

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
The Honorable Doyet A. Early, III Circuit Court Judge**

---

**Appellate Case No. 2019-000362**

---

Adele J. Pope, Appellant,

v.

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

---

**RECORD ON APPEAL  
VOLUME I of VII  
(Pages 1 – 488)**

---

**RECEIVED**

**MAR 27 2020**

**SC Court of Appeals**

Adam T. Silvernail (Bar No. 80219)  
Law Office of Adam T. Silvernail, LLC  
1905 Marion Street (29201)  
Post Office Box 7995  
Columbia, South Carolina 29202-7995  
(803) 779-1770  
adam@silvernaillawfirm.com

*Counsel for Appellant*

J. David Black (Bar No. 68499)  
Kirsten E. Small (Bar No. 75681)  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
(803) 771-8900  
dblack@nexsenpruet.com  
ksmall@nexsenpruet.com

*Counsel for Respondents*

**Index to Record on Appeal  
Appellate Case No. 2019-000362**

**Volume I (Pages 1 – 488)**

<b>I. <u>Orders</u></b>	<b><u>Page</u></b>
Order of Jg. Early (“Jg. Early”), dtd. 2/19/07 [SA].....	1
Order of Jg. Early, dtd.3/7/07 [Appointing Buchanan/Pope SAs].....	7
Order of Jg. Early, dtd. 6/22/07 [SAs’ Access to Estate/Trusts Docs.].....	9
Order of Jg. Early, dtd. 8/10/7 [Accepting Cannon Resignation, Etc.].....	18
Order of Jg. Early, dtd. 11/20/07 [Order Accept. Dallas/Br.Resign., Appt. PR/Trustees]..	18
Order of Jg. Early, dtd.11/20/07 [Allow Combining Funds].....	21
Order of Jg. Early, dtd. 1/8/08 [ Payment Order].....	23
Order of Jg. Early, dtd. 1/8/08 [Scheduling Hearings 1 <sup>st</sup> Half 2008].....	27
Order of Jg. Early, dtd. 1/9/08 [ Approv Engagement of Few/Gilreath].....	30
Order of Jg. Early, dtd. 1/16/08 [Contempt, Cannon].....	33
Order of Jg. Early, dtd. 1/23/08 [Scheduling Order].....	34
Order of the Hon. Jasper M. Cureton (Jg. Cureton), dtd 2/6/08 [ Cannon Appeal Bond]	37
Order of Jg. Early, dtd. 2/19/08 [Denying Recusal Motion of Dallas/Bradley].....	38
Order of Jg. Early, dtd. 2/20/08 [Approv.Sale of Tangible Personal Property (TPP), etc.]..	39
Order of Jg. Early, dtd. 2/20/08 [Retain Cannon Passport].....	61
Order of Jg. Early, dtd. 2/26/08 [Deny Mot. Terry/Forl., Mot. Disqual. Levenson].....	65
Order of Jg. Early, dtd. 3/7/08 [Tommie Documents Rae Gag Order] .....	68
Order of Jg. Early, dtd. 3/7/08 [Deny Reconsid., Dallas/Brad. Resignations].....	69
Order of Jg. Early, dtd. 3/8/08 [Resolv. Mot. Dis̄m. Will/Trust Challenges ].....	89
Order of Jg. Early, dtd. 4/1/08 [Directing PR/Tees to Sign Christie’s Contract] .....	93
Order of the Hon. Doyet A. Early, III, dtd. 4/8/08 [Deny Reconsid, Buch./Pope Appt.]....	99
Order of Jg. Cureton, dtd. 7/14/07 [Deny Dallas Mot. to Stay of Christie’s Sale].....	149
Order of Jg. Early, dtd. 7/23/08 [ Approving Education Payments ].....	152
Order of Jg. Early, dtd. 1/7/09 [ Appointing Bauknight SA/ST].....	159
Order of Jg. Early, dtd. 3/11/09 [Denying Reccusal Mot. of Cannon ] .....	163
Order of the Hon. Doyet A. Early, III, dtd. 5/26/09 [Approving AG’s Settlement] .....	165
Order of Jg. Early, dtd. 9/16/09 [Lift Stay, <i>Wilson v. Dallas</i> appeal].....	210
Order of the Hon. Sue H. Roe, dtd. 6/11/13 [Removing Aiken 1337 to Circuit Ct.]...218	
Order of Jg. Early, dtd. 6/13/13 [ Administrative Order, Various Aiken Cty. Cases].....	219
Order of Jg. Early, dtd. 1/7/14 [ Denying Motion to Dismiss, Aiken 1337].....	222
Order of Jg. Early, filed 2/4/14 [Fm. 4, Mot. Alter, Etc., Denied] 122-123 .....	236
Order of Jg. Early, filed 3/10/14 [Dismissing Complaint as to Bauknight, Indiv.] .....	238
Order of Jg. Early, filed 9/8/14 [Deny Pls. Motion to Strike] .....	241
Order of Jg. Early, filed 12/2/14 [Form 4, Denying Motions for Summary Judgment].....	243
Order of Jg. Early & Hon. L Casey Manning (Jg. Manning), filed 1/20/15 [Jt. Mediation].	244

Order of Supreme Court dtd. 3/4/15 Summer, Petitioner, In Re: Estate of Brown .....	246
Order of Jg. Early, filed 7/18/16 [Form 4 Re: Mot. to Con.].....	248
MISSING!!!!!!	
Order of Jg. Early, dtd. 9/1/16 [ Confidentiality Order].....	249
Order of Jg. Early, dtd. 1/17/17 [Deny Mot. Alter, Amend Denial of Disq, Bauknight]....	280
w/ Order Deny. Mot.to Disqualify Bauknight and Counsel & for Related Relief...	261
Order of Jg. Early, dtd. 1/20/17 [Protective Order, Def. Experts].....	262
Order of Jg. Early, dtd. 2/7/17 [Deny, Consolidate Richland 4900/Aiken 1337Experts] ..	264
Order of the Hon. Jean H. Toal, dtd. 3/1/16 [Deny Wingate, Kendall Motions] .....	266
Order of Jg. Early, dtd. 6/16/17 [ Granting Motion to Confirm Confidentiality].....	267
Order of Jg. Early, dtd. 6/16/17[ Confirm Roger Miller Confidentiality Designations].....	273
Order of Jg. Early, dtd. 8/18/17 [Grant. Defendants’ Mot. to Transfer to Nonjury Roster]..	278
Order of Jg. Early, dtd. 8/29/17 [Form 4, Denying Mot. of Pope to Reconsider].....	281
Order of Jg. Early, dtd. 1/16/19 [Deny Compensation] .....	283
Order of Jg. Early, dtd. 2/7/19 [Deny Reconsid, 1/16/19 Order].....	344

**II. Pleadings and Motions**

Complaint [Buchanan/Pope] for Declaratory Judgment & Related Relief Including Expedited Emergency Relief.....	347
Complaint for Declaratory Judgment; Review of Compensation and Employment; Guidance as to Succession Plan; Approval of Accounting of PR/Trustees and for Order Granting Protection for Trustees Upon Resignation, 5/22/09.....	360
Ex. A: 2: Valid Claims/Priority Expsnes of Administration, Etc.....	377
Mot. [Buchanan/Pope] for Payment of Commissions, Related Relief, 6/24/09 .....	378
Protective Statement and Notice of Creditor’s Claim [Buchanan/Pope], July 17, 2009.....	384
w/ Supp. Affidavit [Buchanan/Pope] in Support of Commissions, Etc.....	388
List of Exhibits 1 through 18 .....	444
Exhibit 1: Complaint for Declaratory Jmt.....	see 347
Exhibit 2: January 8, 2008 (Payment Order).....	see 28
Exhibit 3: February 20, 2008 Order.....	see 39
Exhibit 4: April 1, 2008 Order.....	see 93
Exhibit 5: Minimum PR/Trustee Calculations as Per Order dtd. 1/8/08.....	445
Exhibit 6:Curriculum Vitae, Buchanan.....	447
Exhibit 7 Resume’, Adele J. Pope .....	448
Exhibit 8: Summary of Activities of Pope, Nov. 20, 2007 – June 16, 2008 (1 –38)..	451

**VOLUME II ( Pages 489 – 976)**

**Pleadings and Motions (Continued)**

Protective Statement and Notice of Creditor’s Claim [Buchanan/Pope], July 17, 2009 w/  
 Supp. Affidavit in Support of Commissions, Etc and Exhibits (continued)

Exhibit 8 Summary of Activities, Pope, June 16, 2008 – June 2009 (39.100)..... 489  
     Ex. A Email Chain, Pope/Kraig Fox, 6/3 – 6/5/09.....550

Exhibit 10 Ltr. of Pope to C. Havird Jones, Jr, Nov. 21, 2007.....553

Exhibit 13: Ltr. of Buchanan/Pope to Hon. Henry McMaster, March 10, 2008.....556  
     Ltr., Buchanan/Pope to Hon. Henry McMaster, June 13, 2008.....558  
     Email, Hammond to Pope, June 21, 2007, w/annotations.....567  
     Ltr. of AG to Buchanan & Pope, dtd. June 16, 2008.....569  
     Memorandum of Pope to AGs Jones, McIntosh, Jowers , June 19, '08.....571  
     Ltr. of Estate/2000 Trust to Hon Henry McMaster, June 27, '08.....572  
     Ltr. of Estate/2000 Trust to Hon. Henry McMaster, July 25, 2008..... 577  
     Ltr. of Estate/2000 Trust to C. Havird Jones, Esq., Aug. 12, 2008..... 579

Exhibit 14 Email of Rosen to Jg. Early and others, August 12, 2008.....580

Exhibit 15 Email of Sonny Jones to Jg. Early and others, August 12, 2008.....581

Exhibit 16 Ltr. of AG McMaster to Buchanan & Pope, July 30, 2008.....582

Exhibit 17 Ltr. of AG Jones to Jg. Early, July 7, 2008.....584  
     Emergency Petition of AG, June 26, 2008.....586

Exhibit 18 Email Terry Cox to Marion Heflin, Nov. 30, 2007.....593

Summons, Complaint, Richland Cty. Case 2010-CP-40-4900 (Richland 4900), May19, '10.594

Plaintiffs’ Mot. to Dismiss Notice of Appeal and Writ, Richland 4900, Feb. 28; 2011..... 607

Mot. to Supplement Record on Appeal, May 6, 2011, *Wilson v. Dallas*..... 610  
     w/Proposed Appendix to Record on Appeal.....619

Plaintiffs’ Mot. to Strike Offers of Judgment, Richland 4900, July 18, 2012.....626  
     w/ Exhibit B., Offer of Judgment to Attorney General and Bauknight as Agent.....629

Notice of Disallowance with Notice of Impending Bar served May 29, 2013.....633

Summons & Complaint to Void Appointment and Notice of Disallowance; for Review and  
 Direction to Pay Commissions and Fees under *Wilson v. Dallas*; Remove Bauknight;  
 Require Emergency Appointment of Litig’n SA/ST to Prevent Further Damage by  
 Bauknight in *Wilson v. Dallas*, & for other Relief. (Jury Trial Demand), 6/10/13 .....634

Petition for Allowance of Claim, 6/5/13.....698

Exhibit 2: Notice of Disallowance w/Notice of Impending Bar.....699

Exhibit 3: Summary, *Wilson v. Dallas* and Related Cases.....700

Exhibit 4: *Wilson v. Dallas*, Proposed Fiduciary Payments & Other Pyts.....702

Exhibit 5: Attorneys Working for Benefit of Estate/2000 Trust.....703

Exhibit 6: Attorneys in *Wilson v. Dallas*, Related Cases....Legacy Trust.....704

Petition for Allowance of Claim.....See 698

Motion for Expedited Voiding of Apptmts. & Related Relief, dtd.6/9/13 (corrected).....	705
Motion to Dismiss, July 10, 2013.....	709
Bauknight’s (ST) Mot. Confirm. Confidentiality Desig. (partial), 3:08-cv-00014-WOB.....	713
Reply [Bauknight] in Support of Confirming Confidentiality .....	718
Motion [Pope] for Summary Jmt. & Supp Obj. to Motion to Dismiss, Nov. 24,’13.....	720
Exhibit A Aff. of Pope Opposing admission of Bell, 9/19/13.....	730
Exhibit B, Ltr., Pope to AG Wilson, others, re: Hynie “Diary” Gag Order, 4/1/13.....	737
Answer to Petition for Allowance of Claim, dtd. Jan. 15, 2014.....	738
Mot. to Alter, Amend, Etc., Order Dismissing Claims filed January 24, 2014.....	740
Reply to Memorandum in Opp. To Mot. to Alter, Amend, March 20, 2014.....	808
Return and Opposition to Motion for confidentiality.....	817
Plaintiff’s Motion for Partial Summary Judgment.....	819
Plaintiff’s Motion for Inclusion of Docs., Unsealing, etc., dtd. June 3, 2014.....	822
Ex. A: Estate/Trust Refusal, including Aff. Pope re: Bell, U.S. Dist Ct. 3:08-cv-00014- WBO (Forlando Suit), Sept. 13, 2013.....	831 & see 713 - 719
Ex. B: Commissions.....	834
Exhibit C: Forlando.....	873
Exhibit D: Hynie.....	896
Return (Defendant) to Pl.’s Motion for Partial Summary Jmt., dtd. June 20, 2014.....	905
Attachment 1 – Summons & Complaint, Richland 4900, dtd. May 19, 2010.....	see 594
Attachment 3 – Renunciation of Fees, Etc.(Buchanan) dtd. 7/10/12.....	919
Cross Motion (of Defendants) for Partial Summary Judgment, dtd. 8/21/14.....	922
Plaintiff’s Motion to Strike Affidavit Dated July 3, 2014; and Compel Estate/2000 Trust to Comply with Discovery and for Related Relief Dtd. July 7, 2014.....	924
Ex. A: Defendants’ Answers to Plaintiff’s First Interrogatories.....	928
Return and Opposition (of Plaintiff) to Motion of Russell L. Bauknight for Confidentiality Order, filed 9/10/14.....	937
Return and Opposition (of Plaintiff) to Motion of Estate/2000 Trust for Partial Summary Judgment, dtd. September 24, 2014 .....	938
Motion (of Plaintiff) to Compel Attendance of Bauknight & Principals & Successors of the James Brown Legacy Trust at Court-Ordered Mediation, Jan. 13, 2015.....	948
w/ Ex. A: Ltr. of Lewis, Babcock, etc.,1/6/15, re: FOIA Request, 12/22/14.....	953
Ex. B: Email Chain, AG Sonny Jones, Bill Custer, Bauknight, Events of 11/15/11..	954
Proof of ADR, Joint Mediation, Richland 4900 and Aiken 1337.....	960
Complaint (Violation of FOIA) Summer v. Wilson, 2016-CP-36-00016, Feb. 15, 2016.....	961
Status Report of Judge Early to Supreme Court, May 6, 2015, filed 5/8/15.....	967
Response of Daryl Brown to Status Report of Judge Early, filed May 13, 2015.....	974

**VOLUME III ( Pages 977 – 1450 )**

**Pleadings and Motions (Continued)**

Response to Status Report of Doyet A. Early, III by Terry Brown, filed May 15, 2015.....977

Response to Status Report of Doyet A. Early, III by Counsel for Jeanette Mitchell,  
 Tonya Brown, Cherquarius Williams and Ciara Pettit, proposed LSA for  
 LaRhonda Pettit (deceased), filed May 22, 2015.....986

Motion for Clarification and Judicial Notice, filed Feb. 23, 2016.....994

w/ Ex. A: Affidavit of Pope Opposing Plaintiff’s Mot. for Protective Order  
 etc.; Email Pope to AG Jowers, AG McIntosh, Newsome, 2/10/16; Ltr. Pope  
 to Newsome, dtd. 2/15/16 re: Stipulation of Facts, etc.Email of Pope to  
 Newsome, 2/17/16, re: Deposition of J. Richardson.....998

Ex. B: Affidavit Pope, re: Deposition of James Richardson, Jr., Esq, 2/19/16.....1007

Ex. C (partial) .....1009

Email of Black to AG Jones, AG Jowers, Medlin, dtd. 12/17/10,  
 w/Email Wilkins, to Black, others, 12/10/17 Re: Appraisal Footnote.....1010

Supp. Response to Motion of AG Alan Wilson, Aiken 1337, dtd. April 10, 2016.....1012

Mot. for Protective Order as to Deposition of David C. Sojourner, Esq., filed 6/3/16.....1019

Mot. of Plaintiff to Alter, Amend, Etc, Admin. & Confidentiality Orders, filed 9/16/16.....1021

Designation of Experts (of Plaintiff), October 6, 2016.....1028

Return (Plaintiff) to Motion of Estate/2000 Trust and Request for Relief, Jan. 3, 2017.....1055

Joint Motion of Richland 4900 and Defendants to Consolidate (Experts), Jan. 4, 2017.....1062

Mot. [Plain.]to Alter, Am., etc.Order Deny.Mot. to Disqu. Bauknight, Counsel, 1/13/17.....1069

Return and Opp. (Plaintiff) to Motion of AG Wilson 30(b)(6) depos., Jan. 16, 2017.....1081

Response and Objection (Plaintiff) to Mot. of AG re: McMaster Depos., docs.,Feb. 5, ‘17.....1086

Ex. A: Ltr. of Office of AG to Pope, Nov. 9, 2016 Re: McMaster Statements.....1095

Ex. B: Email, Pope to AG Wilson, Lt. Gov. McMaster, others, 10/20/16.....1096

Return and Opp. to Mot. for Protective Order, Solicitor Gen. Robert Cook, 2/20/17.....1098

Motion (Plaintiff) and Memo. for Partial Summary Judgment, dtd. May 23, 2017.....1110

Motion (of Defendants) the Transfer to Non-Jury Roster, filed July 31, 2017.....1123

w/ Ex. 1, Buchanan/Pope Protective Statement and Notice of Creditor’s  
 Claim & POD dtd. July 17, 2009 .....1129

Return (Plaintiff) to Motion for Transfer to Non-Jury Roster, dtd. August 10, 2017.....1135

w/ Motion to Supplement the Record Pursuant to Rule 212(b), SCACR,  
 or in the Alternative, to Take Judicial Notice of Records Filed in Related  
 Proceeding, filed in *Wilson v. Dallas* on May 6, 2011 (w/ emphasis) &.....1147

Denial of Motion (by notation).....1153

Appendix (Proposed) to Record on Appeal, *Wilson v. Dallas*.....1154

Appellants’ Return and Opposition to Motion to Supplement the Record.....1159

Respondents’ Reply to the Motion to Supplement the Record.....1167

Petition of Respondent James B. for Rehearing.....	1174
Bob and Adele’s Correct \$84 Million Value for James Brown Assets.....	1179
Return (Plaintiff) and Memo. in Oppos.to Mot. to Alter Partial Sum. Jmt., Sept. 3, 2017....	1182
Motion and Memorandum (Plaintiff) to Unseal Documents; Restore Documents to Public Record; and for Related Relief, dtd: December 1, 2017.....	1186
Motion (Respondents) for Sanctions and Memorandum in Support, dtd 12/13/17.....	1195
w/ Ex. 4: Louis Levenson Affidavit Regarding PBW Appraisal.....	1204
Ex. A: Portion, Deposition of Levenson, Nov. 1, 2017.....	1207
Return and Memo. Opposing Payment into Court and Seeking Relief from Defendants’ Refusal to Pay Valid, First-Priority Claim, February 16, 2018.....	1216
Motion (Plaintiff) for Disclosure of <i>ex parte</i> filing, dtd. April 5, 2018.....	1223
w/ Ex. A: Emails, Black to Jg. Early, 2/14-2/15/2018 & others in chain.....	1231
Motion (of Plaintiff) for Directed Verdict, dated June 14, 2018.....	1232
Handwritten Note of Judge Early to “Billy” [Newsome] dtd. January 7, 2019.....	1285
Motion (of Plaintiff) to Alter or Amend Jan. 2019 Order of Judge Early, filed 1/22/19.....	1286

**III. Transcripts**

Transcript of Record, Aiken Cty. Case No. 07-CP-02-122, Nov. 15 & 20, 2007.....	1419
Transcript of Record, September 9, 2009 .....	1424
Transcript of Record, August 30, 2010, Richland 4900.....	1426
Trial Transcript of Trial, Aiken 1337, September 5 and December 14 & 15, 2017, and February 20 & 21, April 19 & 20, May 8 and 9, and June 4, 2018.....	1435
Index.....	1436
Exhibits.....	1442

**VOLUME IV. ( Pages 1451 –1938)**

**III. Transcripts (Continued)**

Testimony of Adele Pope:	
Direct Examination by Mr. Bundy.....	1453
Cross-Examination by Mr. Williams.....	1770
Deposition Designations of Williams Sellars.....	1777
Testimony of W. Thomas Ellison	
Direct Examination by Mr. Newsome.....	1779
Testimony of Russell Bauknight	
Direct Examination by Mr. Newsome.....	1781
Cross Examination by Mr. Bundy.....	1806
Testimony of Bradley Sharp	
Direct Examination by Mr. Williams.....	1822
Cross-examination by Mr. Bundy.....	1827

Redirect Examination by Mr. Williams.....	1833
Testimony of Louis Levenson	
Cross-Examination by Mr. Silvernail.....	1835
Testimony of Jonas E. Herbsman	
Direct Examination by Mr. Newsome.....	1836
Cross Examination by Mr. Bundy.....	1851
Testimony of Jeffrey Smith	
Cross-Examination by Mr. Bundy.....	1856
Testimony of Laura Woolley	
Direct Examination by Mr. Williams.....	1859
Testimony of Roger Miller	
Direct Examination by Mr. Williams.....	1863
Cross Examination by Mr. Bundy.....	1870
Testimony of Tiffany Provence	
Direct Examination by Mr. Newsome.....	1872
Cross Examination by Mr. Bundy.....	1878
Summary of Mr. Bundy of Opinion of Richard B. Alexander by Mr. Bundy.....	1989
Introduction of Deposition Designations [ Ex. 47]by Plaintiff.....	1891
Testimony of Adele Pope	
Direct Examination by Mr. Bundy (partial).....	1897

**VOLUME V. ( Pages 1939-2426)**

**III. Transcripts (Continued)**

Testimony of Adele Pope (continued):	
Direct Examination of Mr. Bundy (continued).....	1939
Cross-Examination by Mr. Newsome.....	2054
Redirect Examination by Mr. Bundy.....	2065
Deposition Designations of Solicitor General Robert Cook.....	2087
Examination by Ms. Pope.....	2088
Deposition Designations of then Governor Henry D. McMaster.....	2158
Examination by Ms. Pope.....	2160
Deposition Designations of Attorney General Alan M. Wilson.....	2252
Examination by Ms. Pope.....	2254
Deposition Designations of Wallace K. Lightsey, Esq.....	2289
Examination by Mr. Williams.....	2290
Examination by Ms. Pope.....	2302
Deposition Designations of Judge (Ret'd) Walter Williams.....	2323
Examination by Ms. Pope.....	2324

Examination by Mr. Williams.....	2328
Deposition Designations of Kenneth B. Wingate, Esq.,.....	2329
Examination by Ms. Pope.....	2330
Deposition Designations of James Hardin III, Esq., .....	2366
Examination by Mr. Newsome.....	2369
Examination by Ms. Pope.....	2374
Deposition Designation of AG Auditor Sandra Matthews.....	2408
Examination by Ms. Pope.....	2410

**VOLUME VI. (Pages 2427-2910)**

**III. Transcripts (Continued)**

(Page 2427 – 2432 Reserved)

Deposition Designations of Assistant Attorney General Mary Frances Jowers.....	2433
Examination by Ms. Pope .....	2434
Deposition Designations of Sr. Asst. Attorney General Havird “Sonny” Jones.....	2433
Examination by Ms. Pope.....	2450
Deposition Designation of Sr. Asst. Attorney General Creighton Waters.....	2494
Examination by Ms. Pope.....	2495

**IV. Exhibits and Other Documents**

Last Will of James Brown dtd. August 1, 2000.....	2501
James Brown 2000 Irrevocable Trust dtd. Aug. 1, 2000.....	2510
w/ 2008 Amendment to “I Feel Good” Trust related to IRS qualification.....	2531
Handwritten Admissions of Tommie Rae Hynie (partial).....	2535
SC v. Cannon, Payments to Cannon, 1999 – 2006.....	2537
Index of Orders (Corresponding to Notebook Tabs).....	2538
[ For Orders, February 19, 2007 – September 16, 2009, See Volume I]	
Developing the James Brown Legacy, Terry Bradford Cox, PH.D., June 2007.....	2542
Report and Recommendation of Special Administrators, June 2007.....	2549
Return and Recommendation of Special Administrators, Nov. 2007.....	2557
2006 Amended U.S. Corp. Income Tax Return, 1120X, James Brown Enterprises, Inc.....	2564
Ltr. of Pope to C. Havird Jones, Jr., Nov. 21, 2007.....	2567
Email of Sonny Jones [ AGSJONES] to Buchanan & Pope, Dec. 6, 2007 re:	
James Brown Legacy Initial Offer 10-12-07.....	2569
Ltr. of Buchanan & Pope to Internal Revenue Service, Dec. 11, 2007.....	2571
Affidavit of Darren Julien, Julien’s Auctions, dtd. 1/6/08, w/ email chain of	
Julien, Leila Dunbar [Sotheby’s] and Dallas, 1/9/08 – 1/10/08.....	2574
CV Ray Gonzalez, Esq., Zumwalt, Almon & Hayes, PLLC.....	2579
Exhibits to Initial Designation of Experts and Disclosure of Opinions.....	2581

Ltr. Estate/Trust of James Brown (Buchanan/Pope) to IRS, Feb. 2009.....	2582
Affidavit of Rita B. Cullum [ Caughman], March 4, 2008.....	2584
Application for Extension of Time and File and/or Pay U.S. Estate (and Gen.Skip.Transfer) Taxes, Est. of James Brown, Fm. 4768, 3/24/08 .....	2586
First Semi- Annual Report to Devisees, Beneficiaries and Attorney General.....	2591
w/ Ex.1: Proposed “Gross” of Sale of Assets ( under “Oct. 18 Letter”).....	2599
Ex. 2: Claims by Former PR/Trustees.....	2600
Ex. 3: Payments, Bills and Claims Presented by Attys., Accountants, Etc.....	2601
Ltr. of Louis Levenson, Esq., to State Bar of Georgia, dtd. June 20, 2008	
In re: Estate of James Brown , Bar Grievance.....	2602
Emergency Petition for Appointment of Special Trustee(s) of AG, dtd. 6/26/08.....	2609
Email of Sonny Jones [AGSJONES] to various parties, June 30, 2008 Re:	
James Brown Special Trustee.....	2616
Ltr. of Est. of James Brown (Buchanan/Pope) to AG Jones, July 8, 2008.....	2617
Christie’s, The James Brown Collection, Thursday, July 17, 2008 [ p. 1 only].....	2618
Ltr. of Attorney General Henry McMaster to Buchanan & Pope, dtd. July 30, 2008.....	2619
Email of Medlin to Chandler & others, July 31, 2008, Re: DNA ORDER, Rosen.....	2621
Agreement of Attorney General of S.C. and others, August 10, 2008.....	2622
Email of Sonny Jones [AGSJONES] to Judge Early & others, dtd. August 12, 2008,	
Re: Proposed Email to Judge Early.....	2626
Schedule F, Estate Tax Return of James Brown, September 2008.....	2627
Bob’s and Adele’s Correct \$84 Million Value for James Brown Assets.....	2628
Rule 26(a)(2) (B) Report of Expert Testimony of James Hardin III filed 11/8/08.....	2631
Resume” of James Hardin III.....	2655
Email of Tracy Johnson, Warner Chappell, dtd. Jan. 16, 2009 , Subject:	
“Get Rights”/Dance Your A..Off.....	2661
w/ attached 495 Productions Synch request .....	2662
Email Chain among Timothy Kane, WarnerChappell between Dec. 10, 2008	
and January 23, 2009, w/ approved notation January 26, 2009.....	2663
w/ email of Kane to Woods, dtd. Dec. 9, 2008.....	2664
Ltr. of Estate/Trust of James Brown (Buchanan/Pope) to Warner/Chappell, 2/2/09.....	2665
Joint Affidavit of Buchanan & Pope Related to Commissions and Expenses, 6/24/09.....	2668
Interim Accounting #1A of Buchanan/Pope filed May 20, 2009.....	2674
w/ Status of Creditors’ Claims.....	2678
Valid Claims/Priority Expenses of Administration (Sec. 62-3-805 (a)(1).....	2679
Pending Unresolved Claims (Partial).....	2681
Pope Hours, Nov. 21, 2007 – June 2009, Corresponding to Chart.....	2683
Memorandum of Pope to Bauknight, Re: Documents Delivered May 27, 2009.....	2694
Custody Receipt , Transfer of Custody of James Brown files, May 29, 2009.....	2698
Custody Receipt, Documents of Est. of James Brown & 2000 Trust, June 22, 2009,	

w/ list of boxes delivered on May 27 & 29 and by 6/22/09, p. 1 & 76 only.....	2699
Ltr. of Buchanan/Pope to Wm. Y. Klett, III, Esq., June 24, 2009.....	2701
Final Accounting (Reserving All Rights) covering May 21 – May 27, 2009.....	2705
Statement of Ray Gonzalez, Esq., Zumwalt, Almon & Hayes PLLC, July 14, 2009.....	2711
Affidavit/Opinion of W. Steven Johnson, July 20, 2009.....	2716
Supplemental Affidavit of Buchanan/Pope in support of commissions and	
Payment of Certain Priority Expenses of Administrations, pp. 1 & 56 only.....	2722
w/ List of Exhibits 1 – 18 .....	2724
Exhibit 5: Minimum PR/Trustee Commissions Calculation.....	2725
[ See pages 388 – 593 for additional pages]	
Email of Medlin to Kingsmore, Jowers, Bauknight & others dtd. August 30, 2009	
Subject: Tax valuation.....	2727
Agreement for Legal Services, Sweeny, Wingate & Barrow, P.A., May 10, 2010,	
Exhibit 12, Deposition of Kenneth B. Wingate, Esq., March 6, 2017.....	2728
Wingate Exhibit 10, Portion of Transcript of Record, August 30, 2010.....	2747
Wingate Ex. 15, Motion to Strike Defendant Pope’s Offers of Judgment, 8/13/12.....	2755
w/ Pope’s Offer of Jmt. To AG and Bauknight as Agent, 7/18/12.....	2758
Ltr. of SWB, Everett Kendall, II, filing Motion to Dismiss, Feb. 28, 2011.....	2752
w/ Plaintiffs’ Motion to Dismiss Notice of Appeal and Petition for	
Writ of Prohibition (pp 1,2 & 8 only), S.C. Ct. Appeals, 2/28/11.....	2763
4/11 Draft, <i>Private Foundations, Copyright Heirs and Musical Millionaires:</i>	
<i>Why the James Brown “I Feel Good” Trust doesn’t.....</i>	2766
Deposition of Wm. Jeffrey Smith, p. 1 only.....	2779
Motion to Supplement the Record of Appeal, <i>Wilson v. Dallas</i> , May 8 2011.....	2780
Deposition of Russell Bauknight, Aug. 20, 2013, Dist. Ct.3:08-cv-00014-WOB.....	2785
Ltr. of Marc Toberoff, Esq., to Warner/Chappell dtd. Sept.23, 2013 Re:	
James Brown/ Terminations under the Copyright Act.....	2789
Affidavit/Opinion of R.B. Alexander, dtd. Sept. 24, 2013, and filed in	
U.S. Dist Ct. Case 3:08-cv-00014-WOB, 9/27/13 Entry No. 299-2.....	2791
Memorandum (Pope) in Support of Partial Summary Judgment, July 2, 2014.....	2800
w/ Exhibit A: Ltr. of Marc Toberoff, Esq., to Warner/Chappell.....	2833
Exhibit B, Affidavit of Nathan Crystal, <i>AstraZeneca v. AG</i> (partial).....	2835
& Aff. of Pope.....	2837
Deposition of Robert Buchanan, Jr. Richland 4900.....	2840
Wingate Ex. 2, Questions, Depositions of Kenneth Wingate, Esq., & Everett	
Kendall, Esq.....	2842
Email of Silvernail to Williams and Newsome, Sept. 6, 2017.....	2848
Commission Due Pope.....	2849
Auction Results (Woolley).....	2850
Ellison Thomas, CPA, slides 28 and 30.....	2869

Chart of Ellison Thomas, CPA, Cash Balances for Year 2008.....	2871
Deposition Designation of Pope, w/ Exhibits (partial).....	2872
Chart, Royalties During Period Nov. 2007 – May 2009, \$7.83 Million (Reduced copy at pp. 2907-8, Full Chart served separately).....	2907
Chart, Standard of Care of PR/Trustees of The James Brown 2000 Irrevocable Trust and Last Will of James Brown (Reduced copy at pp. 2909-10, full Chart served separately).....	2909

**VOLUME VII. (Pages 2911-End)**

Ex. D4, Ltr. of The James Brown Legacy, Inc. to Messrs. Dallas and Cannon, dtd. Oct. 12, 2007.....	2911
Probate Court “Accounting”.....	2913
Ex. D59, Email from Vivian Pfeiffer to Adele Pope, dtd. Jan. 11, 2008.....	2982
Ex. D8, Email from Marianne Conlin to Adele Pope, dtd. Jan. 22, 2008.....	2984
Ex. D9, email from Timothy Kane to Adele Pope, dtd. Jan. 23, 2009.....	2985
Ex. D60, Selection for Sale, dated Feb. 22, 2008.....	2987
Ex. D29, Valuation Bridge Analysis.....	3041

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO. 2007-CP-02-0122

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

IN RE: )  
 )  
THE ESTATE OF JAMES BROWN )  
A/K/A JAMES JOSEPH BROWN )

FEB 20 2007

*Liz Godard*  
\_\_\_\_\_  
C.C.C.P. & G.A., Aiken County, S.C.

*Miriam das Brown*  
\_\_\_\_\_  
Deputy Clerk

*me*  
This matter comes before the Court on two Emergency Petitions for Appointment of a Special Administrator. One Petition was filed by the children and grandchildren of the Decedent: Terry Brown; Larry Brown, Daryl J. Brown, individually and on behalf of his minor children Lindsey Delores Brown and Janice Vanisha Brown; Vanisha Brown; Deanna J. Brown Thomas, individually and on behalf of her minor child Jason Brown-Lewis; Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Romunzo Brown; and Forlando Brown. The other Petition was filed by Tommie Rae Brown, the alleged spouse of the deceased. Both Petitions seek to appoint a Special Administrator pursuant to S.C. Code § 62-3-614. The children and grandchildren also seek to remove the Personal Representatives under S.C. Code § 62-3-611.


The Petitions are very similar in the relief sought. The Petitioners assert that the Personal Representatives have conflicts of interest because they are creditors of the decedent, and of certain trusts created by the decedent. Petitioners also assert that the

1

8-20 7  
12:30 PM

0001

Personal Representatives, in their capacities as co-Trustees of the James Brown Irrevocable Trust, have failed to properly fund and/or maintain the Trust and, since the Personal Representatives will be charged with investigating the conduct of Trustees, an additional conflict of interest is created. Finally, Petitioners claim that the Personal Representatives acted improperly in securing the decedent's home. Petitioners argue that a Special Administrator should be appointed in order to preserve all assets of the estate. Petitioner Tommie Rae Brown asks that the Special Administrator be given all powers and duties of a Personal Representative.

 Alfred A. Bradley, Albert H. Dallas and David G. Cannon were informally appointed as Personal Representatives by the Probate Court on January 18, 2007. On January 24, 2007, the children and grandchildren of the decedent filed their Petition. On February 1, 2007, Tommie Rae Brown filed her Petition. The Personal Representatives have filed a reply to the petitions denying all allegations and seeking injunctive relief against the petitioners.

Under S.C. Code § 62-3-614, a special administrator may be appointed to "preserve the estate or to secure its proper administration" including circumstances in which a Personal Representative cannot or should not act. However, "there is a strong deference shown to the Personal Representative chosen by the testator." *Blackmon v. Weaver*, 366 S.C. 245, 250-251, 621 S.E.2d 42, 45 (Ct. App. 2005). "The Courts have ever been reluctant to take the management of an estate from those to whom it has been

confided by the testator, for to that extent the intention expressed in his will would be defeated." *Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920).

A hearing was held before this Court on February 9, 2007, on the petitions. After reviewing the petitions and responsive pleadings, as well as the affidavits submitted, and having heard the oral arguments of counsel, I hereby order as follows:

1. The Petition to Remove the Personal Representatives is **DENIED**. S.C. Code § 62-3-611(b) permits the removal of a Personal Representative when it is in the best interest of the estate, when the Personal Representative mismanages the estate, or when the Personal Representative fails to perform any duty pertaining to the office. The record is devoid of any credible evidence of any wrongdoing by the Personal Representatives. Therefore, under S.C. Code § 62-3-611, removal of the Personal Representatives is not warranted. Deference must be given to the wishes of the Decedent in his selection of Personal Representatives.

2. The Petition for Appointment of a Special Administrator is **GRANTED**. While none of the evidence indicates any impropriety of the Personal Representatives, this Court, in an abundance of caution and to ensure that the estate is preserved and administered properly, hereby appoints a Special Administrator. The appointment of a Special Administrator in this case will protect the Personal Representatives from an appearance of impropriety and from potential conflicts of interest, will protect the estate by permitting all claims to be pursued and investigated with the required due diligence.

and will assist this Court in assessing the proper administration of the estate. The Court will name the Special Administrator within (10) days from the date of this order. The Court encourages the attorneys for each of the petitioners and the Personal Representatives to attempt to agree on the person to act in this capacity. If no agreement can be reached, each party must submit candidates (no more than three (3) per party) for the Court's consideration. The Court will consider the submissions but may name any individual the Court deems qualified and proper.

3. Pursuant to S.C. Code § 62-3-617, a Special Administrator has the powers of a Personal representative unless otherwise limited by the Court. Because the evidence has not indicated any impropriety of the Personal Representatives and the appointment of the Special Administrator is only made in an abundance of caution, the duties of the Special Administrator shall be limited. To do otherwise would, in effect, "take the management of an estate from those to whom it has been confided by the testator..." *Smith v. Heyward, supra*. By limiting the powers of the Special Administrator, the estate is protected but the wishes of the decedent are still afforded deference.

The Special Administrator's power shall be limited as set forth herein. The Special Administrator shall monitor all actions of the Personal Representatives. If the Special Administrator questions any action of the Personal Representative, he or she should first attempt to resolve the matter with the Personal Representatives themselves. If a resolution cannot be achieved, the Special Administrator may seek the Court's


assistance by filing the appropriate motion and serving copies on all parties through their respective counsel. The Personal Representatives shall inform the Special Administrator of all matters that concern the administration of the estate.

4. The Personal Representatives have a duty, pursuant to S.C. Code § 62-3-709, to “take possession or control of, the decedent's property” and to “take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. Thus, all property owned by the decedent at his death removed by any person after the decedent's death shall be returned to the Personal Representatives and the Special Administrator, including but not limited to: mail, files, safe combinations, keys, checkbooks, files, ledgers and any other assets owned by the decedent at this death, within five (5) days of the date of this order.

5. The Special Administrator shall be empowered to investigate and determine the merits of any allegations against the Personal Representatives.

6. The Personal Representatives and the Special Administrator shall be restrained from selling, transferring, pledging, or otherwise disposing of any assets of the decedent's estate or the assets of any corporation or other entity owned by the decedent's estate without consent between the Personal Representatives and the Special Administrator. If consent cannot be obtained then Court approval must be obtained after notice to all interested parties.

AND IT IS SO ORDERED this 19<sup>th</sup> day of Feb., 2007.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

Bamberg, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that this copy constitutes a true and correct copy of the  
original documents which have been filed in the above case.

STATE OF SOUTH  
COUNTY OF AIKEN

MAR 12 2007

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO. 2007-CP-02-0122

Liz Godard  
C.C.C.P. & G.A., Aiken County, S.C.  
Barbara Bishop  
Deputy Clerk

IN RE:  
  
THE ESTATE OF JAMES BROWN  
A/K/A JAMES JOSEPH BROWN

) SUPPLEMENTAL ORDER APPOINTING  
) SPECIAL ADMINISTRATORS

By Order of this Court dated February 19, 2007, the Court determined that a Special Administrator should be appointed to have certain duties and responsibilities with respect to the above-referenced estate. The Court, pursuant to said Order, encouraged the parties to agree upon a Special Administrator, but reserved the right to appoint any individual the Court deemed qualified and proper.

*MRE*

The parties, after reasonable effort, have been unable to agree upon a Special Administrator. The Court hereby appoints Robert L. Buchanan, Jr., Esquire and Adele J. Pope, Esquire, to serve, without bond, as Special Administrators of the Estate of James Brown, a/k/a James Joseph Brown.

The duties of the Special Administrators shall be limited as follows:

1. The Special Administrators shall not perform any of the fiduciary duties of the general Personal Representatives, but shall monitor, investigate, and oversee the performance by the general Personal Representatives of their duties, and present to the Court any appropriate issues regarding same.
2. If the Special Administrators question any action of the Personal Representatives, they shall first attempt to resolve the matter with the Personal Representatives themselves. If a

FILED 3-12 2007  
Liz Godard  
C.C.C.P. & G.A.  
8:30 AM  
Deputy Clerk

resolution cannot be achieved, the Special Administrators may seek the Court's assistance by filing the appropriate motion and serving copies on all parties through their respective counsel.

3. The Special Administrators, with reasonable notice to counsel for the Personal Representatives, shall have access to all books, records, files, safes, keys, checkbooks, ledgers, and other assets owned by the Decedent at his death or acquired or claimed by the Estate. The Personal Representatives are directed to take all steps necessary to facilitate this complete access.

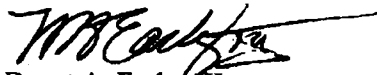
4. The Personal Representatives shall be restrained from selling, transferring, pledging or otherwise disposing of any assets of the Decedent's Estate or the assets of any corporation or other entity owned by the Decedent's Estate without approval of the Special Administrators. If such approval cannot be obtained, then Court approval must be obtained after notice to all interested parties.

5. Any disagreement among the interested parties in the Estate of James Brown as to any legal or materially factual issue shall justify the Special Administrators in withholding approval of any transaction contemplated herein and presenting the issue to the Court.

6. This Court shall retain jurisdiction over the implementation of this Order.

7. To the extent that this Order is inconsistent with this Court's Order dated February 19, 2007, this Order shall supercede the February 19, 2007 Order.

