. Pope's failure to undertake basic functions of a PR/Trustee compel a no fee award.

A. Managing an Estate and Trust with Insufficient Cash and Substantial Litigation Does Not Alter the Obligations of a PR/Trustee to Manage the Estate and Trust

The Court relies on the testimony of two qualified expert witnesses to state its legal and factual finding that Mrs. Pope was not excused from acting prudently to manage the Estate and Trust because of the lack of cash or the presence of substantial litigation. Defendants offered the testimony of Jonas Herbsman as an expert witness for what a fiduciary of a celebrity estate should do to manage that estate. The Court qualified Mr. Herbsman as an expert witness and found his testimony credible and instructive. The Court will set forth a brief description of Mr. Herbsman's professional experience:

I represent musicians, artists, music publishers, record companies, managers of live music venues, and I have a particular specialization in representing the estates and heirs of well-known musicians. I represent the estates of John Lennon, Jimi Hendrix, I work with the Bob Marley estate; Roy Orbison; John Coltrain, Charles Mingus. I am the co-trustee of the John Phillips Trust. John Phillips was the

main songwriter and lead singer of the pop group the Mama's and the Papa's and I am a co-trustee of the Bob Marley Family Trust.

December 14-15 Transcript, p. 385, ln. 2-11.

Mr. Herbsman testified that it is common for the estates of celebrity musicians to lack the funds to pay expenses. He stated that when a fiduciary is confronted with such a situation, that the fiduciary must seek out professionals that will work on a deferred compensation basis. He testified it is a common occurrence for professionals to work for celebrity estates on a deferred compensation basis and that he has done it "a number of times." December 14-15 Transcript, p. 404, ln. 4-18.

Similarly, Mr. Herbsman testified that the presence of substantial litigation does not excuse a fiduciary from managing the assets of an estate. "I mean they're independent. You can manage all that and engage experts to take care of the things that – I'm sorry, take care of the things that need to be taken care of." December 14-15 Transcript, p. 412, ln. 1-25. Under cross-examination, he testified that he would have worked for Mr. Brown's estate on a deferred compensation basis. December 14-15 Transcript, p. 423, ln. 10-12. Under further cross-examination, he explained that Mr. Brown's estate was no different than any other celebrity estate.

Q. Would you take into consideration if you had been approached in any case like this, the fighting and infighting in the estate: Children, . . . putative wives and all of this litigation that's gone on from day one, would you take that into consideration arriving at a conclusion as to whether or not you'd take it under a contingency?

A. Human nature is what it is. I don't think I have one estate client that doesn't have this going on.

Q. All of this?

A. Not as – not anymore as much as this, but unfortunately, Bob Marley had 11 children and a wife and no will. You know – It's unfortunately not uncommon... you also have a lot of, you know, the only way one can put it is a lot of shady characters, [show] up, who see this as an opportunity to latch onto somebody and

to line their own pockets. So in most every instance I've been involved with, unfortunately, something along those lines comes along as part of the baggage.

December 14-15 Transcript, p. 423, ln. 10-25, and p. 425, ln. 2-11.

The Defendants also offered the testimony of Tiffany Provence. Ms. Provence is a former Dorchester County Probate Judge, having served for 10 years in that role. February 20-22 Transcript, p. 383, ln. 23- p. 384, ln. 1. Ms. Provence has been in private practice with the firm of Provence Messervy for ten years. *Id.* at p. 384, ln. 7-9. The Court qualified Ms. Provence as an expert in fiduciary administration, including compensation and litigation. *Id.* at p. 389, ln. 18 - p. 390, ln. 5. Mrs. Provence testified that a personal representative's duties to an estate are not altered by a lack of cash in an estate. *Id.* at p. 412, ln. 20 – p. 413, ln. 1. She testified that retaining professionals for an illiquid estate on a deferred compensation basis is “pretty common.” *Id.* at p. 409, ln. 12-13. Ms. Provence further testified that Mrs. Pope's actions did not meet the standard of care for a fiduciary in South Carolina.

The Court finds as a matter of fact and law that Mrs. Pope was not excused from properly managing the Estate and Trust because of the presence of a lack of funds or the presence of a substantial amount of litigation.

B. The Court's January 8, 2008 Order is Not Controlling

Mrs. Pope's case-in-chief largely rested on the premise that this Court's January 8, 2008 Order operated to pre-approve her fee claim. She essentially argued that this Court's prior authorization for her to pay herself on a time plus cost basis, a review of the events that occurred while Mrs. Pope was PR/Trustee, and the introduction of her billing records, were all that Mrs. Pope needed to introduce in order to prove entitlement to her fee claim.

On January 8, 2008, the Court executed an order that authorized Mrs. Pope to pay herself on a “time plus cost” basis while serving as the PR/Trustee. (January 8, 2008 Order, pp.1, 3, 4).

The purpose of the Order was to allow Mrs. Pope to receive fees during her administration, and those fees would be applied to her future “full commission[] as Personal Representative[] and Trustee[].” *Id.* at 1. Accordingly, the Order was written under the assumption that Mrs. Pope would: (1) properly manage the Estate and Trust and (2) close the Estate.

The Court finds that the January 8, 2008 Order does not limit its authority to determine reasonable compensation or determine that no compensation is reasonable. First, the Court’s Order on its face recognizes that Mrs. Pope would “receive fees and costs on an hourly basis, *as a deposit* only to any full commission to which [she] *may be entitled.*” *Id.* at 3 (emphasis added). The evidence demonstrates that Mrs. Pope never made any deposit of fees during her administration. Even if Mrs. Pope had made deposits during her administration, the Court is authorized to cause a personal representative to reimburse an estate from previously paid fees. *In the Matter of Estate of Kay*, 423 S.C. 476, 484-87, 816 S.E.2d 542, 547-48 (2018). The Court’s authority to order reimbursement confirms the legal infirmity of Mrs. Pope’s reliance on the January 8, 2008 Order. This Court finds that its January 8, 2008 Order in no way limits its authority to determine reasonable compensation.

C. Ruling on Plaintiff’s Motion to Exclude Evidence

At the start of trial, Mrs. Pope made a motion *in limine* to exclude evidence based on the absence of a claim for setoff or affirmative defenses by Defendants. The Plaintiffs’ position appeared to be that Defendant should not be entitled to offer evidence to limit Mrs. Pope’s claim that she was entitled to her hourly claim based upon the fees she billed pursuant to the January 8, 2008 Order. For the reasons discussed immediately above, the Court finds that the January 8, 2008 Order does not control the Court’s determination of a fee decision in this matter. In the Defendants Answer, they denied that Mrs. Pope was entitled to any fees. As a result, at trial they were entitled

to introduce all evidence to support that position. Accordingly, the Court denies the Plaintiff's motion *in limine*.

D. The General Requirements that a PR/Trustee Must Undertake for a Celebrity Entertainer's Estate and Trust

1. *Mr. Herbsman's Testimony*

Mr. Herbsman set forth a list of basic requirements that every prudent fiduciary for a celebrity entertainer's estate must undertake. While the Court acknowledges that Mrs. Pope is not a fiduciary with a specialization in this field, every prudent fiduciary is expected to know what they do not know and seek out professional assistance in the areas of which they are not proficient. Mr. Herbsman testified that he reviewed Mrs. Pope's detailed time records and other Estate and Trust records and as a result of his review he made the following observations and conclusions.

- December 14-15 Transcript, p. 388, ln. 5-25: When a celebrity passes away, a fiduciary must gather all contracts and agreements and understand all obligations and responsibilities the estate has, what the artist was subject to and prepare summaries of each to understand where you can and cannot exploit rights.
 - He found no evidence that Mrs. Pope conducted a contract review.
 - He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 389, ln. 1-25: When a celebrity passes away, determine whether there are archives of unreleased recordings, catalog those, make sure what's available, preserve them, and put together a plan of how and where to exploit them.
 - He found no evidence that Mrs. Pope conducted an unreleased recordings review.
 - He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 390 1-10, 19-25, p. 391, ln. 1: When a celebrity passes away, with respect to name, signature, and trademarks of a deceased performer, the estate should check and make sure what is and is not registered as a trademark, and make sure to protect trademarks in order to "[s]top third parties from bootlegging."

