

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2018-002231

RECEIVED

MAR 29 2019

SC Court of Appeals
89418

Albert H. Dallas, and A. Stephenson Wallace,
Chapter 7 Trustee,Appellant

v.

Russell Bauknight as Special Administrator of the
Estate of James Brown,Respondent

MOTION FOR DISMISSAL OF APPEAL
WITH LEAVE TO RE-FILE AT AN APPROPRIATE TIME

On behalf of the Appellant, the undersigned requests an Order dismissing the appeal as filed, as the Appellant has determined the appeal is untimely and interlocutory in nature.

A Notice of Appeal in this action was filed on December 18, 2018. At that time, a transcript was ordered, from the summary judgment motion underlying the appealed Order granting Partial Summary Judgment. The transcript was delivered to the Appellant by U. S. Mail on January 28, 2019. By order of the Court, the Initial Brief of Appellant is presently due March 29, 2019.

The appealed Order preserves Appellant's creditor's claim under a theory of quantum meruit. As the underlying claims are not entirely dismissed or discharged as a result of the grant of only partial summary judgment, the Appellant, Movant herein, has determined that the Order does not fall within an exception of §14-3-330, S. C. Code of Laws and is not immediately appealable. Appellant seeks an Order dismissing the Appeal, with leave to re-file at the conclusion of the case in the lower court.

This motion, to dismiss the instant appeal until the end of the underlying Circuit Court matter at which time the parties may reconsider the necessity of an appeal, will not prejudice Respondent in any manner.

March 26, 2019



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Attorneys for Appellant

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CERTIFICATE OF SERVICE

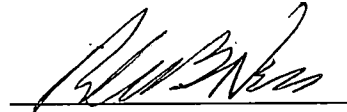
I, the undersigned, do hereby certify, that my agent has served the foregoing Notice of Motion and Motion for an Extension of Time, upon the persons below via US Mail:

William G. Newsome, III
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March 27, 2019



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March 27, 2019

Honorable Jenny Abbot Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

JULIUS B. NESS
1916-1991
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MAR 29 2019
SC Court of Appeals

Re: *Albert H. Dallas, and A. Stephenson Wallace, Chapter 7 Trustee, v.
Russell Bauknight as Special Administrator of the Estate of James Brown,*
Case Number: Case No. 2018-002231

Dear Ms. Kitchings:

Please find enclosed an original and one copy of a Motion for Dismissal of Appeal with Leave to Re-File at an Appropriate Time in the above-referenced action, along with my firm's check for \$50.00. Please file the original and return a clocked copy to me for our file.

Sincerely,



Richard B. Ness

RBN:dlh
Enclosures

CC: Eugene C. Covington, Jr.
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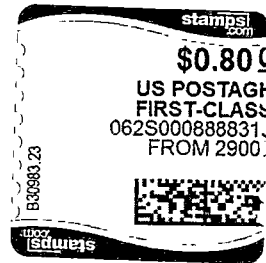
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MAR 29 2013

SC Court of Appeals

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South Carolina Court of Appeals
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