AND IT IS SO ORDERED this 7<sup>th</sup> Day of March, 2007.

  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

Bamberg, South Carolina

*March 7, 2007*

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Gordon, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUN 28 2007

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN )  
 ) SECOND JUDICIAL CIRCUIT  
 ) David H. Bradley  
 ) C.C.P. & G.A., Aiken County, S.C.  
 ) CIVIL ACTION NO. 2007-CP-020122  
 ) Deputy Clerk  
IN RE: )  
 ) ORDER RELATED TO ACCESS  
 ) OF THE SPECIAL ADMINISTRATORS  
THE ESTATE OF JAMES BROWN )  
A;K/A JAMES JOSEPH BROWN )  
 )  
 )

This matter came before me on June 13, 2007 in Aiken, South Carolina, on motion of Robert L. Buchanan, Jr. and Adele J. Pope, Special Administrators (SAs) of the Estate of James Brown. Present were: The SAs; Alfred A. Bradley, Albert H. Dallas and David G. Cannon, Personal Representatives of the Estate and Trustees of the James Brown 2000 Irrevocable Trust; Keith M. Babcock and William Hammond, Counsel for the Personal Representatives and Trustees; Louis Levenson and David M. Yount, counsel for Larry Brown, Daryl J. Brown, Lindsey Delores Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown Lumar, Sydney Lumar, Carrington Lumar, Tonya Brown and Venisha Brown; Christy A. Tyner for Ronald A. Maxwell and David B. Bell, counsel for Terry Brown, Romunzo Brown, Forlando Brown and Darren Lumar; A. Peter Shahid, Jr. counsel for Stephen M. Slotchiver, guardian ad litem for James Brown, Jr.; and Robert N. Rosen and S. Alan Medlin, counsel for Tomi Raye Brown.

*[Handwritten initials]*

The SAs seek an Order of this Court either confirming or expanding their authority to receive, and have continuing access to, all documents, records, and information of James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable Trust, the Brown Family

Education Trust, the James Brown "I Feel Good" Trust<sup>1</sup> and any and all entities in which they, or any of them, have, had, or might claim an interest.

All Interested Persons other than the Personal Representatives joined in the motion of the SAs.

For the reasons set forth below, the SAs should have the broadest possible authority to access such documents, records and information. Further, the Personal Representatives and Trustees, and the officers and directors of any entity in which James Brown has or had an interest should be required to provide such access to the SAs. Where documents, records and information are not within their direct control, they should be directed to facilitate such access.

*WTR*  
*HC*  
Pursuant to multiple orders of removal issued by the Honorable Sue H. Roe, Probate Judge for Aiken County, and on file with this Court, this Court has jurisdiction to hear and determine multiple matters related to the estate and trusts of James Brown.

James Brown died on December 25, 2006, a resident of Beech Island, South Carolina. On January 18, 2007, Mr. Brown's Will dated August 1, 2000 was informally admitted to probate in the Aiken County Probate Court. Alfred A. Bradley, David G. Cannon, and Albert H. Dallas were appointed Personal Representatives (PRs) of Mr. Brown's Estate.

The value of Mr. Brown's estate is expected to exceed \$2 Million.

---

<sup>1</sup> The James Brown 2000 Irrevocable Trust, the Brown Family Education Trust and the James Brown "I Feel Good" Trust will be referred to collectively herein as the "2000 Trust."

The Will of Mr. Brown, in pertinent part, devises his Tangible Personal Property to his children, defined therein as Deanna J. Brown Thomas, Yamma N. Brown.

Vanisha

Brown, Daryl J. Brown, Larry Brown, and Terry Brown. It thereafter devises the remainder of

his estate to the James Brown 2000 Irrevocable Trust.

The PRs also serve as Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust"), which is a South Carolina trust. Pursuant to South Carolina Trust Code

("Trust Code") Section 62-7-701, this Court has broad authority with respect to the administration of the 2000 Trust, and the Trustees, by accepting their appointment, have, pursuant to Trust Code Section 62-7-202, submitted to the personal jurisdiction of this Court.

The 2000 Trust, in pertinent part, divides into two subtrusts:

1. The Brown Family Education Trust (estimated to be a maximum of approximately \$2 Million); and
2. The James Brown "I Feel Good" Trust - a charitable educational trust for the benefit of children of South Carolina and Georgia.

Neither the Will nor the 2000 Trust provides for apportionment of Estate Taxes. Thus, South Carolina Probate Code ("Probate Code") Section 62-3-916 and other applicable law may require that any interested person in the estate, including the Trustees and Beneficiaries of the 2000 Trust, who receive any assets included in the

gross estate for federal estate tax purposes. contribute to the estate taxes payable in Mr. Brown's estate.

On or about February 1, 2007 Tomi Rae Brown filed a Petition asserting that she is the surviving spouse of Mr. Brown and entitled to receive an Elective Share of his estate. That matter is pending.

By various motions certain children, grandchildren and Tomi Rae Brown sought the removal of the PRs and the appointment of a SA. The Court granted the request for a Special Administrator in its Order dated February 19, 2007. By subsequent Order dated March 7, 2007 this Court appointed Robert L. Buchanan, Jr. and Adele J. Pope as SAs. The March 7, 2007

Order defined the scope of their authority and relationship to the PR/Trustees.

Thereafter various motions and actions have been filed, including actions seeking an accounting of the actions of the 2000 Trust.

The SAs have asked the Court to clarify and expand their authority so that they will have direct, immediate and continuing access to all documents, records and information of any kind related to James Brown, the Estate of James Brown, the James Brown Irrevocable Trust, the Brown Family Educational Trust, the James Brown "I Feel Good" Trust and all entities in which the Estate, Mr. Brown, and/or the 2000 Trust has or has had an interest.

The SAs have confirmed that in addition to direct contact, they may need the authorization of the PRs, the Trustees or the officers of one of the Brown entities. Such authority should be given.

Certain beneficiaries have requested that documents be placed in a central repository. While the Court does not find that necessary at this time, the PRs and Trustees should be directed to identify for the SAs the location of all information, records, and documents for the entities and contacts referenced herein. This would include, but not be limited to, the names of all financial institutions or others holding funds in the name of James Brown, the Estate, the 2000 Trust, or any Brown entity or interest. They should also be required to advise the SAs if the location of information, records, or documents are changed.

It was on March 7, 2007, and remains, the intention and direction of this Court that the SAs be given complete, direct and continuing access to all of the documents, records, and information they seek, and that their access be as broad as that of the PRs.

The PRs of the Estate of James Brown, Alfred A. Bradley, Albert H. Dallas and David G. Cannon, hold multiple fiduciary positions with respect to the Estate of James Brown, the James Brown Irrevocable Trust, The Brown Family Education Trust and the James Brown "I Feel Good" Trust. Further, the PRs, in their various capacities, have access to books, records and information in which the Estate of James Brown has an interest or claim. Some of the numerous entities associated with the Estate of James Brown, or which the Estate may have or have had an interest or claim, either legal or equitable, either directly or indirectly, including through the Irrevocable Trust, are listed below:

1. James Brown, LLC a Delaware Corporation

2. James Brown Enterprises, Inc., A South Carolina Corporation  
Registered Agent: David G. Cannon
3. James Brown Burn Lounge, LLC, a South Carolina Corporation  
Registered Agent: David G. Cannon
4. The New James Brown Enterprises, Inc. [or James Brown d/b/a . . .]
5. James Brown Royalty Venture I SPC, Inc.
6. The James Brown 2000 Irrevocable Trust dtd. 8/1/00
7. The James Brown "I Feel Good" Trust
8. The Brown Family Education Trust
9. Seventh Decade Productions
10. Geronimo Music, Ltd.
11. James Brown's Burn Lounge, LLC
12. James Brown Communications, Inc.


*MRE*  
*12/6*

Some of the Music Companies, other entities and persons with whom Mr. Brown, the Estate, or his or their agents may have had contracts or other dealings which may be pertinent include:

1. Broadcast Music, Inc. (BMI)
2. Warner Music Group
3. Ft. Knox Music, Inc.
4. UMG Recordings, Inc.
5. American Society of Composers, Authors and Publishers (ASCAP)
7. TIAA-CREF
8. Leon Friedman
9. Morgan Stanley
10. Intrigue Music Group - Frank Copsidas
11. Phillip G. Farr, C.P.A.
12. Suggs, C.P.A.
13. SouthTrust Bank
14. SunTrust Bank
15. Manufacturers and Traders Trust Company

16. The James Brown Music Education Foundation

The above lists are not exhaustive, and the term "Brown Entities and Interests" as used herein shall mean each and every entity or interest in which James Brown or the 2000 Trust owned a legal or equitable interest, or may have claimed a legal or equitable interest, or which held any funds payable to James Brown, or any Brown Entity or Interest, or which might be liable or potentially liable for any tax, income, reporting, or other responsibility for James Brown, and/or the Estate of James Brown, and/or James Brown Enterprises, Inc., and/or James Brown, LLC and/or the James Brown Irrevocable Trust.

 This Court has appointed the SAs to oversee the preservation and protection of all assets owned by the Estate of James Brown, any asset which is or might be claimed to be a current or former asset of James Brown, or anything which might affect the proper administration of the estate. This necessarily includes access to the 2000 Trust and any Brown Entity or interest in which the Estate, Trust, or an Entity has or may have an interest or claim.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Special Administrators of the Estate of James Brown are hereby granted complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable and all trusts created thereunder, and any Brown Entities or Interest, however titled.

2. This authorization shall include such access to each entity or person named herein, and each financial institution or other institution in which James Brown, the Estate of James Brown, the 2000 Trust, or any Brown Entity or Interest named above, and any additional entities identified by the Special Administrators, may have or may have had funds or assets, including but not limited to: James Brown, LLC; James Brown Enterprises, Inc.; The New James Brown Enterprises, Inc.; Seventh Decade Productions; Geronimo Music, Ltd.; James

Brown's Burn Lounge, LLC; The James Brown "I Feel Good" Trust; The Brown Family Education Trust; James Brown Royalty Venture I SPC, Inc.; Broadcast Music, Inc. (BMI); Warner Music Group; Et. Knox Music, Inc.; UMG Recordings, Inc.; ASCAP; TIAA-CREF; Milton Friedman; Morgan Stanley; Intrigue Music Group; Phillip G. Farr, C.P.A.; Suggs, C.P.A.; SouthTrust Bank; SunTrust Bank or Manufacturers and Traders Trust Company.

3. The PRs and Trustees, in any capacity which they hold with respect to the Estate, and the Trust and the Brown Entities and Interests, are directed to provide such information to the SAs.

4. To the extent such documents, records, and information are not under the control of the PRs and Trustees, they are directed to facilitate the Special Administrators in obtaining such documents, records and information, by all reasonable means, including providing contacts, addresses and written authorizations.

5. The PRs and Trustees shall notify the Special Administrators of the location of such documents, and advise of any location change, other than temporary changes in location associated with the administration of the Estate or Trusts.

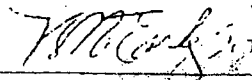
6. This Order is intended to give the Special Administrators the broadest possible access to all documents related to James Brown, the Estate and Trust of James Brown and the Brown Entities and Interests.

7. Any person or entity shall be protected in relying on a copy of this Order as authority to release to the Special Administrators of the Estate of James Brown any information, documents or records of James Brown, the Estate of James Brown, the Trusts of James Brown and/or any Brown Entity or Interest.

8. The direct access to such information, documents and records shall continue until further Order of this Court. Any party may rely on the representation of a Special Administrator that it remains in effect.

9. This Order supplements, and does not reduce, the authority granted to the Special Administrators in this Court's earlier Orders. Except as modified by this Order, they shall remain in full force and effect.

AND IT IS SO ORDERED.



---

Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

June 27, 2007  
Aiken, South Carolina  
*Seaton*

ORDER.ACCESS.SA.REVISIONS.BABCOCK.wpd

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	ORDER ACCEPTING RESIGNATION
	)	AND APPOINTING PERSONAL
	)	REPRESENTATIVES AND TRUSTEES
THE ESTATE OF JAMES BROWN	)	
A/K/A JAMES JOSEPH BROWN	)	
	)	

This matter came before the Court at a hearing in Bamberg, South Carolina on Tuesday, November 19, 2007. The following parties, or their counsel, were present at the hearing: Albert H. Dallas, Esquire and Alfred A. Bradley, Personal Representatives and Trustees; all children of James Brown specifically named in the Last Will and Testament of James Brown dated August 1, 2000; Tommie Rae Hynie Brown; James Brown II; C. Havird Jones, Jr., Esquire, Senior Assistant Attorney General of South Carolina; Grace Evans Lewis, Esquire, Senior Assistant Attorney General of Georgia. Also present were other interested persons.

*DAE #1*

Prior to the hearing Alfred A. Bradley and Albert H. Dallas submitted their immediate and permanent resignation as Personal Representatives, Trustees of the James Brown 2000 Irrevocable Trust dated August 1, 2000, and its subtrusts, and of all Brown Entities as defined in this Court's Order of August 10, 2007, other than Geronimo Music Ltd. ("Geronimo"), and as director, officer, agent and/or fiduciary of the Estate, the Brown Trusts and all Brown Entities (with the exception of Geronimo).

This Court accepted the resignation, and upon the recommendation of all Interested Persons other than the Attorneys General for South Carolina and Georgia, appointed Robert L. Buchanan, Jr. and Adele ~~None as~~ Personal Representatives under the Will and Trustees of the

James Brown 2000 Irrevocable Trust and its subtrusts.

STATE OF SOUTH CAROLINA  
I, Liz Godwin, Clerk of Court of Common Pleas, Second Judicial Circuit, do hereby certify that the foregoing constitutes a true and correct copy of the original document.

NOV 20 2007

*[Signature]*  
CLERK OF COURT  
60018 UN

In Order to immediately effectuate the transition, this Court confirms that it is ORDERED,  
ADJUDGED AND DECREED:

1. The resignation of Alfred A. Bradley and Albert H. Dallas as Personal Representatives, Trustees, directors, officers agents and/or fiduciaries of the Estate, the Brown Trusts and the Brown Entities (with the exception of Geronimo) is hereby accepted, effective immediately.

2. Robert L. Buchanan, Jr. and Adele J. Pope are hereby appointed Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, to serve without bond, with all of the authority, powers and duties as if they had been appointed in the original documents other than the requirement that there be three Personal Representatives and Trustees.

3. This Order shall serve as authorization to the Probate Court for Aiken County to issue certificates of appointment confirming the appointment of Robert L. Buchanan, Jr. and Adele J. Pope as Personal Representatives.

4. A copy of this Order shall serve as authorization to any bank, financial institution, Court or other entity, including but not limited to Security Federal Bank, which holds funds or assets of the Estate of James Brown, the James Brown Irrevocable Trust, and/ or any Brown Entity, to remove the names of Alfred A. Bradley and Albert H. Dallas as Personal Representative and/or Trustees, and replace them with those of Robert L. Buchanan, Jr. and Adele J. Pope.

5. This Order shall be without prejudice to the resigning Personal Representatives and Trustees and/or the Estate and Trust to pursue any claims they may have against each other, including the right of the resigning Personal Representatives to seek compensation for their

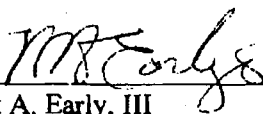
*MPC*  
*#2*

service.

AND IT IS SO ORDERED.

Bamberg, South Carolina  
November 19, 2007

2

  
\_\_\_\_\_  
Doyet A. Early, III  
Circuit Court Judge

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS  
) SECOND JUDICIAL CIRCUIT  
) STATE OF SOUTH CAROLINA  
) COUNTY OF AIKEN  
) I, Liz Godard, Clerk of Court of Common Pleas and General  
) Sessions for Aiken County, South Carolina do hereby certify  
) that the foregoing constitutes the true and correct copy of the  
) original documents which have been filed in my office this  
) DAY OF NOVEMBER 2007

IN RE:

THE ESTATE OF JAMES BROWN  
A/K/A JAMES JOSEPH BROWN

) NOV 21 2007  
) ORDER ALLOWING  
) COMBINING OF FUNDS 11-20-2007  
) *[Signature]*  
) C.C.P. & B. E., Aiken County, SC  
) *[Signature]*  
) Deputy Clerk  
) *[Signature]*  
) Deputy Clerk

This matter came before the Court at a hearing in Bamberg, South Carolina at 9:00 a.m. on Thursday, November 15, 2007. The following parties, or their counsel, were timely notified of the hearing: Albert H. Dallas, Esquire and Alfred A. Bradley, Personal Representatives and Trustees; all children of James Brown specifically named in the Last Will and Testament of James Brown; Tommie Rae Hynie Brown and James Brown II; C. Havird Jones, Jr., Esquire, Senior Assistant Attorney General of South Carolina; Grace Evans Lewis, Esquire, Senior Assistant Attorney General of Georgia; and other interested persons demanding notice.

The Special Administrators (SAs) of the Estate, Robert L. Buchanan, Jr. and Adele J. Pope, requested the right to combine the funds of the Estate, Trust and Brown Entities (other than the James Brown "I Feel Good Trust" if and when it is funded), with proper documentation of receipts and expenditures.

The SAs presented a report from which it appears that the combining of funds is appropriate unless and until ownership of James Brown Enterprises, Inc., and other assets is finally determined. Further, although the Attorney General of South Carolina objected to combining the funds, loans to Decedent's estate by the Trust are specifically authorized. This Court finds such combining of funds appropriate under the safeguards set out below.

DTE #1

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED: Filed: 11-20-2007

Sue H. Roe  
Judge of Probate

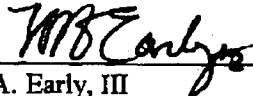
By: *[Signature]*

1. Funds of the Estate, Trust and any one or more of the Brown Entities (other than payments to the James Brown "I Feel Good Trust" if and when it is funded) may be combined into one or more accounts and/or other vehicles, provided adequate records are maintained for ultimate allocation of income and expenses among the Estate, the James Brown 2000 Irrevocable Trust and the Brown Entities as their interests appear.

2. Likewise the expenses of the said Estate, Trust and Entities may be paid from any one or more of such deposits or funds provided adequate records are maintained as aforesaid.

AND IT IS SO ORDERED.

Bamberg, South Carolina  
November 20, 2007

  
\_\_\_\_\_  
Doyet A. Early, III  
Circuit Court Judge



determining reasonableness of fees for attorneys is an appropriate standard by which to measure their request as Special Administrators. The factors to be considered are:

1. The nature, extent and difficulty of the case;
2. The time necessarily devoted to the case;
3. Professional standing of counsel;
4. Contingency of compensation;
5. Beneficial results obtained;
6. Customary legal fees for similar services. See Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989).

1702  
3/2

Considering such factors, the Court finds that the fees and costs requested by Mr. Buchanan and Mrs. Pope are fair and reasonable. Both Mr. Buchanan and Mrs. Pope are attorneys with substantial experience. This has been an extremely difficult case, and has required that they devote a large portion of their day almost every day to the task. Their discovery of the inappropriate August, 2006 deposit of \$900,000, which should have been applied to Mr. Brown's debt at M&T Bank, alone, has been of substantial value to the Estate. With the help of family members and their counsel, the Special Administrators investigated numerous areas of concern. As Personal Representatives and Trustees, they are continuing their work.

In addition to their own work, the Special Administrators were required to use staff in a way which was not anticipated at the time of their appointment. Mr. Buchanan's office became the home address of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and the Brown Entities. Mrs. Pope's office became the repository for more than 80 boxes of documents. With the assistance of the staff of former counsel for the Personal Representatives, after August 10, 2007, Mrs. Pope and her staff made documents and records available to counsel for all Interested Parties, as well as for the work of the Estate.

The payment requested by Mr. Buchanan and Mrs. Pope is also consistent with their standing and services performed by other counsel of similar standing. They are consistent with the hourly rate of other lawyers in this case, as demonstrated in various filings.

With respect to their request to receive periodic payments on a "time plus costs" basis, with right to receive full commissions as Personal Representatives and Trustees, I find that it is entirely reasonable under the circumstances. Based on their affidavits, it is clear that the work of Mr. Buchanan and Mrs. Pope has approximately doubled since they became Personal Representatives and Trustees. In less than a month of service, they have filed the Application for Recognition of the James Brown "I Feel Good" Trust as a 501(c)(3) charitable educational organization. They have also begun to address the substantial tax issues facing the Estate, the Trust, and Brown Entities. Further, they are now actively involved in both the administration of Mr. Brown's assets and entities and also the defense of his Estate Plan.

Under these circumstances this Court finds it appropriate for Mr. Buchanan and Mrs. Pope, as Personal Representatives and Trustees, to continue to receive fees and costs on an hourly basis, as a deposit only, to any full commissions to which they may be entitled as Personal Representatives and Trustees. I specifically find that such payments are reasonable and should be made without prejudice to (but as a deposit toward) their full commissions.

I find it premature to determine whether such fees should be charged to the Estate, the 2000 Irrevocable Trust, or James Brown Enterprises, Inc. A glance at the claims filed against the Estate of James Brown shows that more than twenty attorneys (in at least 4 law firms) performed services for Mr. Brown, James Brown Enterprises, Inc., and the Trust. Most did so without attempting to allocate the services among them. Further, there is litigation pending in at least three states (Illinois, New York and South Carolina) which is and must be conducted

simultaneously by the Estate and one or more of James Brown Enterprises, Inc., the 2000 Irrevocable Trust and other Brown Entities.

The Personal Representatives and Trustees under Mr. Brown's Estate Plan, have abundant authority to make a reasonable allocation, at the appropriate time, of their commissions. Should any party prevail in the challenges now pending to the Estate Plan of Mr. Brown, or any other circumstances state, it may become the duty of the Court to review any such allocation.

Based on the foregoing, IT IS ORDERED, ADJUDGED AND DECREED:

1. Robert L. Buchanan, Jr. and Adele J. Pope shall be paid \$317,000 plus costs, for service as Special Administrators from March 7, 2007 through November 20, 2007.
2. Robert L. Buchanan, Jr. and Adele J. Pope shall receive continuing payment on a "time plus costs" basis for themselves and their staff, commencing November 21, 2007. This shall be a deposit toward, and without prejudice to, their full commissions as Personal Representatives and Trustees.
3. To the extent not paid within 60 days, the above amounts shall be subject to interest at the legal rate.
4. Robert L. Buchanan, Jr. and Adele J. Pope shall be reimbursed for all costs as shown, and all reasonable costs in the future.

AND IT IS SO ORDERED.

January 9, 2008  
*[Signature]*, South Carolina

*[Signature]*  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit



- me #2*
- b. Request of the Special Administrators for \$317,000 in fees, plus costs for the two Special Administrators for service for the 9 months from March 7, 2007 through November 20, 2007.
  - c. Considering and issuing a Scheduling Order in the Elective Share matter, to include discovery; scheduling of the deposition of Tomi Rae Hynie; and a date-certain, upon conclusion of discovery, for summary judgment and, if appropriate, merits hearings.
  - d. Considering any pre-trial matters related to the merits hearing in the Tangible Personal Property portion (Fourth Cause of Action) of the Complaint filed by the Personal Representatives/Trustees on or about November 28, 2007.
  - e. Considering and issuing a Scheduling Order with respect to other matters raised in the Declaratory Judgment action filed on or about November 28, 2007.
  - f. Considering motions by any party, including counsel for former Personal Representatives, related to releasing some or all documents previously designated by former Personal Representatives as privileged.
  - g. Such additional matters as shall be timely brought before the Court and which this Court deems critical or appropriate to hear.

3. The matters to be heard at the hearing scheduled for January 9, 2008 are:

- a. Motions relating to this Court's Order Allowing Combining of Funds dated November 20, 2007.
- b. All motions and matters related to the Order of this Court Accepting Resignation and Appointing Personal Representatives and Trustees dated November 20, 2007.
- c. Such additional matters as shall be timely brought before the Court and which this Court deems critical or appropriate to hear.

4. The matters to be heard at the hearing scheduled February 7, 2008 are:

- a. Merits hearing in the Tangible Personal Property portion (Fourth Cause of Action) of the Complaint filed by the Personal Representatives/Trustees on or about November 28, 2007.

- b. Such additional matters as shall be scheduled at the hearings to be held on December 21, 2007 and January 9, 2008.
- c. Such additional matters as shall be timely brought before the Court and which this Court deems critical or appropriate to hear.

AND IT IS SO ORDERED.



Doyet A. Early, III  
Resident Judge, Second Judicial Circuit



December 8, 2007  
Coker, South Carolina



It was confirmed that former Personal Representatives and Trustees Alfred A. Bradley and Albert H. Dallas took no part in the selection of counsel because the proposed engagement will focus on a period during which they served in one or more fiduciary capacities with respect to Mr. Brown, the 2000 Irrevocable Trust, Mr. Brown's Estate and/or other Brown Entities.

The parties, other than the attorneys general, unanimously urged the Court to proceed with the engagement on the proposed basis. The attorney general of South Carolina agreed with the competency and appropriateness of selected counsel, but raised concerns about the size of the contingency fee arrangement.

*YAC*  
South Carolina Probate Code Sections 62-3-715(19) and 62-7-816(24) authorize the Personal Representatives and Trustees to select counsel of their choice upon reasonable terms. Further the James Brown 2000 Irrevocable Trust, Article X, sections (19),(20), and (24) specifically empowers the Trustees to select and retain counsel, and the informally probated will also allows such selection pursuant to item VI. Thus the Personal Representatives, formerly the Special Administrators, pursuant to this Court's Order dated August 10, 2007 and the documents, have full authority to select and retain counsel.

The Personal Representatives and selected counsel have chosen, however, to seek Court approval as to both the selection of counsel and terms.

I find that both the counsel selected and the contract terms, as contained in Exhibit A, attached hereto, are fair and reasonable.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Engagement Contract proposed by the Estate, Trust, James Brown Enterprises, Inc., and James Brown, LLC, is hereby approved.

2. The Personal Representatives and Trustees are authorized to retain counsel as set out therein.

3. The Order shall not limit in any way the right of the parties to modify the contract as appropriate to developing circumstances.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

January <sup>9</sup> 2008  
Aiken, South Carolina

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

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT  
  
CIVIL ACTION NO: 2007-CP-02-0122

**ORDER**

This matter came before the Court on January 9, 2008 on the Motion to Reconsider the Order issuing sanctions against David Cannon for contempt of court filed on December 18, 2007. Counsel for David Cannon made this Motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure alleging that the Court erred in its sanctions against David Cannon for contempt of court.

Based on the arguments presented in court and the filed motion, the Motion to Reconsider the Order issuing sanctions against David Cannon for contempt of court filed on December 18, 2007 is DENIED.

IT IS SO ORDERED this 14 day of January, 2008.

Conway, SC

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

Liz Godard  
The Honorable D.A. Early III  
JAN 16 2008

Liz Godard  
Clerk of Court  
Aiken County, S.C.

1-18-08  
Liz Godard  
8:30

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CASE NUMBER: 2007- CP -02-0122
	)	
IN RE: THE ESTATE OF JAMES BROWN	)	SCHEDULING ORDER
	)	
a/k/a JAMES JOSEPH BROWN	)	
	)	
	)	

The matter of the Estate of James Brown came before this Court on January 9, 2007 at Aiken, South Carolina, and based upon a request by the Personal Representatives and Trustees for this Court to schedule future dates for hearings in the Estate of James Brown

This Court HEREBY ORDERS THAT:

1. The following dates shall be reserved for hearings in the matters involving the

Estate of James Brown:

- a. Friday, March 7, 2008;
- b. Friday, April 25, 2008;
- c. Friday, May 9, 2008;
- d. Friday, May 23, 2008;
- e. Friday, June 6, 2008;
- f. Monday, June 30, 2008

2. All above hearings shall be set for 9:30 am in the Aiken, South Carolina Court of Common Pleas. *unless otherwise designated by the Court. JVE*

3. If it appears that a hearing is necessary, the parties shall be notified by the Court. *STATE OF SOUTH CAROLINA COUNTY OF AIKEN* *Heather J. Galt, Clerk of Court, Aiken County, South Carolina* *after communicating that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this* with counsel for all relevant parties, may cancel an unnecessary hearing date.

JAN 28 2008

*Liz Godard*  
 C.C.C.P. & G.A., Aiken County, S.C.

Deputy Clerk *WAC*

1-28 8

8:30

- 
4. If the need for an emergency hearing arises this Court shall make a determination at that time, upon proper motion, regarding the scheduling of any additional hearings.
  5. Upon receiving assignments for July 2008 through December 2008 this Court, after communicating with counsel for all relevant parties, will schedule hearings in the above Estate matter for the remainder of 2008.

AND IT IS SO ORDERED

JANUARY 23, 2008  
[Signature], South Carolina

[Signature]  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

Order Prepared By

[Signature] 1/23/08  
LOUIS LEVENSON  
Attorney for Petitioner  
SC Bar No. 7398  
125 Broad Street SW  
Atlanta, GA 30303

# The South Carolina Court of Appeals

Ex Parte: David G. Cannon,

Appellant,

Ex Parte: Georgia Attorney General's Office; South Carolina Attorney General's Office; Terry Brown, Romanzo Brown, Forlando Brown, Darren Lumar, M&T; Tommie Rae Hynie Brown; Stephen L. Slotchiver, the GAL of James James Brown, II; Larry Brown, Daryl Brown (individually and on behalf of his minor children Lindsey Delores Brown and Janise Vanisha Brown), Vanisha Brown; Deanna J. Brown Thomas (individually and on behalf of her minor child Jackson Brown-Lewis), Yamma N. Brown Lumar (individually and on behalf of her minor children Sydney Lumar and Carrington Lumar), Tonya Brown; Robert L. Buchanan, Jr., and Adele J. Pope, as Special Administrators; Albert Dallas and Alfred A. Bradley, as Personal Representatives of the Estate of James Brown, a/k/a James Joseph Brown,

Respondents,

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

Respondent.

The Honorable Doyet A. Early, III  
 Aiken County  
 Trial Court Case No. 2007-CP-02-00122

\_\_\_\_\_  
**ORDER**  
 \_\_\_\_\_

FILED 2-6 2008  
*Liz Godard*  
 C.C.P. & G.S.  
*Debra Brown* 410  
 Deputy Clerk

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FEB 06 2008

*Liz Godard*  
 C.C.P. & G.A., Aiken County, S.C.  
*Debra Brown*  
 Deputy Clerk

Previously, this Court entered an order granting Appellant's Petition for Supersedeas, thereby staying the enforcement of the civil contempt sanction imposed by the Honorable Doyet A. Early, III, in his order filed on December 18, 2007. The Petition was granted on the condition Appellant post a bond in the amount of \$433,000 by February 8, 2008; however, the order failed to specify the type of bond Appellant could post. We hereby clarify that Appellant may post a cash bond or a corporate surety bond in a form that is acceptable to the Aiken County Clerk of Court.

AND IT IS SO ORDERED.

*Jasqueline Curator A.J.*

Columbia, South Carolina

February 6, 2008

- cc: Eric Steven Bland, Esquire
- Ronald L. Richter, Jr., Esquire
- Adale Jeffords Pope, Esquire
- Albert P. Shabid, Jr., Esquire
- Clyde H. Jones, Jr., Esquire
- David Bell, Esquire
- Grace Lewis, Esquire
- Louis Levenson, Esquire
- Robert L. Buchanan, Jr., Esquire
- Robert Rosen, Esquire
- Ronald A. Maxwell, Esquire
- Stanley Guimarin Jackson, Esquire
- Stephen H. Brown, Esquire

**FILED**

2/6/08 *dlp*



2000 was filed for probate on January 18, 2007 in Aiken County, South Carolina. Cannon, Dallas and Bradley were informally appointed as Co-Personal Representatives of the Estate of James Brown at that time. They continued to serve together as Trustees and Personal Representatives until each voluntarily resigned, Cannon on August 10, 2007, and Dallas and Bradley on November 20, 2007.

On January 24, 2007, a Petition to appoint a Special Administrator and to remove Cannon, Dallas, and Bradley as Co-Personal Representatives of the Estate was filed on behalf of the children and grandchildren of James Brown. By order dated January 26, 2007, the Judge of Probate of Aiken County removed the action to the Court of Common Pleas for Aiken County, South Carolina. The Honorable Doyet A. Early, III has since been overseeing the administrations of the Estate as matters are removed seriatim to and from the probate court.

A second, similar petition to appoint a Special Administrator was filed on February 1, 2007 on behalf of Tommie Rae Brown, the <sup>alleged wife</sup> surviving spouse of James Brown.

Judge Early conducted a hearing on the Petitions to appoint a Special Administrator and to remove the Co-Personal Representatives on February 9, 2007. By order filed on February 20, 2007, Judge Early determined that removal of the Co-Personal Representatives was not warranted on a lack of evidence in the record at that time, but that a Special Administrator should be appointed with certain specified powers. Subsequently, on March 7, 2007, Judge Early appointed Adele J. Pope, Esquire, and Robert L. Buchanan, Jr., Esquire, as Special Administrators.

The Inventory and Appraisement was due to be filed by the Personal Representatives on or around April 18<sup>th</sup>, 2007. It is undisputed that no partial or complete Inventory and Appraisement was filed by that date. On April 26, 2007, the Personal Representatives requested

AE  
#2

an extension of time to file the Inventory, and the Court granted the sixty-day extension. Again, it is undisputed that no partial or complete Inventory and Appraisalment was filed within that time frame. The Personal Representatives requested a second extension of time to file, which was objected to by counsel. Counsel for Dallas and Bradley finally submitted a purported Inventory and Appraisalment at a hearing that began on November 15, 2007, nearly seven months after its initial due date. The record will reflect that a legally, sufficient Inventory and Appraisalment was not filed as of that date.

On July 27, 2007, the Special Administrators filed a Motion and Recommendation of Special Administrators requesting the Court to remove one or more of the Personal Representatives of the Estate of James Brown and one or more of the Trustees of the Trust. This motion was based on facts alleging the misappropriation of funds and breach of trust. A hearing was held on this Motion on August 10, 2007. As such Hearing, Cannon submitted his immediate and permanent resignation as Personal Representative and Trustee, among other fiduciary offices. Pursuant to the Court's Order date August 10, 2007, Dallas and Bradley remained as Personal Representatives and Trustees as that time with restrictions placed on their authority to act. The Court scheduled a hearing for September 24th to address whether Dallas and Bradley should remain as Personal Representatives and Trustees. The August 10, 2007 Order further terminated the services of all attorneys, accountants, and/or financial advisors then engaged by the Estate, Trust, and entities related to James Brown, and required that all files and documents in the possession of such persons be turned over to the Special Administrators. Cannon, Dallas and Bradley were also ordered to fully account to the Special Administrators within 15 days by delivering to the Special Administrators "all documents, non-paper and other records, computer records, disks, and information and documents and/or records of any kind related to Brown, the

JE  
#3

Estate, the Brown Trusts, Seventh Decade Productions, Inc., and all other Brown Entities in Cannon's and/or their possession and/or control, including all Brown Historical Documents." Cannon's failure to comply with the Judge's Order of August 10, 2007 led to the Court's consideration of a Motion to find Cannon in contempt at the hearing scheduled for September 24, 2007, and the Court so found by Order of October 2, 2007. The removal of Dallas and Bradley as Personal Representatives and Trustees was continued on the agreement of counsel and the Special Administrators at the September 24, 2007 Hearing, and that Hearing was largely limited to matters related to Cannon and other more pressing matters that had arisen since the August 10, 2007 Hearing.

A Hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007. Counsel for Dallas and Bradley had the opportunity to cross-examine all witnesses at the November 15 and November 20 hearings on behalf of his clients with respect to any and all testimony that was presented that related to his clients' actions or inaction as Personal Representatives and Trustees.

After the testimony on November 15, 2007, and prior to the November 20 continuation of the hearing, Judge Early wrote a letter to all counsel explaining the issues that would be addressed in Court on November 20, 2007 and encouraging counsel to attempt to resolve several of the issues prior to the hearing. One specific issue discussed was the removal of Dallas and Bradley, and the Judge asked all counsel to consider certain issues that would need to be addressed if he did, in fact, determine that Dallas and Bradley should be removed, and asked counsel for Dallas and Bradley to discuss with them the possibility that they would resign prior to the November 20th hearing. Judge Early's letter further provided that the removal issue would be addressed and that "all parties joining in the motions will be allowed argument stating their

DAE  
#4

position. The PRs will then be permitted to testify in response." A copy of Judge Early's letter was forwarded to Dallas and Bradley by counsel representing them as Personal Representatives in Estate litigation. In the cover letter, their own counsel urged Dallas and Bradley to consider resigning in lieu of the possibility of a public removal.

At the continued hearing on November 20, 2007, Judge Early held a conference with all counsel in his chambers. Judge Early asked counsel for Dallas and Bradley to consult with his clients again about the possibility of their resigning before the hearing moved forward on the issue of their removal, and counsel had ample time to so consult. After consultation with their counsel, Dallas and Bradley voluntarily decided not to proceed with the hearing on their removal and resigned as Personal Representatives and Trustees. Counsel for Dallas and Bradley then stated on record that they were resigning and were doing so for the best interests of the Trust and Estate.

#### **Motion for Recusal**

On December 20<sup>th</sup>, 2007, Dallas and Bradley filed a Motion for Recusal asking that the Honorable D.A. Early, III recuse himself from this matter and stay all proceedings in this matter while the motion to recuse is being considered.

In their Brief in Support of Motion for Recusal against Judge Early, Dallas and Bradley alleged that the Court gave the impression to all participants that it had prejudged the issue without hearing evidence, and improperly indicated a personal bias or prejudice toward Dallas and Bradley. In addition, they allege that the Court did not afford them the right to be heard or due process of law in four ways. First, by addressing the removal of Dallas and Bradley as Trustees, the Judge acted on a matter that was not the subject of a motion before the Court. Second, he acted without an evidentiary record. Third, he did not give Dallas and Bradley

adequate time to respond and forced them to make a decision about whether to resign as Trustees the same day they learned that there would be a demand for their removal as Trustees. Fourth and finally, they allege that Judge Early coerced Dallas and Bradley to resign as Trustees through indications things would "get ugly" if they did not resign or if they chose to resign no sanctions would be imposed.

In support of their Motion, Dallas and Bradley submitted affidavits from Norman Fletcher, a Former Chief Justice of the Supreme Court of Georgia, Patrick E. Longan, a professor at Mercer University School of Law in Georgia, and Stanley Jackson, attorney for Dallas and Bradley, who was present at all relevant hearings.

In opposition to the Motion for Recusal, Tommie Rae Brown filed a brief and five affidavits from: T. Heyward Carter, Jr., a South Carolina attorney; Gerald C. Smoak, a former South Carolina Circuit Court Judge; John Freeman, an Ethics Professor at the University of South Carolina School of Law; S. Alan Medlin, attorney for Tommie Rae Brown, and Robert Rosen, attorney for Tommie Rae Brown. The heirs to the Estate, through their attorney Louis Levenson, also filed a Return to the Motion for Recusal, joining in Ms. Brown's Brief.

#### Standard of Review

A trial judge has the authority and the duty to resolve a motion for his own disqualification. Shaw v. State, 276 S.C. 190, 277 S.E. 2d 140 (1981). In Shaw, the South Carolina Supreme Court held:

After much consideration of the authorities, we conclude that as a general rule the judge, in determining whether to proceed, must accept as true the factual allegations of a motion to disqualify. However, this does not prevent the judge from exercising his right to consider the legal sufficiency of those facts. (Citations omitted). Additionally, the fair meaning of any remark must be interpreted in the light of the context in which it is uttered in determining whether the remarks show

AE  
#6

personal bias or prejudice on the part of the judge sufficient to require that he be disqualified.

“It is well settled judges should recuse themselves where questions of impartiality or impropriety are raised.” State v. Cheatham, 349 S.C.101, 111, 561 S.E.2d 618, 623-624 (S.C. App. 2002). Under South Carolina law, “a judge should disqualify himself in a proceeding in which his impartiality might be questioned, including, but not limited to, instances where [the judge] has a personal bias or prejudice against a party.” Murphy v. Murphy, 319 S.C. 324, 461 SE 2d 39 (1995). Any bias or prejudice of the judge “must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from his participation in the case.” Mallett v. Mallett, 323 S.C. 141, 145, 473 S.E. 2d 804, 807 (Ct. App. 1996). It is not sufficient cause of disqualification to merely allege bias; rather, the party seeking disqualification “must show some evidence of bias or prejudice.” *Id.* (citing Roper v. Dymanique Concepts, Inc., 316 S.C. 131, 447 S.E. 2d 218 (Ct. App. 1994)).

#### Legal Analysis

As previously stated, this Court must accept the factual allegations asserted in the motion for recusal as true. At the same time the legal sufficiency of these facts must be considered, and remarks by the Judge must be considered in the context of the situation.

Dallas and Bradley, as movants, supplied the Court with three affidavits. The first is from Norman Fletcher, a former Georgia Supreme Court Chief Justice. Movants claim they provided Mr. Fletcher with the appropriate pleadings, affidavits and documents needed to make his assertions. Despite this, they failed to provide him with all of the necessary documents, most notably, the Motion and Recommendation by the Special Administrators requesting the Court to

remove one or more of the Personal Representatives of the Estate of James Brown and one or more of the Trustees of the Trust, filed on July 27, 2007. The same is true for the affidavit filed by Patrick E. Longan, a professor at Mercer University. Without the support of appropriate pleadings, these two affidavits cannot be considered as sufficient.

After considering the Motion and supporting documents filed by Dallas and Bradley, along with the oral testimony, in addition to the Returns, supporting documents, and oral testimony by other parties, in order to put the situation in light of its context, as well as the legal sufficiency of the facts alleged, I find the following, addressing each of the allegations in turn:

1. Prejudged the Issues

Dallas and Bradley, as Movants, assert as their first grounds, that the Honorable Doyet A. Early, III should recuse himself because he gave the impression he prejudged the matter of removal of Dallas and Bradley as Personal Representatives and Trustees. Dallas and Bradley support their position by quoting Canon 2 of the South Carolina Code of Judicial Conduct, which states, "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." Further, Canon 2(A) provides, "a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Commentary to Canon 2(A) supplies a test for the appearance of impropriety: "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."

AE  
#8

Movants, in their brief and with the support of their affidavits, claim Judge Early prejudged the issue of the administration of the Estate without hearing evidence. This claim is factually incorrect. Judge Early presides over the administration of the James Brown Estate, and has done so since January of 2006. He has been presented with information throughout concerning the administration of the Estate. From such ongoing participation in the Estate's administration, Judge Early had evidence before him, prior to the November 15, 2007 hearing, that accountings and inventories were not filed in a timely manner by Cannon, Dallas and Bradley. In addition, at the November 15, 2007 hearing, Judge Early was presented with evidence, in the form of testimony from David Cannon, specifically concerning the administration of the Estate. Sufficient evidence was presented prior to the resignation of Dallas and Bradley to warrant an opinion on this matter.