- He found no evidence that Mrs. Pope conducted a trademark review.
 - He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 391, ln. 2-24: When a celebrity passes away, seek out third-party content or material not owned by estate or record label to which an artist is associated. For example, an artist does a live performance and is recorded by the venue. It would make sense to “try and find those people to put the word out that you’re looking for that material to acquire it so that it doesn’t become material that’s exploited by third parties without your permission and competing with the legitimate product in the marketplace.”
 - He found no evidence that Mrs. Pope conducted a third-party review, other than the 75th Birthday TV special, which never took place.
 - He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 391, ln. 25 and p. 392, ln. 1-20: When a celebrity passes away, conduct a social media review and secure internet domain names to protect potential marketing rights.
 - He found no evidence that Mrs. Pope conducted a social media or domain name review.
 - He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 392, ln. 1-25, p. 394, ln. 1-4: When a celebrity passes away, efforts should be made to release recordings or new projects to ensure that the fan base does not dissipate.
 - He found no evidence that Mrs. Pope conducted a new project review.
 - He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 402, ln. 16-25, p. 403, ln. 1-25, and p. 404, ln. 1-3: When a celebrity passes away, and their estate is subject to Bowie Bonds, the estate must engage a professional to analyze the bond documents.
 - He found no evidence that Mrs. Pope conducted a Bowie Bond review.

- He found no evidence that she retained experts to advise her or to handle such a review.
- December 14-15 Transcript, p. 407, ln. 14-25 and p. 408, ln. 1-4: When a celebrity passes away, and their estate can be impacted by the exercise of termination rights, they must retain termination rights experts.
 - He found no evidence that Mrs. Pope retained a termination rights expert.

On rebuttal, Mrs. Pope never rebutted any of Mr. Herbsman's testimony on these basic aspects of fiduciary administration of a celebrity entertainer's estate. The Court finds that during her administration Mrs. Pope failed to conduct any of the essential activities identified by Mr. Herbsman.

2. *Findings from Testifying Witnesses*

It is elementary that a celebrity entertainer's estate must have qualified entertainment professionals to assist in the administration of the estate. The Court heard testimony that Mr. Brown's estate receives clearance requests from publishing companies on a daily basis. Professionals were not engaged to handle these requests. A prudent fiduciary must retain competent and experienced professionals to assist.

i. Mrs. Pope Failed to Retain Competent Entertainment Advisors

When Mrs. Pope was elevated to the role of PR/Trustee, she terminated the existing music manager, Mr. Frank Copsidas. May 8-9 Transcript, p. 198 ln. 15-p.199, ln. 19. At the time of his termination, Mrs. Pope did not have a plan in place to replace him. The Court finds that she never created a plan. Mrs. Pope never subsequently retained a music manager to assist with the day-to-day business of the estate. September 5-7 Transcript, p. 381, ln. 13-19. Mrs. Pope never even considered seeking to retain a music manager on a deferred pay basis. September 5-7 Transcript, p. 383, ln. 15-16, 24. Rather, the evidence demonstrated that Mrs. Pope sought advice from a

handful of individuals that were either unqualified or unwilling to assist on a deferred pay basis. The conclusion is that Mrs. Pope attempted to act as the music manager by herself. The Court finds that in the process, Mrs. Pope breached her fiduciary duties, including her duty of prudence.

Mrs. Pope retained Raymond Gonzales. Based on his resume, as an entertainment lawyer, it appeared that Mr. Gonzales would be able to assist Mrs. Pope. She testified on cross-examination that he was her entertainment counsel. September 5-7 Trial Tr. p.192, ln. 12-15. The Estate's accounting for Mrs. Pope's service, however, demonstrated that Mr. Gonzalez was paid roughly \$3,000, indicating the scant amount of work he conducted. (Def. Ex. 3, pp. 19, 22, 23, 27, 28, 29). His deposition confirmed the limited nature of his work. He testified that, "I think we only talked a couple of times regarding specific clearances." February 20-22, Transcript, p. 163, ln. 2-3. He also confirmed that "the James Brown television special was the bulk of the work I did for the estate." February 20-22, Transcript, p. 161, ln. 3-4; *see also id.* at 169, ln. 6-18 (reviewing contemporaneous invoice and confirming testimony is consistent with bill); Def. Ex. 42 (the contemporaneous invoice). He further testified that he was never asked to work on a deferred pay basis. February 20-22, Transcript, p. 171, ln. 1-21.

The James Brown television special never occurred and no deal was signed. In her First Report as Personal Representative, Mrs. Pope stated to the Court in the filing that she had "entered into a substantial contract for a Music Television tribute to James Brown." First Semi-Annual Report, p. 7. At trial, Mrs. Pope admitted that statement was not correct. She blamed it on unspecified interference by the attorney general's office. September 5-7 Trial Tr. p. 404, ln. 1-25.

Mrs. Pope also testified that she secured a law student who previously worked for LiveNation (a concert promoting company) to assist her as an intern "because we were so illiquid." September 5-7 Transcript, p. 383, ln. 2-16. She testified the intern was "really quite helpful in

getting into copyright issues and so forth. And she was a music lover.” *Id.* The intern did not appear at trial, and there is no indication or evidence presented that anything she may have done benefited the Estate and Trust.

Mrs. Pope secured the services of Mr. Jeffrey Smith to assist with termination rights issues and copyright issues. September 5-7 Transcript, p. 384, ln. 22-25. Mrs. Pope testified that she asked him to cease working once the heirs announced a settlement. *Id.* at p. 385, ln. 8-11. When Mrs. Pope was questioned as to what Mr. Smith’s primary occupation was, she stated: “Thinking. Mr. Smith is a scholar.” September 5-7 Transcript, p. 385, ln. 12-25. She went on to admit that he “ran his father’s electronics repair business” for “as long as I’ve known him.” *Id.* The testimony indicated that Mr. Smith ran an electronics repair store in Newberry, South Carolina⁴ for the entirety of his professional life, beginning from 1975. February 20-22 Trial Tr. pp. 129, ln. 6 – p. 130, ln. 12. Mr. Smith worked for the estate from June of 2008 until early August 2008. There is no indication or evidence presented that any of his work benefited the Estate and Trust.

ii. Mrs. Pope Failed to Retain an Advisor to Analyze the Pullman Bond

When Mr. Brown passed away on December 25, 2006, his copyright revenues were pledged to a debt instrument referred to as the Pullman Bond.⁵ On the date of his death, the outstanding debt totaled \$18,405,366. All monies generated from the copyright royalties went directly to pay the Pullman Bond; furthermore, all monies that were generated from the clearance request activities went directly to pay the Pullman Bond. The Estate had no right to receive this cash flow until the Pullman Bond was fully paid off. Accordingly, the Pullman Bond was *the*

⁴ Mrs. Pope’s hometown is Newberry, South Carolina.

⁵ Mr. Herbsman referred to this bond as the Bowie Bond; it is the same debt.

albatross of this Estate for it alone stood in the way of the Estate receiving a positive cash flow to pay the beneficiaries, and importantly, to pay the costs of administration.

Mrs. Pope did not analyze or audit the Pullman Bond. She did not send a copy of the Pullman Bond documents to an experienced financial lawyer or accountant to undertake a review of the documents. September 5-7 Transcript, p. 369, ln. 12-22. She testified that it was possible she sent a copy of the documents to Mr. Smith, but by his own testimony, he does not have any background in finance or accounting. Mrs. Pope allowed the Pullman Bond to operate on autopilot. According to her First Personal Representative Report, the payments were being made on time, so it appeared to her that there was nothing left to do regarding the debt. The Court finds that Mrs. Pope's failure to analyze the Pullman Bond was a breach of her duty of prudence.

During Mr. Bauknight's testimony, he testified what an analysis of the Pullman Bond by Mrs. Pope would have revealed. He testified that his accountants identified an error associated with an escrow account. The error resulted in an escrow account holding approximately \$485,000 that had not been applied to the bond principal and those monies could have been used to fund a separate tax escrow account. Dec. 14-15 Trial Tr., p. 107, ln. 22 – p. 111, ln. 24. The tax escrow account was never set up until Mr. Bauknight's administration. Mr. Bauknight testified monies in the tax escrow could have been used to pay estate taxes. *Id.* at p. 111, ln. 7-24.