In addition, movants claim Judge Early prejudged the merits of the motion for removal without evidentiary support. For the same reasons listed above, Judge Early similarly had sufficient evidentiary support before him specifically related to their role in the administration of the Estate. Through the testimony presented by Cannon on November 15, 2007, and through the failure to submit inventories and an accounting, it was apparent that Dallas and Bradley had breached their fiduciary duty to the Trust and Estate.

Despite having sufficient evidence to warrant an opinion on the matters, considering Judge Early's statements in the light of their context, he never gave the impression that he had prejudged the matter of removal. This Court simply gave Dallas and Bradley the option of resigning. If they had wanted to continue as personal representatives and trustees and had the motion argued, this Court was prepared to proceed in that manner.

HE  
19

## 2. Personal Bias or Prejudice

In addition, Dallas and Bradley assert that Judge Early violated Canon 3 of the Judicial Code of Conduct, which provides that “a Judge shall perform the duties of judicial office impartially and diligently.” Further, Canon 3(B)(5) states, “a Judge shall perform judicial duties without bias or prejudice. A Judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice . . .”

The law requires that bias or prejudice sufficient to disqualify a judge must be personal rather than judicial and come from extrajudicial sources rather than from that judge’s participation in the case. Dallas and Bradley present no evidence of a personal bias, they simply state it must be inferred from the fact that no evidence was presented. As explained above, the Court had sufficient evidence before it to warrant an opinion on the matters of removal and the administration of the Estate. Therefore, Dallas and Bradley do not prove that Judge Early had a personal bias warranting recusal.

Further, movants allege that Judge Early manifested bias through *ex parte* communications. They claim this was a violation of Canon 3(B)(7), which provides, “a Judge shall not initiate, permit, or consider *ex parte* communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.” Dallas and Bradley assert that the Court had *ex parte* communications with the Special Representatives appointed to handle the Estate. They present no evidence of this occurring, but merely state that it must have occurred for the Court to have gained knowledge about the mismanagement of the Estate. Such allegations are unfounded and merely speculation on the part of Dallas and Bradley. Sufficient evidence was presented at various hearings and through filings to warrant the belief that the Estate was mismanaged.

DAE  
#10

### 3. Due Process

Dallas and Bradley, as movants, claim that they were denied due process of law in four ways: 1) there was no pending motion for their removal; 2) the Court acted without an evidentiary record; 3) they were not given an adequate time to respond and were forced to make the decision the same day as learning there was a demand for their removal; and 4) the Court coerced them to resign by stating things would get ugly and sanctions were threatened.

Dallas and Bradley first assert Judge Early was improper and denied them due process of law because there was no pending motion for their removal at the time of the hearing. This allegation is patently untrue. After looking at this history of the case, it is clear that a Motion for their removal as Personal Representatives and Trustees was filed on July 27, 2007. Pursuant to the Order dated August 10, 2007, their removal was to be heard at the September 24, 2007 Hearing. This issue was then continued with the consent of counsel for all interested parties. An amended motion was filed by the heirs of Mr. Brown's Estate to for the removal of Dallas and Bradley in November 12, 2007. In addition, Judge Early advised all counsel by letter dated November 16, 2007, that this issue would be addressed at the November 20, 2007 Hearing. Therefore, a motion was pending in front of the Court since July 27, 2007, allowing Dallas and Bradley ample time to prepare and respond, thus, the argument that no motion was pending is unfounded.

To further support Judge Early's action, this is not an appropriate ground for recusal with regards to the Trust. Even without a specific motion pending to remove Dallas and/or Bradley as

DAE  
#11

Trustees of the purported Brown Trust, the Court would have the authority under the South Carolina Trust Code to remove them as Trustees on the Court's own initiative. S.C. Code Ann. §62-7-706(a).

As second grounds, Dallas and Bradley also allege that Judge Early acted on their removal with no evidentiary record, thus denying them due process of law. Again, this Court finds this was not adequately proved in order to warrant recusal. During the November 15, 2007 hearing, much testimony was presented concerning the contempt of David Cannon, a former Personal Representative and Trustee. This testimony also concerned Dallas and Bradley as they were Co-Personal Representatives and Trustees with Cannon. Testimony was presented at this time that Cannon committed malfeasance when he was a co-fiduciary with Dallas and Bradley. As co-Trustees with Cannon, Dallas and Bradley are culpable for allowing Cannon's malfeasance to occur. Counsel for Dallas and Bradley had the opportunity on November 15 and November 20 to cross-examine these witnesses for the benefit of his clients.

In addition, evidence for removal was apparent merely from Judge Early's role as presiding Judge in the matter. From such ongoing participation in this Estate's administration, this Court had evidence before it before November 15, 2007 that accountings and inventories were not filed in a timely manner by Cannon, Dallas and Bradley. That evidence alone was sufficient to warrant removal of each of the Personal Representatives under the South Carolina Probate Code. See S.C. Code Ann. § 62-3-611(b) ("Cause for removal exists when . . . it is shown that . . . the Personal Representative has . . . failed to perform any duty pertaining to the office." See also S.C. Code Ann. § 6-3-704). The fact that Dallas and Bradley finally offered up a partial inventory and appraisal at the Hearing commenced on November 15, 2007, does not negate their failure to perform the duty of their office in filing such document within the time

DAE  
#12

period required by law, even including the initial extension of time they received from the Court to file that document.

Based on all of the evidence detailed above, Movants claim that Judge Early addressed their removal without an evidentiary record, thus depriving them of their due process of law, is false. The Court had sufficient evidence available to address the issue of Dallas and Bradley. Thus, this is not a legally sufficient claim to warrant recusal.

Third, Dallas and Bradley assert that Judge Early did not give them adequate time to respond and forced the decision on the same day they learned of the demand for removal. This claim is wrong in a number of ways. First, they should have been aware of the demand for removal well before this time. As explained above, there was a pending Motion for removal dating back to July of 2007. The Court also gave them notice through the November 16, 2007 letter, which stated the issue would be taken up at the November 20, 2007 hearing, and to discuss the situation prior to arriving. In addition, even if Dallas and Bradley were unaware of the demand for their removal, they were not forced to make a decision. As discussed above, Judge Early merely gave them the option of resigning or of arguing the Motion for removal. If Dallas and Bradley did not feel they were ready to make the decision, they could have raised that issue at that time.

Movants finally allege that they were denied due process of the law because Judge Early coerced Dallas and Bradley to resign by telling them things would "get ugly" if they did not resign and they would receive no sanctions if they did. Any statements by a judge must be considered in the context in which they are made when determining whether such remarks reflect personal bias sufficient to disqualify the judge.

2AE  
AB

In support of these allegations, Stanley Jackson, counsel for Dallas and Bradley, filed an affidavit stating he remembers Judge Early said, in an in-chambers conference, things would “get ugly” for them if they did not resign and there would be no sanctions if Dallas and Bradley resigned.

In opposition, T. Heyward Carter, Jr., Robert Rosen, and S. Alan Medlin, all present at the in-chambers conference, filed affidavits stating their memories of the conference. From their view of the events, they felt that Judge Early did not threaten Dallas and Bradley with any sanctions. T. Heyward Carter, Jr. states the Judge “was making a concerted effort to allow Messrs. Dallas and Bradley an opportunity to avoid public embarrassment by allowing them to choose between voluntarily resigning as Co-Personal Representatives and taking the stand in public Hearing.” Robert Rosen noted that Judge Early never, “[stated] that he would make things ‘ugly’ for Dallas and Bradley.” He “simply observed, given the vigorous cross-examination of Mr. Cannon and others that things could get ugly for Messrs. Dallas and Bradley in the courtroom.” Alan Medlin agreed in that he “understood Judge Early to be alluding to the likely prospect that counsel would ask tough and probably embarrassing questions if they took the stand, which could become ‘ugly’ (but not because of Judge Early) and could lead to sanctions.”

Taken in the context it is clear that this Court did not deprive Dallas and Bradley of due process of law by coercing them to resign by stating things would get ugly and sanctions would be imposed. Therefore, this is not an adequate ground for recusal.

AE  
#14

After considering the Motion by Dallas and Bradley along with supporting documents and oral arguments, as well as the Returns submitted by other participants in the Estate, this Court DENIES the Motion for Recusal.

IT IS SO ORDERED this 19<sup>th</sup> day of February, 2008.

  
The Honorable D.A. Early III

Bamberg, SC

STATE OF SOUTH CAROLINA

) IN THE PROBATE COURT  
) PROBATE COURT #~~2007-ES-02-0056~~

COUNTY OF AIKEN

2007 CP 02 122

Robert L. Buchanan, Jr. and Adele J. Pope  
as Trustees of the James Brown 2000 Irrevocable  
Trust and as Personal Representatives of the  
Estate of James Brown, deceased

Plaintiffs,

) ORDER APPROVING SALE OF  
) TANGIBLE PERSONAL PROPERTY  
) AND REAL ESTATE AND  
) GRANTING RELATED RELIEF

v.

Deanna J. Brown Thomas, Yamma N. Brown Lumar  
Venisha Brown, Daryl J. Brown, Larry Brown, and  
Terry Brown, each individually and as parent and  
natural guardian of his and her minor and unborn  
issue; Romunzo Brown, Forlando Brown, Tonya  
Brown, Sydney Lumar, Carrington Lumar, Jason  
Brown-Lewis, Lindsey Delores Brown and Janise  
Vanisha Brown; Henry Dargan McMaster, in his  
capacity as Attorney General for the State of South  
Carolina; Tommie Raye Hynie Brown; and James  
Brown II, a minor, by Stephen Slotchiner, his  
guardian ad litem,

Defendants.

*TME*  
*#5*

This matter was commenced with the filing on November 27, 2007 and service of a  
Summons and Complaint by Plaintiffs as Personal Representatives of the Estate of James Brown;  
and Trustees of the James Brown 2000 Irrevocable Trust (the "PR/Trustees"). It was duly  
removed to the Circuit Court on motion of the Honorable Sue Roe, Probate Judge.

All named defendants have answered or appeared herein. Defendants Terry Brown,  
Romunzo Brown and Forlando Brown, through their counsel, have demanded a jury trial as to all

STAFF OF SOUTH CAROLINA  
COUNTY OF AIKEN  
and on a showing of urgent need by the PR/Trustees, the Court scheduled the

I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the relief requested in the Complaint.  
original documents which have been filed in my office this

Present at the hearing held February 7, 2008 were: counsel for all devisees under the

*Liz Godard*  
\_\_\_\_\_  
C.C.C.P. & G.A., Aiken County, S.C.

Deputy Clerk

*Dhanan J. ...*  
\_\_\_\_\_

225 8  
*Liz Godard*  
\_\_\_\_\_  
8:30

August 1, 2000 Will (The "Will") of James Brown, which has been informally admitted to probate and the James Brown 2000 Irrevocable Trust (the "2000 Trust")<sup>1</sup>; the Attorney General of South Carolina; ~~counsel for the former PR/Trustees~~ <sup>DAE</sup>; counsel for Cinnamon Paris and LaRhonda Pettit; and counsel for the Guardian ad Litem of James Brown II. Also attending were counsel for the former PR/Trustees. With the consent of all counsel the hearing was closed because of the discussion of sensitive financial matters.

Based on the testimony and physical evidence before me, the Court makes the findings and rulings set out herein. This and other Orders will result from the February 7, 2008 hearing.

#### PROCEDURAL HISTORY

All assets which are the subject of this action are owned by either the Estate of James Brown or the 2000 Trust, including James Brown Enterprises, Inc. ("JBE, Inc.")

The current PR/Trustees were appointed on November 20, 2007 by Order of this Court and appointment by Sue H. Roe, Probate Judge.

Because it affects the ability of the PR/Trustees to act, and the need for Court guidance, a recitation of the positions of the various Interested Persons is significant. As of the February 7, 2008 hearing was the position of the various parties, as contained in pleadings and motions on file, was:

1. Plaintiff PR/Trustees assert that the Will and 2000 Trust constitute Mr. Brown's valid Estate Plan.
2. The Attorney General of South Carolina ("AG") supports the validity of the Will and 2000 Trust, but has challenged the appointment of the PR/Trustees.
3. Former PR/Trustees Albert Dallas and Alfred A. Bradley assert that they are still

<sup>1</sup> Both the Will and the 2000 Trust are being challenged in pending proceedings

Trustees, and seek to terminate the appointment of Plaintiffs as PR/Trustees.

4. Defendants Terry Brown (child/devisee), Forlando Brown (grandchild), Romunzo Brown (grandchild), support the Estate Plan of Mr. Brown, but seek to remove PR/Trustees.
5. All other children/devisees and grandchildren/devisees have challenged both the Will and 2000 Trust, and seek a declaration of Intestacy.
6. Defendants Paris and Petri seek to set aside the Will and Trust and be declared children of James Brown.
7. Defendant Tommie Rae Hynie Brown and her son, James Brown, II seek to be declared the surviving spouse and child, respectively, of James Brown. The former has also challenged the Will and 2000 Trust.

#### CONDITION OF THE ESTATE/TRUST ON FEBRUARY 7, 2008

Based on the undisputed testimony presented at the hearing, this Court makes the following findings as to the condition of the Estate/Trust as of the date of the hearing:

*TRC #3*

1. The condition of the Estate/Trust as of November 20, 2007, when the current PR/Trustees were appointed, was deplorable. Basic security for Mr. Brown's home Estate was in arrears; valuable and deteriorating Masters had been left in his home for almost a year; income taxes were unpaid for a number of years; and the former PR/Trustees had not prepared or filed an Inventory for the Estate or the 2000 Trust.

2. No Estate Taxes for Mr. Brown's Estate were paid when due on September 25, 2007 and no date-of-death appraisal had been conducted or ordered. Estate taxes estimated at a minimum of \$400,000 were overdue.

3. The request for IRS Charitable Recognition of the James Brown "I Feel Good" Trust

had never been filed<sup>2</sup>.

4. As a result of prior acts, there are no funds to pay Court Ordered payments (administrative priority) to counsel in the New York litigation or the Special Administrators.

5. The majority of Royalties from Mr. Brown's published songs are pledged to the Trustee for the TIAA Royalty-backed debt, and will be unavailable for 5-7 years.

6. The Estate/Trust needs at least \$1.6 Million in 2008 to pay outstanding priority administrative claims; defend the Estate Plan; manage and contest the \$35 Million of claims against the Estate; preserve and evaluate the Masters; provide security for Mr. Brown's home Estate; and protect and secure other Estate and Trust assets.

7. This Court takes judicial notice that the following directly interfere with, or inhibit, the ability of the PR/Trustees to seek traditional funding:

- 1772  
#4
- A. The challenge by most children to the existence of the Trust, makes a traditional mortgage of the Home Estate problematic.
  - B. A Federal lawsuit by Orlando Brown seeking removal impairs the ability of the Trustees to obtain financing for the Estate/Trust.
  - C. The actions of the former PR/Trustees, the SC Attorney General, and certain beneficiaries challenging the appointment of Mr. Buchanan and Mrs. Pope negatively affects their ability to perform their duties without seeking Court approval or seek long-term arrangements for the Estate/Trust.

8. The PR/Trustees have moved Mr. Brown's Masters to secure storage, but do not have the funds to take necessary steps to preserve and catalogue them.

9. Approximately \$35 Million of claims have been filed against the Estate of James Brown, several million of which were filed by former PR/Trustees and their counsel. [Mr.

---

<sup>2</sup> It was submitted by the current PR/Trustees in December 2007.

Cannon, Mr. Bradley and Mr. Dallas.]

10. Because of disputed but unresolved claims of more than 40% to any royalty sale or refinance by the former PR/Trustees (15% or more ); Pullman (12.5%) and Intrigue Music (12.5%)<sup>3</sup> and others, sales of tangible personal property and real estate are the most appropriate source of funds for the approximately \$1.6 million which will be needed to run the Estate/Trust for the next year.

#### PROPOSALS FOR SALES AND DISPOSITIONS

Based on the above facts as to the deplorable condition of the Estate/Trust, the Court finds that emergency action is necessary to preserve and protect the assets of the Estate/Trust. Without prejudice to the eventual outcome, the Court also finds that the PR/Trustees are entitled to conduct such sales as are necessary to raise funds to defend against all challenges to Mr. Brown's Estate Plan. Again, without prejudice to the outcome, the Court finds that this is appropriate for the PR/Trustees. The Court further finds that the proposals of the PR/Trustees, as modified herein, are the appropriate methods of managing the Estate/Trust during these critical times.

In determining the necessity of sale of Tangible Personal Property ("TPP"), the Court has considered the need for funds. It has also considered that the non-charitable devisees who may receive TPP may pay up to fifty (50%) of the date-of-death value of property received in Estate Taxes.

#### TANGIBLE PERSONAL PROPERTY

Based on the above factors, the following is reasonable proposal for the disposition of

Tangible Personal Property.

1. Within 10 days after distribution by the PR/Trustees of the Estate Tax Valuation of TPP being performed by Christie's and of Christie's plan for sale of items, with identification of items, any party desiring to withhold items shall notify the PR/Trustees of items they desire to withhold in order of importance.
2. Within a reasonable time, the PR/Trustees shall, in their sole discretion, designate items to be sold and not sold.
3. Within 10 days after distribution of the final proposal, the Court shall conduct a hearing if, and only if, there are valid specific objections. Any party found to be delaying the sale may be charged with the costs of delay.
4. If possible, the sale or sales by Christie's or any other agent/auctioneer will be conducted on or before August 1, 2008.
5. The PR/Trustees shall have sole discretion as to the terms of the contract, but will consult with interested counsel.
6. The PR/Trustees are authorized to put such pieces as they select on loan to one or more museums, for a period not to exceed 3 years, so that such items may be preserved for future distribution to beneficiaries, as appropriate, with assurances for proper insurance and security for all items put "on loan".
7. Pieces not sold by Christie's or other agent/auctioneer may be sold by the PR/Trustees in their sole discretion at one or more, or a series of, separate auctions/private sales, if additional funds are necessary, provided notice is given to potential heirs and devisees.
8. Any of above pieces, in the sole discretion of the PR/Trustees, may be retained and added to House Museum purchase as described below.
9. The PR/Trustees are authorized to prepare and disseminate images of the home and assets as necessary to carry out the above proposal, including all public advertising they deem appropriate.

REAL ESTATE

The Personal Representative's presented the following proposal, which this Court approves:

<sup>3</sup> (Sales before March 31, 2008)

1. The Trustees shall immediately begin a search for a purchaser of the James Brown home, to be used, if feasible, as a House Museum in honor of the contributions James Brown has made to the State of South Carolina and the world.
2. If possible, the PR/Trustees shall retain approximately 25 acres of the Home Estate for a future home of the James Brown "I Feel Good" Trust so that its educational mission may be associated with the James Brown House Museum.
3. Purchasers shall be required to provide easements and other assurances that the property will be preserved as a museum and open to the public.
4. Some or all of the items of Tangible Personal Property not selected for the Christie's (or any other) auction may be sold with the home, if agreed to by the purchasers and the Trustees.
5. The PR/Trustees may reserve a percentage of future gross receipts of any House Museum and related activities for benefit of the James Brown "I Feel Good" Trust. [Provided the validity of the Trust is confirmed.]

PROPOSAL FOR THE HOME OF JOSEPH BROWN

The Court finds that the Joseph Brown house is a burden to the Estate/Trust. The PR/Trustees are authorized to sell the home titled in the name of James Joseph Brown as follows:


1. The PRs to give quit-claim deed of Estate's interest in Joseph Brown home to one or more clients of Mr. Levenson for a purchase price of \$60,000.00.
2. The property will be sold where is, as is, with no warranties of title or otherwise. Purchasers agree they have been given full disclosure of title problems associated with home.
3. Taxes and insurance for 2007 shall be prorated to time of sale, based on 2007. Purchaser may deduct for 2007 real estate taxes paid.
4. Purchasers are responsible for any probate issues, and have represented that they do not believe Joseph Brown owned any other assets.
5. Purchase price will be paid as follows: 10% paid at closing, within 30 days of this Order; Purchase money Deed of Trust for remainder; 6% interest; equal monthly payment of principal and interest over 10 years. Due-on-Sale clause.

*TRK*  
*1/27*

6. Purchasers to pay all costs of closing.
7. If the Joseph Brown home interest is not purchased by a family member within sixty (60) days of this Order, the PR/Trustees may dispose of the said property in any manner they deem appropriate.

This Court has not outlined in detail the financial circumstances which make the above-approved sales critical to this Estate and Trust. All parties have received full information and do not dispute the Estate/Trust's financial circumstances. To the extent this Court determines that any party has unreasonably interfered with, or delayed the sales approval herein, such party may be charged with the reasonable cost of such action.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

February 20, 2008  
Aiken, South Carolina

State of South Carolina  
County of Aiken

) IN the Court of Common  
) Pleas Case Number:  
) 2007-CP-02-0122

IN RE: The Estate of James  
Brown aka James Joseph Brown

Order

The matter of the Estate of James Brown came before me on February 20, 2008 at Aiken, South Carolina, on the motion for Attachment initially filed by the ~~following~~ <sup>Certain</sup> heirs\* of James Joseph Brown, said motion dated August 23, 2007, and upon reviewing the parties' briefs and after hearing argument from the parties,

This Court HEREBY ORDERS THAT:

1. David G. Cannon immediately surrender his passport to his attorneys Eric Bland and Ronnie Richter.

2. In the event David G. Cannon finds it necessary to leave the country, his attorneys must submit a ~~motion~~ <sup>motion</sup> to the Court requesting return of his passport.

So ordered this 20 day of February 2008.

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

Order presented by

FEB 20 2008

[Signature]

\*except Terry Brown

Liz Godard  
Clerk of Court, Aiken County, S.C.

Anita Smith  
Deputy Clerk

[Signature]

Douet A. Eady, III  
Resident Judge, Second Judicial  
Circuit

FILED 2-20-2008  
Liz Godard  
Clerk of Court, Aiken County, S.C.  
Anita Smith  
Deputy Clerk

STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

Robert L. Buchanan, Jr. and Adele J. Pope )  
as Trustees of the James Brown 2000 )  
Irrevocable Trust and as Personal )  
Representatives of the Estate of James Brown, )  
deceased )

Plaintiffs, )

v. )

Deanna J. Brown Thomas, Yamma N. Brown Lumar )  
Venisha Brown, Daryl J. Brown, Larry Brown, and )  
Terry Brown, each individually and as parent and )  
natural guardian of his and her minor and unborn )  
issue; Romunzo Brown, Forlando Brown, Tonya )  
Brown, Sydney Lumar, Carrington Lumar, Jason )  
Brown-Lewis, Lindsey Delores Brown and Janise )  
Vanisha Brown; Henry Dargan McMaster, in his )  
capacity as Attorney General for the State of South )  
Carolina; Tommie Raye Hynie Brown; and James )  
Brown II, a minor, by Stephen Slotchiver, his )  
guardian ad litem, )

Defendants. )

IN THE PROBATE COURT

CASE NO. 2007-ES-02-0056

2007-CP-02-122

2-20-2008

*Liz Godard*  
C.C.P. & G.S.

*Antia Smith*  
Deputy Clerk

ORDER DIRECTING  
EXECUTION OF AFFIDAVITS  
RELATED TO AND GRANTING  
OTHER PARTIAL RELIEF

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

FEB 20 2008

*Liz Godard*  
C.C.P. & G. S., Aiken County, S.C.  
*Antia Smith*  
Deputy Clerk

*MRE*


This matter was commenced with the filing of a Summons and Complaint on November 27, 2007 by Plaintiffs as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust (the "PR/Trustees"). It was duly removed to the Circuit Court on Motion of the Honorable Sue Roe, Probate Judge. At the February 7, 2008 hearing before me the PR/Trustees requested the following:

The PR/Trustees require that all parties (and perhaps others) interested in the James Brown Estate complete and sign an affidavit stating whether or not they have or know someone who has

been given any type of gift by or from James Brown between January 1, 2001 and December 25, 2006.

This Court finds that this information is necessary to determine whether or not any gift tax returns need to be filed and to make decisions and calculations for the Estate Tax Returns which must be filed by March 25, 2008. Attached hereto is a copy of the affidavit which must be completed by all persons claiming an interest in the Estate and/or 2000 Trust of James Brown, including the former Personal Representatives and Trustees. Each Affidavit must be signed before a Notary Public and returned to the PR/Trustees on or before March 5, 2008.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

February 20, 2008  
Aiken, South Carolina

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, (Name, Address, Telephone Number)

\_\_\_\_\_, who being duly sworn, deposes and says:

1. Have you received or been given transfer of any item for less than full and adequate consideration from James Brown between January 1, 2001 and December 25, 2006?  
\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

2. If answer to Number 1 is "yes", describe each gift(s); its value or an approximate value; the date you received the gift; and whether or not you still possess it.

3. Do you know anyone who received or was given any type of gift(s) by James Brown between January 1, 2001 and December 25, 2006? Yes \_\_\_\_\_ No \_\_\_\_\_

4. If answer to Number 3 is "yes", please provide the name, address, telephone number of the person(s) who were given any gifts; a description of the gifts; an approximation of the value of such gift(s) and whether the recipient of the gift still owns it.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PLEASE PRINT NAME

SWORN TO before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_(L.S.)  
Notary Public for  
My Commission expires: \_\_\_\_\_.

\\Server\docs\BROWN, J\DECLARATORY JUDGMENT\ORDER.EMERGENCY.PLAN.doc

*Liz Godard*  
C.C.P. & G.S.  
*Anita Smith* 450  
Deputy Clerk

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
IN RE: THE ESTATE OF JAMES BROWN )  
 )  
a/k/a JAMES JOSEPH BROWN )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS  
CASE NUMBER: 2007- CP -02-0122  
STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
**ORDER ON MOTION FOR DISQUALIFY**  
**LOUIS LEVENSON**  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAR 04 2008

*Liz Godard*  
C.C.P. & G. S., Aiken County, S.C.  
*Anita Smith*  
Deputy Clerk

The matter of the Estate of James Brown came before me on February 7, 2008 at

Aiken, South Carolina, on the Motion to Disqualify Louis Levenson filed initially by Forlando Brown, said motion dated January 9, 2008 and upon reviewing the parties' briefs and after hearing argument from the parties, and taking evidence in the form of live testimony and considering certain deposition testimony,

This Court HEREBY ORDERS THAT:

1. The Motion to Disqualify Louis Levenson from legal representation of the following lawful heirs of James Joseph Brown as follows is DENIED: Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children Lindsey Delores Brown (age 17) and Janise Vanisha Brown (age 12), Vanisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child Jason Brown-Lewis (age 17), Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children Sydney Lumar (age 8) and Carrington Lumar (age 6), and Tonya Brown (grandchild of James Brown)
2. This Court finds from the evidence presented that Louis Levenson did not violate any of the rules of ethics, as contained in the South Carolina Court Rules, arising

*MJE*  
*#1*

from his representation of the above listed lawful heirs of James Joseph Brown even though such representation of the above named clients of Louis Levenson is argued to be in conflict with his former representation of Petitioners Forlando Brown, Romunzo Brown, and Terry Brown;

3. This Court further finds that Louis Levenson did not violate Rule 407 of the South Carolina Appellate Court Rules, Rules of Professional Conduct, Rule 1.9 in his representation of the above listed lawful heirs of James Joseph Brown even though such representation of the above named clients of Louis Levenson is argued to be in conflict with his former representation of Petitioners Forlando Brown, Romunzo Brown, and Terry Brown;
4. This Court finds that the retainer/engagement agreement dated January 9, 2007 between Louis Levenson, the above listed lawful heirs of James Joseph Brown, and Petitioners Forlando Brown, Romunzo Brown, and Terry Brown expressly contemplates in writing the legal actions taken and pleadings filed by Louis Levenson on behalf of his clients in the present case;
5. Petitioners failed to allege or produce any evidence of any confidential information shared between Petitioners and Louis Levenson during the period of time Louis Levenson provided legal representation to Forlando Brown, Romunzo Brown, and Terry Brown;
6. This Court finds that counsel for Petitioners, Georgia Attorney David Bell, by filing the Motion to Disqualify Louis Levenson in the Circuit Court of South Carolina without such attorney Bell having a license to practice law in South

*me*  
*#2*


Carolina and without the signature of David Bell's sponsoring attorney for admission *Pro Hac Vice*, has violated South Carolina Rule 404(f);

7. At this time, this Court declines to exercise the power or discretion to revoke David Bell's *Pro Hac Vice* admission in South Carolina in the present case for the previously found violation of Rule 404(f) since Mr. Bell has found a new sponsoring attorney following the withdrawal of the previous sponsoring attorney;
8. All fees and costs sought by Louis Levenson and his clients, the Respondents, related to this matter, said fees and costs sought pursuant to Rule 11 and other South Carolina law, shall be reserved for a later determination by Order of the Court;
9. This Court finds from the facts and from the law as applied to the facts set forth above that Louis Levenson, a South Carolina attorney, Bar No. 7395, has conducted himself at all times in this Court in compliance with all rules of law, as a gentlemen, an able advocate, and with the decorum expected of all attorneys practicing in the Courts of the State of South Carolina, whether admitted *Pro Hac Vice* or licensed to practice law in the State of South Carolina.

THEREFORE, AS STATED ABOVE, THE MOTION IS DENIED.

AND IT IS SO ORDERED

FEBRUARY 26, 2008  
 South Carolina

  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE PROBATE COURT  
CASE NUMBER: 2007-ES-02-0056

)  
)  
)  
)  
IN THE COURT OF COMMON PLEAS  
CASE NUMBER: 2007-CP-02-0122

IN RE: THE ESTATE OF )  
JAMES BROWN )  
a/k/a JAMES JOSEPH BROWN )

ORDER REGARDING PETITIONER  
TOMMIE RAE BROWN'S DIARIES


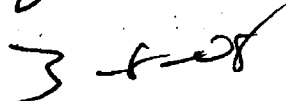
DATE OF HEARING:  
PRESIDING JUDGE:  
COURT REPORTER:

FEBRUARY 20, 2008  
DOYET A. EARLY  
LISA A. HICKLIN

This matter came before the Court on February 20, 2008, upon motion of Tommie Rae Brown for the return of her personal diaries and all copies thereof.

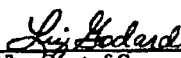
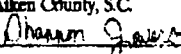
At that time, the Court issued an oral Order which the Court now reduces to writing requiring that all original diaries of Tommie Rae Brown be turned over to her counsel, Robert N. Rosen, immediately and that all counsel, former counsel, parties, former parties, personal representatives and trustees and former personal representatives and trustees and all of their agents and investigators and any other person in possession of a copy or copies of Tommie Rae Brown's diaries are restrained from disseminating or giving said copies to anyone or allowing any person to read said copies, pending further Order of the Court.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge  
Second Judicial Circuit 

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAR 10 2008

  
\_\_\_\_\_  
Liz Godard  
C.C.C.P. & G.A., Aiken County, S.C.  
  
\_\_\_\_\_  
Shannon G. [unclear]  
Deputy Clerk

37 8

5:10pm

0068

Order Regarding Petitioner Tommie Rae Brown's Diaries

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

FILED 3/7/08  
Liz Godard  
Clerk of Court  
150

STATE OF SOUTH CAROLINA )  
MAR 07 2008 )  
COUNTY OF AIKEN )  
C.C.C.P. & G.S., Aiken County, S.C. )  
Deputy Clerk )  
IN RE: )  
THE ESTATE OF JAMES BROWN )  
A/K/A JAMES JOSEPH BROWN )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2007-CP-02-0122  
ORDER DENYING MOTION  
TO ALTER, AMEND OR VACATE  
ORDER APPROVING RESIGNATION  
AND GRANTING RELATED RELIEF

This matter came before me on February 20, 2008 on Motion of Alfred A. Bradley and Albert H. Dallas to alter, amend or vacate this Court's Order of November 20, 2007 accepting the resignation of Bradley and Dallas; appointing successor Personal Representatives (PRs) of the Estate of James Brown (the "Brown Estate"), deceased; and appointing successor Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and its subtrusts.

For reasons set forth in detail below, the motion is DENIED. This Court finds:

1. On November 20, 2007, Bradley and Dallas voluntarily, immediately and permanently resigned as PRs of Mr. Brown's Estate; as Trustees of the 2000 Trust and its subtrusts; as fiduciaries of all Brown Entities (other than Geronimo Music Ltd., LLC); and as directors, officers, agents and/or fiduciaries of the Estate, the Brown Trust or any Brown Entity.<sup>1</sup>
2. The facts, together with applicable documents and law, made their resignation both appropriate and necessary in order to avoid removal.
3. Because their service in all capacities as PR/Trustees permanently and finally terminated on November 20, 2007, Bradley and Dallas are not Interested Persons as to the appointment and service of successor fiduciaries.

DAE  
#1

<sup>1</sup> As confirmed in the record, the Brown Entities to which the immediate and permanent resignation applies include James Brown Enterprises, Inc.; James Brown, LLC; James Brown Royalty Venture I SPC; James Brown Burn Lounge, LLC; Seventh Decade Productions, Inc.; and each and every entity in which James Brown and/or the Estate of James Brown has an interest (other than Geronimo Music, LLC).

## JURISDICTION AND PARTIES

Two separate actions for removal of David G. Cannon, Bradley and Dallas as fiduciaries were commenced in the Probate Court for Aiken County. The first was filed on January 24, 2007 by six children and eight grandchildren of Mr. Brown.<sup>2</sup> The Second was commenced by Tommie Rae Brown.<sup>3</sup> On April 16, 2007 the children/grandchildren also brought an action for an accounting of the PR/Trustees.

All actions were removed to the Circuit Court by orders of the Honorable Sue H. Roe pursuant to S. C. Probate Code Section 62-1-302 (d).

The original defendants (respondents) were the PR/Trustees Cannon, Dallas and Bradley.

After March 7, 2007, Robert L. Buchanan, Jr. and Adele J. Pope, the Special Administrators (SAs) were joined. Other Interested Parties now part of this proceeding are certain putative children and the Attorney General of South Carolina.

Since February 13, 2007 this Court has held more than ten hearings, each of which was (among other matters<sup>4</sup>) related to the removal of Cannon, Dallas and Bradley as PR/Trustees, and the petition for accounting.

DAE  
#2

---

<sup>2</sup> Terry Brown, Larry Brown, Daryl J. Brown, Vanisha Brown, Deanna J. Brown Thomas, Yamma N Brown; Lindsey Delores Brown, Janise Vanisha Brown, Jason Brown Lewis, Sydney Lumar, Carrington Lumar, Tonya Brown, Romunzo Brown, and Forlando Brown.

<sup>3</sup> Ms. Brown asserts that she is the spouse of Mr. Brown.

<sup>4</sup> Also pending are various proceedings related to determination of heirs; contests of Decedent's 2000 Will and 2000 Trust ("Estate Plan") and other matters.

## RESIGNATIONS OF BRADLEY AND DALLAS AND SUBSEQUENT TRANSACTIONS

On November 20, 2007, Bradley and Dallas resigned as PRs, Trustees of the Brown 2000 Trust, as Trustees of the Brown 2000 Trust's subtrusts, and as director, officer, agent and/or fiduciary of the Estate, the Brown Trusts and all Brown Entities (with the exception of Geronimo.)<sup>5</sup> The resignations were on the record in open court. That day this Court issued its Order Accepting Resignation and Appointing Personal Representatives and Trustees.<sup>6</sup> On that same day, Probate Judge Roe also issued a certificate of appointment of Buchanan and Pope.

On November 30, 2007 Bradley and Dallas filed a Motion to Vacate, Amend and Reconsider the November 20, 2007 Order. It was supported by affidavits of Dallas and Bradley dated November 29, 2007. The thrust of the Affidavits was that Dallas and Bradley's resignations were coerced by actions of this Court. On the same day, the Attorney General of Georgia served a Motion and amended Motion to set aside the Court's November 20, 2007 Order. It, also, was supported by the November 29<sup>th</sup> affidavits of Dallas and Bradley, as well as an affidavit of attorney William F. Hammond.

On December 28, 2007 certain children and grandchildren of James Brown filed a response to Dallas and Bradley's Motion to Vacate, Alter or Amend. They asserted that the Order properly accepted the termination of Bradley and Dallas, and properly appointed Buchanan and Pope.

<sup>5</sup> Geronimo Music, LLC, is partially titled in the names of Cannon and Dallas.

<sup>6</sup> Appointing Buchanan and Pope as PRs and as Trustees, with all powers and duties as if they had been appointed under the Will and 2000 Trust, with the exception of the requirement that a third Trustee be appointed.

On January 6, 2008 Buchanan and Pope served a response to all motions to alter or amend. It was supported in part by affidavits of Buchanan and Pope. They requested:

1. That the Court proceed with, and deny, all attempts of Dallas and Bradley to set aside their permanent resignations;
2. That the Court order Bradley and Dallas to fully account for, and deliver to them as Successors, a complete accounting for the Estate and the 2000 Trust; and
3. That the Court conduct a full hearing on the propriety of their appointment and grant certain additional relief.<sup>7</sup>

On December 13, 2007 and January 28, 2008, Bradley and Dallas filed Supplemental Motions to Alter, Amend or Vacate. The supplemental Motions assert, in part, that this Court lacked jurisdiction to accept the resignations and appoint a successor.

Pope and Buchanan responded to the Supplemental Motions, asserting that they were not timely. Additional testimony, affidavits<sup>8</sup> and filings were made a part of the record at the hearing.

---

<sup>7</sup> Buchanan and Pope, among other things, asked the Court to find:

- DAE  
\*4
- a. Because of the damage caused to James Brown, the James Brown 2000 Trust, and the Brown Entities by Messrs. Cannon, Dallas and Bradley, it was both proper and in the best interest of the Estate to appoint PRs and Trustees to serve in both capacities. Separating those functions would cause unnecessary duplication and hinder the Estate Plan of James Brown.
  - b. Buchanan and Pope ethically and properly performed their service as SAs and their claim for past services was properly ordered by the Court.
  - c. Buchanan and Pope, or other properly designated fiduciaries, may ethically serve simultaneously as PRs and Trustees under Mr. Brown's Will and the 2000 Trust, and Buchanan and Pope have properly done so since November 20, 2007.

<sup>8</sup> Including the Affidavits of Buchanan and Pope, with attachments, served on January 18, 2008.

The Motions to Alter, Amend or Vacate of Dallas and Bradley were heard before me on February 20, 2007.<sup>9</sup>

#### FACTS RELATED TO RESIGNATION

Bradley and Dallas assert that their resignation was involuntary and procured under improper judicial or other influence. They assert numerous technical defects. And they challenge this Court's authority to issue the Order. The SAs and those opposing the return of Dallas and Bradley assert that they repeatedly violated this Court's orders, often secretly; made false statements in affidavits and in court testimony; and encouraged or allowed others to make false representations to the court. They further assert that by November 15, 2007 the removal of Dallas and Bradley was imminent and inevitable. They assert that Dallas, a lawyer himself, and Bradley followed the sound advice of their counsel to immediately and permanently resign in all capacities related to the Brown Estate, 2000 Trust and related entities. The facts in the record support this view.

*DAE  
+S*

---

<sup>9</sup> The hearing on reconsideration of the immediate and permanent removal of Bradley and Dallas was originally scheduled for January 9, 2008. Before the hearing Bradley and Dallas moved the undersigned to recuse himself. That motion was orally denied after a hearing on January 4, 2008. On January 9, 2008 Bradley and Dallas appeared with new counsel, R. Wayne Byrd, Esquire. After a brief delay requested by new counsel, the Court's Order denying the motion for recusal was issued on February 18, 2008.

On August 1, 2000 Cannon, Dallas and Bradley were appointed Trustees of the 2000 Trust and named PRs in Mr. Brown's last known executed Will.<sup>10</sup>

James Brown died on December 25, 2006.

On December 26, 2006, Atlanta attorney Joel Katz of Greenberg Traurig (GT) formed the James Brown Music Education Foundation, a Delaware non-profit organization. This entity purports to usurp some of the functions of the 2000 Trust.

On December 28, 2006 PR/Trustee Cannon received \$350,000.00 from the bank account of the 2000 Trust.

At some time after Mr. Brown's death, and before January 3, 2007, Dallas created a new, post-death document entitled "SCHEDULE B - IRREVOCABLE TRUST AGREEMENT OF JAMES BROWN". The new Schedule B represented that virtually all of Mr. Brown's assets, including his copyright and publishing rights, and image and persona had been transferred to the 2000 Trust.<sup>11</sup>

On January 3, 2007, Trustee Bradley applied in his individual name for the rights to "Soul Brother #1." This name belonged to Mr. Brown.<sup>12</sup> Neither Dallas nor Bradley informed the SAs of these events.

DAG  
+E  
<sup>10</sup> Throughout the proceedings described herein certain heirs and the claimed spouse of Mr. Brown have reserved the right to challenge the 2000 Will and Trust. After the resignation of Bradley and Dallas, several actions have been filed for that purpose.

<sup>11</sup> More than a year later, on February 7, 2008 Mr. Dallas testified that it was merely a list of what he thought had been transferred prior to Mr. Brown's death. Both Dallas and Bradley testified that the new Schedule B was prepared with the assistance of counsel Cam Lewis and/or Strom Thurmond, Jr. The new Schedule B was, however, prepared before Bradley signed an acceptance as Trustee on January 3, 2007, and before either attorney was engaged.

<sup>12</sup> On March 5, 2007, Bradley agreed to return those rights to the 2000 Trust.

On January 3, 2007 Cannon filed a \$912,000 judgment in Aiken County against Mr. Brown and the 2000 Trust.

On January 18, 2007, the Will was informally admitted to probate and Cannon, Bradley and Dallas were appointed PRs. Under the 2000 Will, Mr. Brown named six children as devisees of certain items of tangible personal property. The residue of his estate is devised to the 2000 Trust. If for any reason the gift to the 2000 Trust is invalid, the terms of the 2000 Trust are incorporated by reference in the Will, and Cannon, Dallas and Bradley named as Trustees.<sup>13</sup>

Two Petitions for removal of Cannon, Dallas and Bradley were filed by February 1, 2007. At an emergency hearing on February 9, 2007 the PR/Trustees appeared with three of their then-attorneys, Mr. Peebles, Mr. Thurmond and Mr. Miller. The Court did not allow examination of the PR/Trustees or other testimony. The PR/Trustees, through counsel, however made a number of representations to the Court, including:

1. Mr. Cannon and Mr. Dallas were not creditors of Mr. Brown's Estate (Tr.2/9, p.54)<sup>14</sup>
2. The only assets of the Estate were approximately \$208,000. All other assets, including Mr. Brown's home and his company James Brown Enterprises, Inc. (JBE, Inc.), were transferred to the 2000 Trust. (Tr 2/9/07, p 71)<sup>15</sup>

*DAE #7*  
<sup>13</sup> More than a year after Mr. Brown's death, and seven years after the 2000 Trust was signed, Cannon, Dallas and Bradley have not filed any statement showing assets of either Mr. Brown's estate or the 2000 Trust as of Mr. Brown's death, despite numerous demands, notwithstanding an attempt made by Bradley and Dallas to identify some of the assets.

<sup>14</sup> Mr. Thurmond further stated, "If they're creditors, they are creditors of the trust. That's not before Your Honor."

<sup>15</sup> Among the documents which the PR/Trustees used to support their contention that the Estate had no assets was a copy of the Post-death Schedule B. They did not disclose that it was created after Mr. Brown's death.

On January 23, 2007, the Trustees' minutes reflect a meeting with Atlanta Attorney Bill Shearer of Powell Goldstein. On February 19, 2007 this Court issued an Order for appointment of an SA. The Court ordered that the "Personal representatives shall inform the Special Administrators of all matters that concern the administration of the Estate." On March 5, 2007 the PR/Trustees met with Joel Katz of the firm of GT in Atlanta. They voted that control of the 2000 Trust would be by majority action of Katz, Cannon, Bradley, Dallas, and Frank Copsidas. Neither Katz nor Copsidas was named in Brown's documents.<sup>16</sup> Specifically, they determined that

"[g]oing forward decisions on the Trust's behalf are to be decided by the committee comprised of Buddy Dallas, David Cannon, Al Bradley, Frank Copsidas and Joel Katz. In the event of two dissenters, the members have agreed to further good faith discussion with the majority winning."

At the same meeting, the Trustees (with Katz and Copsidas) also decided to provide copies of "all Schedules B" to GT and to attorney Bill Hammond and William Shearer (Powell Goldstein), to determine the "next steps". Hammond and Shearer were described as "the Trust's other legal counsel with respect to estate planning matters."

On March 7, 2007, by supplemental order, Buchanan and Pope were appointed SAs. Their duties were limited to oversight. Where they were unable to reach consensus with the PR/Trustees, the SAs were directed to seek court intervention. Except for prohibitions against transfers and the duty of full disclosure, administration of the Estate remained in the hands of the

<sup>16</sup> This decision was never communicated to the Court, the SAs, or the beneficiaries. The SAs learned of it shortly before the Nov. 15, 2007 hearing.

1AE  
\*B

original PRs. The SAs were never told of the March 5 events described above, even though a detailed report was issued to the Trustees on March 13, 2007.

On March 14, an attorney for the PR/Trustees provided the SAs with what was represented to be Mr. Brown's Will, Trust, "Schedule B to the Trust," and several basic documents. The PR/Trustees failed to tell either their counsel, Keith Babcock, or the SAs that the "Schedule B to the Trust" was created after Mr. Brown's death.

Between March and June, 2007 Cannon, Dallas and Bradley refused to allow the SAs to review tax returns and other critical documents, although they asked them to approve a sale of Mr. Browns music catalogue and royalties without due diligence to determine whether it was best for the Estate/Trust.

On April 13, 2007 the Court, in camera, encouraged the PR/Trustees to give the SAs all documents appropriate to an understanding of the Estate and affairs of Mr. Brown.

On June 13, 2007, after a formal motion of the SAs confirming that documents were not being provided, the Court ruled that the SAs must be given full access to the books, records and tax returns of the Estate, the 2000 Trust and Brown Entities. An Order to that effect was issued on June 25, 2007.

In June of 2007, the SAs also filed a motion questioning the propriety of GT=s remaining as counsel in certain litigation in the State of New York.<sup>17</sup> Cannon, Bradley and Dallas asserted that GT should remain. They did not tell the Court or the SAs of their March 5, 2007 vote to

---

<sup>17</sup> The SAs were concerned that GT and the PR/Trustees were relying on a document known as the "October 18<sup>th</sup> letter" by which GT, Dallas, Cannon, and others would receive a substantial portion of any future sale or refinance of Mr. Brown's royalties and other rights. They believed GT had a conflict in the representation.

AE  
#9

make Katz one of five decision makers for the 2000 Trust. The Court determined that other counsel should be retained for the New York litigation.

On June 25, 2007, the SAs issued a first "Quarterly Report" to the PR/Trustees. Their primary areas of concern were the lack of access to information and the potential conflict of the PR/Trustees in promoting a sale of Mr. Brown's assets which would benefit themselves, but might be harmful to the Estate/Trust.

On June 26, 2007, the PR/Trustees still refused access to the records. Cannon asserted that he would not produce any records, despite the Court's June 25 Order, unless instructed to do so by attorney William Hammond. The SAs were later asked to return after the 4<sup>th</sup> of July. They did so at the earliest date the PR/Trustees would schedule, July 17, 2007.

Meanwhile, on July 10, 2007, a member of Powell Goldstein, Mr. Shearer's law firm, delivered to PR/Trustee Dallas documents for Cannon, Bradley and Dallas to sign and to change the situs of the 2000 Trust to Georgia. The SAs did not learn of this until November, 2007.

On July 17, 2007, the SAs reviewed the Trust's bank account for the first time, and discovered that \$900,000 which should have been applied to Mr. Brown's debt at M&T Bank, had been partially misappropriated. Between August 1, 2006 and December 28, 2006, \$720,000 had improperly passed through the Trust's checking account and been disbursed by Cannon.

Throughout the period from March to November, discovery was ongoing as to whether Cannon, Dallas and Bradley should be removed as PR/Trustees.

On July 27, 2007 the SAs filed documents asserting that one or more PR/Trustees should be removed because of the alleged \$900,000 misappropriation.

On or about August 10, 2007 Cannon wired \$866,000 to Honduras.<sup>18</sup> That same day he filed a document with the Probate Court attempting to resign as PR only. In open court, however, he immediately and permanently resigned as PR, Trustee, and as officer, director, and fiduciary of any Brown Entity.<sup>19</sup> He also restored \$350,000 from the M&T funds. Attorney Hammond appeared at the hearing along with Mr. Babcock and other attorneys for the PR/Trustees.

On August 10, 2007, Dallas and Bradley, along with the SAs, asked the Court to approve an Agreement by which Bradley and Dallas would temporarily remain as PR/Trustees, subject to greater restrictions. The Court approved the Agreement in an Order dated that same day. At the time of the Agreement, neither the SAs nor the Court knew of attempts to remove the Trust from the state; the creation of the post-death Schedule B; or the events of the March 5, 2007 meeting. Further, Bradley and Dallas, as remaining PR/Trustees, asserted that they knew nothing of the \$900,000 transaction.

DAE  
#11

---

<sup>18</sup> Cannon alleges that the money was his wife's or jointly his and his wife's.

<sup>19</sup> Except Seventh Decade Productions.

The August 10, 2007 Agreement was read into the record and approved by Dallas, Bradley and Cannon. Based on this Agreement, the hearing on the removal of Dallas and Bradley was delayed. Attorney Hammond and other attorneys, accountants and advisors to the Estate and Trust were terminated by the August 10<sup>th</sup> Order. The address of the Estate and Trust were changed to Buchanan's Aiken address. Cannon, Dallas and Bradley were directed to deliver all documents of the Estate and Trust, including files of terminated attorneys and accountants, to a central location. In addition, terminated accountant Phillip Farr<sup>20</sup> continued to work and communicate with Cannon, Dallas and Bradley.

On August 31, 2007, PR/Trustees Bradley and Dallas filed a motion to have JBE, Inc. declared an asset of the Estate, rather than of the 2000 Trust. The SAs did not join in the motion.

Bradley and Dallas attached various exhibits to support their position. They asserted that Mr. Brown, rather than the Trust, was the sole owner of JBE, Inc. They asserted the transfer never took place because the stock certificates were not executed. Importantly, they asserted that the JBE, Inc. Tax returns for 2000 - 2005, prepared by Mr. Farr, were the highest evidence that JBE, Inc. was never transferred to the trust because they were filed under penalties of perjury. Returns for those six years showed Mr. Brown, individually, to be the owner JBE, Inc.

DJE  
#12

---

<sup>20</sup> Farr's earlier tax returns for JBE, Inc. and Mr. Brown were acknowledged to be incorrect.

Phillip Farr testified in Court on November 15, 2007 that he was not advised of his termination as CPA. On September 5, 2007 Cannon's attorney, James B. Huff, directed Farr to conduct an audit of the Brown Entities and 7<sup>th</sup> Decade.<sup>21</sup>

Without the knowledge or consent of the SAs Farr's audit continued until shortly before the November 15, 2007 hearing.

In September, 2007, Dallas and Bradley filed a stipulation with the Court in which they again asserted that JBE, Inc. was an asset of the Estate and not the 2000 Trust.<sup>22</sup> Again, the SAs did not join in that stipulation.

On or about September 6, 2007 Cannon, Dallas and Bradley filed claims against the Estate which appear to exceed 15% of its value. Their claims were directly contrary to the representation they made on February 9, 2007 that they had no claims against the Estate.

At the hearing held on September 24, 2007, Bradley and Dallas, through counsel, vigorously argued that JBE, Inc. belonged to the Estate. Again they asserted that the income tax returns, prepared by terminated accountant Phillip Farr, were the best evidence that JBE, Inc. was owned by the Estate.

By October 16, 2007, without the knowledge or consent of the SAs, Phil Farr had prepared, signed and filed tax returns for JBE, Inc. for the years 2004, 2005 and 2006. These

HE  
#13

---

<sup>21</sup> Seventh Decade was a company titled in the name of Cannon, into which Mr. Brown's monies were deposited. In testimony, Cannon claimed that Brown was his employee, and entitled to a salary only if he properly performed according to contract. In such case he was entitled to \$100,000 per month. Mr. Brown's performances grossed \$18 Million between 2003 and his death.

<sup>22</sup> This stipulation was also consented to by Tommie Rae Brown, Terry Brown, Larry Brown, Daryl J. Brown, Vanisha Brown, Deanna J. Brown Thomas, Yamma N Brown; Lindsey Delores Brown, Janise Vanisha Brown, Jason Brown Lewis, Sydney Lumar, Carrington Lumar, Tonya Brown, Romunzo Brown, and Forlando Brown.

returns asserted that JBE, Inc. was owned by the 2000 Trust, and not by the Estate. The SAs learned of the returns after their filing.

Various matters related to the termination and failure to account of Cannon were taken up on September 24, 2007. The SAs, who had not been told of the March 5 meeting; the new Schedule B; the ongoing Phillip Farr audit; the engagement of Powell Goldstein; or the July attempt by Bradley, Cannon and Dallas to move the Trust to Georgia, agreed with Dallas and Bradley that there should be a delay in the hearing on their removal. Pope and Buchanan both asserted that they were attempting to help Bradley and Dallas, as remaining PR/Trustees to focus on various administrative functions of the Estate and Trust which the August 10, 2007 Order had directed needed to be completed.

According to the affidavits of Pope and Buchanan, by early November of 2007 they had learned of the considerations by Dallas and Bradley to move the Trust from South Carolina. They were also aware of the problems caused by the Phillip Farr returns; the failure of the PR/Trustees to prepare inventories or perform other administrative functions; and other issues. Many of these problems were addressed in Court on November 15, 2007.

At the November hearing Cannon testified that after resigning as PR/Trustee he had instructed Phil Farr to prepare the returns in order to save the Estate/Trust \$39 Million dollars. He asserted that the SAs would not file such returns. He gave no explanation for why he had not notified Bradley and Dallas or the Court. Cannon, on cross examination about various financial matters - including the \$18 Million which Mr. Brown's road shows generated between 2003 and 2006 - exercised his fifth amendment rights against self-incrimination.

DAE  
#14

Also at the November 15, 2007 hearing Phil Farr testified that he prepared, signed and filed amended income tax returns for 2004, 2005, 2006 for JBE, Inc.,<sup>23</sup> based on information he had received in February of 2007. He testified that he had not had contact with the PR/Trustees during the period. He further testified that he prepared, signed and filed 3 years of JBE, Inc. income tax returns because he had a fiduciary duty to do so. He testified that filing the returns did not save millions of dollars. He gave no explanation why he changed the ownership of the company on the returns from Mr. Brown to the 2000 Trust. Dallas and Bradley assert that Farr never represented the James Brown Estate, merely James Brown individually before his death.

As Keith Babcock, litigation counsel for the PR/Trustees, later testified, it was clear by the afternoon of November 15, 2007 that Bradley and Dallas were to be subjected to substantial scrutiny on November 20, 2007. Even before their testimony, their failure to prepare any Inventory & Appraisalment was troublesome. Mr. Cannon had testified that Bradley and Dallas knew of Cannon's payments to himself in early February, 2007. They had never reported it to the Court, and the alleged \$900,000 misappropriation remained undiscovered for five months until disclosed by the SAs. Further, in violation of the August 10, 2007 Order, they had not instructed Phillip Farr to deliver his file and discontinue work for the Estate, Trust and Brown Entities.

The Court's suggestions on November 16, 2007 were related to two matters. First, the Court suggested that attorney David Bell might want to withdraw a filing by Velma Brown asserting that she was still married to James Brown. [The record had revealed that she had divorced him.] The second was a suggestion that Bradley and Dallas consider resigning.

---

<sup>23</sup> And a 2006 return.

DAE  
+15

With the advice of counsel, they elected to resign instead of facing removal. Their resignation was immediate, permanent and complete. It was read into the record. Bradley and Dallas asserted that they had resigned so as not to damage the legacy of James Brown. The immediate and permanent resignation of Bradley and Dallas was accepted by all Interested Parties with respect to the Brown Estate/ the 2000 Trust and the Brown Entities.

#### THE RESIGNATION OF DALLAS AND BRADLEY WAS VOLUNTARY

Abundant evidence in the record supports that Bradley and Dallas voluntarily resigned. They had advice of competent counsel. They were not pressured by the Court or the SAs.

Although the Court was cognizant of certain evidence from the record, it was unaware of the full extent of the evidence likely to be presented on November 20, 2008, which it has since learned of.

The resignations were voluntary. They occurred before the full evidentiary hearing. Evidence revealed in response to the assertion of Bradley and Dallas that their resignation were coerced, however, shows that there was a substantial likelihood of their removal had they proceeded with the hearing.

Dallas and Bradley have voluntarily produced to the Court and parties the written advice of counsel that they resign, without waiving any attorney/client privileges. That advice was sound in light of the facts which had been uncovered by November 15, 2007, and which were likely to be brought out at the hearing, and as corroborated by evidence in subsequent hearings.<sup>24</sup>

<sup>24</sup> For example, Dallas testified on February 7, 2008 that he knowingly directed his attorney to file documents with the Court related to the Trust's ownership of JBE, Inc. He stated that he authorized the filing of these documents to prevent his removal as PR/Trustee.

Having resigned, as did Cannon, with no notice, the PR/Trustees have no grounds to complain about technical notice requirements, if any, of the statute or the governing documents related to resignation. Equity would not prevent the resignation of PR/Trustees who have breached their duty or acted improperly. The notice requirements of both the governing documents and the statutes are twofold. They protect PR/Trustees who do not voluntarily resign. And they prevent a gap in administration.

The resignation of Dallas and Bradley as Trustees could have been accomplished without the Court's intervention. Dallas and Bradley, as resigned PR/Trustees still have a duty to account for and deliver the assets of the Estate and Trust to the successors. Other than that, they have no further part in the administration of the Estate and Trust or the selection of a successor.

It is clear that multiple proceedings for the removal of Cannon, Dallas and Bradley were commenced in the Probate Court for Aiken County and removed to Circuit Court on motion of the Honorable Sue H. Roe. Once removed to Circuit Court pursuant to 62-1-302(d),<sup>25</sup> the various matters have been heard together.

DAE  
#17

---

<sup>25</sup> Formerly 62-1-302(c)

## LAW AS TO SUBJECT MATTER JURISDICTION

This Court did not lack subject matter jurisdiction to consider motions to remove Movants. Movants contend that any removal action is a civil action that must be commenced by a summons and complaint under Rules 2 and 3 of the South Carolina Rules of Civil Procedure ("SCRCP"). However, South Carolina Probate Code ("SCPC") section 62-1-304 recognizes exceptions to the application of the SCRCP to matters within the scope of the SCPC: if the SCPC specifically provides to the contrary or the SCRCP is inconsistent with the provisions of the SCPC, then the SCRCP rules do not apply. Section 62-7-706 of the South Carolina Trust Code ("SCTC"), which is contained within the SCPC, provides that a trustee may be removed upon request of a settlor, co-trustee, or beneficiary or "by the court on its own initiative." Because the SCTC specifically contemplates the removal of a trustee by the court sua sponte, a summons and complaint cannot be required for a trustee's removal. Otherwise, that Court would have to serve a summons and complaint on the trustee who was the subject of its removal action. The SCPC provisions are therefore inconsistent with the SCRCP on this issue and, consequently, a summons and complaint was not required to commence the removal actions in this case.<sup>26</sup>

A consistent reading of SCPC section 62-1-302 and SCTC section 62-7-201 gives the Probate Court exclusive jurisdiction over matters involving the internal affairs of trusts.<sup>27</sup> The removal of a trustee would fall within the exclusive jurisdiction of the probate court. However, trust matters may be removed from the probate court to the circuit court pursuant to section 62-1-

<sup>26</sup> Even if a summons and complaint was required, any such requirement was waived by appearance and participation.

<sup>27</sup> SCPC section 62-1-302 grants the probate court "exclusive original jurisdiction" over trusts; SCTC 62-7-201 grants the probate court "exclusive jurisdiction" over the internal affairs of trusts.

302(d)(4).<sup>28</sup> Actions to remove the trustees were commenced in the probate court and properly removed to this Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Motion of Bradley and Dallas to alter, amend or vacate this Court's Order of November 20, 2007 accepting the resignation of Bradley and Dallas; appointing successor Personal Representatives (PRs) of the Estate of James Brown (the "Brown Estate"); deceased;

---

<sup>28</sup> Movants argue that, despite SCPC section 62-1-302(d)(4), SCTC section 62-7-201 somehow precludes removal because SCTC section 62-7-201 does not itself provide for removal of trust actions. However, as with any legislative act, the provisions of the SCPC, which includes the SCTC, must be read as consistent when reasonably possible. It would be inconsistent to read section SCTC 62-7-201 as somehow precluding removal of a trust matter from the probate court to the circuit court, merely because it is silent on that issue, when SCPC section 62-1-302(d)(4) specifically permits the removal of trust matters from the probate court to the circuit court. Moreover, SCTC section 62-7-201 is specifically subject to SCPC section 62-1-302(c) [sic], which was the applicable subsection governing removal before the insertion by the legislature of a new subsection (c) reconciling jurisdiction over relationship issues between the family and probate courts in 2005, redesignating former subsection (c) as subsection (d). SCTC section 62-7-201, contained in 2005 Act # 66, was enacted on May 23, 2005, with an effective date of January 1, 2006. SCPC section 62-1-302(c) was redesignated as (d) by 2005 Act #132, enacted on June 3, 2005, and effective on that date. Thus, the SCTC was enacted before the redesignation of SCPC section 62-1-302(c) as (d). The clear intent of the legislature was to make the subject matter jurisdictional provisions of SCTC section 62-7-201 subject to the removal provisions of what is now SCPC section 62-1-302(d).

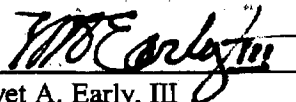
AE  
119

and appointing successor Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and its subtrusts is DENIED.

2. Their appointments having been permanently terminated, Bradley and Dallas have no further interest in these proceedings except to account for their actions and deliver the assets of the Estate and Trust to their successors.

3. Bradley and Dallas shall deliver to this Court their final accounting of their acts as Personal Representatives and Trustees within ninety (90) days and shall immediately deliver to the Successor PR/Trustees all assets, books and records of the Estate, Trust and Brown Entities not previously delivered.

AND IT IS SO ORDERED,



---

Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

March 7, 2008  
Aiken, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER: 2007-CP-02-0122

COUNTY OF AIKEN

1. DARYL J. BROWN, individually and on behalf of his minor children, LINDSEY DELORES BROWN and JANISE VANISHA BROWN, 2. VANISHA BROWN, 3. LARRY BROWN, 4. DEANNA J. BROWN THOMAS, individually and on behalf of her minor child JASON BROWN LEWIS, 5. YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR and 6. TONYA BROWN

Plaintiffs,

v.

ADELE POPE as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, ROBERT L. BUCHANAN, JR. as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, TOMMIE RAE BROWN, as the potential heir of James Brown, JAMES JOSEPH BROWN as the potential heir of James Brown, CINNAMON NICOLE MERNICKLE PARIS as the potential heir of James Brown, LARHONDA PETITT as the potential heir of James Brown, JEANETTE MITCHELL, as the potential heir of James Brown, TERRY BROWN, as the potential heir of James Brown, ROMUNZO BROWN as the potential heir of James Brown, FORLANDO BROWN, as the potential heir of James Brown, HENRY DARGAN MCMASTER in his capacity as ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, JANE DOE and JOHN DOE numbers I, II, III, IV as potential heirs and/or devisee and/or beneficiaries of James Brown and as representatives of all other persons known or unknown claiming to be an heir and/or devisee and/or beneficiary of James Brown.

Defendants.

ORDER RESOLVING MOTION OF PR/TRUSTEES TO DISMISS AND REQUIRING SERVICE BY PUBLICATION

STATE OF SOUTH CAROLINA COUNTY OF AIKEN I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAK 18 2008

3.7

8

CLERK OF COURT, Aiken County, S.C.

Return to Plaintiff

*Handwritten initials*

5.20

This matter was commenced with the filing by the Plaintiffs on December 26, 2007 of two separate Complaints. This Court has jurisdiction to hear this matter because it was duly removed to the Circuit Court on Motion of the Honorable Sue Roe, Probate Judge.

Within 30 days after filing of the original complaints, they were consolidated into a single amended complaint. On or about January 15, 2008, Defendants Adele J. Pope and Robert L. Buchanan, Jr., as Personal Representatives of the Estate of James Brown and as Trustees of the James Brown 2000 Irrevocable Trust (the "PR/Trustees") served a Motion to Dismiss or Consolidate and for Related Relief. This Order resolves the PR/Trustees' motion.

Plaintiffs give notice that their position as to the lawful heirs of James Brown and their respective shares is as follows<sup>1</sup>:

1. Daryl J. Brown (1/6)
2. Vanisha Brown (1/6)
3. Larry Brown (1/6)
4. Deanna J. Brown Thomas (1/6)
5. Yamma N. Brown (1/6)
6. Terry Brown (1/6)

Plaintiffs have agreed to the clerical change in the caption to correctly name a Trustee.

Plaintiffs agree that it is appropriate to serve all parties by publication in the Augusta Chronicle and the Aiken Standard. Because of the worldwide media recognition of James Brown, and because of James Brown's longstanding connection with Augusta, Georgia and Aiken, South Carolina, Plaintiffs and other parties assert that publication in these papers will

---

<sup>1</sup> This is without prejudice to the position of Defendant PR/Trustees and certain others that James Brown died testate and that the action to set aside the Will and Trust is without merit. Said defendants acknowledge, however, that the determination of the lawful heirs of James Brown may have bearing on other rights and obligations of the parties.

provide the best notice to the Doe Defendants.

It is therefore ORDERED, ADJUDGED and DECREED:

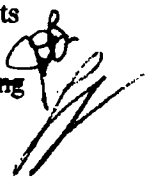
1. The Caption is hereby modified as stated above.
2. Plaintiffs shall publish the Summons for 3 weeks in the Augusta Chronicle and the

Aiken Standard as provided by law, and shall also publish therewith the following notice:

Nature of action: The purpose of the above action is to determine all lawful heirs at law of James Brown, including lawful heirs at law who may be entitled to rights under state and federal laws. This action is also an action by plaintiffs to set aside the will of James Brown and the James Brown 2000 Irrevocable Trust, along with its subtrusts, the Brown Family Education Trust and The James Brown "I Feel Good" Trust. Failure to respond to the summons and complaint may result in loss of any and all rights with respect to the above matters.

3. Plaintiffs shall serve all defendants with the amended complaint within 30 days.
4. Defendants who have been served but who have not answered the Amended

Complaint shall have Thirty (30) days from the date of this Order to answer, move or otherwise appear.

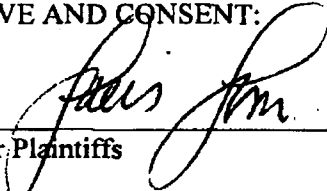
5. The resolution of the PR/Trustees' motion to dismiss is without prejudice to the rights of any party to assert any defenses, counterclaims and/or crossclaims in the proceeding, including  but not limited to laches and statutes of limitations.

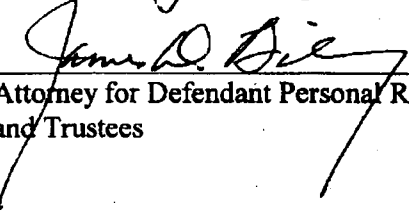
AND IT IS SO ORDERED.

March 8, 2008  
Aiken, South Carolina

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

WE SO MOVE AND CONSENT:

 Paul J. M. 3/7/08  
Attorneys for Plaintiffs

 James D. Diez  
Attorney for Defendant Personal Representatives  
and Trustees



1. Within 10 days after distribution by the PR/Trustees of the Estate Tax Valuation of TPP being performed by Christie's and of Christie's plan for sale of items, with identification of items, any party desiring to withhold items shall notify the PR/Trustees of items they desire to withhold in order of importance.
2. Within a reasonable time, the PR/Trustees shall, in their sole discretion, designate items to be sold and not sold.
3. Within 10 days after distribution of the final proposal, the Court shall conduct a hearing if, and only if, there are valid specific objections. Any party found to be delaying the sale may be charged with the costs of delay.
4. If possible, the sale or sales by Christie's or any other agent/auctioneer will be conducted on or before August 1, 2008.
5. The PR/Trustees shall have sole discretion as to the terms of the contract, but will consult with interested counsel.
6. The PR/Trustees are authorized to put such pieces as they select on loan to one or more museums, for a period not to exceed 3 years, so that such items may be preserved for future distribution to beneficiaries, as appropriate, with assurances for proper insurance and security for all items put "on loan".
7. Pieces not sold by Christie's or other agent/auctioneer may be sold by the PR/Trustees in their sole discretion at one or more, or a series of, separate auctions/private sales, if additional funds are necessary, provided notice is given to potential heirs and devisees.
8. Any of above pieces, in the sole discretion of the PR/Trustees, may be retained and added to House Museum purchase as described below.
9. The PR/Trustees are authorized to prepare and disseminate images of the home and assets as necessary to carry out the above proposal, including all public advertising they deem appropriate.

*MAE*  
#1

The February 20th Order also directed that anyone intentionally interfering with the Order and the Christie's sale would be charged with all costs and losses resulting therefrom.

On or before February 27, 2008, all parties were given the Christie's Selection for Sale and the estate tax valuation as provided in the February 20th Order. The last day to designate items requested to be withheld, in order of importance, was March 10, 2008. No party timely submitted a designation in accordance with the Order. Various parties objected, but the Court deemed the objections untimely or not in conformity with the February 20, 2008 order.

The Selection for Sale by the PR/Trustees was served on all parties on March 21, 2008.

Pursuant to the February 20th Order, only a party with a valid objection to the selection was to be granted a hearing, with the hearing to take place within 10 days of the Selection for Sale.

On March 25, 2008 Plaintiffs requested a brief hearing within the 10 day period for the sole purpose of asking the Court to issue its Order Directing Execution of Contract and Sale. The request was accompanied by an affidavit of Robert L. Buchanan, Jr. confirming the continued grave financial situation of the Estate/Trust and the inability of the Estate/Trust to, provide security for the Tangible Personal Property and defend the Estate Plan of Mr. Brown.

On March 28, 2008 Deanna J. Brown Thomas, Yamma N. Brown Lumar, Venisha Brown, Daryl J. Brown and Larry Brown, each individually and as parent and natural guardian of his and her minor and unborn issue, filed two separate motions objecting to the sale and requesting an extension.

Because of the emergency nature of the Court's February 20, 2007 final Order for Sale of Tangible Property, Plaintiff PR/Trustees filed an opposing

YMAE  
#3

Affidavit and asked the Court to proceed with directing the execution of the Christie's contract and the sale. Plaintiffs also asked the Court to find that the above defendants have intentionally interfered with the sale and should be charged with all costs and damages resulting from the delay. They assert that those damages are at least:

- a. \$4,000 per week, payable Friday, April 4, 2008 and every week thereafter until Christie's has taken possession of the Selection for Sale, such funds to be directly applied for the protection and security of the home and TPP.
- b. All insurance with respect to the home and/or its content due after April 4, 2008, upon 10 days written notice to their counsel.
- c. All losses, up to \$2 Million, resulting from the failure to deliver all TPP to Christie's and selected institutions by April 10, 2008.
- d. Losses related to inability to pay real estate taxes.
- e. All other losses and damages, in an amount to be determined, proximately caused to the Estate/Trust by delay in issuance or implementation of the Court's February 20, 2008 Order or the supplemental Order directing sale.

The Court finds that the emergency condition in which the Estate/Trust found itself on February 20, 2008 has worsened. The PR/Trustees have responded to that emergency with a plan which must be immediately implemented to avert financial disaster.

The Court further finds that the moving parties and all others have had more than adequate time and opportunity to review the assets and the Selection for Sale. The Court finds that neither the moving parties nor any others made a valid, specific and timely objection to the PR/Trustees' Selection for Sale.

The PR/Trustees also called to the Court's attention an offer made by Defendant Terry Brown, received by Mrs. Pope on March 28, 2008, and by Mr.

*MPC*  
#4

Buchanan on March 29, 2008, for purchase of all Tangible Personal Property shown in the Christie's Estate Tax Appraisal for \$2 Million. The PR/Trustees advised the Court that they intended to reject the offer, in part, because it calls for the sale of more than 600 lots of TPP, rather than the approximately 395 of the Christie's sale. The Court notes that neither Mr. Terry Brown, nor any of the five children who moved for an extension to object to the sale, has paid the \$84,933.00 (each) Estate Taxes which have been overdue since September 25, 2008. This approximately \$500,000, constitutes part of the funds needed from the sale.

Plaintiff PR/Trustees also called to the Court's attention that five of the moving parties, acknowledged children of James Brown, should not be allowed to delay a sale which will generate funds necessary defend Mr. Brown's Will and Trust, which they are seeking to set aside. The PR/Trustees assert that by contesting the Will and Trust these parties have subjected themselves to forfeiture of all interest under the In Terrorem clauses of the Will and Trust. They assert that the children no longer have any special status with respect to the TPP. The moving children dispute this assertion. Without prejudice to the final outcome, this Court finds that the PR/Trustees under Franklin vs. Chavis, 640 SE 2d 873(S.C. 2007), have the right to raise all funds necessary for a reasonable defense of the Estate Plan of Mr. Brown. They also have the rights to raise funds for the proper administrative expenses of the estate and Trust. This is both authorized by the Will and Trust and general law. Those contesting the Estate Plan must not be allowed to control the purse strings of the PR/Trustees.

*WPE*  
*ES*

This Court finds that the March 28, 2008 motions, to date, have caused no damages or delay.


This Court finds that the PR/Trustees have fully complied with the provisions of this court's Order of February 20, 2008 and that this Court should direct the execution of the contract and the sale.

The Court further finds that any party who delays the implementation of the February 20, 2008 order or the implementation of this order should be charged with all costs and damages as set out in "a" through "d" above and such costs and such other damages as shall be determined pursuant to "e" above.

Based on this Court's Order of February 20, 2008 and the entire record in this matter, it is ORDERED, ADJUDGED AND DECREED:

1. The PR/Trustees are directed to execute the Consignment Agreement with Christie's upon terms set out in the proposed Consignment Agreement, with such revisions as they deem appropriate.
2. The sale of the Items contained in the Selection for Sale shall proceed as ordered on February 20, 2008.
3. Any party who delays the implementation of the February 20, 2008 order or the implementation of this order shall be charged with all costs and damages as set out in "a" through "d" above and such costs and damages as shall be determined pursuant to "e" above.
4. This Court shall retain jurisdiction to enforce the implementation of this Order and the sale and any other enforcement issues or interference with this Court's February 20, 2008 Order.

AND IT IS SO ORDERED.

  
Honorable Doyet A. Early, III  
Resident Judge

April 1, 2008  
Aiken, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	(On Removal from Probate Court)
	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	ORDER DENYING MOTION TO
	)	RECONSIDER APPOINTMENT OF
	)	SUCCESSOR PERSONAL
THE ESTATE OF JAMES BROWN	)	REPRESENTATIVES AND TRUSTEES
A/K/A JAMES JOSEPH BROWN	)	AND GRANTING RELATED RELIEF
	)	

This matter came before me on March 7, 2008 on motion of the former PR/Trustees of the Estate of James Brown and the James Brown 2000 Trust and others for reconsideration of this Court's Order dated November 20, 2007 as it relates to the appointment of Robert L. Buchanan, Jr. and Adele J. Pope as Personal Representatives ("PRs") of the Estate of James Brown, deceased, and as Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and its subtrusts.

In addition to Buchanan and Pope, other parties to this proceeding present in person or represented by counsel were the original petitioners Daryl J. Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Yamma N. Brown, Terry Brown, Tonya Brown, Lindsey Delores Brown, Janise Vanisha Brown, Jason Brown Lewis, Sydney Lumar, Carrington Lumar, Romunzo Brown, Forlando Brown and Tommie Rae Brown.<sup>1</sup> Also present or represented by counsel were James Joseph Brown II, Cinnamon Nicole Memickle Paris and LaRhonda Pettitt;<sup>2</sup>

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing is a true and correct copy of the original documents which have been filed in my office this

<sup>1</sup> These are all acknowledged children of Mr. Brown's claimed spouse.

<sup>2</sup> These persons claim to be children of James Brown.

APR 14 2008

*Liz Godard*  
\_\_\_\_\_  
C.C.P. & G.S., Aiken County, S.C.  
*Deann Gault*  
\_\_\_\_\_  
Deputy Clerk

C. Havird Jones, Jr., Esquire, Senior Assistant Attorney General for the State of South Carolina; and former PR/Trustees David G. Cannon, Alfred A. Bradley and Albert H. Dallas.

Prior to the hearing, all parties received this Court's Order dated March 7, 2008 denying reconsideration of the portion of the November 20 Order accepting the resignations of Bradley and Dallas as PR/Trustees.<sup>3</sup> That Order outlines certain facts related to the resignations of Cannon, Bradley and Dallas which are incorporated herein by reference.

The March 7, 2008 hearing related to reconsideration of the portion of the November 20, 2007 Order appointing Buchanan and Pope as Successor PR/Trustees.<sup>4</sup> There appears to be no viable challenge to the appointment of Buchanan and Pope as PRs, as Bradley and Dallas confirm their resignation as PRs and do not contest the appointment of Buchanan and Pope. The only challenge is to the appointment of Buchanan and Pope as Trustees.

---

<sup>3</sup> And officers, directors and/or agents of any Brown Entity other than Geronimo Music, LLC.

<sup>4</sup> The appointment Order was followed by a Certificate of Appointment issued that same day by the Honorable Sue H. Roe, Probate Judge for Aiken County. The November 20 Order gave the Successor PR/Trustees all of the authority and duties granted in the governing documents, other than the requirement of appointing a third PR/Trustee.

ME  
#2

On November 29, 2007 the Attorney General of Georgia filed a motion to set aside the November 20, 2007 Order on various jurisdictional and constitutional grounds. I find that such motion should not be considered.<sup>5</sup>

On November 30, 2007, Bradley and Dallas moved to vacate, amend and reconsider the November 20 Order. They later filed various amendments which the PR/Trustees objected to as not timely.

On December 14, 2007 the Attorney General for South Carolina filed an Objection to the Appointment of the SAs as PRs and Trustees.

<sup>5</sup> Grace Evans Lewis, assistant Attorney General for Georgia, was admitted pro hac vice to assist the Attorney General of South Carolina. The status of the Attorney General of Georgia was later revoked as improvidently granted because it was issued with the misunderstanding that the James Brown "I Feel Good" Trust, a South Carolina Charitable Trust, was for the protection of needy children of South Carolina and Georgia. This South Carolina charitable Trust's beneficiaries are not so limited.

DIE  
E3

On January 6, 2008 Buchanan and Pope served a response to all motions opposing the November 20 Order appointing them.<sup>6</sup> They requested that the Court conduct a full hearing on the propriety of their appointment and make the following findings:

1. Because of the damage caused to James Brown, the 2000 Trust, and the Brown Entities by Messrs. Cannon, Dallas and Bradley, it is both proper and in the best interest of the Estate Plan to have PRs and Trustees serving in both capacities. Separating those functions would cause unnecessary duplication and hinder the Estate Plan of James Brown.
2. Buchanan and Pope ethically and properly performed their service as Special Administrators ("SAs") and their claim for past services was properly ordered by the Court.
3. Buchanan and Pope (or other properly designated fiduciaries) may ethically serve simultaneously as PRs and Trustees under Mr. Brown's Will and the 2000 Trust, and Buchanan and Pope have properly done so since November 20, 2007.

After review of the entire record, this Court makes the following findings:

1. All motions to reconsider or set aside the appointment and service of Buchanan and Pope as PRs and Trustees should be denied.
2. Buchanan and Pope have served properly to date in the capacities of SAs, and later PR/Trustees. They should continue as PRs and Trustees, subject to the right of the PR/Trustees, the Court or any other Interested Persons to seek the appointment of a Special Administrator (SA), a Special Trustee, or both, if appropriate.
3. Cannon, Dallas and Bradley, having permanently resigned as PR/Trustees, have no further interest in matters related to the Estate and Trusts of James Brown other than to deliver to the successor PR/Trustees and to account.
4. So that this Removal/Appointment/Accounting matter is appropriately distinguished from other pending matters, all parties should be directed to

<sup>6</sup> Buchanan and Pope supported their position with their own affidavits and that of Rita Cullum, a certified specialist in Estate Planning and Probate Law.

use the caption attached as Exhibit A as the caption for all future filings in this case.

The basis<sup>7</sup> of this decision is set out below.

### FACTS AND PROCEDURAL HISTORY

On August 1, 2000, James Brown executed a Will and Irrevocable Trust. Attached to the 2000 Trust were Schedules A, B and C describing the property “[g]rantor transfers and delivers to the Trustees . . .” [Trust, Article I]. By their terms these documents create the Estate Plan of Mr. Brown, the bulk of which will ultimately pass to the 2000 Trust, to be divided into a charitable and non-charitable trust.<sup>8</sup> The Will and Trust designated Cannon, Dallas and Bradley as PR/Trustees.

Cannon has an accounting degree. Dallas is a Georgia attorney. And Bradley is a former magistrate.

---

<sup>7</sup> Also see facts in this Court's Order dated March 7, 2007 and earlier orders.

<sup>8</sup> The Estate Plan will be effective if the current challenges to the Will and 2000 Trust are unsuccessful. Item X of the Will and Article XXI of the Trust refer to the Will and Trust as Mr. Brown's Estate Plan. The Will is a “pour over” will which, after a devise of personal and household effects (“PHE”) to 6 named children, devises the residue to the 2000 Trust [Item II]. If for any reason the pour-over to the 2000 Trust is invalid, the Will creates a Trust identical to the 2000 Trust [Item III]. After Mr. Brown's death, the 2000 Trust divides into the noncharitable Brown Family Education Trust, for the education of certain designated grandchildren under age 35, and the charitable James Brown “I Feel Good” Trust. Schedules A, B and C were signed by Mr. Brown.

AE  
MS

Bradley asserts that he refused to serve as a Trustee until certain conditions were met; and did not receive a copy of the Trust until after Mr. Brown's death.<sup>9</sup>

About October 18, 2006 a letter from the Atlanta law firm of Greenberg Traurig (GT) (the "October 18 Letter") was generated which set out a proposed division of proceeds upon a sale or refinance of Mr. Brown's royalties.<sup>10</sup>

James Brown died on December 25, 2006, a resident of Aiken County.

On December 26, 2006 GT formed a Delaware Corporation which, in its internet postings, purports to compete with the 2000 Trust.<sup>11</sup>

On December 25, 2006 the 2000 Trust's bank account contained approximately \$288,706.

Deposits were made on December 26 and 28, 2006.<sup>12</sup>

---

<sup>9</sup> Tr., Hearing 2/7/08, pp. 243-245, 249 and Exhibit 9. Bradley also asserts that the conditions he required to serve are set out in the claim he later filed against the Estate.

<sup>10</sup> The October 18 Letter proposed various payments exceeding \$2 Million plus 10% of proceeds to Cannon (DGC) and Dallas upon a sale or refinancing of certain of Mr. Brown's assets. The October 18 Letter later became part of Cannon's claim against the Estate.

<sup>11</sup> The entity, known as The James Brown Music Education Foundation, LLC, was discovered by Buchanan and Pope in the spring of 2007.

<sup>12</sup> Motion & Recommendation dtd. 7/27/07.

On December 28, 2006 \$350,000.00 was paid to Cannon from the 2000 Trust's bank account.<sup>13</sup>

On January 1 or 2, 2007 Dallas, consulting with Cannon, created a document entitled "Schedule B, Irrevocable Trust of James Brown" ("Dallas Schedule B"). Read with Article I of the Trust, Dallas Schedule B asserts that the following assets were transferred and delivered to the 2000 Trust:

All copyrights and all rights to income from any copyright or publishing rights to musical compositions of James Brown the entertainer, artist, composer and creator of musical works and video graphic and sound images including the likeness, image and persona of James Brown a/k/a The Godfather of Soul and any other stage or performance work now in existence or hereafter created by James Brown; the rights to any book, movie, narrative or illustration of the life and the works of James Brown in any form, including, but not limited to the attached more definitive list of intellectual work product of James Brown, which is ever continuing and which work product may or may not be registered with the Library of Congress, ASCAP or BMI.

<sup>13</sup> This check was not reported to the Court, interested parties, or SAs. It was discovered by the SAs on July 17, 2007.

Dallas did not advise the Court or the SAs of his post-death authorship of Dallas Schedule B until after November 20, 2007.<sup>14</sup>

On January 2, 2007 Bradley wrote Cannon and Dallas asserting that he was ready to serve as Trustee. He asked for a copy of the Trust and an accounting.<sup>15</sup>

On January 3, 2007, according to Bradley, Dallas and Cannon named Deanna Brown as Trustee. The appointment was either not accepted or revoked.