Based upon the professional review of the Pullman Bond, Mr. Bauknight's advisors analyzed the requirements of the "yield maintenance provision," which essentially operated as a prepayment penalty. December 14-15 Transcript, p. 111, ln. 25 and p. 112, ln. 1-9, 13-21. Based upon the professional analysis of the Pullman Bond, Mr. Bauknight was able to map out a strategy to accelerate the Pullman Bond pay-off without triggering the punitive effects of the yield maintenance provision.

Defense Exhibit 36 contained a list of four settlements that Mr. Bauknight negotiated with the publishing companies that conducted business with Mr. Brown during his lifetime. These settlements were reached following his fiduciary process of reviewing all contracts with the Estate and Trust. The settlements were reached with Warner-Chappell, BMI, Polygram Records/Universal Music. December 14-15 Transcript, p. 116, ln. 5- p. 124, ln. 3. In total, these settlements generated \$5,242,921, which were available to reduce the principle of the Pullman Bond. Had Mrs. Pope employed a fiduciary process to analyze the Estate and Trust contracts with the assistance of professionals, the Court finds that she should have been able to secure settlements with these companies and within the range negotiated by Mr. Bauknight. Applying the analysis found in Defense Exhibit 36, had Mrs. Pope done this during her administration, then she could have saved approximately \$643,848.18 in interest payments on the Pullman Bond.

E. Negative Effects on Estate and Trust from Failing to Retain Professional Advisors

The Court finds that Mrs. Pope's failure to hire professional advisors foreclosed her ability to make prudent decisions and manage the Estate and Trust. The Court finds that Mrs. Pope mismanaged the handling of the clearances, she failed to utilize the Pullman Bond for the benefit of the estate and as a result improperly advised this Court to authorize the Christie's auction, and she failed to understand the value of the proceeds of the termination rights provided in the settlement. Mrs. Pope's failures harmed the Estate and Trust.

1. *Mismanagement of the Clearances*

During cross-examination of Mrs. Pope, Defendants discussed her handling and approach to clearances. Mrs. Pope testified that she was responsive to clearances, meaning that she responded timely. September 5-7 Transcript, p. 374, ln. 19-25. The Defense introduced Defense Exhibits 8 and 9. Both of these exhibits were printouts of email communications involving

clearance requests. Defense Exhibit 8 referenced a clearance request for which Mrs. Pope never provided a response. The email read that, “never received response from Adele to my e-mail dated 5/30/08, advertise[r] and moved onto another song.” September 5-7 Transcript, p. 379, ln. 20-23.

Defense Exhibit 9 was an email from December 10, 2008 and it sought to use the song “It Takes Two” in two movie trailers. The email noted that the clearances were “becoming quite urgent.” September 5-7 Transcript, p. 376, ln. 17. Mrs. Pope responded to that email and stated that “[w]e are simply unable to deal with this until January.” (Def. Ex. 9). Mrs. Pope discounted these two emails, by noting that they were only two out of the approximately 200 clearances she processed. September 5-7 Transcript, p. 378, ln. 21-22

The Defendants offered Bradley Sharp to testify as an expert in the “field of estate valuations of musicians and valuations of intellectual property.” December 14-15 Transcript, p. 226, ln. 8-11. Part of Mr. Sharp’s work included analyzing the Estate and Trust’s clearance data in order to provide the Court context for Mrs. Pope’s work.⁶

Mr. Sharp provided a comprehensive analysis of the entire body of clearance activity under Mrs. Pope’s administration that served to buttress the inference to be drawn by Defense Exhibits 8 and 9. He testified that the approval rate for clearances by Mrs. Pope was in the 60% to below 60% range during her administration. Specifically, in 2008 he testified it was in the 60% range, and then there was “a significant decline in 2009.” December 14-15 Transcript, p. 255, ln. 15-25, p. 256, ln. 1-2. The Court draws the reasonable inference that the significant decline in 2009 was based upon Mrs. Pope’s preoccupation with challenging the settlement, and not having professionals in place to manage the musical assets.

⁶ Mr. Sharp also provided valuation testimony, which will be addressed below.

Mr. Sharp also corrected Mrs. Pope's testimony as to the number of clearance requests during her administration. He testified that in 2008 there were "approximately 65," and that in the "first portion of 2009 that's associated with Adele Pope['s] administration, it's approximately 60." December 14-15 Transcript, p. 291, ln. 9-11, 13-14. Mr. Sharp testified that he was provided with the Estate and Trust's clearance files. December 14-15 Trial Tr. p. 249, ln. 10-12. Accordingly, the Court finds Mrs. Pope's statement that she oversaw approximately 200 clearances is incorrect, and that the number is approximately 125.

Part of Mr. Sharp's testimony, which this Court found helpful in its analysis of the quality of Mrs. Pope's work, was a comparison of the clearance activity during Mrs. Pope's administration versus Mr. Bauknight's administration.⁷ Mr. Sharp testified that the approval rate for clearances under Mr. Bauknight increased to "north of 80%." December 14-15 Transcript, p. 255, ln. 21-22. He went on to state that it remained steady at approximately 85% from 2010 and beyond. *Id.* at p. 256, ln. 4-6. Mr. Sharp's analysis also indicated a dramatic increase in the number of clearance requests. He testified that in the second half of 2009, the number jumped to approximately 119. In 2010, the number increased to approximately 304, approximately 268 in 2011, approximately 234 in 2012, and approximately 215 in 2013. December 14-15 Transcript, p. 291, ln. 17 – p. 292, ln. 4.

The Court makes two observations here. First, the obvious point is that once Mr. Bauknight was appointed and retained a professional music advisor, the number of clearance requests received by the Estate in the first 6 months of his administration nearly matched the entirety of

⁷ The Court notes that Mr. Bauknight hired Peter Afterman, a Grammy award winning music supervisor for the Rolling Stones. Mr. Afterman assisted with clearances at the earliest stages in Mr. Bauknight's administration. The Court notes that Mr. Bauknight retained Mr. Afterman on a deferred compensation basis. December 14-15 Trial Tr. p. 93, ln. 12 – p. 94, ln. 1.

Mrs. Pope's administration. Second, relates to the surge in activity once the Estate was under proper management. Mr. Herbsman referred to this as the "death bump." It appears Mrs. Pope was also aware of this phenomenon, but the evidence demonstrates she failed to put in place any apparatus to capitalize on the surge for the benefit of the Estate and Trust.

During Mr. Herbsman's direct testimony, he was questioned about clearances. He testified that he "handle[s] clearance requests every day." December 14-15 Transcript, p. 395, ln. 16. He noted that they are a "fairly specialized area" and that you "need a lot of experience seeing the same thing over and over again in order to know what you can and can't negotiate." *Id.* at p. 396, ln. 11-14. He went on to note that you cannot manage clearances by just "sit[ting] and wait[ing] for the phone to ring." *Id.* at p. 396, ln. 19-20. Rather, "there is a whole process of marketing and promoting the business." *Id.* at p. 396, ln. 22-23.

Mr. Herbsman testified that it was his opinion that the clearance activity increased under Mr. Bauknight because he "hired Peter Afterman who is an expert in music clearances." *Id.* at p. 397, ln. 23-24. Referring to Mr. Afterman, he went on to testify that:

I've worked with him. I've had clients - - one of my clients is a very large music video production company. They make and distribute a substantial number of music videos, including a James Brown product; and so I've had to go to Peter Afterman for clearances so I'm aware of what it is he does and for other clients as well. He also represents the Rolling Stones. . . . And that's what he does day in and day out.

Id. at 398, ln. 2-11.

With the addition of Mr. Afterman, Mr. Bauknight testified that the Estate and Trust was able to secure a number of very large financial opportunities. The motion picture "Get on Up" was made, as was the documentary, "Mr. Dynamite." The Estate and Trust placed seven songs in Super Bowl commercials. It also placed a song in a well-known Chanel perfume commercial. Mr. Bauknight testified that many of these projects were "million-dollar deals." December 14-15 Transcript, p. 149, ln. 4-25 and p. 150, ln. 1-7.

Mrs. Pope's mismanagement of the clearance activity was caused by her breach of the duty of prudence. The clear effects of this breach on the Estate and Trust is that it lost opportunities to generate funds to accelerate paying down the Pullman Bond, resulting in excess interest payments.

2. *Decision to Conduct the Christie's Sale*

Mrs. Pope advised this Court that the Christie's Sale needed to occur because funds were required to pay the estate taxes. September 5-7 Transcript, p. 483, ln. 7-10 and p. 484, ln. 5-12 (referring to Def. Ex. 4). Further, Mrs. Pope advised the IRS that the Christie's Sale needed to occur in order to pay the estate taxes. (Def. Ex. 14). She testified that a "substantial deposit toward the estate taxes" would be made upon receipt of the proceeds.⁸

While this Court approved the Christie's Sale, it did so based upon the recommendation of Mrs. Pope. According to her testimony in this trial though, and unbeknownst to the Court at the time, Mrs. Pope did not consult a qualified professional in making this decision. During her cross-examination, she testified as follows:

Q. Did you consult anybody in the music industry whether or not it was prudent to sell off the iconic personal property?

A. Well, we consulted through Mr. Dallas and Mr. Cannon and Toby Byron and everybody was around with everybody. Everybody had an opinion about the sale, yes.

Q. So –

A. The answer is yes.

Q. You consulted Dallas, Cannon?

A. Dallas, Cannon, Levinson, Mr. Julien, Sotheby's, Christie's. I can't name them all sitting here today. It's 2017. But we consulted and consulted and consulted before that sale because there were so many opinions about it.

⁸ The Court notes that upon receipt of the auction proceeds Mrs. Pope paid \$10,000 to the IRS as estate taxes, and a substantially larger sum to herself. *Wilson v. Dallas*, 403 S.C. 411, 448-49, 743 S.E.2d 746, 767 (2013).

September 5-7 Transcript, p. 479, ln. 22-25 and p. 480, ln. 1-9.

Consulting with Mr. Cannon, who resigned in disgrace after stealing money from Mr. Brown is inexplicable. Consulting with Mr. Dallas, who resigned under allegations of gross mismanagement and was being sued by the Estate and Trust at the time, is likewise inexplicable. Finally, Mr. Julien, Sotheby's, and Christie's are all in the business of auctioning property. As a PR/Trustee, Mrs. Pope had a fiduciary duty to make a threshold determination whether it was in the best interest of the Estate and Trust to sell the iconic personal property. She failed to consult with anyone who had the experience to advise her, and in doing so breached her duty of prudence.

With regard to this issue, Mr. Herbsman testified that "[i]t would be the last thing I would recommend doing . . . because there are opportunities for . . . museum exhibitions, tours, things of that nature where it would be worthwhile to have those items and once they're gone, they're gone." December 14-15 Transcript, p. 408, ln. 5-25. Finally, Mr. Herbsman noted that if an estate must conduct an auction, then it is incumbent upon the fiduciary to solicit and receive proposals from numerous auction houses. December 14-15 Transcript, p. 409, ln. 1-17. Although Mrs. Pope's above testimony stated that she consulted with three different auctioneers, the Court finds and the evidence demonstrates that Mrs. Pope only received a bid proposal from a single auction house: Christie's. Accordingly, she was left with no ability to canvass the landscape for the best deal for the Estate and Trust. Mrs. Pope failed to properly manage the Christie's Sale, and in doing so, breached her duty of prudence.

3. *Decision to Oppose the Settlement Agreement*

The heirs reached a settlement agreement in August of 2008. Part of the settlement agreement included the heirs contributing the proceeds from their federal copyright termination rights to the Settlement Entity. Mrs. Pope opposed the settlement. During this trial, Mrs. Pope

admitted that at the time of the settlement hearings she “was vaguely familiar with the notion” of termination rights. September 5-7 Transcript, p. 505, ln. 13-15. During this trial, she further testified that she did not retain anyone to advise her on the value of termination rights during the 2009 settlement hearings. September 5-7 Transcript, p. 508, ln. 24 – p. 509, ln. 5. She also testified that termination rights do not have any value to a charity. *Id.* The Court finds the latter statement demonstrates a lack of credibility on Mrs. Pope’s behalf.

The Defendants offered Mr. Miller as an expert in music valuation and termination rights valuations. February 20-22 Transcript, p. 272, ln. 22-24, p. 273, ln. 16-17, 21-24. The Court found Mr. Miller credible and very helpful in understanding the role of termination rights in the settlement agreement and termination rights in general. Mr. Miller discussed the settlement agreement that culminated in this Court’s May 26, 2009 Order. He testified that the settlement was a prudent decision because the heirs contributed the benefits of their termination rights and that contribution would have been beneficial to the Estate and charity. February 20-22 Transcript, p. 283, ln. 1-23. He testified as follows: “The heirs as things are now have the ability to *extract earnings* from what’s flowing through the Estate into the charity. Which means that over time, the ability of the charity to do its *charitable work will be diminished.*” *Id.* at p. 283, ln. 7-11 (emphasis added). He went on to testify that, “[i]f an agreement was reached where all the assets would have been combined and those termination rights would have resided with the Estate, then not only would there be preservation of that income, there actually would have been growth.” *Id.* at p. 283, ln. 11-15.

He explained the growth of the revenue stream as follows:

Q. And so how would that grow the pie as it were?

A. They would go from receiving a portion of those royalties to the entire royalty stream.

A. But what's more interesting and potentially much more valuable is the Carlin works.

Q. Okay. And what are those?

A. So early in his career before he was a superstar, it's my understanding that Mr. Brown did a deal with Carlin Music America, which was a more traditional publishing deal where he sold or assigned the publishing rights to some of his earlier works, including the song I Got You, I Feel Good.

Q. Okay.

A. *And so there's a situation where the estate does not have any publisher interest, but if those renewal rights were contributed to the estate*, the estate could terminate those assignments and double their money for that song and some of the other earlier important works.

Q. Okay. Now, I don't want you to give me numbers, but can you give the judge a sense of how big the income is from I Feel Good?

A. As a percentage?

The Witness: When I did my valuation of the termination rights, the value of the termination rights for that one song was a substantial portion.

Q. Of what?

A. Of the overall value of the termination rights.

February 20-22 Transcript, p. 285, ln. 3- p. 286, ln. 14 (emphasis added).

Mr. Miller further testified that the settlement agreement would have created “[c]onsolidated administrative control.” February 20-22 Transcript, p. 288, ln. 8. The benefit of this is that if “the estate ever decided that it would be most prudent to aggregate all the assets and sell them for one lump sum, . . . buyers would prize a larger interest in each underlying copyright which would be achieved by the terminations being consolidated into the estate.” *Id.* at p. 288, ln. 10-16. And by use of the word “prize,” Mr. Miller meant that the “assets would be more expensive.” *Id.* at p. 288, ln. 17-20.

The Supreme Court's opinion in *Wilson v. Dallas* is, the law of the case for this proceeding. Nevertheless, this Court is not required to turn a blind eye to the fact that Mrs. Pope did not seek advice regarding the benefits of the settlement agreement vis-à-vis termination rights before her appeal attacking the settlement. Moreover, every appellate decision is, of course, limited to the facts before the Court. The Supreme Court's decision in *Wilson v. Dallas* did not have the benefit of the testimony and evidence the Court received during this trial. The Court is likewise not required to turn a blind eye to the fact that the settlement agreement put an end to litigation among the heirs.⁹ The Court finds that Mrs. Pope's failure to seek guidance on this vitally important term of the settlement agreement constituted a breach of her duty of care and prudence.