On January 5, 2007 Bradley signed an acceptance as Trustee and was given a copy of the Will and Trust which were the "same documents filed with the Probate Court". This included Dallas Schedule B.<sup>16</sup>

---

<sup>14</sup> At some time after September 24, 2007, Dallas told the S.C. Attorney General that he had created Dallas Schedule B after Mr. Brown's death.

<sup>15</sup> No accounting was ever given. [Tr., Hearing 2/7/08 pp. 247-250, Exhibit 9.]

<sup>16</sup> Tr. Hearing 2/7/08 p.252, Exhibit 5. Affid. Pope dtd 2/18/08, Exhibit D.

On January 11, 2007, the PR/Trustees read the Will in the Aiken County Court House and delivered the Will and the 2000 Trust, with Dallas Schedule B, to family members.<sup>17</sup>

On January 18, 2007 Brown's Will was informally admitted to probate, and Cannon Bradley and Dallas were appointed PRs.<sup>18</sup>

On January 24, 2007 all of Brown's acknowledged children and grandchildren filed an Emergency Petition for Termination of Appointment and Removal of PRs and for Emergency Restraining Order.<sup>19</sup>

On February 1, 2007 Tommie Rae Hynie Brown filed an Emergency Petition for Appointment of Special Administrator (SA).

The January 24 and February 1 proceedings were removed to the Circuit Court by Order of the Honorable Sue H. Roe, Probate Judge.

On February 9, 2007 this Court held an emergency hearing on the two Petitions. Cannon, Bradley and Dallas, as PR/Trustees, appeared at the hearing with four attorneys.<sup>20</sup> As

---

<sup>17</sup> Tr. Hearing 2/9/07, p. 69. See Levenson statement on February 9 that under the Trust presented to the children "...every single thing owned on earth by James Brown was purported to have been transferred to the Trust in the year 2000." See Tr. Hearing, 2/9/07, p. 78.

<sup>18</sup> A majority of the children and grandchildren, along with the putative spouse and other claimed children, are now contesting the validity of the Will and the 2000 Trust.

<sup>19</sup> On January 31, 2007 Tommie Rae Brown filed a separate Omitted Spouse; & Elective Share proceeding claiming to be the surviving spouse. As of this Order, that matter is still pending.

<sup>20</sup> Rodney A. Peeples, Esq., David W. Miller, Esq., J. Strom Thurmond, Jr., Esq. and Wm. Ray Massey, Esq. appeared for the PR/Trustees.

PRs. and also as Trustees of the primary devisee of the Will, the 2000 Trust, Cannon, Dallas and Bradley were necessary parties to the proceedings for removal and appointment of an SA.<sup>21</sup>

At the emergency hearing, Petitioners sought an accounting for the six years the Trust had been in existence. The Court did not allow testimony as to the requested removal and accounting. The Trustees however, through counsel, explained in detail their assertion that various allegations as to their wrongful actions as Trustees were incorrect. They also sought certain relief related to Mr. Brown's home (which is an asset of the Trust) and their administration.<sup>22</sup>

On February 9, among other representations, Cannon, Dallas and Bradley asserted that they were not creditors of the Estate.<sup>23</sup>

---

<sup>21</sup> The PR/Trustees appeared at all subsequent hearings in both capacities with counsel. In later hearings, they also had various individual counsel.

<sup>22</sup> As PR/Trustees, Cannon, Dallas and Bradley, through counsel, made various representations about the Estate, the Trust, and their actions as Trustees.

<sup>23</sup> They asserted they might be creditors of the Trust, but that Georgia counsel had represented that this was not unusual. [Tr. Hearing 2/9/07, pp. 54-55]

2-15  
2/10

On February 19, 2007 this Court issued its Order denying emergency removal of the PRs. The Court's decision rested primarily on its deference to Mr. Brown's selection of Cannon, Dallas and Bradley as PR/Trustees. The Court did, however, decide to appoint an SA.<sup>24</sup>

Extensive discovery on issues related to the removal and accounting of Cannon, Dallas and Bradley commenced shortly after February 19, 2007 and continued until all three resigned.<sup>25</sup>

The February 19 Order set out guidelines for the service of the SA, including the requirement that:

The Personal Representatives shall inform the Special Administrator of all matters that concern the administration of the Estate.

The PRs were also restrained from selling or pledging any asset of the estate or a corporation or entity owned by the estate, without the consent of the SA.

---

<sup>24</sup> The parties were urged to reach agreement as to the SA. They were unable to do so.

<sup>25</sup> Cannon, Dallas and Bradley, as PR/Trustees, actively participated in such discovery.

On March 5, 2007 Cannon, Dallas and Bradley met in Atlanta with GT attorneys. They decided that the Trustees would provide "all schedules B" to GT attorney Steve Sidman who, working with William Hammond and Bill Shearer, could determine the "next steps".<sup>26</sup> The Trustees also decided that the 2000 Trust would be controlled by a majority of GT attorney Joel Katz, Frank Copsidas, Cannon, Dallas and Bradley. These actions were not revealed to the Court until 2008.<sup>27</sup>

On March 7, 2007 this Court appointed Buchanan and Pope as SAs. The March 7 Order reaffirmed the February 19<sup>th</sup> Order, but set additional guidelines, including a requirement of full disclosure.

On March 7, 2007 Hammond sent an email to Cannon and Dallas advising them not to change Schedule B of the Trust. Hammond said that as much as possible should remain in the Estate.<sup>28</sup>

By March, 2007 most of the original counsel for the PR/Trustees had been terminated. Beginning in March, 2007, the PR/Trustees were represented in this proceeding by Keith Babcock and others of Lewis & Babcock, LLP (L&B); Hammond's firm, Hull Towill; and Rodney A. Peeples, Esquire.

---

<sup>26</sup> See Affid. of Buchanan, dtd. 2/18/08, Exhibit B.

<sup>27</sup> William Shearer of Powell Goldstein (PG), Atlanta, was mentioned in the Trustee meeting of January 2007, and William (Bill) Hammond of Hull, Towill appears in March. They are described as estate planning attorneys for the Trust. (Affid. of Buchanan, dtd. 2/18/08, Exhibit E.)

<sup>28</sup> The email said "Leave Schedule B as is without modification unless there is some writing indicating an intention on Mr. Brown's part to complete transfer of his intangible rights to the Trust prior to his death." Tr. Hearing 2/7/08, p. 228.

On March 14, 2007 a member of L&B provided the SAs with a copy of Mr. Brown's Will; the 2000 Trust (with schedules A, B and C); and the Dallas Schedule B. The SAs were not told that the Dallas Schedule B was created by Dallas after Mr. Brown's death.<sup>29</sup>

On March 26, 2007 the PR/Trustees, with Hammond and other counsel, first met with the SAs. The PR/Trustees asked the SAs to approve a sale of Mr. Brown's royalties for \$26 Million, but would not allow Buchanan and Pope access to records to conduct due diligence with respect to the proposed sale. They proposed to distribute the sale proceeds in accordance with the October 18 Letter.<sup>30</sup> Buchanan and Pope would not approve the sale without due diligence to determine if it was in the best interest of the Estate to enter into the sale.

On March 26, 2007 Hammond, according to his affidavit, advised Cannon, Dallas and Bradley that they were "sitting ducks" for removal as PR/Trustees.<sup>31</sup>

On April 10, 2007, various parties moved to modify the Order Appointing SAs, to give the SAs greater authority and control.

On April 25, 2007 the SAs and PR/Trustees appeared at a hearing.

---

<sup>29</sup> Keith Babcock of L & B testified that he did not know the Dallas Schedule B had been created by Dallas after Mr. Brown's death. Tr. Hearing 2/20/08, pp .]

<sup>30</sup> The October 18 Letter, at a sale of \$26 Million, would have paid about \$20 Million on the M&T debt; more than more than \$2 Million to Cannon; more than \$1 Million to Dallas; more than \$500,000 to GT; and other amounts. [Affid. A. Pope., dtd. 12/14/07]

<sup>31</sup> Hammond's affidavit asserts that the first meeting with the SAs was March 23. Buchanan and Pope assert it was March 26. [Affid., Hammond, dtd. 11/30/07; Affid., Buchanan dtd. 12/17/07.]

DJE  
#13

On April 25, 2007 various children and grandchildren of Mr. Brown commenced another action in Probate Court for an accounting by Dallas, Bradley and Cannon. It was removed to the Circuit Court by Order of the Honorable Sue H. Roe, and was consolidated with other proceedings related to the removal and accounting of Cannon, Dallas and Bradley as PR/Trustees.

On May 30, 2007 Bradley, Dallas and Cannon, as Trustees, served a Return to the Petition for Accounting.

Between March and June, 2007 Buchanan and Pope's primary challenges as SAs were the refusal by the PR/Trustees to grant access to records and the PR/Trustees' insistence on a sale of Mr. Brown's Royalties in accordance with the October 18 Letter. The SAs' 1<sup>st</sup> Quarterly report to the PR/Trustees, issued June 22, 2007, states, in part:

...  
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. . . . The intention is to explore issues of concern early in the process of deliberation in the hope that differences can be resolved by PRs, Trustees and SAs without court intervention.

#### SUMMARY OF FIRST QUARTER

...  
The primary challenge to the PRs during the first quarter was obtaining information necessary to oversee the preservation and protection of assets belonging to, or claimed by, the Estate.. .

#### 3. CLAIMS AND POTENTIAL CLAIMS AGAINST THE ESTATE

- ... 3. The PRs should disqualify themselves from the evaluation of claims in which they have an interest in the outcome ...[to] include claims related to the OT October letter...Geronimo and any other contracts or claims they have to the

Estate, Trust or entity funds.) See Probate Code Section 62-3-713 [Affid., Pope 12/14/07.]

By June 5, 2007, the SAs believed that GT could not continue to serve as counsel for the Estate and James Brown Enterprises, Inc. ("JBE, Inc.")<sup>32</sup> in certain litigation in New York (the "NY Litigation"). They filed a motion to engage new counsel.<sup>33</sup>

On June 5, 2007 the SAs also filed a motion to gain access to all books and records of the Estate, Trust and Brown Entities.

On June 12, 2007 the SAs prepared and filed a report related to the NY Litigation.

On June 13, 2007 a hearing was held on various matters. This Court orally directed the PR/Trustees to produce for continuing access the books and records of the Estate, the 2000 Trust and various Brown Entities.

On June 22, 2007 this Court directed the SAs to select new counsel for the NY Litigation.<sup>34</sup>

---

<sup>32</sup> JBE, Inc. is owned either by the Estate, the 2000 Trust, or both. Under Mr. Brown's Estate Plan, like all assets other than his PHE, it will pass to the 2000 Trust.

<sup>33</sup> The February 19 Order directed the SAs to try to reach consensus with the PRs where possible, and to file a motion where agreement could not be reached. Under the October 18 letter, GT was to receive 5% of any "new transaction". GT also required that the Estate approve \$327,000 of bills, including \$149,912.28 for the NY Litigation (in which they had only filed a complaint and opposed Defendant's motion to disqualify them) as a condition to continuing service.

<sup>34</sup> Matthew Ballenger, Esquire, of Hogan & Hartson (H&H) was engaged.

ME  
45

On June 22, 2007 this Court issued its Order directing Cannon, Dallas and Bradley as PRs/Trustees and in any capacity which they held with respect to Brown Entities, to give to the SAs:

"... complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable [Trust]...and any Brown Entities or interest, however titled."

On June 26, 2007 SA Pope traveled to Barnwell to Cannon's office to review documents. The Trustees refused to allow Pope access to any documents. Cannon advised Pope that he didn't care what the Order said, that he wasn't showing her anything until Hammond told him to do so. (Affidavit Pope, 12/14/07). The Trustees later told Pope the SAs could return after the 4<sup>th</sup> of July.

Buchanan and Pope tried to return as soon as possible after July 4th, but were told scheduling prevented their return until July 17, 2007.

Before July 10, Cannon and Dallas met in person and/or by phone with a member of the firm of Powell Goldstein. On July 10, 2007, a Powell Goldstein attorney sent Dallas documents purporting to transfer the situs of the 2000 Trust from South Carolina to Georgia. The draft documents did not contain draft notices necessary to comply with the requirements of the South Carolina Trust Code as it relates to changing the situs of a Trust.<sup>35</sup>

On July 17, 2007 Buchanan and Dallas traveled to Barnwell; reviewed the 2000 Trust's checkbook for 2006; and found that \$900,000.00 payable to M&T Bank<sup>36</sup> had been deposited

<sup>35</sup> In testimony given on November 15, 2007 Cannon asserted that Powell Goldstein was never hired by the former PR/Trustees, and documents to transfer the Trust to Georgia were never signed. As set out below, Trustees Dallas and Bradley testified on March 7, 2008 that such documents were signed.

<sup>36</sup> This money should have been applied to Mr. Brown's 1999 royalty-backed security debt to TIAA.

into the 2000 Irrevocable Trust's account on August 1, 2006. \$720,000 of the amount was misappropriated between August 1, 2006 and December 28, 2006, three days after Mr. Brown's death.<sup>37</sup>

On July 27, 2007 Buchanan and Pope moved the Court for an Order removing one or more PR/Trustees as a result of the serious breach of trust related to the \$900,000.00 check and misappropriation. The motion was scheduled for August 10, 2007.<sup>38</sup>

On July 26 or 28, 2007, Cannon, along with Dallas and Bradley, met with attorneys Stanley Jackson and Hammond. According to Dallas and Bradley,<sup>39</sup> they signed the following documents that day:

- a. A document to remove the situs of the Trust to Georgia;<sup>40</sup>
- b. A document by which Cannon resigned as Trustee;<sup>41</sup>

---

<sup>37</sup> Cannon returned \$350,000.00 of the \$720,000.00 when he resigned on August 10, 2007.

<sup>38</sup> Motion and Recommendation of SAs dtd. 7/27/07 with supporting documentation.

<sup>39</sup> This was testified to for the first time on March 7, 2008. Cannon stipulated that if he were asked the same questions he would assert his 5<sup>th</sup> Amendment rights.

<sup>40</sup> Such document has never been shown to the Court, SAs or Interested Parties, and Cannon testified under oath that it was never signed.

<sup>41</sup> Such document has never been shown to the Court, SAs or Interested Parties.

c. A document by which Hammond was appointed Trustee.<sup>42</sup>

<sup>42</sup> Such document has never been shown to the Court, SAs or Interested Parties.

27E  
40

On August 2, 2007, Hammond wrote M & T Bank.<sup>43</sup> Hammond asserted that Cannon's misappropriation of the \$900,000.00 was accidental, and that Cannon's disbursements, including Cannon's payments to himself, were authorized by Mr. Brown. [Affid. A. Pope, 2/18/08].<sup>44</sup>

On August 3, 2007 attorney Jackson filed notice of his appearance as counsel for Dallas and Bradley. In later filings and statements he confirmed that he was representing them both individually and as PR/Trustees.

On August 3, 2007 Dallas and Bradley filed with this Court affidavits related to the \$900,000.00 transaction in the 2000 Trust's account. Each said "[i]t is my intention to provide the [SAs] with all records in my possession related to James Brown, and to the best of my knowledge I have done so." Both asserted they did not know of the misappropriated \$900,000.00 check. Neither Affidavit mentioned the Trust's events of July 26 - 28, 2007.

On August 3, 2007 Cannon filed an affidavit asserting that the other Trustees, Dallas and Bradley, had no knowledge of the \$900,000.00 transaction. [Affidavit Cannon, dtd. July 22, 2007].

---

<sup>43</sup> M & T Bank was the payee for the \$900,000.00 check which was misappropriated on August 1, 2006 and placed in the 2000 Trust checking account.

<sup>44</sup> According to Dallas' testimony on March 7, 2008, Hammond would have written this letter after Cannon resigned and Hammond was purportedly appointed a Trustee. Hammond's letter did not disclose his purported appointment.

ME  
41

On August 7, 2007 most of the children and grandchildren served a Return to the SAs' Motion and Recommendation asserting that all three PRs and all three "alleged Co-Trustees" should be permanently removed for breaches of Trust. They also sought related relief.

On August 8, 2007 the Rev. Larry Fryer, a Lincolnton, Georgia minister, moved to intervene in this proceeding on behalf of beneficiaries of the James Brown "I Feel Good" Trust.<sup>45</sup>

On August 9, 2007, Cannon signed and filed another Affidavit.<sup>46</sup>

On or about August 10, 2007 Cannon wired \$866,000 to Honduras. [Tr. Hearing 11/15/07, pp. 80-81].

At the hearing on August 10, 2007, Cannon announced his immediate and permanent resignation as PR/Trustee and as director, officer and/or fiduciary of any kind as to the Estate, the Brown Trusts and all Brown Entities.<sup>47</sup> Upon Cannon's resignation on the record in open Court "[a]ll persons confirmed in open Court that they consent[ed] to the resignation . . ." Bradley and Dallas, on the record in open Court, recited the terms of an Agreement<sup>48</sup> they, as PR/Trustees, had reached with the SAs. The Agreement and Order resulted in a delay in the hearing on the removal of Dallas and Bradley as PR/Trustees.

---

<sup>45</sup> The motion was later abandoned.

<sup>46</sup> The August 9, 2007 Affidavit was similar to Cannon's July 22 Affidavit, but also asserted that "[he] never discussed with Mr. Dallas or Mr. Bradley the deposits or checks written by me nor did they ever see the check register until they were disclosed to the [SAs]" [Affid., Cannon 8/9/07]

<sup>47</sup> With the exception of Seventh Decade Productions, Inc.

<sup>48</sup> Tr. Hearing 8/10/07, p. 6, l.2 - p. 29, l.16

After the August 10, 2007 Agreement was recited on the record it was reduced to an Order dated that same day. All counsel, including counsel for Bradley and Dallas, remained at the Courthouse and worked on the proposed language for the Order.

The August 10, 2007 Order, in part, stated that "[r]emaining PRs and/or Remaining Trustees shall mean Alfred A. Bradley and Albert H. Dallas." As PR/Trustees, Dallas and Bradley agreed not to take action for the Estate and/or Trusts and/or any Brown Entity without the written consent of the SAs. Hammond was present at the August 10, 2007 hearing.<sup>49</sup>

The August 10 Agreement and Order, in addition to confirming Cannon's resignation, provided:

... 1. To the extent not terminated prior to the date of this Agreement, the service of all attorneys, accountants and/or financial advisors engaged by the Estate, the Brown Trusts and the Brown Entities is hereby terminated and the remaining PRs and Trustees shall secure and deliver to [a central location], all files of James Brown, the Estate, the Brown Trusts and/or the Brown Entities from such attorneys, accountants and/or financial advisors. The new accountant for the Estate, the Brown Trusts and all Brown Entities shall be William E. Sellars, Jr., CPA.<sup>50</sup>

2. This Court orders and directs the delivery to [a central location] of all files and documents in the possession of all attorneys, accountants and other financial advisors whose service has been terminated as set out herein, and who have rendered prior service to James Brown, the Estate of James Brown, any Brown Entity, and/or any Brown Trust.<sup>51</sup>

---

<sup>49</sup> Tr. Hearing 11/20/07; pp. 325, 326.

<sup>50</sup> Certain attorneys, including L& B, were excepted from the termination.

<sup>51</sup> On the same day the Court entered its Order Confirming Engagement of Counsel for All Plaintiffs in NY Case. That action is being pursued, and the counterclaim defended, by the Estate, JBE, Inc. and The New James Brown Enterprises, Inc. [sic], a d/b/a used by Mr. Brown. The suit was commenced in 2006 prior to Mr. Brown's death. The Trust is not a party.

The August 10 Agreement and Order also set out certain administrative functions to be performed by the PR/Trustees within the following 3 months, many of which related to tax and accounting matters. As stated above, William Sellars, CPA was designated CPA for the Estate, the 2000 Trust and all Brown Entities.<sup>52</sup>

---

<sup>52</sup> Among the functions to be completed within 3 months of August 10, 2007 was the Application for Recognition of the charitable status of the James Brown "I Feel Good" Trust by the Remaining Trustees. This was not completed when Dallas and Bradley resigned. It was filed by Buchanan and Pope on December 5, 2007 after they became Trustees. [Affid. Pope, dtd. 12/14/07]

On August 10, 2007 this Court issued a separate Order confirming Engagement of Counsel for all Plaintiffs in the NY Litigation.<sup>53</sup>

By August 15, 2007, more than 80 boxes were delivered by Cannon, Dallas, Bradley and L&B to the central location set out in the Agreement and Order of August 10. They were represented to be the entire files of Cannon, Dallas and Bradley related to James Brown, the Estate, the Trust and the Brown Entities. Hammond, as one of the terminated attorneys, delivered what was represented to be his entire file.<sup>54</sup> The PR/Trustees, the SAs, and other counsel<sup>55</sup> were given free access to the boxes, which were designated as the "Brown Historical Documents."

---

<sup>53</sup> The August 10<sup>th</sup> Order confirming counsel in the NY Litigation recited that "it is believed the owner of [JBE, Inc.] is either the Estate of James Brown or the [2000 Trust] or both." It also said that the PRs, Trustee of the 2000 Trust and SAs had ratified the engagement of H&H but that, despite this, GT had not signed a consent to substitution. [Order Counsel dtd. 8/10/07.]

<sup>54</sup> None of the purported July 26/28, 2007 documents about which Dallas and Bradley testified on March 7, 2008 were delivered. Nor were the files of GT and Powell Goldstein delivered. The Court notes that they still have not been delivered, but should be. Both appear to contain important information about the period prior to August 10, 2007.

<sup>55</sup> With certain exceptions related to purported privileged documents.

D&B  
423

On August 22, 2007 L&B as "[c]ounsel for Remaining [PR s] and Trustees"<sup>56</sup> filed with the Court documents seeking to obtain relief related to not assisting Cannon. The purported Hammond appointment and situs issue were not mentioned.

On August 27, 2007 Dallas and Bradley, as "[PRs] and Trustees of the 2000 Trust" moved this Court for an accounting by Cannon.<sup>57</sup>

On August 31, 2007 this Court issued the requested Order confirming that L&B, as counsel for the Remaining PR/Trustees, should not assist Cannon in discovery matters.

---

<sup>56</sup> Bradley and Dallas

<sup>57</sup> The purported July 26/28 Hammond appointment and situs issue were not mentioned.

JAE  
24

On August 31, 2007 Dallas and Bradley, as Remaining PR/Trustees, filed a Motion asking the Court to declare that JBE, Inc. was an asset of the Estate – not of the 2000 Trust. Buchanan and Pope did not join in the motion or make any similar motion. No reference was made to the events of July 26/28.<sup>58</sup>

On September 7, 2007, Dallas and Bradley as PR/Trustees, supplemented their Motion to require Cannon to account.

On September 7, 2007 Bradley filed a claim against the Estate for Compensation as PR of the Estate and Trustee of the 2000 Trust, plus a percentage of a large number of other projects and assets.<sup>59</sup>

On September 7, 2007 Dallas filed a claim against the Estate for Compensation as PR of the Estate and Trustee of the 2000 Trust, plus \$624,876 and other amounts.<sup>60</sup>

---

<sup>58</sup> In testimony given on February 7, 2008 Dallas stated that he believed the representation of JBE, Inc., ownership by the Estate to be false.

<sup>59</sup> Celebrity Duck 10% of Revenues; Doll Deal 5% of 300,000; Georgia-Lina record 6%; Godfather of Soul Publishing now Geronimo Music, L.L.C. 6% of revenues; 10% of any revenues earned due to blank tapes sold by Alliance of Artists and Recording Companies for Brown recordings; 10% of any revenues earned due to the marketing and/or exploitation of master recordings; 5% of the royalties received from the "James Brown Doll" [Claim of Bradley filed 9/7/07, Affid. A. Pope dtd. 12/14/07 Exhibit I]

JE  
#25

2-15  
#260

---

<sup>60</sup> The claim was based on a purported oral contract by which Mr. Dallas asserts he would receive "5% of Mr. Brown's and his enterprises' gross revenue"; 5% of revenues from Teddy Bear Productions as agent for Hakuho Advertising Agency; 25% of royalties received from the "James Brown Doll"; 10% of revenues from God Father of Soul Publishing, 5% of Global Gaming revenue; 5% of revenues from the sale of Mr. Brown's writer's share music, and 5% revenues from the 1991 pay-per-view recording. [Claim of Dallas filed 9/7/07, Exhibit B].

On September 12, 2007 Buchanan and Pope, as SAs, joined Dallas and Bradley in a recommendation that there be further delay in any hearing on the removal of Dallas and Bradley.<sup>61</sup>

On September 14, 2007 Cannon filed a Motion to Alter or Amend the Order related to his return of the remaining \$373,000 belonging to M&T Bank (for application to the TIAA debt).

On September 17 and 26, 2007 terminated accountant Phil Farr, in communication with terminated Hammond and Cannon, prepared, signed and filed amended Income Tax Returns for JBE, Inc. for the year 2006. The Amended Returns purported to change ownership of JBE, Inc. from Mr. Brown to the 2000 Trust. [Tr. Hearing 11/20/07, pp. 246-247, Ex. 19 & 20.]

On September 17, 2007 attorneys Eric S. Bland and Ronald L. Richter, Jr., filed a Notice of Appearance on behalf of Cannon in this matter.

On September 20, 2007 the Attorney General of South Carolina moved to intervene in this proceeding. No objection was made to his intervention.

On September 20, 2007 attorney Stephen L. Brown filed a notice of appearance herein on behalf of M & T Bank under Indenture of Teachers Insurance and Annuity Association ("TIAA"), to whom the \$900,000.00 check was payable.

On September 20, 2007 Cannon filed a Return to Motion for Accounting.

---

<sup>61</sup> Active discovery on the issue of removal and accounting of Cannon, Dallas and Bradley as PR/Trustees had been ongoing. This Court issued several Orders related to discovery, including commissions for out-of-state depositions. At the time the SAs did not know of the July attempt to move the situs of the Trust to Georgia. Nor did they know of the post-death Dallas Schedule B to the 2000 Trust, or that Dallas and

On September 24, 2007 this Court issued a confidentiality Order related to Cannon's financial statements.

At the hearing on September 24, 2007 in open court, Dallas and Bradley, "individually and as Co-Trustees of the Trust and Personal Representatives of the Estate" entered into evidence a Stipulation through their counsel Jackson [Tr. Hearing 9/24/07, Ex. 3]. They asserted that they were the remaining PRs and Trustees. They asserted that:

... the only assets belonging to the Trusts as of the date of death of James Brown were (a) all ownership interests in the residence of the deceased, James Brown, including all land of approximately 60 acres, improvements and its fixtures located at ... Beech Island [SC] and (b) possibly the sum of fifty (\$50) dollars. **No other assets had been properly transferred and accepted by the Trustees as trust assets.**

2. [JBE, Inc.] is an as. . . of the Estate and not presently of the Trusts.  
[emphasis supplied]

---

Cannon had filed a motion related to JBE, Inc. that Dallas knew to be false.

215  
20

Buchanan and Pope, as SAs, refused to join in the stipulation.<sup>62</sup>

Cannon was Ordered by the Court to repay the additional \$373,000.00 he had misappropriated. He has not done so.

At the September 24<sup>th</sup>, 2007 hearing Dallas and Bradley, as PR/Trustees, argued vigorously that JBE, Inc. was an asset of the Estate of James Brown, not of the 2000 Trust. As Trustees, they asserted that the stock had never been transferred to them. They cited the tax returns as the best evidence JBE, Inc. was never transferred to the 2000 Trust. [Tr. Hearing 9/24/07, pp. 45-46].

On September 25, 2007 the initial Estate Tax Returns and payments were due for the Estate. No payments were made by Bradley and Dallas with the Extension Request. No date-of-death Inventory of assets of the Estate or Trust was completed by Cannon, Bradley or Dallas.

---

<sup>62</sup> On February 7, 2008 Dallas testified that the assertions in the Stipulation were false. Dallas asserts that he was coerced into filing the August 31 motion and the September 24 Stipulation by Pope and Buchanan. There is simply no evidence to support this conclusion.

<sup>63</sup> The 2000 - 2005 Tax Returns of JBE, Inc. showed Mr. Brown as the sole owner.

On September 26, 2007 Cannon filed claims against the Estate seeking more than \$1 Million and a percentage of past and future revenues.<sup>64</sup>

On October 2, 2007 this Court issued its Order that Cannon had failed to account, as required.

By Order dated October 4, 2007 the South Carolina and Georgia Attorneys General were granted permission to intervene in this matter to represent and protect the interests of any beneficiaries of any Charitable trust created by the Will or 2000 Trust.<sup>65</sup>

On October 15, 2007 Dallas wrote Phil Farr, CPA, a letter confirming Farr's termination as of August 10, 2007.

About October 16, 2007 Farr signed and filed amended tax returns he prepared for three years for JBE, Inc. The amended tax returns again claimed the 2000 Trust - not Mr. Brown - was the owner of JBE, Inc.<sup>66</sup>

---

<sup>64</sup> The claim of Cannon seeks Five percent (5%) of all revenue generated by gross bookings, royalties and any other funds generated by James Brown Enterprises, Inc. from whatever source and two and one-half percent (2.5%) for the handling of vintage revenue... ongoing claim for all revenue earned and not paid prior to death and all revenue earned since date of death and all future revenues of James Brown Enterprises, Inc. [Claim of Cannon filed 9/26/07; Affid., A. Pope 12/14/07, Exhibit J]

<sup>65</sup> The subsequent pro hac vice admission of Grace Evans Lewis, Georgia Assistant Attorney General, was later revoked.

276  
31

---

<sup>66</sup> Mr. Cannon, in testimony on November 15, 2007, said he directed the preparation of the returns to save the Estate \$39 Million. Neither Farr nor Cannon adequately explained the ownership change. Cannon has exercised his 5<sup>th</sup> Amendment rights in all hearings after November 15, 2007.

On November 2, 2007 the SAs (acting without Bradley and Dallas) petitioned for an Order to allow engagement of J. Kendall Few, Esquire and James Gilreath, Esquire to represent the Estate and/or the 2000 Trust in connection with losses by Cannon and others from 1999.<sup>67</sup>

On November 9, 2007 Bradley and Dallas as PR/Trustees amended their motion related to JBE, Inc., asking the Court to determine whether JBE, Inc. was an asset of the Estate or Trust.

On November 12, 2007 most of the acknowledged children and grandchildren of Mr. Brown amended their Petition for Removal of Personal Representatives to seek immediate removal of Bradley and Dallas.

On November 13, 2007, the South Carolina Attorney General opposed the motion to engage counsel to seek redress for losses by Cannon and others since 1999.

On November 15, 2007 a hearing took place in Bamberg, South Carolina. After a full day, it was continued on Tuesday, November 20, 2007. Jackson appeared on behalf of the PR/Trustees, as did attorneys from L&B. At the hearing, testimony was taken by Cannon, Farr and Hammond. None of the three mentioned the events of July 26-28.

By November 15, 2007, Cannon had refused to repay the remainder of the wrongfully misappropriated funds.

---

<sup>67</sup> The authorization request included any subtrust of the 2000 Trust, including the James Brown "I Feel Good" Trust and the Brown Family Education Trust and/or James Brown Enterprises, Inc. and/or James Brown, LLC and/or James Brown Royalty Venture, SPC and/or any other entity owned or controlled by any one of them, as their interests appear. As cited in the motion, in accordance with their inability to act under the August 10 Agreement and Order, because of conflict, Bradley and Dallas did not participate in the motion or selection or engagement of counsel.

At the hearing Cannon repeatedly asserted his Fifth Amendment rights. He was ordered to produce a financial statement within 10 days.<sup>68</sup>

On November 20, 2007, prior to the hearing on their removal, Bradley and Dallas immediately and permanently resigned as PR/Trustees and as director, officer, agent and/or fiduciary of the Estate, the Brown Trusts and all Brown Entities.<sup>69</sup> The Court appointed Buchanan and Pope as PRs and Trustees.<sup>70</sup> Bradley and Dallas then surrendered to Buchanan and Pope the bank accounts, home estate and various assets. They have not yet accounted, and have been ordered to account separately as both PRs and Trustees.

On November 27, 2007 this Court received and sealed the financial statement of Cannon.

On November 30, 2007 Dallas and Bradley sought reconsideration of the November 20, 2007 Order. They attached to their Motion a purported copy of the Will and Trust. Attached as part of the Trust was the Dallas Schedule B.<sup>71</sup> The Motion was supported by Affidavits of Bradley, Dallas and Hammond.<sup>72</sup> The affidavits asserted that an Advisory Board was appointed

---

<sup>68</sup> Cannon also asserted that Cannon's company was entitled to the proceeds from \$18 Million of Mr. Brown's bookings from 2003-2006, and that Mr. Brown was paid \$1.2 Million a year only. [Tr. Hearing 11/15/07, pp. 200, 201]

<sup>69</sup> With the exception of Geronimo, LLC.

<sup>70</sup> Buchanan and Pope were given all of the duties and authority set out in the Will and Trust, but were not required to appoint a third PR/Trustee.

<sup>71</sup> In later testimony, Dallas confirmed that he had created Schedule B after Mr. Brown's death. He said he did so with the advice of counsel. But a copy of the Trust given by Cannon and Dallas to Bradley on January 5, 2007 contained the Dallas-created, post-death Schedule B. Dallas testified that the Dallas Schedule B was simply a listing of assets of JBE, Inc., and should not have been filed with the Court as part of the 2000 Trust. [Tr. Hearing 2/07/08, pp. 150-151, 155-156; Affid. Pope dtd 2/18/08, Exhibit D]

<sup>72</sup> The affidavits assert that Buchanan and Pope caused Trust, Estate and other funds to be improperly commingled. This Court has since found and held that the financial condition of the Estate and Trust was deplorable when Buchanan and Pope took over on November 20, 2007, and that funds were needed from

in January 2007 and all five members accepted the appointment.<sup>73</sup> No one of these five has appeared in person or by affidavit in the fifteen months this matter has been pending.

On December 14 and 17, 2007 Buchanan and Pope served affidavits outlining the reasons for their belief that Bradley and Dallas should not return to any fiduciary capacity, and why the same person(s) needed to serve as both PR and Trustee to protect and defend Mr. Brown's Estate Plan.

On December 18, 2007, Pope and Buchanan withdrew the former PR/Trustees' Motion Related to Ownership of JBE, Inc.

On December 20, 2007, Bradley and Dallas filed a motion for recusal addressed to this Court. The motion was orally denied after hearing on January 9, 2008. The oral Order denying recusal was followed by a written order dated February 19, 2008.

---

all sources merely to provide security for the home estate (owned by the Trust) in which assets belonging to both the Estate and Trust are located.

<sup>73</sup> This conflicts with the testimony of Pope on March 7, 2008, that she was advised by Dallas and Bradley in the fall of 2007, while they were working on the application for The James Brown "I Feel Good" Trust, that no Advisory Board existed.

Between December 20 and 26, 2007 Tommie Rae Hynie Brown and most of the acknowledged children and grandchildren of Mr. Brown filed multiple suits challenging the validity of both the Will and the 2000 Trust.<sup>74</sup>

On December 28, 2007, most of the acknowledged children and grandchildren of James Brown served a Return to Motions to Vacate, Alter or Amend, asserting that Buchanan and Pope's appointment should be confirmed and Dallas and Bradley not allowed to return.

---

<sup>74</sup> These matters are still pending. The three beneficiaries who support the validity of the Trust are 21-year-old grandson Forlando Brown, his brother Romunzo and his father, Terry Brown. Forlando Brown testified under oath that he believed that Cannon, Dallas and Bradley have done nothing wrong, and should not have resigned.[Tr. Hearing 2/7/08 p. 23.]

NE  
#315

On or about January 2, 2008 Forlando Brown, represented by Powell Goldstein, former counsel to the 2000 Trust, filed suit in the Federal District Court for South Carolina for a declaration that Buchanan and Pope have no authority to serve as Trustees of the 2000 Trust.<sup>75</sup>

On January 9, 2008 Bradley and Dallas participated in hearings before this Court related to the Will and Trust.<sup>76</sup> Dallas and Bradley both testified before this Court. Neither advised the Court of the events of July 26-28, 2007 or the purported appointment of Hammond.

On January 9, 2008 this Court approved the engagement of counsel to recover losses to the Estate/Trust and Brown Entities by Cannon and others from 1999.

On February 5, 2008, through Mr. Few and Mr. Gilreath, Buchanan and Pope as PR/Trustees brought an action against Cannon, Dallas, Bradley, Joel Katz, GT and Enterprise Bank. The suit seeks actual and punitive damages in connection with more than \$12 million in alleged losses since January 1, 1999.<sup>77</sup>

---

<sup>75</sup> By its terms the James Brown 2000 Irrevocable Trust, upon the death of James Brown, will divide into 2 Trusts, the James Brown "I Feel Good" Charitable Trust and the Brown Family Education Trust. Neither subtrust was funded on November 20, 2007 when Buchanan and Pope became PR/Trustee. Because of the contest to the validity of the Will and Trust, they cannot now be funded.

<sup>76</sup> In December and January Forlando Brown, Terry Brown and Romunzo Brown sought certain relief related to their interest in the 2000 Trust. Others sought relief related to the intervention of the Georgia Attorney General in this and other matters related to the 2000 Trust.

<sup>77</sup> Even if they returned as Trustees, Cannon, Dallas and Bradley could not pursue these claims on behalf

ME  
+36

On March 5, 2008, Bradley and Dallas each filed suit against Buchanan and Pope as PRs of the Estate. They seek payment of the amounts set forth in their claims. Those cases have been removed to this Court.

On March 7, 2008 the hearing in this matter was held.

---

of the Estate or Trust against themselves.

HE  
37

On March 9, 2008, Cannon<sup>78</sup> filed a suit against the Estate seeking payment from the Estate as set out in his claims. That case has been removed to this Court pursuant to 62-1-302(d).

On March 13, 2008, prior to the entry of this Order, Dallas and Bradley filed a Motion for Relief from this Court's Order dated August 10, 2007 as it relates to the Trustees serving on that day.<sup>79</sup> They ask that the August 10 Order, which memorializes the Agreement read into the record, not apply to the Trustees.

### **LAW AS TO SUBJECT MATTER JURISDICTION**

This is a consolidation of several actions commenced in the Probate Court relating to the removal, appointment and accounting of PRs and Trustees. The actions are clearly removable under § 62-1-302(d), as set out in the removal Orders of the Probate Court and this Court's earlier Orders. The several cases were properly removed by the Probate Judge on her own motion. Any failure of a party to attach a Summons, if required, was waived by appearance of the PR/Trustees and other parties. Parties were added and deleted.

Under § 62-7-202 Bradley and Dallas accepted the Trusteeship of a Trust having its principal place of administration in South Carolina and submitted personally to the jurisdiction of the Courts of this state regarding all matters involving the Trust.

---

<sup>78</sup> Represented by Angela M. Kirby, Esquire and Thomas E. Lydon, Esquire

<sup>79</sup> "to the extent that it is applicable to the [2000] Trust or the Trustees serving thereunder."

215  
538

Bradley and Dallas, at a minimum, did not exercise reasonable care to prevent a co-Trustee from committing a serious breach of trust after the death of Mr. Brown. Bradley and Dallas never dissented to Cannon's actions. In fact, it now appears they may be seeking his return as Trustee. Equity could not allow the return of a Trustee who exercises his Fifth Amendment rights when questioned about his financial dealings with the Trust.

This Court finds that under § 62-1-106 of the S.C. Probate Code statements have been filed and made by Cannon, Bradley and Dallas which have been used to circumvent the provisions and purposes of the Probate Code as enumerated in § 62-1-102.

This Court finds that Bradley and Dallas admit that they have violated § 62-7-810 by not keeping adequate records of the administration of the 2000 Trust. Over a period of a year, Bradley and Dallas have made conflicting and changing statements and filings, including statements under oath and by Stipulation. They have changed what they assert are the assets of the 2000 Trust. The same is true with respect to the assets of the Estate.

Dallas and Bradley have not complied with § 62-7-813 to keep the qualified beneficiaries of the 2000 Trust reasonably informed. The copy of the Trust provided to the qualified beneficiaries pursuant to § 62-7-813(c) (and to the SAs) now appears to have been created in part by one or more Trustees after Mr. Brown's death.

On November 20, 2007 Dallas and Bradley were faced with what (it is now known) was a great possibility of removal as PR/Trustees. They had faced it before on August 10, 2007. On August 10, 2007 they entered into an Agreement. On November 20, 2007 they resigned.

2/18  
237

By their agreement to resign Bradley and Dallas were spared possible removal; and the SAs and all qualified beneficiaries consented not to have the hearing. They sought, and obtained, this Court's approval of the resignation, as well as that of the beneficiaries.<sup>80</sup>

On November 20, 2007, Bradley and Dallas sought the protection of the Court and the agreement of the qualified beneficiaries, as well as the South Carolina Attorney General, to resign without nominating a Successor. This offer was accepted by the Court in a proceeding in which Dallas, Cannon and Bradley, as PR/Trustees have been parties for months. The jurisdiction of the Court to accept the consent resignation and appoint a Successor is clear.

**SERVICE OF POPE AND BUCHANAN AS  
PERSONAL REPRESENTATIVES AND TRUSTEES**

At the March 7, 2008 hearing, Pope testified that having separate PRs and Trustees under the facts of the Brown Estate and Trust would complicate the efforts of the PR/Trustees to alleviate the problems caused by Cannon, Dallas and Bradley. She testified that the Estate/Trust was unable to meet its obligations, and could not bear the additional expense. Further, she asserted that she and Buchanan believed that they could not carry out their fiduciary duty to properly administer the assets and defend the Estate Plan if they did not hold both the PR and Trustee positions. Pope testified that she and Buchanan defined these duties as:

1. Preventing the return of Cannon, Dallas and Bradley to any position of authority or control of the Estate/Trust or Brown Entities.
2. Defending the Estate Plan of James Brown against all challenges to the Will and Trust and the claim of Tommie Rae Hynie Brown.

---

<sup>80</sup> See § 62-7-410 et seq. for the various combinations of qualified beneficiaries, fiduciaries and others who may modify trust terms, including service of trustees, with and without Court permission.

3. Resolving and defending the approximately \$35 Million of claims against the Estate.
4. Preserving assets of the Estate/Trust.

Buchanan and Pope, without objection, introduced the affidavit of attorney Rita B. Cullum, a certified specialist in Estate Planning and Probate law. Ms. Cullum's affidavit supports the position of Buchanan and Pope that it is customary and appropriate for the same persons to serve both as PRs and as Trustees in a unified Estate Plan such as Mr. Brown's.

The Will and Trust of Mr. Brown clearly contemplate that the same persons will be both PRs and Trustees. They set out broad powers for the interaction of the two. For example, Article XXV (25) says "[t]he fact that the Grantor's personal representative and the Trustee are the same shall in no way affect the validity [of a right in the Trustee to purchase or sell to the Estate]."

In summary, the service by Buchanan and Pope as both PRs and Trustees is appropriate, efficient and contemplated by the documents.

The extraordinary twists and turns which this Estate/Trust has taken suggest that there may be a need for a special administrator and/or special trustee at some time in the future. This Court finds that Buchanan and Pope were properly appointed; have properly performed; and should continue in both capacities. This does not prevent them, or any other Interested Person, from seeking the appointment of a special fiduciary when and as needed.

#### **NO ADVISORY BOARD**

The provisions of Mr. Brown's Will and 2000 Trust with respect to succession of PR/Trustees upon a resignation are similar but not identical. Since no challenge has been made

275  
241

to the appointment of Buchanan and Pope as PRs, the minor differences are not discussed herein.<sup>81</sup>

---

<sup>81</sup> See Item IV of the Will.

2000 Trust Articles VIII(6) and XIII relate to the possible role of an Advisory Board in the selection of a Successor Trustee. Article VIII(6) says the Advisory Board shall have three (3) initial members, to be "designated in/or by a separate writing, reference thereto being craved and to be given effect as if such Advisory Board Members were set forth herein." There is, however, no provision for succession of the Advisory Board itself.<sup>82</sup>

A document dated August 1, 2000 and entitled Advisory Board recites that James Brown appointed an Advisory Board of Willie Glenn, Ella Overton and Deanna J. Brown Thomas. None were serving as of the November 20, 2007 resignation.

Pope testified that she was aware that Trustee Dallas had mentioned names of certain prominent persons as Advisory Board members. She testified, however, that Dallas had confirmed in the fall of 2007 that no Advisory Board existed. Pope testified that the issue came up in the context of work on the Application for Charitable Recognition of The James Brown "I Feel Good" Trust. She asserted that one or both of Dallas and Bradley confirmed to her and to the accountant, William Sellars, that no Advisory Board existed. Neither Dallas nor Bradley denied this.

Although Dallas and Bradley testified that they, and Cannon, had designated certain persons to be members of the Advisory Board after Mr. Brown's death, no documents were presented to show either how the original Advisory Board was deconstituted or how any successor Advisory Board was formed or functioning.

---

<sup>82</sup> The Trustee(s) may consider but are not obligated to follow advisories as propounded by the Advisory Board, See Article VIII(6)

215  
545

It is unclear from the 2000 Trust whether the original three members of the Advisory Board even have the authority to select a Successor Trustee. This Court does not have to reach that question, since there was no evidence that the persons selected by Cannon, Dallas and Bradley had ever served or functioned as an advisory board.

More than sixty (60) days have elapsed since the well-publicized resignation of Bradley and Dallas, and no person has stepped forward to assert status as a member of the Advisory Board on November 20, 2007.<sup>83</sup>

This Court finds that the provisions of the Trust related to the role of an Advisory Board in the selection of successor Trustees are not applicable here. Even if one existed, Cannon, Dallas and Bradley as resigned PR/Trustees would have no standing to challenge how it functioned. This Court, in appointing Buchanan and Pope, complied with S.C. Trust Code 62-7-704 as well as Article XIII of the Trust (and Item IV of the Will).

#### **NO APPOINTMENT OF SUCCESSOR TRUSTEE**

Article XIII of the 2000 Trust provides that a resigning Trustee may appoint a Successor.

No such appointment<sup>84</sup> was ever made.<sup>85</sup>

---

<sup>83</sup> Dr. Leonard McIntyre and Ms. Inez Tenenbaum were appointed to the Advisory Board by Buchanan and Pope after November 20, 2007.

<sup>84</sup> Except for the possible secret attempted Hammond appointment in July, 2007 discussed below.

<sup>85</sup> When Cannon resigned as PR/Trustee on August 10, 2007, the remaining PR/Trustees did not attempt to implement the nomination/Advisory Board succession procedure.

1 to  
244

Under the 2000 Trust, if a resigning Trustee, fails to appoint a Successor, "then the Court having jurisdiction over this Trust shall select the successor Trustee." That is what happened in this case.

Upon their resignation, Dallas and Bradley surrendered bank accounts, the Estate home and control to the Successors on November 20, 2007. All individual beneficiaries of the Trust, heirs and devisees ratified the resignations and the appointment of Buchanan and Pope as successor PR/Trustees. Buchanan and Pope accepted the appointments. Under Article XIII of the Trust Buchanan and Pope now "... succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein."<sup>86</sup>

#### **PURPORTED APPOINTMENT OF WILLIAM HAMMOND AS TRUSTEE**

The testimony of Dallas and Bradley on March 7, 2008 that they had taken secret action on July 26 or July 28, 2007 to appoint Hammond as Trustee and to remove the situs of the Trust to Georgia raises numerous disturbing issues. The failure to disclose raises issues under the first Order for Appointment of SAs dated February 19, 2007, which directed the PRs to inform the Special Administrator of all matters that concern the administration of the Estate. Surely the appointment of a Trustee and an attempt to transfer the situs of the Estate's primary devisee to another State would qualify as essential information.

Dallas and Bradley, through attorneys Stan Jackson, Keith Babcock and others, filed numerous documents between August 10, 2007 and November 20, 2007, in which they represented themselves to be sole remaining Trustees. They represented to this Court since August 10, 2007 that they were the remaining Trustees. On August 10, 2007, as the sole

---

<sup>86</sup> The only exception is their right not to appoint a third PR/Trustee.

remaining PR/Trustees, they asked this Court to approve an Agreement by which they would not be immediately removed. They supported the Agreement and this Court's August 10, 2007 Order with their representations and affidavits confirming full disclosure.

#### PROPRIETY OF ACTIONS OF SPECIAL ADMINISTRATORS

This Court has reviewed the record of Buchanan and Pope and found that their service in light of the emerging facts related to the former PR/Trustees has been outstanding. As required by this Court's Orders of February 9, 2007 and March 7, 2007, Buchanan and Pope made every effort to reach consensus with the PR/Trustees where possible. Only after nearly three months of refusal of access to documents did they seek Court guidance to obtain access to records.<sup>87</sup>

Upon discovery of the \$900,000.00 which was payable to M&T Bank, Buchanan and Pope did not accuse all three Trustees. Instead, they sought immediate removal only of those responsible for the misappropriation. Buchanan and Pope gave Bradley and Dallas the benefit of the doubt. Bradley and Dallas, however, did not accord Buchanan and Pope the same treatment. They did not inform Buchanan and Pope of attempts to change either Trustees or the situs of the Trust.<sup>88</sup>

---

<sup>87</sup> The Court's Order of February 19, 2007, which, it is now apparent, was repeatedly violated by Cannon, Dallas and Bradley, directed the PRs to keep the SAs fully informed of all matters that concern the administration of the Estate.

<sup>88</sup> The Court notes that the Trust's attorneys, Frank S. MacGaughey, III and William B. Shearer, Jr. of Powell Goldstein, sent papers to remove the Trust to Georgia on July 10, 2007, just days before the misappropriated \$900,000.00 was discovered by Pope and Buchanan on July 17, 2007. According to Dallas and Bradley, they were then signed just after the discovery. Then a week later Dallas and Bradley filed affidavits saying they knew nothing of the \$900,000 misappropriation until after it was discovered by the SAs.

Jackson filed notice that he represented Bradley and Dallas on August 3, 2007. He later filed numerous documents and made representations to the Court that he represented Dallas and Bradley as the remaining PRs and Trustees. Neither he nor they mentioned Hammond or the purported situs change. Jackson was with Bradley and Dallas when they recited the August 10, 2007 Agreement they had reached with the SAs to prevent an immediate hearing on their removal as PRs and Trustees. Jackson filed on their behalf, as PRs and Trustees, the motion to declare JBE, Inc. an asset of the Estate, rather than the Trust. In short, during the more than three months from August 10, 2007 until their resignation neither Bradley nor Dallas gave any indication of the purported secret appointment of Hammond. Nor did they, Jackson or Hammond advise the Court, or anyone, of the purported (but ineffective)<sup>89</sup> situs change.

The actions of Hammond himself are wholly inconsistent with his election as Trustee. He appeared in Court on August 10, 2007 while Cannon was resigning and the Agreement was recited by which Dallas and Bradley temporarily remained as PR/Trustees. Pursuant to the Agreement and Order, he turned over what was supposed to be his entire file, to be retained with Historical Documents. Along with other members of his firm, Hammond filed a claim against the Estate of James Brown for services rendered up to the time of his termination by the August 10, 2007 Order.<sup>90</sup>

On November 30, 2007 Hammond signed an affidavit, filed with this Court stating that he believed Mr. Brown's net estate to exceed \$85 million. He did not tell the Court he had ever

---

<sup>89</sup> Dallas admitted that the statutory requisites for transferring the situs of a Trust out of state were not met. [Tr. Hearing 3/7/08, pp.       ].

<sup>90</sup> The Court takes judicial notice that the claim and accompanying documents give no indication of Hammond's purported appointment as Trustee.

LVE  
MPT

been appointed a Trustee. He asserted that "false charges" were asserted against Cannon, Dallas and Bradley. He asserted that the Trust assets have been valued at over \$20 million, and "may be worth more than \$80[million] if [JBE, Inc.] owns the rights to James Brown's image and persona".

Hammond asserts that after the first meeting with Buchanan and Pope on March 23<sup>91</sup> he advised Cannon, Dallas and Bradley that they were "sitting ducks" for attempted removal because of high (5%) fees payable to "Personal Administrators" in South Carolina. Hammond's affidavit did not disclose that he was purportedly a Trustee. Nor did he address the more than 10% claimed by Dallas, Cannon and Bradley. The Court notes that Hammond, Jackson and Dallas are all attorneys and officers of the Court who understand the consequences of false and misleading representations.

The Court is deeply concerned with the revelations of March 7, 2008. For purposes of this Order, however, they are important only to confirm that the appointment of Buchanan and Pope should be affirmed, and that Cannon, Dallas and Bradley should not return to any position of trust and confidence with respect to the Estate of James Brown or the 2000 Irrevocable Trust.

Based on the foregoing, it is **ORDERED, ADJUDGED AND DECREED:**

1. All motions to reconsider, revoke and/or modify the appointment of Robert L. Buchanan, Jr. and Adele J. Pope as Person Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust and its subtrusts, deceased, are hereby DENIED.
2. This matter is remanded to the Probate Court for Aiken County for the sole purpose of issuing a certificate of appointment, and such additional certificates of appointment as shall be requested, confirming that pursuant to the Orders of this Court dated August 10, 2007, November 20, 2007, March 7, 2008 and this Order,

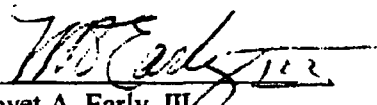
---

<sup>91</sup> Buchanan and Pope assert that their first meeting with Hammond was on March 26, 2007.

the said Robert L. Buchanan, Jr. and Adele J. Pope were appointed Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust on November 20, 2007, and that such appointments remain in full force and effect.

3. The costs of this action, including reasonable attorneys' fees, shall be equitably charged to Cannon, Bradley and Dallas, pursuant to South Carolina Trust Code § 62-7-1004. Such amounts shall be determined by affidavits and brief arguments (without testimony) at the hearing to be held on May 9, 2008.
4. Without affecting the validity or finality of the appointment of the PR/Trustees, the Attorney General of South Carolina or any Interested Person may bring an action in the appropriate Court to determine the effect, if any, on the 2000 Trust of the July 26/28 documents, if found.
5. All future filings in connection with this matter shall bear the caption attached as Exhibit A.

AND IT IS SO ORDERED.

  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

April 8, 2008  
Bainbridge, South Carolina

**EXHIBIT A**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) SECOND JUDICIAL CIRCUIT  
COUNTY OF AIKEN ) (On Removal from Probate Court)  
 )  
DARYL J. BROWN, individually and on behalf of ) CIVIL ACTION NO. 2007-CP-02-0122  
his minor children, LINDSEY DELORES )  
BROWN and JANISE VANISHA BROWN, )  
VANISHA BROWN, LARRY BROWN, )  
DEANNA J. BROWN THOMAS, individually and )  
on behalf of her minor child JASON BROWN )  
LEWIS, YAMMA N. BROWN, individually and on )  
behalf of her minor children SYDNEY LUMAR )  
and CARRINGTON LUMAR and TONYA )  
BROWN; TERRY BROWN, ROMUNZO )  
BROWN and FORLANDO BROWN, )  
 )  
and )  
 )  
TOMMIE RAE HYNIE BROWN, )  
 )  
and )  
 )  
ROBERT L. BUCHANAN, JR. and ADELE J. )  
POPE as Personal Representatives and Trustees )  
 )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DAVID G. CANNON, ALBERT H. DALLAS, )  
ALFRED A. BRADLEY, as former Personal )  
Representatives and former Trustees; and other )  
Interested Persons: HENRY DARGAN )  
McMASTER in his capacity as Attorney General )  
of the State of South Carolina; )  
MANUFACTURERS & TRADERS BANK; )  
JAMES JOSEPH BROWN II, CINNAMON N.M. )  
PARIS, LARHONDA PETITT and JEANETTE )  
MITCHELL, as potential heirs of James Brown, )  
 )  
Defendants )  
 )  
IN RE: )  
ESTATE OF JAMES BROWN AND THE JAMES )  
BROWN 2000 IRREVOCABLE TRUST )  
 )

---

The above caption represents the status of the parties as of March 7, 2008.

# The South Carolina Court of Appeals

In Re: The Estate of James Brown,  
w/a James Joseph Brown, Albert H.  
Dallas and Alfred A. Bradley, Trustees  
of the Irrevocable Trust Agreement of  
James Brown,

Appellants

v.

Adele J. Pope and Robret L. Buchanan,  
Jr., Putative Trustees of the Irrevocable  
Trust Agreement of James Brown,

Respondents

The Honorable Doyet A. Early, III  
Aiken County  
Trial Court Case No. 2007-CP-02-00122

---

## ORDER

---

Appellants appeal from three orders issued by Judge Early: a November 10, 2007 order purporting to accept their resignation as personal representatives of James Brown's Estate and as trustees to the James Brown 2000 Irrevocable Trust, and appointing Respondents as the new personal representatives and trustees; a February 19, 2008 order denying Appellants' motion to recuse Judge Early from the case; and a March 7, 2008 order denying Appellants' motions to alter, vacate or amend the November 10, 2007 order. Since Respondents have been appointed as the personal representatives and trustees, they have sought the trial court's assistance and permission to act off certain items that once belonged to James Brown in order to generate funds to protect the assets of both the Trust and the Estate. On February 20, 2008, the circuit

court issued an order directing the auction take place, if possible, by August 1, 2008.

Subsequently, the Respondents negotiated a deal with Christie's and again, sought the circuit court's approval before going forward. On April 1, 2008, the circuit court directed Respondents to execute the consignment agreement with Christie's. No party has appealed from this order or the February 20, 2008 order. The Christie's auction is scheduled for Thursday, July 17, 2008.

On July 9, 2008, a mere eight days prior to the auction, Appellants filed a "Motion to Enforce the Automatic Stay," arguing Respondents are not allowed to dispose of property while the order appointing them as personal representatives/trustees is being appealed. Respondents have filed a return along with a motion requesting that the stay (if any) be lifted. Appellants filed a return to Respondents' motion to lift the stay as well as a reply to Respondents' return. Christie's has also filed a motion to appear as amicus curiae, and the South Carolina Attorney General's Office has filed a motion to intervene.

We grant Christie's motion to appear as amicus curiae and the Attorney General's motion to intervene. All documents filed with this Court have been carefully considered, and after review, we find that regardless of whether Rules 205 and 225, SCACR, provide for an automatic stay, this Court elects to lift the stay. The auction may take place as scheduled, and for practical purposes, Respondents may continue to act as trustees while this appeal is pending. We decline to require Respondents to post a bond, despite Appellants' request. With proper accounting, the funds generated from the auction can be tracked, and to the extent there may be some dispute about whether the proceeds from the auction belong to the Estate or to the Trust, an accounting will allow the dispute to be sorted out at a later date.

Finally, we order this appeal be expedited. From this date forward, no extensions will be granted absent extraordinary circumstances.

AND IT IS SO ORDERED.

*Joseph W. Curran, A.J.*

Columbia, South Carolina

July 17, 2008

**FILED**  
*2/1/08* *AK*

cc: R. Wayne Byrd, Esquire  
Audre M. Byrd, Esquire  
R. Hawthorne Barrett, Esq.  
Curtis Ott, Esq.  
James Daniel Bailey, Esquire  
Tressie T.H. Hayes, Esquire  
Senior Assistant Attorney General C. Havird Jones, Jr.  
James B. Richardson, Jr., Esquire

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

) CASE NUMBER: 2008-CP-02-872

FILED 8-1 2008

1. DARYL J. BROWN, individually and on behalf of his minor children, LINDSEY DELORES BROWN and JANISE VANISHA BROWN, 2. VANISHA BROWN, 3. LARRY BROWN, 4. DEANNA J. BROWN THOMAS, individually and on behalf of her minor child JASON BROWN LEWIS, 5. YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR and 6. TONYA BROWN

*Liz Grubard*  
C.C.P. & G.S.  
*Anita Knoepfle* 30  
Deputy Clerk

Plaintiffs,

v.

ADELE POPE as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, ROBERT L. BUCHANAN, JR. as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, TOMMIE RAE BROWN, as the potential heir of James Brown, JAMES JOSEPH BROWN II as the potential heir of James Brown, CINNAMON NICOLE MERNICKLE PARIS as the potential heir of James Brown, LARHONDA PETITT as the potential heir of James Brown, JEANETTE MITCHELL, as the potential heir of James Brown, TERRY BROWN, as the potential heir of James Brown, ROMUNZO BROWN as the potential heir of James Brown, FORLANDO BROWN, as the potential heir of James Brown, HENRY DARGAN MCMASTER in his capacity as ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, JANE DOE and JOHN DOE numbers I, II, III, IV as potential heirs and/or devisee and/or beneficiaries of James Brown and as representatives of all other persons known or unknown claiming to be an heir and/or devisee and/or beneficiary of James Brown.

Defendants.

ORDER APPROVING AND SETTING CONDITIONS OF INTERIM PAYMENTS OF EDUCATIONAL BENEFITS

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Grubard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

AUG 01 2008

*Liz Grubard*  
C.C.P. & G. S., Aiken County, S.C.  
*Anita Knoepfle*  
Deputy Clerk

*MAE*

This matter was scheduled for hearing on June 6, 2008 in connection with the request of Robert L. Buchanan, Jr. and Adele J. Pope, Personal Representatives of the Estate of James Brown (the "PRs"), for guidance with respect to circumstances which have developed since this Court's Order dated August 10, 2007<sup>1</sup>. The August 10, 2007 Order provided, in part, that the Estate of James Brown, if and when funds are available, should be allowed to advance tuition payments for qualified beneficiaries of the Brown Family Education Trust who ratify the Trust.

The PR/Trustees, upon receipt of the net proceeds of the Christie's sale, anticipate that for the first time the Estate/Trust may have adequate funds to advance certain tuition payments. They seek Court guidance as to the following questions:

1. When funds become available, may the Estate/Trust advance tuition payments to qualified beneficiaries of the Brown Family Education Trust who ratify the Trust even though Tommie Rae Hynie Brown, 5 of Mr. Brown's 6 acknowledged children, 7 grandchildren and certain purported heirs have, since the August 10 Order, contested the validity of both the 2000 Will and the 2000 Trust in this proceeding?

[The PR/Trustees ask the Court to confirm that they may.]

2. May the PR/Trustees make tuition payments for Forlando Brown despite his challenge in Federal Court to the authority of the PR/Trustees to act? Is the same true of other beneficiaries who challenge their status as Trustees?

[The PR/Trustees ask the Court to find that they may make such payments.]

3. Do the limitations on distributions and forms and assurances obtained and proposed by the PR/Trustees in making limited tuition payments during the pendency of this and other actions adequately protect the interest of creditors of the Estate/Trust and potential heirs while preventing the beneficiaries from possible permanent loss of educational benefits?

[The PR/Trustees ask the Court to find that they do.]

---

<sup>1</sup> Consideration of this matter was delayed as a result of concerns raised by the Order of the Honorable Jasper M. Cureton, S. C. Court of Appeals, dated May 28, 2008 in Case No. 2007-CP-02-0122. This was resolved by subsequent Order of Judge Cureton dated July 14, 2008.



Without specific objection from any party or creditor, the Court, based on the facts set out below, answers each of the questions in the affirmative.

#### HISTORY OF BROWN FAMILY EDUCATION TRUST

The Will of James Brown and the James Brown 2000 Irrevocable Trust were created on August 1, 2000. The validity of both are currently being challenged by Plaintiffs and others, and the recitation of facts prior to the death of James Brown on December 25, 2006 is without prejudice to those positions.

At the death of James Brown the 2000 Trust provides for division into two Trusts, as follows:

1. The non-charitable Brown Family Education Trust (about \$2 Million)
2. The James Brown "I Feel Good" Trust (charitable Trust, expected to be much larger.)

The Education Trust, upon its creation, divides into shares providing a fund of approximately \$220,000 from which each designated grandchild may receive benefits prior to reaching age 35. On the grandchild's 35<sup>th</sup> birthday, his/her share goes to the "I Feel Good" charitable Trust.

Before Mr. Brown's death the then-Trustees David G. Cannon, Albert H. Dallas and Alfred A. Bradley (the "Former PR/Trustees") had the authority under Article IV of the 2000 Trust to make distributions to or for the benefit of beneficiaries of the Education Trust. None were made.

After Mr. Brown's death, on April 5, 2007, the Former PR/Trustees created a bank account in the names of the "I Feel Good" Trust [Regions Bank Acct.#3900199613]. The name was, however, erroneous, because the majority of the funds were not used for any charitable purpose, but for the Brown Family Education Trust. The account transactions were:

PRIMARY TRANSACTIONS – REGIONS BANK ACCOUNT I/N/O I FEEL GOOD TRUST  
OF JAMES BROWN

April 5, 2006	Deposit	\$6,000.00	[From Irrevocable Trust's account]
April 9, 2006	W'drawal.	(\$5,201.14)	[Paid by Trustee Dallas , Tuition, children of Darren Lumar.]
June 6, 2007	Deposit	\$870.00	[Tribute to Mr. Brown.]
August 8, 2007	W'drawal	<u>(\$1,581.06)</u>	[Transfer by former Trustees to James Brown Enterprises, Inc.]
<b>Balance since August 8, 2007</b>		<b>- 0 -</b>	

On or about May 10, 2007 the PR/Trustees, who were then Special Administrators (SA s) began working with the Former PR/Trustees to develop a procedure, and seek Court approval, to make tuition advances from the Estate for student grandchildren who were potential beneficiaries of the Education Trust if and when funds were available. College students and older grandchildren would be given priority because of the termination of benefits at age 35

On August 10, 2007 this Court adopted the recommendations of the Former PR/Trustees and SA s, making it a part of the Order accepting the resignation of David Cannon. [See Order dtd. 8/10/07, p. 9]

In order to qualify for benefits, the August 10, 2007 Order required that a designated grandchild student must ratify the validity of the 2000 Trust.

There are nine members of the class of grandchildren who are potential recipients of scholarship benefits under the Education Trust.

From August 10, 2007 to the present, the Estate/Trust has lacked funds to make any tuition payments.

On November 20, 2007 the Former PR/Trustees Cannon, Dallas and Bradley resigned, and Buchanan and Pope became PR/Trustees.

Between December 20 and 26, 2007, seven of the nine potential eligible recipients of Education Trust benefits, and others, challenged the validity of the 2000 Trust. This made them

ineligible to receive tuition benefits under the guidelines established by both the current and Former PR/Trustees and the August 10 Order.

Shortly after the filing of the contests to the 2000 Will and 2000 Irrevocable Trust, Buchanan and Pope as PR/Trustees notified the grandchildren that they would seek Court approval of tuition payments in accordance with the earlier plan when funds are available if the parent who would potentially take an intestate share if the Will and Trust were set aside agreed to indemnify the PR/Trustees.

The only 2 grandchildren who currently confirm the validity of the 2000 Trust and are potential recipients of the Education Trust benefits are Romunzo Brown and William Forlando Brown.

On December 31, 2007 William Forlando Brown verified a complaint which asserted that Trustees Buchanan and Pope were improperly and illegally appointed Trustees of the 2000 Trust and its subtrusts. The suit was filed about January 2, 2008.

Since January 2, 2008 both Forlando Brown and Romunzo Brown have sought tuition assistance, and their father, Terry Brown, has agreed to the indemnity conditions, but the Estate/Trust lacks funds to pay any tuition at this time.

Between June, 2008 and September 2008 the PR/Trustees will be dealing with the more than \$45 Million pending claims against the Estate.

Upon receipt of the Christie's sale proceeds, which are expected by the fall of 2008, the PR/Trustees expect to pay initial Estate Taxes (now overdue) and priority expenses of administration. Thereafter, they expect to have funds to pay moderate tuition expenses for grandchildren/students over 21 who otherwise qualify. They anticipate that the payments, expected to be less than \$80,000 per year, will not substantially impair the PR/Trustee's ability

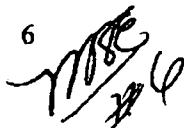
to defend the Estate Plan and contest claims of creditors (provided the Christie's proceeds are at least the expected amount).

On or about May 12, 2008, the PR/Trustees gave informal notice of their intent to request Court approval to all heirs, devisees, and potential heirs of James Brown, as well as to creditors who have filed claims against the Estate. None has filed written objection to the request.

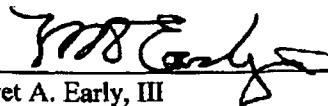
This Court finds that under the circumstances set out below it would be appropriate for the PR/Trustees to advance future tuition payments for beneficiaries 21 and older. Upon receipt of the Christie's sale proceeds, and after payment of initial Estate Taxes, with interest, and payment of all court-ordered priority expenses of administration, the PR/Trustees should be allowed (if funds are available) to make limited tuition advances for acknowledged grandchildren upon the following conditions:

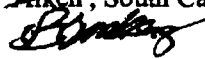
1. Tuition payments may be made from the net proceeds of the Christie's sale only after the above payments are made.
2. Tuition payments shall be made only for children of acknowledged children who are students and who are 21 or older.
3. Tuition payments shall be made directly to the educational institution, and shall not exceed \$20,000 per student per semester.
4. The PR/Trustees shall not be required to make any such advances, and may, in their sole discretion, discontinue payments at any time based on the financial condition of the Estate/Trust.
5. Tuition payments may be made only for the benefit of those students who acknowledge the validity of the 2000 Trust and who, along with their parent, have executed all reasonable receipt and indemnity forms requested by the PR/Trustees.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the PR/Trustees, upon receipt of the net proceeds of the Christie's sale are authorized to make payments as aforesaid.

6  


AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

July 25, 2008  
Aiken, South Carolina  


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No.: 08-CP-02-1647

HENRY DARGAN MCMASTER, in his )  
capacity as Attorney General of the State )  
of South Carolina; DARYL J. BROWN, )  
on behalf of his minor children, LINDSEY )  
DELORES BROWN and JANISE )  
VANISHA BROWN; DEANNA J. )  
BROWN THOMAS, on behalf of her minor )  
children, JASON BROWN LEWIS; )  
YAMMA N. BROWN, on behalf of her )  
minor children, SYDNEY LUMAR, )  
CARRINGTON LUMAR, and TONYA )  
BROWN; VANISHA BROWN; and )  
LARRY BROWN; TOMMIE RAE )  
HYNIE BROWN; JAMES JOSEPH )  
BROWN, II, through his Guardian Ad )  
Litem )

(On removal to Circuit Court from Probate  
Court 07-ES-02-0056)

ORDER

FILED 1-7 2009  
Liz Godard  
C.C.P. & G.S.  
Anita Knoepfle 130  
Deputy Clerk

Petitioners,

- vs -

ALBERT H. DALLAS, ALFRED A. )  
BRADLEY, and DAVID G. CANNON, )  
individually and as (purported) Trustees )  
of the James Brown 2000 Irrevocable Trust; )  
ADELE J. POPE and ROBERT L. )  
BUCHANAN, JR., individually and as )  
(purported) Personal Representatives of the )  
Estate of James Brown and Trustees of the )  
James Brown 2000 Irrevocable Trust; )  
TERRY BROWN; ROMUNZO BROWN; )  
FORLANDO BROWN; CINNAMON )  
N.M. PARIS; LARHONDA PETITT; and )  
JEANNETTE MITCHELL )

Respondents.

In Re:  
The Estate of James Brown and The James )

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

JAN 08 2009

Liz Godard  
C.C.P. & G.S., Aiken County, S.C.  
Anita Knoepfle  
Deputy Clerk

YME  
0159

Brown 2000 Irrevocable Trust u/a/d )  
August 1, 2000 )  
\_\_\_\_\_ )

This matter comes before the Court upon several motions of the Petitioners, above-named, one of which requested an Order for the appointment of a Special Administrator and Special Trustee in the above-referenced case. Petitioners made their request for Special Administrator and Special Trustee based on applicable South Carolina law, including but not limited to, § 62-3-614, § 62-7-704(e), § 62-7-706(c) and § 62-7-1001(b) of the South Carolina Probate Code and South Carolina Trust Code. Petitioners have filed other motions and Respondents filed various responses to those other motions in this matter. Those other motions and responses will be dealt with below.

A hearing was held on November 25, 2008 at the Aiken County Courthouse regarding several of the motions and responses filed in this action. After a lengthy in-chambers discussion with all necessary counsel and an opportunity for objections to be put on the record regarding the appointment of a Special Administrator and Special Trustee, this Court finds the immediate appointment of a Special Administrator and Special Trustee with the powers enumerated in this Order is necessary in the above-referenced case. Petitioners have requested that Russell L. Bauknight, C.P.A., of Columbia, South Carolina be appointed as Special Administrator and Special Trustee. The Court finds that Mr. Bauknight is an appropriate person to serve in this capacity.

Petitioners have entered into a proposed Settlement Agreement regarding The Estate of James Brown and the James Brown 2000 Irrevocable Trust u/a/d August 1, 2000. A copy of this proposed Settlement Agreement was disseminated during the hearing to all present counsel of record who requested a copy.

*MRE*  
*HL*

It is hereby ordered that Mr. Bauknight is appointed to serve as the Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust (hereinafter "Estate") for the sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case. Adele Pope and Bob Buchanan shall continue to serve in their capacity as previously ordered by this Court and will continue to be responsible for all estate and trust matters, except for the limited duty of Russell L. Bauknight as set forth herein.

A number of motions were filed in response to the Amended Petition in this case. However, in the interest of the Estate and Trust, all discovery on those motions filed in this case is hereby held in abeyance until such time as a hearing is held in January 2009 regarding the approval of the proposed Settlement Agreement among the Petitioners. This stay of discovery affects all motions filed in the above-numbered case, including but not limited to, Respondents Pope and Buchanan Motion to Disqualify, Motion to Dismiss and/or Stay, Answer to the Amended Petition with Counterclaim, Cross-Claim, and Return to Petitioners' Emergency Motion. This stay of discovery also affects all motions filed by David G. Cannon in this case, including but not limited to, Motion to Recuse, Response to Amended Petition, Response to Motion to Remove to Circuit Court, Requests for Affirmative Relief, Requests for Interpleader and Mandamus, and Motion to Dismiss. The deadline for all responses to these motions is hereby extended until such further notice from this Court after the hearing on the approval of the proposed Settlement Agreement.

*YMC*  
*8/3*

THEREFORE, IT IS HEREBY ORDERED that Russell L. Bauknight, C.P.A., of Columbia, South Carolina is appointed as the sole Special Administrator and Special Trustee for the sole purpose of providing input and recommendations for the proposed settlement agreement.

IT IS ALSO ORDERED that all discovery in this case is stayed and all responses to motions filed in this case are extended until such further notice from this Court after the hearing to approve the proposed Settlement Agreement.

IT IS SO ORDERED.



---

The Honorable Doyet A. Early, III  
Circuit Court Judge for the State of South Carolina  
Second Judicial Circuit

January 7, 2009

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE PROBATE COURT  
Probate Court No. 2008-CP-02-1647

HENRY DARGAN McMASTER. )  
In his capacity As Attorney General )  
of the State of South Carolina )

Petitioner, )  
Vs. )

**ORDER DENYING  
MOTION TO RECUSE**

Albert H. Dallas, Alfred A. Bradley, and )  
David G. Cannon, et. al., )  
Respondents. )

IN RE: THE JAMES BROWN )  
IRREVOCABLE U/A/D AUGUST 1, 2000 )

This matter comes before the Court on January 30, 2009, on motion of David G. Cannon to recuse the Honorable Doyet A. Early, III.

The Motion contends that the Judge is biased and prejudice against Mr. Cannon because he has "issued orders without having subject matter jurisdiction; has purportedly held David G. Cannon in contempt of void orders; has allowed the Special Administrators to illegally act as Trustees of the James Brown Trusts pursuant to appointment by a Court lacking subject matter jurisdiction; has deprived David G. Cannon of due process of law; has created a civil liability of David G. Cannon without David G. Cannon having an opportunity to present his case; has utilized contempt as a form of debtors prison; and has acted as an investigator of this matter in violation of South Carolina Appellate Court Rules which embody the Canons of Judicial Conduct." See Mr. Cannon's Memorandum in support of Mr. Cannon's motion filed on November 25, 2008.

Mr. Cannon's affidavit complains about prior rulings and orders of the Court, the Court acted as an investigator, and the Court sent Mr. Cannon to debtor's prison.

The Court has carefully reviewed the allegations and finds that the supporting affidavit of David Cannon repeats arguments before this Court already rejected and rehashes decisions made by the Court in these proceedings. The Court has not acted as an investigator by merely examining

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing is a true and correct copy of the original documents which have been filed in my office and

recuse themselves where questions of impartiality or impropriety are raised. State v. Cheatham, 349 S.C.101, 111, 561 E.2<sup>nd</sup> 618, 623-624 (S.C. App.2002). Under South Carolina law, "a judge should disqualify himself in a proceeding in which his impartiality might be questioned, including, but not limited to, instances where the judge has a

CCCP & G.A., Aiken County, S.C.  
Debra S. Smith  
Deputy Clerk

*MRE*  
#1

Sharon J. Baker  
CCCP & G.S.  
Deputy Clerk

personal bias or prejudice against a party." Murphy v. Murphy, 319 S.C. 324, 461 SE 2d 39 (1995). Any bias or prejudice of the judge "must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from his participation in the case." Mallett v. Mallett, 323 S.C. 141, 145, 473 S.E. 2d 804, 807 (Ct. App. 1996). It is not sufficient cause of disqualification to merely allege bias; rather, the party seeking disqualification "must show some evidence of bias or prejudice." Id. (citing Roper v. Dymanique Concepts, Inc., 316 S.C. 131, 447 S.E. 2d 218 (Ct. App. 1994)).

This Court must accept the factual allegations asserted in the motion for recusal as true. At the same time the legal sufficiency of these facts must be considered.

It is well established law that a judge is not required to recuse himself when no evidence is present other than claimed adverse rulings by the judge.

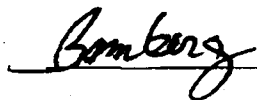
A trial judge has the authority to resolve a motion for his own disqualification. Shaw v. State, 276 S.C. 190, 277 S.E.2<sup>nd</sup> 140 (1981).

The law requires that bias or prejudice sufficient to disqualify a judge must be personal rather than judicial and come from extrajudicial sources rather than from that judge's participation in the case. Mr. Cannon presents no evidence of a personal bias.

After considering the Motion by Mr. Cannon along with supporting documents and oral arguments, as well as the Returns submitted by other participants in the Estate, this Court DENIES the Motion for Recusal.

IT IS SO ORDERED THIS 11<sup>th</sup> day of March, 2009.

  
The Honorable D. A. Early, III

 SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

HENRY DARGAN MCMASTER, in his )  
capacity as Attorney General of the State )  
of South Carolina; DARYL J. BROWN, )  
on behalf of his minor children, LINDSEY )  
DELORES BROWN and JANISE )  
VANISHA BROWN; DEANNA J. )  
BROWN THOMAS, on behalf of her minor )  
children, JASON BROWN LEWIS; )  
YAMMA N. BROWN, on behalf of her )  
minor children, SYDNEY LUMAR, )  
CARRINGTON LUMAR, and TONYA )  
BROWN; VANISHA BROWN; and )  
LARRY BROWN; TOMMIE RAE )  
HYNIE BROWN )

Case No.: 08-CP-02-1647 - original  
(Case No.: 07-CP-02-0122) - cert. copy  
(Estate of James Brown)  
(Case No.: 08-CP-02-00872) - cert. copy  
(Wills/Trust/Heirs Matter)

Petitioners,

- vs -

RUSSELL L. BAUKNIGHT, )  
as Special Administrator and Special )  
Trustee for The Estate of James Brown )  
and The James Brown 2000 Irrevocable )  
Trust, TERRY BROWN, ROMUNZO )  
BROWN; FORLANDO BROWN; )  
CINNAMON N.M. PARIS; LARHONDA )  
PETITT; and JEANNETTE MITCHELL )

**ORDER APPROVING  
SETTLEMENT AGREEMENT**

FILES 5-26-09  
Liz Godard  
C.C.P. & G.S.  
Anita Knoepple 945  
Deputy Clerk

Respondents.

In Re:  
The Estate of James Brown and The James  
Brown 2000 Irrevocable Trust u/a/d  
August 1, 2000

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

MAY 26 2009

Liz Godard  
C.C.P. & G. S. - Aiken County, S.C.  
Anita Knoepple  
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement.

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

DAG  
FI

on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. The following counsel appeared at the hearing related to the Motion for Settlement Approval: (1) Louis Levenson, counsel for Deanna J. Brown, Larry Brown, Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, Vanisha Brown, Daryl J. Brown, individually and on behalf of his minor children child Janise Vanisha Brown, Lindsey Delores Brown, Jason Brown Lewis, and Tonya Brown; (2) Robert N. Rosen, S. Alan Medlin, T. Heyward Carter, David L. Michel, M. Jean Lee, Andrew W. Chandler, and F. Patricia Scarborough, counsel for Tommie Rae Hynie Brown; (3) Tressa Hayes and James D. Bailey, counsel for Adele J. Pope and Robert L. Buchanan, Jr., (4) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (5) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (6) David B. Bell and Matt Bodman, counsel for Terry Brown, Forlando Brown, and Romunzo Brown; (7) C. Havird Jones, Jr., J.C. Nicholson, III, and Mary Frances Jowers, on behalf of the South Carolina Attorney General; (8) R. Wayne Byrd, counsel for Albert Dallas and Alfred Bradley; (9) James M. Griffin, counsel for LaRhonda Pettit and Cinnamon Paris; (10) Fred L. Kingsmore, Jr., counsel for Russell Banknight; (11) Jan L. Warner and Max Pickelsimer, counsel for David Cannon; (12) William Barr, counsel for Jeanette Mitchell; (13) Sonja R. Tate, counsel for Albert Dallas; and (14) Kaymani D. West, counsel for Greenberg Traurig and Joel Katz.

#### **I. Statement and History of the Case**

##### **A. Facts and Procedural History**

This matter arises out of the Estate of James Joseph Brown, Jr. Mr. Brown died on December 25, 2006, a resident of Aiken County, South Carolina. Mr. Brown's will, dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. His will

DAE  
#2

nominated three individuals as Personal Representatives, and they were appointed by the Probate Court by Order dated January 18, 2007: Albert H. Dallas, David G. Cannon, and Alfred A. Bradley. These same individuals were appointed Trustees of the Trust by the express terms of the Trust.

Mr. Brown's will named six children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Daryl J. Brown, Larry Brown, and Terry Brown (collectively "named children"). Mr. Brown left "all [his] personal and household effects of every kind . . ." to these named children in equal shares per stirpes. All of the named children were alive at the time of Mr. Brown's death. Mr. Brown left the remainder of his Estate to the Trust created under his Irrevocable Trust Agreement dated August 1, 2000. The will provided that the remainder of his Estate would go to the Trust as a pour-over devise.

Mr. Brown's Irrevocable Trust Agreement created two trusts: the Brown Family Educational Trust and the James Brown "I Feel Good" Trust. The Brown Family Educational Trust provides for income to be paid for the benefit of each then-living grandchild who has not reached the age of thirty-five (35) for his education and related expenses. Upon termination of the Family Trust, the balance would be added to the "I Feel Good" Trust. The "I Feel Good" Trust is for the "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." In addition to the three appointed Trustees, the Trust created an Advisory Board of three initial members. The Trust describes the powers of the Trustees, including the power to allocate up to 50% of the gross income from the Trust for the payment of administrative and managerial expenses. The

DAE  
#3

Trust provides for Trustee Succession. If the Trustee resigns, the Trust provides that he appoint a successor, or upon failure of that, the successor shall be determined by unanimous vote of the advisory board then existing. Failing this, the Court having jurisdiction shall select the successor Trustee. The Trust included a Schedule A listing initial funding of the following: (1) Fifty Dollars (\$50.00); (2) all ownership in James Brown Enterprises, Inc.; and (3) ownership of Mr. Brown's primary residence at 430 Douglas Drive, Beech Island, South Carolina.

Mr. Brown's will was admitted to informal probate on January 18, 2007. On January 26, 2007, the Aiken County Probate Court removed the matter to the Court of Common Pleas. From this time forward, the Aiken County Probate Court continued to remove all matters filed in this Estate to the Court of Common Pleas.

On February 1, 2007, Tommie Rae Hynie Brown filed a Petition for Elective Share or Omitted Spouse's Share, asserting she is the widow of Mr. Brown. She and Mr. Brown were married on December 14, 2001, in Beech Island. She had previously been involved in a putative marriage ceremony with Javed Ahmed on February 17, 1997, in Texas. Mrs. Brown subsequently brought an action to annul her marriage to Ahmed, and the Charleston County Family Court found her marriage to Ahmed void *ab initio* by Order dated April 15, 2004. Among other conclusions, the Court found that Mr. Ahmed was married at the time he entered into his marriage with Mrs. Brown, and therefore he lacked capacity to marry her.