The Court also concludes that Mrs. Pope's opposition to the settlement was linked, at least in part, to its removal of her as a PR/Trustee. Mrs. Pope served an offer of compromise on the settling parties in the midst of the settlement hearings. (Def. Ex. 34). The first term of the settlement offer provided that, "[t]he action to remove . . . Adele J. Pope as Personal Representative[] and Trustee[] is hereby dismissed." *Id.* at 2. Further, the fifth term of the offer provided that, "Adele J. Pope shall continue to serve as PR[] and Trustee[], and [her] actions to date are ratified and confirmed." *Id.* at 3. Mrs. Pope's offer of compromise did contain more favorable terms to the ultimate charitable endeavors of Mr. Brown. By agreeing to withdraw her opposition to a settlement in exchange for remaining the PR/Trustee, however, those terms demonstrated a breach of the duty of impartiality on the part of Mrs. Pope. It further demonstrated

⁹ The Court takes judicial notice that a case is pending in the United States District Court for the District of South Carolina, styled *Deanna Brown-Thomas, et al. v. Tommie Rae Hynie a.k.a. Tommie Rae Brown, et al.*, 1:18-cv-02191-JMC. The case was filed in the United States District Court for the Central District of California but transferred to South Carolina on August 8, 2018. In that case, certain children of Mr. Brown have brought a lawsuit against Mrs. Brown and the Estate related to federal copyright termination rights. A number of the plaintiffs in that case were signatories to the August 2008 settlement agreement.

that she inappropriately breached her duty of loyalty by placing her interests in front of the best interests of the Estate and Trust.

F. The General Requirements of a PR/Trustee of an Estate and Trust

The Court will now turn to the duties of managing a typical estate and trust. Mr. Bauknight testified credibly regarding the state of Mr. Brown's home when he was appointed:

Q. What was the condition of the house at Beech Island when you were first appointed?

A. The house -- well, I brought in a contractor to help me assess the condition of the house. It was leaking. The roof leaked. The plumbing leaked. There were a lot of structural issues according to my -- what I was advised, mainly caused by water. The -- there's a structure that I refer to as the pool house next to Mr. Brown's pool that contained a lot of business/personal property such as band uniforms, some instruments, lots of costumes, lots of posters advertising concerts, and that type of material. In -- in the pool house, which had no working heating or air, the roof and the ceiling, you could stand in that structure and look up and see the sky. It had holes all the way through and there was mold growing on the property that was in that structure.

A. But the structure itself was not being kept up.

December 14-15 Transcript, p. 95, ln. 7-23. Because the structure was not being kept up, neither was the business personal property contained within the structure. As noted above at p. 8, Mrs. Pope was well aware of these issues as early as her service as a Special Administrator, for they served, in part, as grounds for the petition to remove Dallas and Bradley as PR/Trustees. Moreover, Mr. Levenson demanded that Mrs. Pope address these issues when she was a PR/Trustee. December 14-15 Transcript, p. 324, ln. 4-13; *see also id.* at p. 96, ln. 15 – p. 97, ln. 5.

Mrs. Pope also failed in her handling of the Estate and Trust's finances. When Mr. Bauknight began his administration, the Estate and Trust's bank account contained \$12,300, and there "were bills currently due and payable that exceeded the amount of cash . . . in the bank." December 14-15 Transcript, p. 87, ln. 18-20. As a result, Mr. Bauknight testified that "I borrowed

on an unsecured basis \$25,000 from Merrill Lynch to allow me to have a little bit of cash to be able to pay bills and protect the estate assets.” *Id.* at p. 92, ln. 11-14.

The Defendants offered Mr. Ellison Thomas to testify, in part, as a forensic accountant. In preparing for his testimony, Mr. Thomas analyzed the Estate and Trust bank account. His testimony established that during her administration Mrs. Pope had access to \$855,430. September 5-7, Trial Tr. p. 642, ln. 5-8. Stated differently, \$855,430 flowed into the Estate and Trust bank account for use by the PR/Trustees during Mrs. Pope’s administration. Based upon the evidence and testimony shown at trial, Mrs. Pope failed to use these monies to remedy the known problems facing Mr. Brown’s Beech Island home and the personal and business property located within that home. Rather, Mrs. Pope used some of these monies to pay herself and other lawyers. Mr. Thomas testified that Mrs. Pope received the largest percent of disbursements from the Estate and Trust’s bank account during her administration. *Id.* at p. 642, ln. 17-21.¹⁰

1. *Mrs. Pope Did Not File Income Tax Returns*

When Mrs. Pope was the Special Administrator, she submitted an August 10, 2007 Order, which the Court signed, identifying the following 2006 income tax returns that needed to be filed: 1.) Mr. Brown; 2) The James Brown Irrevocable Trust; 3.) James Brown Enterprises, Inc.; 4.) James Brown, LLC; 5.) James Brown Royalty Venture I SPC; 6.) Seventh Decade Productions; and 7.) Geronimo Music, Ltd. With the exception of Mr. Brown’s income tax return, these same returns were required to be filed every year thereafter.

Mrs. Pope never filed a single income tax return while she was the PR. She did not file the 2006 returns she highlighted for the Court in its August 10, 2007 Order. Mr. Bauknight confirmed

¹⁰ The Court notes that Mr. Bauknight, who has been working on a deferred pay-basis, fixed the problems at Mr. Brown’s Beech Island home, spending over \$500,000 to remedy what his prior fiduciaries failed to do. December 14-15 Transcript, p. 97, ln. 6-18.

that no income tax returns were ever filed by Mrs. Pope. December 14-15 Transcript, p. 142, ln. 5-8. As a result, penalties were assessed against the estate for tax delinquencies. December 14-15 Transcript, p. 142, ln. 5-8, 20-25 and p. 144, ln. 23-25.

It is a basic requirement of a PR/Trustee to file income tax returns associated with the assets they are charged to administer. That Mrs. Pope identified the need to file these income tax returns, but then failed to do so is a breach of the duty of prudence. Through deposition testimony in her case in chief, Mrs. Pope introduced Steve Johnson, Esq., a South Carolina Estate and Trust practitioner. On cross-examination, he admitted that it could be a breach of fiduciary duty for a PR to fail to file income tax returns. September 5-7 Transcript, p. 581, ln. 12-21. The Court affirmatively finds that Mrs. Pope breached her fiduciary duties to the Estate by failing to file any income tax returns during her administration.

2. *Mrs. Pope Filed the Form 706 Estate Tax Return with No Valuation for the Intellectual Property*

Mrs. Pope filed Mr. Brown's Form 706 estate tax return (the "Return") on September 24, 2008. (Confidential Def. Ex. 2). The Return did not contain an appraisal or valuation regarding the intellectual property. Nevertheless, Mrs. Pope valued the estate, including the intellectual property, at approximately \$84,000,000. When Mr. Bauknight became the PR, the Return was under audit by the IRS. December 14-15 Transcript, p. 142, ln. 5-8, 20-25.

The focus of the audit was the lack of any substantiation for the \$84,000,000 value placed, in part, for the intellectual property. Mr. Bauknight testified that the Return did not have a valuation for the intellectual property when it was filed by Mrs. Pope. In order to overcome the audit, Mr. Bauknight had a valuation conducted of the intellectual property. Mr. Bauknight retained a firm, on a deferred payment basis, to conduct the valuation. Mr. Bauknight testified that the IRS accepted the valuation report generated by the firm he retained. As a result, the value of the

intellectual property on the Return was reduced from approximately \$84,000,000 to \$4,812,265. (Def. Ex. 56). Once the IRS accepted the valuation, it determined that no estate taxes were due and refunded the \$10,000.00 that Mrs. Pope paid in estate taxes following the Christie's Sale.

It is important to underscore what the extreme reduction that the IRS agreed to indicates to the Court. The IRS has an incentive for every estate to have as high a defensible value as possible for the higher value increases the tax liability owed to the IRS. Mr. Bauknight testified that once he submitted the valuation, it encountered three layers of review at the IRS: (1) the audit agent, (2) the audit agent's supervisor, and (3) the national valuation team that addresses royalty interests. For the IRS to accept the extreme reduction in value, I find that the original value placed on the Estate's property by Mrs. Pope was either overstated or placed on the Return with a disregard for the actual value. My conclusions are supported based upon the evidence I find below.

G. The Valuation of the Estate

The date of death valuation of this Estate has been a contentious issue over the years. Mrs. Pope has claimed, in court filings and in the courtroom, that the Estate and Trust was worth \$100 million, less the outstanding balance on the Pullman Bond. Based upon the Court's review of the record and evidence, I find no evidence to support Mrs. Pope's valuation. The evidence demonstrates that the \$100 million number was an opinion expressed by Mr. Dallas unsupported by any professional appraisal. Mrs. Pope never hired anyone to conduct a valuation of the intellectual property.