The six named children filed an Emergency Petition for Termination of Appointment of and Removal of Personal Representatives on January 24, 2007. On February 1, 2007, Tommie Ray Hynie Brown filed an Emergency Petition for Appointment of Special Administrator. The Court held a hearing on these Petitions on February 9, 2007. By Order dated February 20, 2007, the Court denied the Petition for Removal of the Personal Representatives and granted the

CAE  
#4

Petition for Special Administrator. By Order filed March 12, 2007, the Court appointed Adele J. Pope and Robert L. Buchanan, Jr., as Special Administrators. At that time, the Special Administrators' duties were limited and included the power 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." By Order filed June 25, 2007, the Court granted the Special Administrators "complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable Trust and all trusts created thereunder, and all Brown Entities or Interest, however titled."

In addition to the six named children, several other individuals have appeared and claimed rights as children of Mr. Brown: (1) James Joseph Brown, II; (2) Cinnamon Nicole Parris; (3) LaRhonda Petit; and (4) Jeannette Mitchell. James Joseph Brown, II seeks his rights as a pretermitted child, having been born on June 11, 2001, after Mr. Brown wrote his will. Steven Slotchiver was appointed Guardian ad Litem for James Joseph Brown, II, by Order filed June 13, 2007. James Joseph Brown, II filed a Petition for Adjudication of Paternity on August 24, 2007. LaRhonda Petitt filed an action on August 23, 2007. Cinnamon Nicole Parris filed an action on September 21, 2007. Jeannette Mitchell filed a motion on April 21, 2008.

On July 27, 2007, the Special Administrators filed a Motion and Recommendation of Special Administrators requesting the Court to remove one or more of the Personal Representatives and one or more of the Trustees. A hearing was held on this Motion on August 10, 2007. At the hearing, David G. Cannon resigned as Personal Representative of the Estate, Trustee of the Brown Trusts, and as director, officer, agent, and/or fiduciary of any kind as to

DAE  
#5

Mr. Brown, the Estate, the Brown Trusts, and all Brown Entities (except Seventh Decade Productions). Dallas and Bradley remained Personal Representatives and Trustees.

The Court held a hearing on September 24, 2007. At the hearing, the Court heard issues related to David Cannon's obligation to account to the Court. The Court found Cannon in contempt by Order filed October 2, 2007. A hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007. By Order dated December 18, 2007, the Court found Cannon in willful contempt for failing to pay \$373,00.00 as ordered, and for amending tax returns on behalf of Brown entities after being ordered to give up authority in regard to the Brown entities and for deliberately disobeying the order of this Court. The Court ordered him to confinement with the South Carolina Department of Corrections for six months, though he could purge himself of the confinement by payment of the \$373,000.00, payment to the court of \$50,000.00 to be applied towards various parties' attorney fees, and a fine of \$10,000.00. Cannon appealed this Order, and as of the date of the present Order, the appeal is still pending.

The South Carolina Attorney General appeared at the hearing on September 24, 2007, and requested to intervene to enforce and protect the funds given or appropriated to any charitable trust created by the will or Trust of Mr. Brown, or any other assets of the Estate which may be impressed with a charitable trust. The Georgia Attorney General also appeared and requested to intervene. By Order filed October 11, 2007, the Court granted the Motions to Intervene. The South Carolina Attorney General continues to remain involved in the case. The Georgia Attorney General is no longer participating in the action, as discussed below.

At the hearing on November 20, 2007, Alfred Bradley and Albert Dallas submitted their resignation as Personal Representatives of the Estate and Trustees. By Order dated November

DNE  
#6

20, 2007, the Court accepted their resignations, and immediately appointed Buchanan and Pope to serve as Personal Representatives and Trustees. The Court did not consult the Advisory Board regarding their appointment. By Motion dated November 30, 2007, Dallas and Bradley moved the Court to vacate its Order accepting their resignations, arguing the Court did not have authority to accept the resignations or authority to appoint Pope and Buchanan as Trustees. The Court heard this matter on February 20, 2008, and denied Dallas and Bradley's Motion by Order filed March 7, 2008. Dallas and Bradley appealed, and as of the date of the present Order, the appeal is still pending.

On December 20, 2007, Tonnie Rae Brown filed Petitions to Set Aside the Will and Trust, alleging causes of action for undue influence, fraud, lack of intent, and illusory trust. On December 26, 2007, five of the six named children (all but Terry Brown)<sup>1</sup> filed Petitions to Set Aside the Will and Trust, alleging the same four causes of action.

On January 4, 2008, the Court held a hearing on the Motion for Recusal filed by Dallas and Bradley. By Order filed February 20, 2008, the Court denied this Motion.

The Court held a hearing on February 7, 2008. At that hearing, the Court granted the motion of the Levenson clients to revoke the pro hac vice admission of the Georgia Attorney General, though no written Order has been issued on this matter. The Georgia Attorney General became involved in this matter based on an understanding of the Trust that only students in South Carolina and Georgia qualify for benefits under the "I Feel Good" Trust. However, a careful reading revealed that students can be from anywhere; the only limitation is that they desire to attend a school in South Carolina or Georgia. The Court found that the South Carolina

---

<sup>1</sup> The six named children, and their children who are Mr. Brown's grandchildren, were all originally represented by Louis Levenson. David Bell was substituted as counsel for Terry Brown, Forlando Brown, and Romunzo Brown.

DAE  
#7

Attorney General was the appropriate party to adequately protect the interests of the charitable beneficiaries because the trust situs is in South Carolina.

Also arising out of the hearing on February 7, 2008, the Court issued an Order filed February 25, 2008, allowing the PR/Trustees to sell Mr. Brown's tangible personal property and his home in Beech Island. The PR/Trustees desired to sell the personal property through an auction, and hired Christie's Auction House to conduct the sale. Over objection by other counsel, the Court allowed the sale of personal property.

The Court held a hearing on March 7, 2008. At the hearing, the Court heard arguments on the Attorney General's Objection to the Appointment of Pope and Buchanan as Personal Representatives and Trustees, filed December 14, 2007. The Court heard testimony from Pope, Dallas, and Bradley in connection with the Objection. The Court overruled the objection by Order filed April 10, 2008. The Attorney General filed a Motion to Alter or Amend this Order on April 24, 2008, and subsequently, by Motion dated June 18, 2008, asked the Court to hold the Motion to Alter or Amend in abeyance. This request was based on the fact that the Motion relates to the appointment of successor Trustees, and the pending appeal of Dallas and Bradley also relates to the appointment of Trustees and its outcome may make the Motion moot. Because of the request to hold the matter in abeyance, the Court has not ruled on the Motion to Reconsider.

By Order filed March 10, 2008, the Court required service by publication of the Summons and Order in the case caption 07-CP-02-1222. The Notice was published in the Aiken Standard on April 19 and 26, 2008, and May 3, 2008. The published notice stated that it was "to determine all lawful heirs of James Brown, including lawful heirs at law who may be entitled to

DAE  
#3

rights under state and federal law." No additional parties have appeared as a result of the publication.

On August 10, 2008, the following parties participated in an informal mediation: Tommie Raye Hynie Brown; the named children and grandchildren represented by Louis Levenson; and the South Carolina Attorney General. The parties reached a settlement which was reduced to writing and signed by all of the participating parties.

At the hearing on August 19, 2008, the parties reported the partial settlement to the Court during an in-chambers conference. The parties also reported in open court that they had reached a resolution among themselves. At that time, the parties did not disclose their signed settlement document.

On September 29, 2008, the South Carolina Attorney General filed a Petition for Removal and Restraint of Trustees, asking that Dallas and Bradley be removed as Trustees, in the event they are Trustees. On November 7, 2008, the Attorney General and the other settling parties filed an Amended Petition for Removal and Restraint of Trustees Dallas, Bradley, and Cannon, and PR/Trustees Pope and Buchanan. The Court has not heard this matter pending the settlement approval. Also on November 7, 2008, the settling parties filed an Emergency Petition for Appointment of Special Administrator and Special Trustee.

During the pending settlement, Pope and Buchanan have filed numerous pleadings in the matter, including the following which were filed in addition to their Responses and Returns to other matters: (1) Motion for Partial Summary Judgment, dated September 12, 2008; (2) Supplemental Motion to Dismiss All "Spousal" Claims of Tommie Rae Hynie Brown, dated September 12, 2008; (3) Motion to Dismiss all Causes of Action to Set Aside the James Brown 2000 Irrevocable Trust, dated September 15, 2008; (4) Motion to Dismiss, dated October 9,

2008; (5) Motion to Intervene and Dismiss, dated October 24, 2008; (6) Motion to Dismiss Robert L. Buchanan, Jr. and Adele J. Pope as Individual Parties, dated November 14, 2008; (7) Motion to Disqualify C. Havird Jones, Jr. and Mary Frances Jowers as Counsel and Related Relief, dated November 14, 2008; (8) Emergency Motion to Quash Subpoena and Protect Evidence, dated November 14, 2008; (9) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery, dated January 9, 2009; (10) Motion to Alter or Amend Judgment, dated January 14, 2009; (11) Motion for Partial Summary Judgment, dated January 20, 2009; (12) Motion and Memorandum of PR/Trustees for Partial Summary Judgment that the AG and PR/Trustees have a Duty to Defend and Uphold the James Brown 2000 Irrevocable Trust; the Trust and Transfer to the Irrevocable Trust of Beech Island are Valid; and all Challenges to the Irrevocable Trust and the Deed of Beech Island to the Trust are Barred by Statutes of Limitation and Estoppel; and Petition for Mandatory Guidance under section 62-7-932(D), dated February 23, 2009; (13) Emergency Motion for Appointment of Special Administrator and Special Trustee, dated February 27, 2009; (14) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dated March 12, 2009; and (15) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009.

In addition, they also filed numerous affidavits after the settlement was announced to the Court, including the following; (1) Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope Supporting Demand for Due Process Hearing and Related Relief, dated November 24, 2008; (2) Joint Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated January 20, 2009; (3) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in Support of Injunction and Damages for Intentional Interference, dated February 17, 2009; (4) Joint Affidavit of Robert L. Buchanan, Jr.

DRE  
#10

and Adele J. Pope, dated February 19, 2009; (5) Affidavit of Adele J. Pope Opposing Removal of PR/Trustees Buchanan & Pope; Denying Emergency; Supporting Stay and Proper Joinder Supporting Proper Notice of Hearings; Supporting Order Compelling parties to Appeal with records to Testify; and Seeking Ruling Under S.C. Trust Code section 62-7-932(D) Related to Principal and Income Charges Under Will/Trust *In Terrorem* Clauses, dated February 23, 2009; and (6) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope as PR/Trustees Supporting Emergency Motion for Appointment of Special Administrator and Special Trustee with Full Authority to Manage, Preserve and Protect Assets of the Estate of James Brown, the James Brown 2000 Trust, James Brown Enterprises, Inc. and other Brown Entities pending final resolution of all formal testacy/resignation/removal/appointment matters and challenges to the validity of the James Brown 2000 Trust.

The Court held a hearing on November 25, 2008, and at that time the settling parties disclosed the terms of the settlement on the record and reported they were ready to move forward with a hearing to approve the settlement. The Court scheduled a hearing for settlement approval on January 30, 2009. The Court continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009.

By Order filed January 7, 2009, the Court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case." Ms. Pope and Messrs. Buchanan, Dallas, and Bradley appealed the Court's January 7, 2009 order to the Court of Appeals. The appeals were dismissed.

At the hearing on January 30, 2009, the settling parties reported that Terry Brown had joined the settlement. Thus, all beneficiaries of the Brown Estate/Trust were part of the

settlement agreement. The settlement agreement does not include Cinnamon Parris, LaRhonda Pettit, or Jeannette Mitchell. However, those parties each stated they have no objection to the settlement, pursuant to a stipulation with the settling parties that the settling parties do not intend for the settlement to in any way impact or affect their rights.

#### **B. Related Litigation**

While the above actions have been pending, there are numerous collateral matters pending in other jurisdictions. Forlando Brown sued Pope and Buchanan in South Carolina District Court on January 2, 2008. As a grandchild and beneficiary of the Family Educational Trust, Forlando Brown contends in the action that he has not received the scholarship money he is entitled to. His allegations against Pope and Buchanan include the following: (1) that they have irreconcilable conflicts of interest; (2) that they have breached their fiduciary duties; and (3) that they have disregarded the terms of the Trust. He seeks removal of Pope and Buchanan and injunctive relief. This action remains pending in the district court.

The CORBIS litigation is pending in Illinois. This action involves claims brought by Mr. Brown during his life for violation of rights of publicity, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, and a claim for profiteering on the name and likeness of Mr. Brown without his consent based on CORBIS' sale and offering for sale over the internet of Mr. Brown's photographs for commercial purposes. There is a pending settlement in the CORBIS litigation, and on March 24, 2008, Buchanan and Pope brought an action against the South Carolina Attorney General in Aiken County, asking the Court to approve the terms of the CORBIS settlement agreement.

The Pullman litigation is pending in New York. During his life, Mr. Brown sued the Pullman Group when he was unable to secure a loan from the Royal Bank of Scotland using

DPE  
#12

future song royalties as collateral because Pullman Group claimed it had exclusive authority to broker the transaction. The Pullman Group filed a counterclaim, and this action remains pending against the Estate.

On April 6, 2009, Jacqueline Hollander filed an action in the Northern District of Illinois against Pope, Buchanan, and the State of South Carolina. She seeks a finding that she and Mr. Brown were partners and the "I Feel Good" Trust was an extension of the partnership, which she owns as the surviving partner.

### C. Synopsis of Settlement Agreement

The settlement agreement dated August 10, 2008, and amended and restated on March 3, 2009, was entered into by and among Henry D. McMaster, Attorney General of South Carolina (the "Attorney General"), Tommie Rae Brown, individually and on behalf of her minor child, James Joseph 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, and Tonya Brown, and Terry Brown (the "Settling Parties").

The salient points of the settlement agreement are as follows:

1. The purpose of the agreement was to settle any and all differences among the settling parties concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and of substantial significance, to come together as a family to honor the legacy of Mr. Brown.

2. The settling parties intend for the agreement to be a binding private settlement agreement but also are seeking court approval of the settlement.

3. Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse.

4. The children and grandchildren who are parties to the agreement were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life and at the time of his death, and qualify as his surviving issue. No DNA testing will be required of any child or grandchild who is a party to the agreement.

5. A professional fiduciary will replace Robert Buchanan and Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown.

6. A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable. The South Carolina Attorney General will have sole authority to select, remove, and replace the Trustee who will manage the Charitable Trust. The children and Tommie Rae shall each be empowered to select a trustee from whom the managing trustee will seek input and advice.

7. The settling parties will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust and the charitable trust created thereunder, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination

rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to royalty, persona, image, likeness, royalties etc. (collectively, the "James Brown Assets"). The parties will divide any and all such assets and/or proceeds, and maintain beneficial ownership interests in the settlement entity, in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) a net 47.5% to the Charitable Trust; (2) a net 23.75% to Tommie Rae, which includes any share attributable to James Joseph Brown, II (by agreement between Tommie Rae and the Guardian ad Litem for James Joseph Brown, II, he will receive a 4.79% interest in the settlement entity to be held in trust and the remainder interest in another 4.79% interest in the settlement entity to be held in trust); and (3) a net 4.79% interest in the settlement entity to each of the children who are settling parties (with the exception of James Joseph Brown, II, who is provided for as discussed above). The Charitable Trust retains a 50% voting and control interest in the Settlement Entity, and the named children and Tommie Rae Brown (including any share attributable to James Joseph Brown, II) shall each retain a 25% voting and control interest. Tommie Rae waives any spousal right she may have to such assets to the extent that they might otherwise exceed her interest in the settlement entity. The children waive any rights to the Brown Assets to the extent that they might otherwise exceed their interests in the settlement entity.

8. All settling parties waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were in good faith and with probable cause.

DAE  
#15

15

9. The promissory note and security deed currently due from the parties represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

10. Terry Brown will receive an exclusive due diligence period of six months during which he can market the assets of the Estate and a Right of First Refusal that terminates in 10 years. However, the settling parties do not have to agree to sell any or all of the assets and a 2/3 majority is required to do so.

11. A trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the Charitable Trust.

12. Any and all will and trust contests will be dismissed.

13. The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from the date of the agreement, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying expenses of relocation. The settling parties shall all have reasonable opportunities to visit privately the

ONE  
#110

gravesite upon reasonable notice. The parties waived any right to otherwise direct the location of the gravesite as a result of their status under law.

## II. Findings of Fact and Conclusions of Law

### A. Parties, Notice, and Jurisdiction

For several reasons, I find that the interested parties have been properly notified, given an opportunity to be heard, afforded all appropriate due process rights, and thus appropriately represented at the hearing to approve the settlement. Ms. Pope and Mr. Buchanan claim a lack of notice. The notice for the hearing commenced on January 30, 2009, was provided on December 5, 2008, in advance of the time required under any applicable rule. The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. Because these dates involved the conduct of the same hearing commenced on January 30, 2009, notice was proper.

1. The settling parties' agreement does not impact rights other than their own. Thus, assuming arguendo that there were interested persons in the Estate of James Brown who were not properly notified and given an opportunity to be heard (although there are none), their lack of participation in the hearing, assumed for the sake of argument, would not affect the ability of this Court to approve the settlement.

South Carolina Probate Code (SCPC) section 62-3-912 recognizes that parties may enter into a private settlement agreement without court approval. The agreement may be among fewer than all persons interested in an estate. Moreover, that section requires personal representatives to honor the terms of the private settlement and to continue the administration of the estate for the benefit of those who are not parties to the settlement. By requiring the personal representatives to both honor the settlement and to continue administering the estate for those

DAE  
#17

successors who are not parties to the agreement, section 62-3-912 evidences the legislative intent to recognize as valid settlements among some but not all of the successors to an estate. Moreover, the parties to the settlement agreement are all successors to the Estate. SCFC section 62-1-201(42) broadly defines "successors" to include "those persons, other than creditors, who are entitled to property of a decedent under his will or this Code." The charitable successors are properly represented by the Attorney General of South Carolina, as discussed below.

SCPC sections 62-3-1101 and 62-3-1102, authorizing a court to approve a settlement agreement, also recognize the validity of a settlement by fewer than all parties. Section 62-3-1102 requires that the settlement be signed by all competent persons whose beneficial interests or claims will or may be affected by the settlement. As with section 62-3-912 discussed above, section 62-3-1102 thus recognizes that a settlement agreement may be effectuated by fewer than all the interested persons in an estate; only those whose interests will or may be affected by the settlement must be signatories.

Section 62-3-1102 also provides that fiduciaries have an opportunity to be heard at a settlement approval hearing but do not have the authority to veto a settlement presented to the court for approval. Although section 62-3-1102 recognizes that a fiduciary may be a party to a settlement and even propose its approval to the court,<sup>2</sup> it provides that a fiduciary who is not a

<sup>2</sup> The ability of a fiduciary to agree to be a party to a settlement is recognized in *University of Southern California v. Moran*, 365 S.C. 270, 617 S.E.2d 135, (Ct. App. 2005), providing that when a trustee joins in the execution of a settlement agreement, a trust beneficiary, although given the opportunity to notice and to be heard, cannot veto the settlement. *Moran* does not apply to the matter *sub judice*, which deals with a different situation: the fiduciary did not join in the execution of this settlement agreement. In the case *sub judice*, section 62-3-1102 clearly provides that, because the fiduciaries did not join in the settlement agreement, this Court can nevertheless approve the settlement and direct the fiduciaries to join in the execution of the approved agreement.

party to the settlement can be directed by the court to execute the agreement after it is approved by the court.

2. Even though fewer than all interested persons can enter into a private settlement agreement and a court can approve such an agreement, all necessary parties are represented in this matter.

The SCPC provides that personal representatives and trustees represent and bind their beneficiaries for purpose of notice and hearing. See SCPC sections 62-1-403, 62-7-301, and 62-7-303.

Ms. Pope and Mr. Buchanan, the personal representatives of the Estate, were appointed to represent any successor of the Estate, whether by any valid will of Mr. Brown or by intestate distribution. Thus, any successor who would take from the probate estate of Mr. Brown would be properly represented by Ms. Pope and Mr. Buchanan, who do not have a conflict of interest with any of the successors.

Similarly, any beneficiaries of the 2000 Irrevocable Trust, if valid, would be represented by Ms. Pope and Mr. Buchanan as trustees of that trust. Any beneficiaries of the 1999 Revocable Trust, if valid, would be represented by Messrs. Bradley, Cannon, and Dallas as trustees of that trust who participated in the settlement hearing.

There can be no other successor or beneficiary with an interest in the Estate of James Brown or in the 2000 Irrevocable Trust or the 1999 Revocable Trust. Any successor or beneficiary of the Estate or those trusts were represented by the appropriate fiduciaries. Moreover, minor children of the settling parties were also properly represented by their parents

DAE  
#17

who executed the agreement, and any charitable beneficiaries of the Estate and trusts were also properly represented by the South Carolina Attorney General.<sup>3</sup>

3. In addition to the notice and opportunity to be heard afforded by the representation discussed above, I find that any interested person also received notice and an opportunity to be heard pursuant to the publication of notice directed by order of this Court filed on March 10, 2008, as discussed above.

4. It is clear that the Attorney General in his *parens patriae* capacity has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. See *South Carolina Dep't of Mental Health v. McMaster, et al.*, 372 S.C. 175, 642 S.E.2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities); *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); and *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); also see S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

---

<sup>3</sup> Ms. Pope and Mr. Buchanan contend that notice and hearing opportunities should have been afforded Salkchatchie, Voorhees, and USC Alken as beneficiaries of the 1999 Revocable Trust and to the members of the advisory board they attempted to appoint in their capacities as trustees. If these parties were interested, they were represented as discussed above. However, none of these three institutions of higher learning nor the advisory board members are interested persons. The colleges are not the beneficiaries of any trust; as noted by Mr. Buchanan in his testimony, it is the students who would attend those schools who are the beneficiaries, and they are already represented as discussed above. (If those three colleges would have to be parties to any action involving the 1999 trust, then by extension every educational institution in South Carolina and Georgia would have to be parties to any action involving the 2000 trust.) The advisory board members have no beneficial interest in the trust.

It is noted that section 62-7-405(c) also allows the settlor, trustee, and among others [i.e. parties with "special interests"] to enforce a charitable trust. The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office's lack of resources to be in all charitable trust cases. See *Bogert Trusts and Trustees* § 411 - "The attorney general as the protector, supervisor and enforcer of charitable trusts." However, when the Attorney General does appear in litigation involving a charitable trust either by motion for intervention or being brought in by an amendment to the pleadings, he has the right to take charge and control that portion of the litigation which relates to the charitable trust. *Kolin, et al. v. Leitch, et al.*, 99 N.E.2d 685, 687 (Ill. 1951). As previously stated, the South Carolina Attorney General's Motion to Intervene in this matter was granted by Order filed October 11, 2007.

This authority that allows the Attorney General to control the litigation also provides that the Attorney General has exclusive authority, in order to protect the public interest, to settle or compromise litigation.<sup>4</sup> See *Sarkeys v. Independent School Dist.*, 592 P.2d 529 (Okla. 1979).

In *Sarkeys*, the Court approved a settlement involving a charitable trust entered into by the parties and the Attorney General. Settlor's descendants appealed. The Court found that they did not have standing to appeal in the absence of an appeal by the Attorney General because the Attorney General was in control of the case. Similarly in *Application of Schluskel*, 89 N.Y.S.2d

<sup>4</sup> See 81 A.L.R. 124 (with updates, originally published in 1932), citing *Cooley v. South Carolina Tax Comm'n*, 204 S.C. 10, 28 S.E.2d 445 (1943) and *State v. Southern R. Co.*, 82 S.C. 12, 62 S.E.2d 116 (1908), at page 7: The general authority of the attorney general, at common law under the various constitutional and statutory provisions, to compromise or settle disputes in litigation in which the state is an interested party, and to direct dismissal of the proceedings, so far at least as the public interest is concerned, provided there is doubt and an honest dispute as to the state's rights and the compromise or settlement is a bona fide one, is well settled.

DAE  
#21

47 (1949), the Court stated as follows in regards to the Attorney General's authority to enter a settlement agreement: "Under the authorities, it is, therefore, within the competence of the Attorney General to bind the uncertain charitable beneficiaries by [a compromise]." Also see *In Re Estate of Smith*, 349 N.Y.S.2d 281 (N.Y. Surr. Ct. 1973), appeal dismissed, 355 N.Y.S.2d 994 (N.Y. App. Div. 1974), appeal denied, 321 N.E.2d 555 (N.Y.) (allowing Attorney General to enter into settlement agreement on behalf of charitable beneficiaries and over executor's objection; rejecting executor's contention that Attorney General did not have authority to compromise on behalf of charitable beneficiaries; observing that to delve too deeply into Attorney General's reasons to compromise could jeopardize charitable beneficiaries' ultimate case if not settled; nevertheless finding that the Attorney General had sufficient reason to enter settlement and was not making "gift"; noting that failure to settle risked charities ending up with nothing; observing that settlement of cases is desirable; holding that the Attorney General has the right and the power to enter into compromise on behalf of charitable beneficiaries, subject only to an abuse of discretion standard, which was not abused in this case.).

Therefore it is for the Attorney General, as the officer charged with the duty of protecting charitable beneficiaries, to exercise his discretion as to the appropriateness of a settlement. It is the responsibility of this Court in reviewing the record to determine if the Attorney General acted in good faith entering into this compromise agreement. Factors to be considered by the Court include whether the Attorney General has given careful consideration to his decision with relation to the compromise and whether the Attorney General's decision is based upon solid legal judgment and a full consideration of all the facts and circumstances available. It would be appropriate for the Attorney General to include in his review whether there was a possibility that the final outcome of this litigation was in doubt and the continued expense to the charitable trust

by additional litigation. See *In Re Estate of Smith*, supra at 283-4. These factors for my consideration are subsumed in the requirements of section 62-3-1102 that the settlement be in good faith and that it is just and reasonable. Therefore I find that the Attorney General has the power pursuant to his common law and statutory authority to protect the charitable beneficiaries, to control such litigation as to the charitable interests when he is a party, and to compromise and settle such interests where appropriate.

#### **B. Standard for Approving Settlement**

South Carolina Probate Code section 62-3-1102 provides that the Court shall approve the settlement and direct the fiduciaries to execute the agreement if it: (1) finds the contest or controversy is in good faith, and (2) the effect of the agreement on interested persons is just and reasonable.

##### **1. Good faith controversy**

Based on the history of matters involving the Estate and other issues related to James Brown, I find that it is incontrovertible that a good faith controversy exists. Any of the factors discussed hereinafter could constitute grounds for finding that a good faith controversy exists. The cumulation of these issues creates an overwhelming set of grounds for finding that a good faith controversy exists. Some of the more salient issues are as follows:

a. The Levenson clients and Tommie Rae Brown brought actions to contest the 2000 Will and the 2000 Irrevocable Trust. Although the contestants raised other reasons for the contest, a compelling argument was that Cannon, Dallas, and Bradley unduly influenced Mr. Brown into executing those documents. Without deciding whether the undue influence argument has merit, I find that argument certainly has a foundation in good faith. The 2000 Trust names Cannon, Dallas, and Bradley as trustees. The 2000 trust authorizes the trustees to expend up to

50% of gross income for management expenses.<sup>5</sup> Based on testimony from Ms. Pope and Mr. Ruff, the estate planning expert presented by Ms. Pope and Mr. Buchanan, such a provision is unprecedented, especially in a charitable trust. On behalf of the estate and trust, Ms. Pope and Mr. Buchanan have brought an action against Messrs. Cannon, Dallas, and Bradley, alleging inter alia that Messrs. Cannon, Dallas, and Bradley practiced undue influence on Mr. Brown and used various entities controlled by them to syphon off his assets, effectively under the guise of management expenses. Ms. Pope testified that Mr. Cannon told her he could get half of Mr. Brown's estate, if he wanted.

Moreover, the voluminous file of the drafter of the 2000 will and trust (and of the 1999 will and trust), Mr. Herring, is in evidence. That file contains a blank deed apparently signed by Mr. Brown and witnessed. There is no valid reason to create such a document, and its existence certainly adds additional credence to the argument against the validity of any document prepared for Mr. Brown by Mr. Herring. Upon questioning, Mr. Buchanan could testify to the existence of only one document that may be in that voluminous file that possibly represents direct correspondence between Mr. Herring and Mr. Brown. There is evidence in the file that Mr. Herring and Mr. Cannon are good friends.

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable. Mr. Herring is in jail for murder. The accuracy and veracity of the testimony in this matter by Messrs. Cannon, Dallas, and Bradley is suspect and at times

---

<sup>5</sup> Whether the 50% provision would be valid, in light of the charitable savings clause language in the trust, is irrelevant to the issue of undue influence. The issue is whether the alleged practitioners of undue influence believed at the time of preparation and execution of the 2000 will and trust that the 50% provision would be enforceable. Assuming they did, otherwise why would a known invalid provision be included, that could be evidence of undue influence.

DAE  
#24

contradictory. For example, Mr. Dallas testified that he signed a stipulation presented to this Court knowing it to be false because he did not want to lose his position as fiduciary. This is an astonishing admission that he did and would lie to this Court to protect his position as a fiduciary. The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims.

If the 2000 will and trust were found to be invalid for undue influence, and the issue of whether the 1999 will and trust were valid was then raised, the same arguments as above could be asserted against the validity of the 1999 will and trust, and that controversy would also be in good faith.

In her testimony, Ms. Pope asserted that the case of *Russell v. Wachovia Bank, N.A.*,<sup>6</sup> was controlling. That case is not controlling. The issue before this Court is whether the proposed settlement agreement is the result of a good faith controversy and whether the agreement is just and reasonable. There was no settlement agreement in *Russell*. The gist of the *Russell* case was whether a federal appellate court judge still sitting on cases until a few weeks before his death was the victim of undue influence practiced by family members. The circumstances of Mr. Brown's execution of the 2000 will and trust documents are not the same as in the *Russell* case.

b. In addition to the controversy over the validity of any will and trust executed by Mr. Brown, a good faith controversy exists over what property if any was funded into the 2000 trust and what property if any would pass through the probate estate pursuant to the 2000 will.

<sup>6</sup> 370 S.C. 5, 633 S.E.2d 722 (2006); 353 S.C. 208, 578 S.E.2d 329 (2003).

DAE  
#25

Testimony demonstrates that records that would adequately prove the provenance of any trust or probate assets are either non-existent or too scanty to provide adequate proof. Moreover, testimony from the three original trustees is contradictory. They executed a stipulation representing that the only assets of the 2000 trust were the Beech Island real estate and 50 dollars. Subsequently, Mr. Dallas testified that the stipulation was incorrect and that he had joined in the stipulation to avoid losing his position as fiduciary. The fiduciaries ultimately sought to withdraw the stipulation.

More specifically, questions remain as to whether James Brown Enterprises, Inc. ("JBE, Inc.") was transferred to the trust during Mr. Brown's lifetime. Available documentation shows that any attempted transfer was incomplete. Furthermore, income tax returns filed on behalf of JBE, Inc. showed Mr. Brown, not the 2000 trust, as the owner. Nevertheless, the ownership of JBE, Inc. is uncertain. Even if the ownership of JBE, Inc. could be confirmed, determining what assets if any JBE, Inc. owns is also problematic due to a dearth of documentation.

The ownership of the relevant assets as between the estate and the trust could affect the assets subject to the spousal share claims of Tommie Rae Brown, as discussed below, as well as the omitted child share claim of James Joseph Brown, II, as discussed below.

Any assets that would pass pursuant to the 2000 will would be subject to spousal share claims and omitted child claims. Also, a good faith argument exists for subjecting any assets of the 2000 trust to the elective share, pursuant to the *Selfert* and *Dreher* decisions,<sup>7</sup> and by analogy, to the omitted spouse and omitted child shares. Because testimony demonstrated that Mr. Brown retained control of the 2000 trust, it could be deemed a revocable trust, which would

<sup>7</sup> *Selfert v. Southern Nat. Bank of South Carolina*, 305 S.C. 353, 409 S.E.2d 337 (1991); *Dreher v. Dreher*, 370 S.C. 75, 634 S.E.2d 646 (2006).

DAE  
#26

be subject to the elective share and, by extension, to the omitted spouse share and omitted child share.

Moreover, certain assets, such as the copyright termination rights would not belong to the 2000 trust or to the probate estate, instead passing by federal law to the federal statutory heirs.

Further confusing the question of ownership is the question of the validity of the 1999 revocable trust. Mr. Dallas, one of the trustees of that trust, testified that he did not know if the 1999 trust had been revoked in accordance with its provisions. Nor was any evidence produced from Mr. Herring's file that the 1999 trust had been revoked. If that trust was valid and was not revoked, then ownership issues similar to the 2000 trust arise as to the 1999 trust. If the 1999 trust was valid and not revoked, then any assets owned by that trust might not be included in the 2000 trust or the probate estate. Furthermore, any assets owned by the 1999 revocable trust would clearly be subject to the elective share pursuant to *Seifert* and *Dreher* and, by analogy would be subject to the omitted spouse's share and the omitted child's share.

If the 1999 trust was valid, funded, and not revoked, then the trustees of the 2000 trust had no power or control over those assets.

c. A compelling factor in finding that a good faith controversy existed is the assertion of Tommie Rae Brown (Mrs. Brown) of elective share and omitted spouse's share claims. If Mrs. Brown qualifies as a surviving spouse, then she would clearly be entitled to an elective share and may well qualify for an omitted spouse's share. The elective share would be one-third of the probate assets plus any assets held by a revocable trust, pursuant to *Seifert* and *Dreher*. The omitted spouse's share would be one-half of the probate assets plus, by analogy to *Seifert* and *Dreher*, any assets held by a revocable trust. In addition, Mrs. Brown would have a

DAE  
# 27

27

0191

claim as a surviving spouse under federal copyright law to receive one-half of the copyright termination rights.

Asserting the *Lukich* decisions,<sup>8</sup> the personal representatives and trustees have argued vigorously that Mrs. Brown does not qualify as a surviving spouse. They contended that she had an impediment to her marriage to Mr. Brown because she was already married at the time to Javed Ahmed. However, the evidence demonstrated that the Charleston County Family Court held as a finding of fact and a conclusion of law that Mrs. Brown had no impediment to her marriage to Mr. Brown because she was never previously married to Javed Ahmed as he had an impediment to that purported marriage: he was already married at the time. The family court order shows that Javed Ahmed was properly served by publication.

The *Lukich* decisions effectively held that an annulled marriage could not relate back to the time of the creation of the annulled marriage for purposes of removing an impediment to a subsequently attempted marriage. However, Mr. Buchanan admitted in his testimony that the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs. Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage. Thus, rather than supporting the position of the personal representatives and trustees, *Lukich* supports the position of Mrs. Brown as Mr. Brown's surviving spouse.

Moreover, Mr. Buchanan also admitted in his testimony that *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her

---

<sup>8</sup> 379 S.C. 589, 666 S.E.2d 906 (2008); 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006).

DAE  
#28

marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.

The personal representatives and trustees assert that Mr. Brown brought his own annulment action against Mrs. Brown. The record shows that action was commenced after the commencement of the Javed Ahmed action. Mr. Brown and Mrs. Brown mutually consented to a dismissal of the annulment action brought by Mr. Brown. Although the personal representatives and trustees assert that the consent order of dismissal includes a waiver by Mrs. Brown to ever claim any status as a common-law spouse, that waiver, even if valid under the law, is immaterial to the matter *sub judice*. Mrs. Brown is not asserting her claim as a common-law spouse but rather as a surviving spouse based on her ceremonial marriage to Mr. Brown and their South Carolina marriage license and certificate.

The evidence also demonstrates that, in his authorized autobiography, Mr. Brown represented that he was married to Tommie Rac Brown. Significantly, his autobiography was copyrighted and first published in 2005, after the conclusion of both family court matters discussed above.

Thus, based on *Lukich*, Mr. Brown (or any third party) did not have the right to intervene or contest the family court order holding that there was an impediment to the purported marriage between Mrs. Brown and Javed Ahmed. If he did not have that right, neither do his fiduciaries. Thus, as to the estate and any trust, that family court order, as well as the marriage license, constitute the law of the case as to that issue.

In the settlement agreement, the settling parties agree that Mrs. Brown is the surviving spouse of Mr. Brown, presumably spurred on by the compelling factors discussed above. Treating Mrs. Brown as the surviving spouse provides substantial benefit to the settling parties.

DAE  
#29

including the charitable beneficiaries. Her status as surviving spouse allows the estate to claim a marital deduction for those assets passing to her, which increases the net amount passing to the settlement entity, in which the charitable beneficiaries have a share and thereby benefit from that tax savings.

d. Another factor evidencing the existence of a good faith controversy is the omitted child's claim submitted on behalf of James Joseph Brown, II by his guardian ad litem. Pursuant to SCPC section 62-2-302, a child born after the execution of the testator's will is entitled to receive his intestate share if omitted from the will. The 2000 will was executed before the birth of James Joseph Brown, II. Although the personal representatives contested that James Joseph Brown, II was the biological child of Mr. Brown, substantial evidence would demonstrate that James Joseph Brown, II is indeed the biological child of Mr. Brown. Mr. Brown describes James Joseph Brown, II as his son in his autobiography. Mr. Brown is listed as the father on the birth certificate. Mr. Brown obtained health insurance and social security benefits for James Joseph Brown, II by representing that he was his son;<sup>9</sup> he named him as his son in his medical directive. The guardian ad litem procured a DNA test demonstrating that there was a greater than 99 percent probability that they were father and biological son. James Joseph Brown, II is presumed to be the child of the marriage of Mr. Brown and Mrs. Brown because that marriage was valid, as discussed above. Even though James Joseph Brown, II was born before that marriage, the subsequent marriage of Mr. Brown and Mrs. Brown would legitimize James Joseph Brown, II, pursuant to SCPC section 62-2-109.<sup>10</sup> Although James Joseph Brown, II would not

<sup>9</sup> Thus, to find that James Brown II was not the son of Mr. Brown opens the door for a claim that Mr. Brown defrauded the health insurance carrier and social security.

<sup>10</sup> This would be true even if the marriage was not valid. SCPC section 62-109 legitimates a child if his parents

DAK  
#30

need to be legitimate to qualify under section 62-2-302 for his intestate share, it is an additional factor to consider.

James Joseph Brown, II is not automatically entitled to an omitted child's share merely because he is found to be Mr. Brown's son. One operative exception to the granting of the omitted child's share is if the testator specifically provides for overriding the statutory share. One might argue that language in Mr. Brown's 2000 will does specifically provide for such an override, but there is compelling authority to the contrary.<sup>11</sup> Ultimately, that issue would be decided by determining Mr. Brown's intent.

The settling parties agree that James Joseph Brown, II is the biological child of Mr. Brown. Treating him as a child provides substantial benefit to the settling parties, including the charitable beneficiaries. His status as a child allows him to claim, for the benefit of the settlement entity, a federal copyright termination rights share. Moreover, treating James Joseph Brown, II as the child of Mr. Brown does not detrimentally impact the settlement entity, including the charitable beneficiaries, because according to the settlement agreement his share is paid from Mrs. Brown's share.

e. Another factor indicating the existence of a good faith controversy involves the applicable time to contest the 2000 trust. Section 62-7-5 provides that a trust is voidable if it resulted from fraud, coercion, or undue influence — the gravamen of the contestant's actions to contest the trust. The fiduciaries contend that the statute of limitations to contest the 2000 trust

---

subsequently attempt to marry even in the attempted marriage is not valid.

<sup>11</sup> See, e.g., *Estate of Robbins*, 756 A.2d 602 (N.H. 2000); *Estate of Torregano*, 352 P.2d 505 (Cal. 1960). The estate would bear the burden of proof. *In re Estate of Haigaard*, 360 N.W.2d 360 (Minn.App.1984).

has run. However, for the reasons discussed below, the contestants would have viable arguments that no statute of limitations would bar their contest.

i. As to fraud

Assuming arguendo that a 2000 trust is irrevocable, South Carolina follows the discovery rule for fraud, which commences the running of the statute of limitations from discovery of the fraud itself or of such facts as would have led to the knowledge thereof, if pursued with reasonable diligence. *Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). A suspicion alone is not sufficient to place a party on inquiry. *Beattie v. Pool*, 13 S.C. 379 (1880); *Hunt v. Smith*, 202 S.C. 129, 24 S.E.2d 164 (1943). The burden would be on the fiduciaries to show that the contestants had knowledge of the fraud or of such facts as would have led to knowledge if pursued with reasonable diligence. *Grayson v. Fidelity Life Ins. Co.*, 114 S.C. 130, 103 S.E. 477 (1920); *Means v. Feaster*, 4 S.C. 249 (1873); *Richardson v. Mounce*, 19 S.C. 477 (1883). The contestants would also assert that the fraud was continuing, so that any applicable statute of limitations did not commence any sooner than Mr. Brown's death.

The original trustees would be the alleged perpetrators of the fraud. The commission of a fraud or an intentional misrepresentation therefore estops the trustees from asserting any statute of limitations. See *R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 730 (2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). Moreover, even if the trustees did not engage in fraud or make intentional misrepresentations, they are estopped from asserting any statute of limitations because the settling parties reasonably relied on the words and conduct of the trustees in allowing any limitations period to expire. See *Regions Bank v. Schmauch*, 582 S.E.2d 432 (Ct.

DAE  
#32

App. 2003); *Hedgepath v. American Telephone and Telegraph Co.*, 559 S.E.2d 327 (Ct. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (2000); *Harvey v. South Carolina Dept of Corrections*, 527 S.E.2d 765 (Ct. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (Ct. App. 1997).

The fiduciaries assert that the recordation of the certificate of trust commenced the running of the statute of limitations. However, recordation of a deed will not, by itself, be sufficient notice to put a party on inquiry as to the existence of a fraudulent conveyance. *Tucker v. Weathersbee*, 98 S.C. 402, 82 S.E. 638 (1914); *Means v. Feaster*, 4 S.C. 249 (1873).

ii. As to undue influence

Statute of limitations for fraud would not apply to the contestants' claims for undue influence because undue influence is an action in equity. *Dixon v. Dixon*, 362 S.C. 388, S.E.2d 849 (2005).

iii. Tolling as to minors

To the extent that any statute of limitations would apply to the trust contests, the contestants would assert that the statute of limitations would be tolled for a minor, such as James Joseph Brown, II.

iv. If the trust is deemed revocable, then SCPC section 62-7-604 provides that the trust contests were timely commenced.

f. One additional salient factor demonstrating the existence of a good faith controversy involves the issue of the ownership of federal copyright termination rights. Federal copyright law provides a termination right to a songwriter who has assigned some or all of his

DRE  
#33

copyright rights to a third party, such as a publisher.<sup>12</sup> Testimony revealed, Mr. Brown assigned at least a substantial number of his copyrights to one or more publishers and he assigned to one or more third party entities the remaining rights to a substantial number of his copyrights. Federal copyright law allows a songwriter who is alive after a certain number of years pass from any assignment of some or all of his copyrights to terminate, or revoke, that assignment, thereby regaining control of the assigned right with the freedom to negotiate a new assignment.<sup>13</sup> However, if the applicable time period for that song has not expired before the songwriter dies, that termination right passes by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to otherwise transfer the termination right. See 17 U.S.C.A. §§ 203, 304; Ann Bartow, *Intellectual Property and Domestic Relations: Issues to Consider When There Is an Artist, Author, Inventor, or Celebrity in the Family*, 35 Fam. L.Q. 383.