1. *The Genesis of the \$100 Million Number*

The \$100 million number came from a letter of intent to purchase the intellectual property assets of the Estate and Trust. The letter of intent was created, in part, by Terry Cox. During this

trial, Terry Cox appeared by deposition and the evidence shows where the \$100 million number came from:

- Q. Okay. And in your discussions with Buddy Dallas, were you given any direction of what he thought –
- Q. – the sales price should be?
- A. He's the one who came up with this number.
- Q. ...In the third paragraph of page 1 of Defense 1, there is a number.
- A. Yes.
- Q. It says between 90 million and 100 million?
- A. Yes.
- Q. That number came from Buddy Dallas?
- A. Yes.
- Q. Tell me how that played out.
- Q. Okay. Why did Buddy Dallas come up with this number, or how did he come up with this number?
- A. I can tell you what I think, but I don't know how he came up with it. The only thing I can think about is just he saw what Presley had done and James Brown was as big as Presley.
- Q. Okay. Did you do any due diligence?
- A. Well, no, not at the time.
- Q. Okay. So then that number is just a number. Am I correct in saying that number is just a number that Mr. Dallas told you to use?
- A. That's the number that he said that he would accept that number and that's the number. If we're going to send a letter of intent that's the number he wanted on there for him to accept that letter of intent.
- Q. ...Then with respect to either of those two letters of intent, were you ever provided the opportunity to look under the hood and do the due diligence?

A. As related to these two letters of intent, no.”

February 20-22 Transcript, p. 328, ln. 14-25, p. 329, ln. 1-2, p. 330, 7-12, p. 332, ln. 5-13, and p. 333, ln. 3-6.

Accordingly, the \$100 million number came from Mr. Dallas. He told Mr. Cox to send a letter of intent to him offering \$90-100 million to purchase the intellectual property. And, according to Mr. Cox, the genesis of the number was that Elvis Presley’s estate had recently sold in that range. Accordingly, Mr. Dallas decided that Mr. Brown’s estate was worth the same thing.

That letter of intent was later used as the basis for the Inventory and Appraisal (“I&A”) created by Dallas and Bradley. (Def. Ex. 5). By the time a reference to the letter of intent appeared in the I&A, those individuals referred to it as a “firm offer.” *Id.* at 5. The Court finds that it was never a firm offer and the reasons for Dallas and Bradley, then PRs, to use this valuation are self-evident.

Mrs. Pope accepted the \$100 million number and used it herself. In an Estate accounting of her administration filed on May 20, 2009, Mrs. Pope placed the value of the Estate at \$100 million and specifically cited to the Terry Cox letter, which she referred to as an “offer.” (Def. Ex. 3, p. 1; September 5-7 Transcript, p. 347, ln. 2, 5-7). The letter of intent was never an offer, and Mrs. Pope should have known it. Prior to filing the accounting on May 20, 2009, the testimony demonstrates that Mr. Cox told Mrs. Pope that he believed the assets were probably worth between \$35-65 million, but even then he had never done any due diligence.

The following colloquy during Mr. Cox’s deposition reveals the following:

Q. . . . When you would come around to this 65 million or 35 million range, had you even been able to go and look inside the house yet [*i.e.*, conduct due diligence]?

A. No.

(Cox Deposition, p. 78, ln. 20-24).

Q. ...Dr. Cox, during cross-examination, I believe that you testified that you came to believe that the value could have been 35 million or 65 million. Did you – was that – did I hear that testimony correct?

A. Correct.

Q. Did you communicate those lower range numbers 65 million or 35 million to Mrs. Pope?

.....

A. Because she had heard that I had mentioned 65 to something and so there was some correspondence to that nature, where, you know, if I thought it was only worth 65 and she wasn't interested in having our group make an offer.

Q. Okay.

A. And so that's as much as I can remember at the time.

February 20-22 Transcript, p. 375, ln. 19-23 and p. 376, ln. 8-10, 12-19.

Mrs. Pope submitted an Estate accounting that used Mr. Cox's \$100 million number. (Def. Ex. 3, p.1). Mr. Cox testified that he told Mrs. Pope that he believed the actual number was likely closer to \$35-65 million, and he made that known to Mrs. Pope while she was a PR/Trustee. Accordingly, the Court finds that the value of the Estate on the accounting was overstated. Mrs. Pope labeled a letter of intent an offer, and she stood by that letter of intent as a basis for value when she knew Mr. Cox refuted the value.

2. *Mrs. Pope's Trial Testimony Regarding Valuation is Not Credible*

During trial, the Defendants challenged Mrs. Pope on how she valued the Estate. Mrs. Pope admitted that she did not engage a professional to render a valuation opinion. September 5-7 Transcript, p. 340, ln. 22-25 and p. 341, ln. 14-16. But Mrs. Pope would not admit that she simply relied upon Mr. Cox's letter and the I&A filed by Dallas and Bradley. September 5-7 Transcript, p. 349, ln. 15-17, p. 350, ln. 14-16, p. 352, ln. 17-21, p. 354, ln. 15-22, and p. 355, ln. 16-20. The

constant reply was that Mrs. Pope used various pieces of information, including conversations, from sources to value the Estate. May 8-9 Trial Tr. p. 81, ln. 20-25. Mrs. Pope, had never valued a copyright or royalty in her life. September 5-7 Transcript, p. 357, ln. 11-12, 14-17, 21.

Mrs. Pope supported her valuation by reference to a formula she mentioned in a response she filed as Special Administrator. The formula, verbatim, called for a valuation based upon the following:

- 1) 1 year royalties based on 5 yr. M&T Average
- 2) PLUS 50% of Gross known Performance Contract from 2006
- 3) X – a figure recommended by accountant within range of 12.5 – 14
- 4) LESS payoff amount due M&T Bank as of date of death
- 5) EQUALS date-of-death value of Royalties, Image, Name and Persona.

(Def. Ex. 13).

Mrs. Pope has no background in finance or valuation, and she never credibly testified where the formula came from. Moreover, the Court finds that it is not credible for Mrs. Pope to claim that the above formula, that was not approved by the Court, and was tucked into a Special Administrator filing, served as the basis for her valuation when she later served as the PR. Finally, Mrs. Pope never offered the financial inputs for this formula.

The only qualified expert valuation witness that appeared at trial (Mr. Sharp) testified credibly that the above formula had no basis in accepted valuation methodology. Mr. Sharp testified that he had never seen a valuation like Mrs. Pope's formula:

Q. In your entire experience have you ever seen this type of valuation formula utilized?

A. No, I have not. In my experience this type of valuation formula has not been applied to value intellectual property.

December 14-15 Transcript, p. 233, ln. 5-9.¹¹ Because the Court finds that Mrs. Pope's number was likely based upon Mr. Cox and Mr. Dallas's letter of intent, the Court finds the following testimony of Mr. Sharp insightful.

Q. ... Can you comment on the appropriateness of valuing anything on a letter of intent?

A. . . . That's entirely inconsistent with my professional experience whereby nonbinding letters of intent submitted prior to any due diligence being completed or any active review in support of a transaction, they're not fair indications of value.

December 14-15 Transcript, p. 237, ln. 7-8, 12-18, 22-23.

3. *Mrs. Pope was Unable to Present a Qualified Expert to Support Her Valuation*

Mrs. Pope has voiced the opinion that the date of death value of Mr. Brown's Estate and Trust was approximately \$100 Million ever since she was the PR/Trustee. Mrs. Pope failed to provide expert testimony to support her opinion. In Mrs. Pope's rebuttal case, she sought to offer a valuation expert named R.B. Alexander. The Defendants moved to exclude Mr. Alexander from offering an expert opinion on the basis that he was unqualified to render an expert valuation opinion. In open court, the Court conducted an analysis of the proposed expert's qualifications and an analysis of the inputs into those opinions pursuant to *Watson v. Ford Motor Co.*, 389 S.C. 434, 449-53, 699 S.E.2d 169, 177-79 (2010). As a result of the Court's analysis, the Court determined that Mr. Alexander was not qualified to offer an expert opinion and excluded him from testifying.

April 19-20 Transcript, p. 375, ln. 7-18.

¹¹ Mr. Sharp is a Certified Financial Analyst charter holder, December 14-15 Transcript, p. 223, ln. 11-14; he has overseen 700 media and entertainment projects, *id.* at p. 224, ln. 12-13; he estimated that he had been involved in 120-130 projects in the music industry, *id.* at 224, ln. 21-22; some of his more famous estate valuation work included work on the estates of Frank Sinatra, Elvis Presley, Jimmy Hendrix, Frank Zappa, Audrey Hepburn, Bob Hope, Johnny Carson, Michael Creighton, and Paul Walker. *Id.* at 225, ln. 14-22.

After the Court excluded Mr. Alexander, Mrs. Pope went on to testify in her rebuttal case in an effort to provide a basis for her number. Mrs. Pope referenced documents from litigation related to an abandoned refinancing of the Pullman Bond, prior to Mr. Brown's death, which purported to support her position. These documents referenced that as a condition to any transaction the financial institution required a valuation report and a supporting financial model. Under questioning by the Court, Mrs. Pope admitted that she had never seen any of those reports. May 8-9 Trial Tr., pp. 53, ln. 22- p. 54, ln. 1; pp. 54 ln. 11- p. 55, ln. 3. There is no evidence those reports were ever created. The conclusion of this Court is that Mrs. Pope's position on valuation is not credible.

4. *The Valuation Accepted by the IRS Comported with Industry Standards*

The IRS accepted and independently vetted the valuation report submitted by Mr. Bauknight during its audit of the Return. Mr. Sharp also testified regarding the methodology utilized in Mr. Bauknight's valuation. His testimony was as follows:

Q. Is the approach utilized by Philpott Ball & Werner a methodology approach that you have seen before?

A. The methodology that was applied by Philpott Ball & Werner in valuing the assets underlying the estate as the date of death is consistent with my personal experience over the course of my career in having completed or overseeing close to 700 valuation projects with a large majority of those in the entertainment media space and is consistent with my understanding of industry standards and practice with respect to valuing intellectual property rights.

December 14-15 Transcript, p. 245, ln. 6-16.

The Court finds that Defendants presented the only credible valuation evidence at trial. The Court finds that the Philpott Ball & Werner valuation independently vetted and agreed to by the IRS represents the date-of-death value of the intellectual property of the Estate.

H. The South Carolina Fiduciary Administration Expert Witnesses Confirmed and Bolstered the Court's No Fee Conclusion

Ms. Provence served as a Dorchester County Probate Judge for 10 years and after leaving the bench has continued membership in both state and national probate judges' associations. Transcript, Dec. 14-15, p. 6, ln. 15. She has also served as a court-appointed fiduciary in approximately 100 cases in counties across South Carolina. Transcript, Dec. 14-15, p. 7, ln. 23. Her court-appointed fiduciary service has included administration of estates in the \$150 million range and involved management of ongoing businesses. Transcript, Dec. 14-15, p. 9, ln. 16. She has served as fiduciary of estates that lacked sufficient cash to hire advisors and as fiduciary for estates embroiled in litigation, testifying that both situations were quite common. Transcript, Dec. 14-15, p. 29, ln. 7. Ms. Provence testified that she has been compensated for her fiduciary service in some cases on an hourly basis and in other cases by payment of a statutory personal representative's commission. Transcript, Dec. 14-15, p. 35, ln. 9. In each situation, Ms. Provence was required to submit a detailed invoice for review by the court and the beneficiaries of the estate. Transcript, Dec. 14-15, p. 36, ln. 9. The Court qualified Ms. Provence as an expert in fiduciary administration, including compensation and litigation. The Court found Ms. Provence and her opinions credible.

1. *Mrs. Pope Breached the Duty of Prudence*

Ms. Provence opined that Mrs. Pope had a duty to administer the Estate prudently and she failed to meet the standard of care in South Carolina by failing to hire an advisor with entertainment experience to assist her managing the entertainment assets of the Estate. Transcript, Dec. 14-15, p. 76, ln. 7. Further, she testified Mrs. Pope failed to fulfill her duty of prudence when she billed the estate for attempting to learn the entertainment business. Transcript, Dec. 14-15, p. 53, ln. 8. She further opined that Mrs. Pope had a duty to administer the Estate prudently and failed to meet

the standard of care in South Carolina when she failed to hire an expert with intellectual property experience to advise her on how to administer the musical copyrights, including an understanding of termination rights and how they impacted the Estate. Transcript, Dec. 14-15, p. 52, ln. 21. Ms. Provence also opined that Mrs. Pope breached her duty to prudently administer the Estate when she failed to hire a valuation expert to advise her on how to properly value the musical copyrights and other business assets of the Estate. Transcript, Dec. 14-15, p. 74, ln. 14. The Court agrees.

The primary asset of the Estate and Trust is Mr. Brown's musical copyrights. Mrs. Pope had little, if any, experience in the management of such assets and she did not hire anyone who did. Her attempt to manage the musical copyrights on her own operated as a breach of her fiduciary duty to prudently administer the Estate. With all of Mr. Brown's business experience in the music industry, he did not manage his own music business. Rather, he retained a music manager, Frank Copsidas, to assist him. Mrs. Pope fired Mr. Copsidas almost immediately after her appointment as Personal Representative. Def. Ex. 83. She did so with no plan to hire an adviser to replace him. This action and the others noted above were deviations from the standard of care. Mrs. Pope did not meet the standard of care for a South Carolina fiduciary when she fired the music manager of the Estate and then attempted to manage the music business of the Estate herself.

The Court further finds it was a breach of fiduciary duty for Mrs. Pope to attempt to value the musical copyrights on her own. Mrs. Pope failed to meet the standard of care for a South Carolina fiduciary when she failed to engage an expert to assist her in valuing the musical copyrights and related assets of Mr. Brown's music business.

Ms. Provence testified that although this Court approved Mrs. Pope's recommendation to conduct the Christie's Sale, Mrs. Pope remained responsible for overseeing it, including the decision to hire Christie's and to monitor Christie's conduct of the sale. Transcript, Dec. 14-15, p.

54, ln. 13. Mrs. Pope was aware of the “long lead” necessary for a successful auction, as reflected in Mrs. Pope’s billing description from her Jan. 15, 2008 meeting with Christie’s. Transcript, Dec. 14-15, p. 57, ln. 22. Nevertheless, Mrs. Pope caused the sale to occur with insufficient time to obtain maximum value. The Court finds that Mrs. Pope’s mismanagement of the Christie’s Sale, including her failed attempt to sell the Grammy as noted by the Supreme Court in *Wilson v. Dallas*, was a breach of her fiduciary duty to act prudently in administering the Estate and failed to meet the standard of care for a South Carolina fiduciary.

2. *Other Pertinent Findings that Support a No Fee Award*

Ms. Provence testified that at the time of her removal, Mrs. Pope should have had a checklist of what had been done and what still needed to be done, including a detailed inventory with a list of professionals and parties responsible for each Estate and Trust asset. Transcript, Dec. 14-15, p. 72, ln. 3. Ms. Provence credibly testified that she did not see any evidence that Mrs. Pope completed any of these basic tasks during her administration. Transcript, Dec. 14-15, p. 73, ln. 13; p. 74, ln. 3; p. 74, ln. 14.

Ms. Provence testified that Mrs. Pope is not entitled to a statutory fee for a number of reasons. First, Mrs. Pope did not complete the administration of the Estate during her tenure. Transcript, Dec. 14-15, p. 66, ln. 22. Second, Ms. Provence testified that the statutory fee is not fully earned and typically not paid until the estate administration is complete and the estate is in the process of being closed. Transcript, Dec. 14-15, p. 66, ln. 22. Mrs. Pope did not begin nor complete the administration of this Estate during her tenure. Finally, the administration of this Estate is ongoing today more than nine (9) years after Mrs. Pope’s removal for cause.

Ms. Provence testified that she often serves as a court-appointed fiduciary for an hourly fee. Transcript, Dec. 14-15, p. 35, ln. 14. Ms. Provence opined that this Court has the discretion

to set a reasonable fee for Mrs. Pope based on all facts and circumstances in this case, including the length and quality of Mrs. Pope's service, any breaches of fiduciary duty during her service, and Mrs. Pope's removal for cause. Transcript, Dec. 14-15, p. 79, ln. 2.

Ms. Provence further testified that in her experience, if a PR is removed, the majority of the time the probate court does not award any fee to the removed PR.¹² Transcript, Dec. 14-15, p. 40, ln. 1. *Wilson v. Dallas* affirmed that Mrs. Pope was removed for cause because it was in the best interests of the Estate and Trust. Her removal and the Supreme Court's opinion affirming that decision, alone, are sufficient grounds for this Court to justify denying Mrs. Pope a fee.

Ms. Provence testified that South Carolina is a Uniform Probate Code ("UPC") state, and in other UPC states, courts have held that a PR that breaches his fiduciary duty or does not benefit the Estate is not entitled to a fee. *See Matter of Estate of Stone*, 236 Mont. 1 (Mont. 1989) (noting "a crucial factor for determining the reasonableness of any challenged fee is whether the services rendered were beneficial to the estate . . . [and] we agree with the view taken by the courts of the State of Michigan that when a personal representative's negligence causes harm to the estate, he or she may be deprived of all or part of their fee."); *see also In Re: Estate of Arnsdorff*, 273 Ga. App. 612 (Ga. Ct. App. 2005) ("The Trial Court is authorized to deny compensation to an executor who breaches his fiduciary duty to the estate or its beneficiaries."). When the Court considers the weight of the evidence presented at trial and detailed throughout this order, I find that Mrs. Pope is not entitled to a fee.

¹² The Court notes that no PR fees have been awarded to Dallas, Cannon, Bradley, or Buchanan.

I. Mrs. Pope's Rebuttal

In response to Ms. Provence, Mrs. Pope called W. Steven Johnson, Esquire to testify in her Reply case. Mr. Johnson testified that despite Mrs. Pope's removal for cause for the reasons stated by the Supreme Court, in his opinion Mrs. Pope should nevertheless still receive her full fee. Transcript, June 4-5, p. 141, ln. 13-145, ln. 22. Mr. Johnson further opined that Mrs. Pope did not breach any of her fiduciary duties and performed extraordinary service for the Estate and Trust. June 4-5, p. 109, ln. 11-p. 126, ln. 6; p. 131, ln. 4. He offered that opinion on numerous occasions throughout his direct and cross-examination. When confronted with facts about Mrs. Pope's administration of which he was unaware, however, Mr. Johnson repeatedly testified that he believed Mrs. Pope acted prudently because "[s]he's reasonable and she's got good judgment." *E.g.*, June 4-5 Trial Tr. p. 189, ln. 22- p. 190, ln. 4.

The Court discounts Mr. Johnson's opinions and places little to no weight behind them, for it is clear that he was not aware of the facts of this case and simply supported Mrs. Pope. For example, Mr. Johnson testified that Mrs. Pope reasonably relied on the Inventory and Appraisal filed by the prior personal representatives, but he had not reviewed the inventory, did not know the qualifications of the person who prepared it, was unfamiliar with the letter of intent proffered by Terry Cox and had not read his deposition. Transcript, June 4-5, p. 179, ln. 8-p. 183, ln. 21. In short, Mr. Johnson appeared as a character witness and not as an expert witness. I find Mr. Johnson's testimony unpersuasive. It did not refute the testimony of Ms. Provence.

**IV.
STATUTORY FEE COMPUTATION**

Absent a finding of extraordinary services, § 62-3-719(a) provides that a personal representative may receive as compensation a sum of up to 5% of the appraised value of the personal property of the probate estate. In addition, under § 62-3-719(b) a personal representative

may also receive up to 5% of the income earned by the probate estate. This additional compensation may be denied, however, if the Court determines the personal representative “acted unreasonably in the accomplishment of the assigned duties.” § 62-3-719(b)

Defendants produced the only credible financial valuation evidence at trial. As detailed above, Mr. Bauknight testified that as a result of a professional valuation conducted under his administration, the IRS and the Estate settled an audit of the Estate Tax Return. The settlement resulted in an IRS accepted Schedule F valuation of \$4,812,265.00. After the IRS audit concluded, on May 4, 2011 a Supplemental Inventory and Appraisal was filed with the Aiken County Probate Court, and it identified \$5,152,830.00 in personal property of the probate estate. (Def. Ex. 56). Under the statutory framework and based upon the date of death valuation for this Estate, the full 5% calculation would result in a fee of \$257,641.50. Through the testimony of Mr. Thomas, Defendants introduced an accounting of the income that flowed through the Estate during Mrs. Pope’s administration based on her probate accounting. (Def. Ex. 28). Mr. Thomas’s accounting demonstrated that \$855,430.83 flowed through the Estate. Under the statutory framework, the full 5% calculation would result in an additional fee of \$42,771.54. Together these two calculations would result in a total PR fee cap of \$300,413.04, to be divided among all personal representatives of the Estate, absent a finding of extraordinary service. As discussed above, the Court concludes that a statutory fee award is inappropriate because Mrs. Pope did not complete the administration of the Estate and the evidence demonstrates that she did not benefit the Estate during her work as PR. Moreover, her service was not extraordinary.

South Carolina Code Section 62-7-708(b) provides that if the terms of a trust specify the trustee’s compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if: (1) the duties of the trustee are substantially different from

those contemplated when the trust was created; or (2) the compensation specified by the terms of the trust would be unreasonably low or high. Article VIII, Paragraph 3 of the Trust provides as follows: “For its services as Trustee(s), the Trustee(s) shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.” Trust, p. 6. Mrs. Pope did not seek a separate trustee fee, nor did she present any evidence at trial on the issue of a trustee fee. Instead, she requested the full statutory PR fee for her services as both personal representative and trustee.

**V.
COMMON FUND DOCTRINE DOES NOT APPLY**

Mrs. Pope did not plead the common fund doctrine. She raised this theory of relief during her reply case. Mrs. Pope claimed she created a common fund based upon the result in *Wilson v. Dallas*. Although Mrs. Pope did not properly plead the claim, the Court nevertheless will address why it does not apply. The South Carolina Supreme Court in *Estate of Kay*, 423 S.C. 476, 489-90, 816 S.E.2d 542, 549-50 (2018), evaluated the common fund doctrine in the context of a claim for personal representative’s fees. The critical language of *Estate of Kay* that forecloses Mrs. Pope’s claim is as follows: “To recover under the doctrine, there must be an express or implied contract of employment between the successful party’s counsel and all individuals who hold an interest in the fund. Moreover, if the parties’ interests are adverse, the doctrine does not apply.” *Id.* at 490, 816 S.E.2d at 550. Mrs. Pope never had a contract express or implied. Further, she was adverse to the other parties in the *Wilson v. Dallas* appeal. Finally, even if the doctrine applied, the Court finds that based upon the facts detailed above, it would be inequitable to apply the doctrine here.

**VI.
CONCLUSION**

Mr. Brown's Estate and Trust is responsible for the payment of any fee that Mrs. Pope seeks, for Mrs. Pope seeks payment for her work as a PR/Trustee. The question before the Court is what is reasonable to Mr. Brown's Estate and Trust in light of the benefit, if any, provided to it by Mrs. Pope. The Court conducted a bench trial that spanned thirteen days of testimony and included nearly two hundred exhibits. After considering the testimony and evidence, the Court concludes that any benefits Mrs. Pope provided to the Estate and Trust are overwhelmed and surpassed by the detriments she caused. As a result, Mrs. Pope's work as a PR/Trustee did not benefit the Estate and Trust. Accordingly, the Court finds that Mrs. Pope is not entitled to a fee.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III

January __, 2019

_____, South Carolina



Aiken Common Pleas

Case Caption: Adele Jeffords Pope VS James Estate Of Brown , defendant, et al
Case Number: 2013CP0201337
Type: Order/Other

So Ordered

s/D.A. Early III 2136

Electronically signed on 2019-01-16 14:01:14 page 61 of 61