Under the settlement agreement, those settling parties who would qualify as statutory heirs for federal copyright law termination rights purposes have contributed their termination rights, and any proceeds therefrom, to the settlement entity, which includes the charitable beneficiaries. If it were not for this contribution to the settlement entity, there is no way that the charitable beneficiaries could receive any benefits from the federal copyright termination rights.

<sup>12</sup> Typically, the publisher's share of any royalties is 50 percent of the total and the songwriter's share is 50 percent.

<sup>13</sup> For songs copyrighted before the 1976 copyright act, the time period before the termination rights can be asserted is 56 years from the date copyright was secured. For songs copyrighted after the 1976 copyright act, that time period is 35 years from the assignment.

DAE  
#34

## 2. Just and Reasonable

Including those discussed above, there are many reasons supporting the conclusion that the proposed settlement is just and reasonable. The key issue is how the charitable beneficiaries fare under the proposed settlement. I find that the settlement is just and reasonable and provides a just and reasonable result for the charitable beneficiaries.

From the perspective of the charitable beneficiaries, the risks of not approving the settlement agreement are substantial. As discussed above, significant arguments can be made that the 2000 will and trust are not valid. If the 2000 will and trust are overturned, essentially the same arguments can be made that the 1999 will and trust are invalid. If the contestants would prevail in these contests, an intestacy would result and the charitable beneficiaries would get nothing — a substantial risk.<sup>14</sup>

Even if the 2000 will and trust (or the 1999 will and trust) are upheld, significant arguments can be made to recognize Mrs. Brown's spousal share claims, as discussed above. No matter Mr. Brown's intent, she would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust. And unless Mr. Brown demonstrated an intent to override SCPC section 62-2-301 (the omitted spouse's share), which is questionable, Mrs. Brown would be entitled to one-half of the probate estate<sup>15</sup> and likely one-half of the assets of any revocable trust. If Mrs. Brown would prevail in her claims, the charitable beneficiaries' share of the

---

<sup>14</sup> The risk for the charitable beneficiaries would be enhanced by the burden of proof. Because Messrs. Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Mr. Brown's execution of the 2000 will and trust documents, the burden of proof would fall on the proponents of the will and trust because Messrs. Cannon, Dallas, and Bradley were in a confidential relationship with Mr. Brown. *Dixon v. Dixon*, 362 S.C. 388, S.E.2d 849 (2005).

<sup>15</sup> As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

DAE  
#35

probate estate and any revocable trust would be reduced by either one-half or one-third — a substantial risk.

Even if the 2000 will and trust (or the 1999 will and trust) are upheld (and even if Mrs. Brown is not entitled to any spousal share), significant arguments can be made to recognize James Joseph Brown, II's omitted child claim, as discussed above. Unless Mr. Brown demonstrated an intent to override SCPC section 62-2-302 (the omitted child's share), which is questionable, James Joseph Brown, II would be entitled to his intestate share of the probate estate<sup>16</sup> and likely the same share of the assets of any revocable trust. If James Joseph Brown, II would prevail in his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share — a substantial risk.

Even if the 2000 will and trust are upheld and the spousal and omitted child's claims are unsuccessful, the time and expense to litigate through appeal all of these and other issues would be extraordinary. The cost to the estate and trust for fees and costs and related expenses are substantive. It has taken more than two years of estate administration and millions of dollars of fees and costs just to get to the point of considering a settlement. The time and expense necessary to carry out all litigation to completion and appeal boggles the mind.

The Court has been apprised as to the distribution of the settling parties' interest as more fully set forth in the settlement agreement, and the settlement agreement has been made a part of the record. The percentages assigned to each settling party are fair and reasonable. The Attorney General's Office has ensured a substantial portion of the Estate will be dedicated to the specific intent of James Brown, that is providing an educational trust. The Court has also considered and

<sup>16</sup> As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

DAE  
#310

is satisfied that the minor child, James Joseph Brown II, will receive his share of the estate assets as distributed through his Mother's share and that he will receive another equal portion from his Mother in the form of a second trust.

The protection of a public trust is of paramount concern to the Court and the Court is satisfied that through the diligent efforts of the Attorney General's Office, the assets to fund the public trust will now be available. Furthermore, any issues as to the protection of the minor child's interest have been preserved through this agreement.

Consideration of these factors demonstrates that the allocation of the proposed settlement is just and reasonable. However, an additional, and perhaps substantial additional benefit to the charitable beneficiaries is the contribution by the other settling parties of their federal copyright termination rights. As discussed above, these rights may have considerable value and, without the settlement, the charitable beneficiaries could derive no benefit from these rights.

Replacement of the currently serving fiduciaries is also just and reasonable. The propriety of their appointment as trustees is currently on appeal, and their replacement should moot that issue. Moreover, both fiduciaries testified that they intended to appeal the approval of the settlement; that action would place them in the position of an irreconcilable conflict of interest.

The settling parties propose that Mr. Russell Bauknight be appointed as the replacement personal representative and trustee. I find that he is qualified and willing to serve and suffers from no conflict of interest because the settling parties have all consented to his appointment and, because the settlement agreement places all possible probate estate and trust assets into the same settlement entity, he has no conflict of interest by serving as both personal representative

DAE  
#37

and trustee. Pursuant to Mr. Bauknight's testimony, I find that no transition period is necessary before the appointment of Mr. Bauknight to replace Ms. Pope and Mr. Buchanan.

### C. Tax Issues

#### 1. Charitable Exemption Concerns

I find that the Settling Parties have carefully considered the impact of the Settlement Agreement and participation in the Settlement Entity and the James Brown Legacy Trust on the tax exempt status of the 2000 "I Feel Good" Trust.

As the Trustee of the 2000 "I Feel Good" Trust will be selected by, and can be removed for any reason by, the South Carolina Attorney General, the Settling Parties believe there is no private inurement problem. Additionally, all transactions between the Brown family members, the 2000 "I Feel Good" Trust, and the James Brown Legacy Trust are at fair market value. The provisions of the James Brown Legacy Trust effectively grant the 2000 "I Feel Good" Trust a veto over major decisions, allowing the 2000 "I Feel Good" Trust sufficient control over the settlement entity to prevent the Settling Parties from conducting the business of the James Brown Legacy Trust in such a manner as to allow them to use the assets or income of the "I Feel Good" Trust for their own private benefit.

Marital Deduction - In order to receive the marital deduction, Tommie Rae Brown must have been the spouse of James Brown. The Attorneys for Mrs. Brown strongly believe that they have sufficient evidence to prevail in a trial on the merits as to whether Tommie Rae Brown was the spouse of James Brown. The other Settling Parties agree that Mrs. Brown has a material chance of success, as they are willing to settle with Mrs. Brown and recognize her status as surviving spouse.

ONE  
#30

Charitable Deduction – The Settling Parties recognize that the charitable deduction will be limited to the amount that the 2000 “I Feel Good” Trust actually receives, per Regulation §20.2055-2(d) and Reed v. U.S., 26 AFTR 2d 70-6042 (DC Ill. 1970), and that the amount of the charitable deduction cannot exceed the amount the 2000 “I Feel Good” Trust otherwise would be entitled to under the terms of the Will, per Terre Haut First National Bank v. U.S., 67 AFTR 2d 91-1217 (DC Ind. 1991).

I find that the Settling Parties took the issues discussed above into account in drafting the Settlement Agreement, and, other than the loss of the charitable deduction for assets passing to heirs/devisees other than the 2000 “I Feel Good” Trust, the Settling Parties have planned to preserve the Estate’s right to a charitable deduction for the value of the assets passing to the 2000 “I Feel Good” Trust.

The specific concerns of the Personal Representatives/Trustees, as expressed by their expert witness, Harley Ruff, Esquire, are addressed below.

Attorneys’ Fees – According to the settlement agreement, each party is ultimately responsible for his or her own attorneys’ fees. These fees are therefore not additional costs to the charitable beneficiaries. These attorneys’ fees may be deductible for estate tax purposes. Treasury Regulation §20.2053-3(c)(3) provides “[a]ttorneys’ fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney’s fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate.” This regulation allows attorneys fees incurred by beneficiaries to be deductible for estate tax purposes if they were incurred in litigation that was

DAE  
#39

essential to the proper settlement of the estate. The Settling Parties plan to contend that the majority of their legal fees have been incurred in litigation essential to the proper settlement of the Estate and, thus, are deductible by the Estate. By providing a pro-rata reduction of the elements of the Estate which are subject to estate taxes, the net amount to be received by the Settling Parties, including the charitable beneficiaries, would be increased.

The Settling Parties plan to assert that the payment of the Settling Parties' legal fees are deductible as an estate administration expense under §2053. The Settling Parties' legal fees were necessary in determining the proper distribution of the estate due to (i) the alleged undue influence asserted against Mr. Brown, and (ii) establishing Tommie Rae Brown as the spouse of James Brown, and her entitlement to either the elective share or the omitted spouse share. Additionally, the efforts of the Settling Parties, Pope and Buchanan, and their counsel uncovered the mismanagement and misappropriation by the initial fiduciaries and led to their resignation. Pending the outcome of additional litigation, these efforts may lead to the Estate's recovering substantial sums.

Due Diligence – The Settling Parties are aware that it is in the best interest of all beneficiaries of the Estate of Mr. Brown, whether Settling Parties or not, that the Estate minimize any potential estate tax due by Mr. Brown's estate. For that reason, the Settling Parties assert that they have carefully examined the potential estate tax consequences of the Settlement Agreement and are confident that they have drafted the Agreement in such a way as to preserve the charitable and marital deduction to the greatest extent possible in line with the provisions of the settlement.

Effect of Settlement on Charitable Deduction – Mr. Ruff expressed concerns that the structure of the Settlement Agreement and the James Brown Legacy Trust would jeopardize the

charitable deduction because it results in a non-qualified split interest trust under §2055(e)(2). The Settling Parties disagree that a non-qualified split interest trust is created, and, even if it was, assert that the form of the James Brown Legacy Trust can be revised to satisfy the split interest trust rules of §2055(e)(2).

The Settlement Agreement provides that each Settling Party will receive a specified percentage of the Estate assets. These assets are first distributed to and/or are owned by the Settling Parties outright. The Settling Parties have contractually obligated themselves to then contribute these assets to the James Brown Legacy Trust for consolidated management and marketing of the "James Brown assets." The assets do not pass directly from Mr. Brown's estate to the James Brown Legacy Trust. The assets pass directly to the Settling Parties, who in turn contribute these assets to a co-investment entity, the James Brown Legacy Trust. Such co-investment between charitable and non-charitable beneficiaries is specifically permitted by Section 4943 of the Internal Revenue Code.

Even if the IRS or a federal court were to disregard the distribution of assets to the Settling Parties and their subsequent contribution to the James Brown Legacy Trust, and treat the assets of the Estate of James Brown as passing directly to the James Brown Legacy Trust, the Settling Parties could amend the structure of the James Brown Legacy Trust (as they are required under the settlement agreement to do if necessary to preserve the charitable deduction) to allow the contribution to qualify for the charitable deduction. In *Galloway v. U.S.*, 99 AFTR2d 2007-3412, the case cited by Mr. Ruff in support of his opinion that the charitable deduction would not be allowed if the Settlement Agreement were approved, the Court emphasized that there was a single Trust that did not divide until distributions were to be made some years in the future. The Settling Parties believe that amending the James Brown Legacy Trust to provide for a charitable

share, to which the 2000 "I Feel Good" Trust assets would be contributed, and a non-charitable share, to which all other "James Brown assets" would be contributed, is one option that would resolve the issue of the non-qualified split interest trust, if necessary.

## 2. Self Dealing

Mr. Ruff alleged that the right of first refusal granted to Terry Brown in the Settlement Agreement would constitute self-dealing and would generate an excise tax and/or a loss of charitable exemption for the 2000 "I Feel Good" Trust.

The Settling Parties opine that the granting of the right of first refusal and the exercise of the right of first refusal (presuming such exercise is done while the estate is still open for federal income tax purposes) fall within the "estate administration" exception to self-dealing found in Regulation §53.4941(d)-1(b)(3). If the right of first refusal does not fall within the "estate administration" exception to self-dealing, the Settling Parties could propose that the 2000 "I Feel Good" Trust become a public charity (such as a Supporting Organization supervised and controlled by the South Carolina Attorney General's Office), which is not subject to the self-dealing prohibition.

If the right of first refusal does not meet the "estate administration" exception, and the 2000 "I Feel Good" Trust cannot be converted to a public charity, the Settlement Agreement provides that "[i]f any time any federal or state agency determines that any part of this Addendum shall endanger the tax-exempt status of the Charitable Trust, and that decision becomes final and non appealable, then the parties shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the charitable trust." This type of curative language is used by planners as the ultimate safeguard to prevent charitable exemption problems.

DAE  
#42

### 3. Marital Deduction

Mr. Ruff addressed the case of *Commissioner of Internal Revenue v. Estate of Bosch*, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967), and its impact on the marital deduction. In *Bosch*, the issue of whether the estate was due a marital deduction was dependent on the interpretation of state law (i.e. whether the widow's purported release of a power of appointment was valid). The Supreme Court of the United States ruled that only an opinion of the state's highest court as to a state law issue is binding on federal authorities when applying federal law.

*Bosch* does not directly affect whether or not the Estate of James Brown will be entitled to a marital deduction for assets that pass to his wife, Tommie Rae Brown. *Bosch* simply states that the IRS and the federal courts are not required to accept a South Carolina court's ruling that Tommie Rae Brown is the spouse unless that ruling comes from the South Carolina Supreme Court. As is the case with any surviving spouse, nothing in *Bosch* prevents the Estate of James Brown from arguing the merits of Tommie Rae Brown's claim that she was the wife of James Brown. If the Estate prevails on the merits of that claim, it will be entitled to a marital deduction for assets that pass to Mrs. Brown, despite the lack of a Supreme Court ruling that she is the wife of Mr. Brown.

### 4. Private Letter Ruling

The Settling Parties have not yet sought a Private Letter Ruling ("PLR"). *Revenue Procedure 2009-1* states that a PLR is issued only to a "taxpayer" and must be signed by the taxpayer or an "authorized representative." In this case, the Settling Parties have no authority to act on behalf of either the estate or the 2000 "I Feel Good" Trust.

DAE  
#213

The Settling Parties anticipate that an independent professional fiduciary appointed by this Court will carefully consider whether or not to apply for a PLR on one or more issues, after consulting with the Settling Parties, especially the Attorney General.

Thus, after conducting substantial due diligence with the advice of highly-regarded tax lawyers, including a number of certified tax specialists, the Settling Parties assert that the Settlement Agreement does not disqualify the charitable exemption, cause excise tax problems, or prevent the Estate from receiving a charitable deduction for property passing to the 2000 "I Feel Good" Trust. However, to the extent that there may be a problem, the Settling Parties have a number of options. They can pursue the estate administration exception. They can pursue the conversion of the private foundation to a public charity (which they may choose to do for nontax reasons as well). If such options fail to protect the charitable exemption, the Settling Parties are required by the Settlement Agreement to take whatever curative action is necessary to protect the charitable exemption, which would be enforced by the Attorney General.

#### IV. Conclusion

Based on the foregoing, I find as follows:

1. All necessary parties are properly joined;
2. Notice has been provided to all necessary parties;
3. The settlement agreement has been executed by all persons having beneficial interests which are affected by the compromise;
4. The controversy is in good faith; and
5. The settlement is fair, equitable, and reasonable.

I therefore Order as follows:

1. The settlement is approved;

44

DAE  
#44

2. Adele J. Pope and Robert L. Buchanan, Jr., are directed to execute the agreement; and
3. Russell L. Bauknight is immediately appointed as Personal Representative of the Estate and Trustee of the James Brown 2000 Irrevocable Trust in replacement of Ms. Pope and Mr. Buchanan.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
The Honorable Doyet A. Early, III

May 26, 2009  
Aiken, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

HENRY DARGAN McMASTER, in his capacity as Attorney General of the State of South Carolina; DARYL J. BROWN, on behalf of his minor children, LINDSEY DELORES BROWN and JANISE VANISHA BROWN; DEANNA J. BROWN THOMAS, on behalf of her minor children, JASON BROWN LEWIS; YAMMA N. BROWN, on behalf of her minor children, SYDNEY LUMAR, CARRINGTON LUMAR, and TONYA BROWN; VANISHA BROWN; and LARRY BROWN; TOMMIE RAE HYNIE BROWN,

Petitioners,

vs.

RUSSELL L. BAUKNIGHT, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, TERRY BROWN, ROMUNZO BROWN; FORLANDO BROWN; CINNAMON N.M. PARIS; LARHONDA PETITT; and JEANNETTE MITCHELL,

Respondents.

*In Re:*

The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No. 08-CP-02-1647-*original*

(Case No. 07-CP-02-0122) *cert/copy*  
(Estate of James Brown)

(Case No. 08-CP-02-00872) *cert/copy*  
(Wills/Trust/Heirs Matters)

ORDER

FILED

9.16.09

*Liz Godard*  
CC.C.P.&G.S.  
*Anita Knoepfle* / 15  
Deputy Clerk

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 16 2009

CC.C.P.&G.S. Aiken County, S.C.

Deputy Clerk

This matter comes before the Court upon a filing of Application to Lift Stay by counsel for Russell L. Bauknight, Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust, and counsel for all the settling

*YATC*  
#1

parties under the Settlement Agreement approved by this Court by Order dated May 26, 2009 (the "Settling Parties"). The Court heard arguments on September 9, 2009.

The Court has carefully reviewed the filings and considered the arguments related to the Application to Lift Stay.

A partial procedural history relevant to the Application to Lift Stay follows:

1. July 14, 2008 By Order of Judge Cureton dated July 14, 2008, the South Carolina Court of Appeals orders the automatic stay, if any, under Rule 241, SCACR (formerly Rule 225, SCACR), is lifted in order to permit Pope/Buchanan to handle affairs of the Estate while previous Personal Representatives/Trustees challenge their appointment;
2. Sept. 29, 2008 Attorney General files Petition for Removal and Restraint of Trustees;
3. Nov. 7, 2008 Attorney General and others file their Motion for Emergency Appointment of Special Administrator and Special Trustee;
4. Nov. 7, 2008 Attorney General and others file their Amended Petition for Removal and Restraint of Trustees Albert H. Dallas, Alfred A. Bradley, and David G. Cannon and Removal and Restraint of Personal Representatives and Trustees Adele J. Pope and Robert L. Buchanan, Jr.;
5. Jan-Mar 2009 This Court conducts hearings on proposed settlement and replacement of Pope/Buchanan as Personal Representatives and Trustees;
6. May 26, 2009 This Court issues Order Approving Settlement Agreement which replaces Pope/Buchanan as Personal Representatives and Trustees with Bauknight as Personal Representative and Trustee;
7. June 1, 2009 Pope/Buchanan file Motion for Reconsideration of May 26, 2009 Order (80 page motion with 404 grounds);
10. July 8, 2009 This Court issues Order denying Pope/Buchanan's Motion for Reconsideration of May 26, 2009 Order;
11. July 21, 2009 Pope/Buchanan file a Notice of Appeal of this Court's May 26, 2009 Order and the actions of the Aiken County Probate

*MTE*  
*#2*

Court issuing certificates terminating their appointment and appointing Bauknight;

12. July 24, 2009 Bauknight files his Application to Lift Stay (Rule 241, SCACR (formerly Rule 225, SCACR)) with this Court seeking authority for Bauknight to act for Estate and Trust during Pope/Buchanan's pending appeal of this Court's May 26, 2009 Order.

Russell L. Bauknight has served as Personal Representative for the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust since May 26, 2009, when this Court appointed him to those fiduciary positions in replacement of Pope and Buchanan. This Court is informed that Bauknight has possession of one-hundred and forty-five (145) banker's boxes that contain the majority of the key documents and trust property and that Bauknight has been handling the administration of the Estate and Trust for over three months.

As evidenced by the participation of all of the Settling Parties in this request for relief, Bauknight has handled the administration in a manner acceptable to and supported by all Settling Parties.

During this critical time frame, this Court believes it is important to allow for consistent administration of the Estate and Trust, and that to interfere with Bauknight's continuing administration of the Estate and Trust would not be in the best interest of the Estate, the Trust, or the beneficiaries.

As recognized by Judge Cureton's Order dated July 14, 2008 in this case, the South Carolina Court of Appeals previously determined that the automatic stay, if any, should be lifted to allow the fiduciary appointed in the Order that is the subject of the appeal to continue the ongoing administration of the Estate and Trust. Of particular relevance to this matter, Pope and Buchanan took the position in those proceedings that the automatic stay, if

*YMBE*  
*103*

any, should be lifted while the Order appointing them to the fiduciary positions was under appeal. As such, this Court has determined that Russell L. Bauknight should be allowed to continue to act as fiduciary while the appeal of this Court's Orders, including its May 26, 2009 Order, is pending. After considering all the facts and circumstances, this Court believes it is in the best interest of the Estate, the Trust, and the beneficiaries to provide for consistent administration through Bauknight during the pendency of Pope and Buchanan's appeals.

Further, the November 7, 2008 Amended Petition for Removal and Restraint filed by the Settling Parties was pending at the time this Court's May 26, 2009 Order was issued. The pending Amended Petition for Removal and Restraint statutorily bars Pope and Buchanan from taking any affirmative action as Personal Representatives. See S.C. Code Ann. §62-3-611 ("Termination of Appointment by removal; cause; procedure"). Therefore, if any stay imposed as a result of Pope and Buchanan's appeals is not lifted, there will be no personal representative with authority to administer the Estate. While there may be no corresponding statutory automatic bar to their actions as Trustees,<sup>1</sup> because the business interests of the Estate and Trust are interrelated, the limitations on their ability to act as Personal Representatives will effectively limit their ability to serve as Trustees. Therefore, it is impossible for Pope and Buchanan to effectively manage the Estate and Trust's assets and ongoing business interests while the Amended Petition for Removal and Restraint is pending before this Court.<sup>2</sup> If any automatic stay applies as a result of their appeal of this

---

<sup>1</sup> Although the South Carolina Trust Code (SCTC) may not contain a statutory automatic bar when the removal of a trustee is sought, as compared to the statutory automatic bar imposed when seeking the removal of a personal representative, the provisions of the SCTC confirm the authority of a court to impose such a restraint. See, e.g., SCTC Sections 62-7-706, 62-7-1001.

<sup>2</sup> Importantly, Pope and Buchanan have asserted in various pleadings and sworn affidavits that they understand that they are restrained.

*YME*  
*BA*

Court's May 26, 2009 Order, it must be lifted in order to allow Bauknight to continue administration of the Estate and Trust and thereby avoid irreparable harm to the Estate and Trust.

The purpose of an automatic stay pending an appeal is to preserve the status quo and to protect the interests of the appealing party. In this case, the status quo may be preserved only by lifting any automatic stay applicable under South Carolina Appellate Court Rule 241 ("Rule 241, SCACR"). This Court is mindful that Bauknight has undertaken the complex task of administering the Estate and Trust for the past three months. Because the Amended Petition for Removal and Restraint of Pope and Buchanan as Personal Representatives and Trustees is pending before this Court, if an automatic stay is imposed, the status quo will not be maintained. Pope and Buchanan are statutorily barred from taking action except to correct acts of maladministration and to preserve the Estate. Further, an automatic stay is unnecessary to protect the interests of Pope and Buchanan. If their appeal is successful and they are reinstated to the offices of Personal Representatives of the Estate and Trustees of the Trust, their interests will not have been harmed in any way by lifting any automatic stay.

Based on the foregoing, I find as follows:

- i. All of the Settling Parties have joined Bauknight in the Application to Lift Stay.
- ii. Notice has been provided to all interested parties.
- iii. As a result of the Amended Petition for Removal and Restraint filed in this Court on November 7, 2008, Pope and Buchanan are statutorily barred from effectively serving as Personal Representatives or Trustees of the Estate and

Trust;

- iv. Any automatic stay imposed by Rule 241, SCACR, would leave the Estate of James Brown and the James Brown 2000 Irrevocable Trust without a Personal Representative and Trustee who could effectively manage the Estate and Trust's assets and ongoing business interests and could moot the effect of this Court's May 26, 2009 Order;
- v. Any failure to effectively manage the Estate and Trust's assets and ongoing business interests at this critical time would cause irreparable harm to the Estate and Trust;
- vi. Russell L. Bauknight has acted as the lawful Personal Representative of the Estate and Trustee of the Trust since May 26, 2009, and it is in the best interest of the Estate, the Trust, and the beneficiaries to allow him to continue administration of the Estate and the Trust in order to maintain the status quo during the pendency of any appeals by Pope and Buchanan;
- vii. The actions of the Aiken County Probate Court taken pursuant to this Court's May 26, 2009 Order issuing a Termination of Appointment for Pope and Buchanan as Personal Representatives and Trustees and Fiduciary Letters and Certificate of Appointment as Personal Representative and Trustee to Russell L. Bauknight are hereby affirmed;
- viii. Russell L. Bauknight, as Personal Representative and Trustee, shall be restricted from making distributions to beneficiaries from the Estate or Trust without further Order of this Court but shall have all powers necessary to administer the Estate and Trust and carry out his fiduciary obligations to the

*MOE*  
*HL*

- Estate and Trust during the pendency of the Pope and Buchanan appeals; and
- ix. Pope and Buchanan shall have no authority in the administration of the Estate or the Trust during the pendency of their appeals.

IT IS HEREBY ORDERED:

1. That the Application to Lift Stay is GRANTED to the extent that any stay would otherwise apply to the ongoing administration of the Estate and Trust during the pendency of any appeals of this Court's orders; provided, however, pursuant to Rule 241, SCACR, the following restrictions are placed on Russell L. Bauknight as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust:

a. There shall be no distributions of Estate or Trust assets to Estate or Trust beneficiaries during the pendency of the appeal of this Court's May 26, 2009 Order approving the Settlement Agreement; and

b. There shall be no payments to current or former Personal Representatives or Trustees for commissions from Estate or Trust assets without further Order of this Court.

2. That the actions of the Aiken County Probate Court taken on May 26, 2009 issuing a Termination of Appointment for Pope and Buchanan as Personal Representatives and Trustees and Fiduciary Letters and Certificate of Appointment as Personal Representative and Trustee to Russell L. Bauknight pursuant to this Court's May 26, 2009 Order are hereby affirmed; and



3. That Russell L. Bauknight, as Personal Representative of the Estate of James

*TME*  
*27*

Brown and Trustee of the James Brown 2000 Irrevocable Trust, except as specifically restricted above in Item 1, has all powers necessary to, and is authorized to, continue any and all activity necessary for the proper administration thereof during the pendency of the appeal of this Court's May 26, 2009 Order and will continue to be exclusively responsible for all Estate and Trust matters.

IT IS SO ORDERED.

  
\_\_\_\_\_  
The Honorable Doyet A. Early, III

  
\_\_\_\_\_, 2009.  
  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE PROBATE COURT

2013 CP 02 01337

ORDER

IN RE: James Brown aka )  
James Joseph Brown )  
Probate Case No. 2007-ES02-0056 )

**IN RE: Summons and Complaint to Void Appointment and Notice of Disallowance; for Review and Direction to Pay Commissions and Fees under Wilson v. Dallas; Remove Bauknight; Require Emergency Appointment of Litigation SA/ST to Prevent Further Damage by Bauknight in Wilson v. Dallas and Related Cases; for Accounting; And for Related Relief; Motion for Expedited Voiding of Claimed Appointments; Notice of Disallowance; and Appointment of SA/ST, Including Emergency Appointment of SA/ST For Litigation to Accept Service And Prevent Further Loss by Bauknight; Affidavit Supporting Request for Emergency Appointment of Litigation SA/ST and Expedited Appointment of Administration SA/ST and Related Relief filed on June 10, 2013 by Adele J. Pope**

**Pursuant to Code of Laws of South Carolina Section 62-1-302(d) as amended, upon this Court's Motion, this matter is hereby transferred to the Court of Common Pleas by Order of this Court.**

IT IS SO ORDERED THIS 11<sup>th</sup> DAY OF June, 2013

6-12-2013  
[Signature]  
Deputy Clerk

[Signature: Sue H. Roe]  
Honorable Sue H. Roe, Judge of Probate  
Aiken County, South Carolina

FILED 6.13.13  
Liz Hodson  
J.C.P. & G.S. 11:30  
Anita K. [unclear]  
Deputy Clerk

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN (ON REMOVAL FROM PROBATE COURT)

IN RE:  
THE ESTATE OF JAMES BROWN  
A/K/A: JAMES JOSEPH BROWN

ADMINISTRATIVE ORDER

Case No.: 2008-CP-02-1647 -originals  
Case No.: 2007-CP-02-0122 } cert/copy  
Case No.: 2008-CP-02-0872 }

On May 29, 2013 this Court held a status conference concerning *Wilson v. Dallas*, --- S.E.2d ---, 2013 WL 2005103 (2013), the South Carolina Supreme Court's May 8, 2013 Opinion (the "Opinion") affirming, reversing, and remanding this Court's May 26, 2009 order confirming the James Brown Estate and Trust Settlement Agreement.

In the Opinion, the Supreme Court affirmed this Court's decision to remove Ms. Adele J. Pope from her fiduciary positions. The Supreme Court noted that: "an irreconcilable conflict existed between [Ms. Pope] and the settling parties because [Ms. Pope] had expressed continuing opposition to their actions." *Wilson*, \* 19. Accordingly, the Supreme Court held that, "the circuit court had cause to remove [her] and replace [her] with a professional fiduciary." *Id.* The Supreme Court went on to note that "the extreme discord between the parties convince us that [Ms. Pope's] continued service as [a] fiduciary is not in the best interest of the estate." *Id.*

The Supreme Court also found that this Court did not violate the statutory provisions regarding the removal of Ms. Pope as she had asserted that she was removed without this court complying with procedural mandates or for justifiable reasons. The Opinion further stated that that this Court had cause to remove her as it was not in the best interest of the estate. The Justices noted that the parties remained at odds over the handling of estate matters.

*[Signature]*  
#1

The Supreme Court referenced specific actions that it relied on in holding that Ms. Pope's service as a fiduciary was not in the best interest of the estate. The opinion specifically mentioned the \$5 million dollars in fees she sought as fiduciary for a relatively short interval of time, paying her own fees from a large portion of the funds raised from selling iconic assets, and attempting to sell a GRAMMY award. The Supreme Court found no error in this Court removing Ms. Pope from her fiduciary positions.

Despite the South Carolina Supreme Court's Opinion, Ms. Pope has now filed several documents with this Court. The documents include Motions, Memoranda, and Proposed Scheduling Orders concerning the James Brown Estate and Trust litigation. These actions and filings will not be considered by this Court. The Supreme Court of South Carolina has upheld and affirmed Mrs. Pope's removal as fiduciary, denied her motions for rehearing, and the remittitur has since been filed in this Court. It is now the law of the case that Ms. Pope has been removed from her fiduciary positions and is no longer a party to the James Brown Estate and Trust litigation. It is the Order of this Court that Ms. Pope does not have standing to proceed with the motions she has filed since the Supreme Court's opinion has issued. Accordingly, this Court hereby directs the Clerk of Court to remove Ms. Pope's filings from these cases pursuant to the Supreme Court's Opinion removing her as party to these proceedings.

This Court is aware that Ms. Pope has filed a separate fee petition for Personal Representative and Trustee commissions. If Ms. Pope's fee petition is litigated, then pursuant to past practices, the Probate Court is hereby directed to assign the case to the Circuit Court, and the Clerk of Court is hereby directed to assign Mrs. Pope's fee petition a separate case number. Ms. Pope's filings relating to her fee petition shall then be filed under that case number.

*POPE*  
*#2*

AND IT IS SO ORDERED.

*Somberg*

~~Barnwell~~, South Carolina

June 13, 2013

*Doyet A. Early III*

The Honorable Doyet A. Early, III  
Chief Administrative Judge  
Second Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE CIRCUIT COURT

Adele J. Pope,

Plaintiff,

vs.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

C/A No. 2013-CP-02-1337

**RECEIVED**

FEB 07 2014

ORDER SC Court of Appeals

1.17.14  
L. J. Hodson  
C.C.P. & G.S.  
Amita Knoeche 12/20/13  
Deputy Clerk

This matter came before the Court on the Motion to Dismiss or, in the Alternative, for a More Definite Statement of Defendant Russell L. Bauknight, as Special Administrator of the Estate of James Brown (the "Estate") and Special Trustee of the James Brown 2000 Irrevocable Trust (the "Trust"), pursuant to Rule 12(b)(6) and Rule 12(e) of the South Carolina Rules of Civil Procedure. A hearing in this matter was held on Tuesday, December 2, 2013. Present were Adele Pope, *pro se* Plaintiff, Russell Bauknight, Defendant, William G. Newsome III, attorney for the Defendant Russell L. Bauknight in his fiduciary capacities as general personal representative and special administrator of the Estate of James Brown and general trustee and special trustee of The James Brown 2000 Irrevocable Trust, and Frederick A. Crawford, attorney for Defendant Russell L. Bauknight in his individual capacity.

*WGE*  
#1

### PROCEDURAL HISTORY

Plaintiff filed a Complaint in this action on June 10, 2013. Attached to the Complaint as Exhibit 1 was a Petition for Allowance of Claim. Defendant Bauknight filed his motion to dismiss the Complaint pursuant to Rule 12(b)(6) and motion for more definite statement pursuant to Rule 12(e) in his fiduciary capacities as personal representative and special administrator of the Estate and trustee and special trustee of the Trust on July 10, 2013.

### STANDARD OF REVIEW

A claim may be dismissed pursuant to a Rule 12(b)(6) motion to dismiss if the defendant demonstrates that the plaintiff has failed to allege facts in the complaint sufficient to establish a cause of action. *Disbato v. S.C. Assoc. of School Administrators*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). A court must base its ruling on a Rule 12(b)(6) motion to dismiss solely on the allegations set forth in the complaint, and the court must consider all factual allegations as true. *Id.* A Rule 12(b)(6) motion may not be granted if the facts alleged in the Complaint and any inferences drawn therefrom would entitle the Plaintiff to any relief on any theory. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995). If the factual allegations and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief under any theory, then a Rule 12(b)(6) motion to dismiss should not be granted. *Id.* The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007).

### DISCUSSION & ANALYSIS

1. First Cause of Action: Voiding Appointment, Settlement and Notice and Granting of Claims

*TAE*  
#2

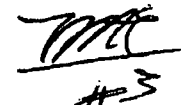
In the first cause of action, titled "Voiding Appointment, Settlement and Notice and Granting of Claims," Plaintiff appears to be requesting that the Court enter an order finding that Defendant Bauknight's appointment as special administrator of the Estate and special trustee of the Trust be found void. Plaintiff also requests that the Notice of Disallowance issued by Defendant Bauknight be declared void, the settlement entered into between Robert L. Buchanan, Jr., and the Estate and Trust be declared void, and that Plaintiff's Claim and related cases be granted. (Compl. ¶ 221.)

a. Voiding Appointment as Special Administrator or Special Trustee

In the complaint, the Plaintiff repeatedly alleges that Defendant Bauknight's appointment as a general or special fiduciary of the Estate or Trust became void upon the Supreme Court's issuance of its decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), on May 8, 2013. (Compl. ¶¶ 4, 194.) Plaintiff also requests that Defendant Bauknight's emergency appointment as special administrator of the Estate or special trustee of the trust be declared void. (Compl. ¶ 220.)

At the hearing, Plaintiff alleged that the appointment of Bauknight as special administrator and special trustee is void because it was issued after the Supreme Court issued its opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), on May 8, 2013, and prior to remittitur, which issued on May 24, 2013. The Court takes judicial notice of these two orders.

This Court also takes judicial notice of the Aiken County Probate Court's order dated June 13, 2013, in Case No. 2007-ES02-0056, 2008CP0201647, appointing Defendant Bauknight as special administrator of the Estate and confirming all prior appointments of Defendant Bauknight as special administrator. The Court further takes judicial notice of this Court's order dated June 13, 2013, appointing Defendant Bauknight as special trustee of the Trust and confirming all prior appointments of Defendant Bauknight as special trustee.

Handwritten signature and initials, possibly "MS" and "HS", in black ink.

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is substantially similar to its counterpart in Rules 12(b)(6) and 12(d) of the Federal Rules of Civil Procedure. In the absence of prior state law on a particular issue, federal cases interpreting substantially similar federal rules are persuasive. *Unisun Insurance v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000).

When considering a Rule 12(b)(6) motion to dismiss, a court generally may not consider material outside of the complaint. *Baird*, 333 S.C. at 527, 511 S.E.2d at 73; *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. Federal courts addressing the issue, however, have held that a court may take judicial notice of matters of public record outside of the pleadings and consider them for purposes of a Rule 12(b)(6) motion to dismiss. *Henson v. CSC Credit Serv.*, 29 F.3d 280, 284 (7th Cir. 1994); *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991). In considering a Rule 12(b)(6) motion to dismiss, courts may take judicial notice of documents filed in such court or in other courts. *Reyn's Pasta Bella v. Visa USA*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006); see also *Henson*, 29 F.3d at 284; *Kramer*, 937 F.2d at 773-74. If factual allegations establishing a defense are certain and clear on the face of the complaint, or other matters of which a court may take judicial notice, then a court may grant a motion to dismiss based on an affirmative defense or for lack of standing. See *Santana-Castro v. Toledo-Davila*, 579 F.3d 109, 113-14 (1st Cir. 2000) (reviewing motion to dismiss based on statute of limitations); *Citibank Global Markets, Inc. v. Rodriguez Santana*, 573 F.3d 17, 23 (1<sup>st</sup> Cir. 2009) (reviewing motion to dismiss based on affirmative defense of release); *In re Ackerman*, 247 B.R. 336, 339 (Bankr. M.D. Fla. 2000) (granting motion to dismiss for lack of standing).

Because Defendant Bauknight was appointed as special administrator and special trustee after the issuance of remittitur by the South Carolina Supreme Court, the Court grants Defendant



Bauknight's motion to dismiss Plaintiff's action seeking to void the orders appointing Defendant Bauknight as special administrator and special trustee entered prior to remittitur as moot.

In addition, in seeking to have Defendant Bauknight's appointment as special administrator and special trustee be found void, Plaintiff alleges as follows:

[I]n clear defiance of the *Wilson v. Dallas* mandate, [Defendant Bauknight] sought and may have obtained *ex parte* orders appointing him SA/ST without notice or hearing not for the proper purpose of emergency protection of assets – but to continue his plan, with Tommie Rae and other to dismantle the Estate Plan.

(Compl. ¶ 220.)

In the Complaint, Plaintiff appears to allege that the Probate Court's May 9, 2013 order appointing Defendant Bauknight as special administrator is void because Defendant Bauknight's intentions in seeking the order did not fall within the plain meaning of S.C. Code §§ 62-3-614 and 62-3-617, and the order was issued without notice or a hearing. Assuming this allegation is true, Plaintiff has not stated a viable cause of action.

As the Plaintiff is aware, it is the law of this case that, in accordance with *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E2d 184 (Ct. App. 1991), this Court does not have subject matter jurisdiction in connection with an appeal from a Probate Court order regarding the emergency appointment of a special administrator. The appointment of a special administrator is clearly temporary, and this Court does not have subject matter jurisdiction to hear an appeal challenging the appointment of a special administrator as an interlocutory order.

b. Voiding Settlement Agreement

To the extent that Plaintiff's first cause of action requests this Court to overturn a settlement agreement entered into between Defendant Bauknight, as personal representative or special administrator of the Estate or trustee or special trustee of the Trust, and Robert L.

*TTC*  
#5

Buchanan, Jr. (the "Settlement Agreement"), the Court finds that Plaintiff does not have standing to bring this claim.

Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting *Black's Law Dictionary* 1413 (7th ed. 1999)). Standing is a concept of justiciability concerning whether a particular person may raise legal arguments or claims. *Id.* (quoting 1A C.J.S. *Actions* § 101 (2005)). It concerns whether an individual has a sufficient interest in the outcome of the litigation to warrant consideration of the person's position by a court. *Id.*

The proponent of a claim has the burden of proving the three elements of standing:

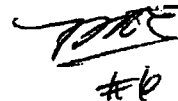
(1) That the person has suffered an injury in fact, a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;

(2) There is a causal connection between the injury and the conduct complained of – the injury must be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court; and

(3) It must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

*Smiley v. SCDEC*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007).

"As a general rule, to have standing a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). Standing requires that the person be a real party in interest, a person with a real, material or substantial interest in the subject matter of the litigation, as opposed to one who has only a nominal or technical interest in the action. *Id.*

Handwritten signature and initials, possibly "TMC" and "#6".

In the Complaint, Plaintiff seeks to have the Settlement Agreement declared void. (Compl. ¶ 221.) The Complaint alleges that the Settlement Agreement relates to Buchanan's claims against the Estate for attorney's fees and other matters that are the basis of Plaintiff's Petition for Allowance of Claim. (Compl. ¶ 5.) The Complaint appears to request that the Court declare the Settlement Agreement void so that Buchanan can proceed to collect under the Petition for Allowance of Claim filed by Plaintiff in this matter. (Compl. ¶ 269.)

Construing the factual allegations of the Complaint in the light most favorable to the Plaintiff, the Court finds that Plaintiff does not allege facts to show that she has standing to challenge the Settlement Agreement. Plaintiff has not alleged that she is a party to the Settlement Agreement or that she has any enforceable interest in or related to the Settlement Agreement. In addition, Plaintiff has not alleged that she has any legally protected interest that is injured by the Settlement Agreement or may be redressed by the Court's granting the remedy sought in the Complaint, in particular, voiding the Settlement Agreement.

In contrast, the allegations in the Complaint show that Plaintiff is attempting to request this Court to overturn the Settlement Agreement on Buchanan's behalf, without any allegation that Plaintiff is authorized to act on behalf of Buchanan or legally entitled to represent his interests. As a result, the Court finds that, based on the allegations of the Complaint, Plaintiff does not have standing to bring this action seeking to void the Settlement Agreement, and the Court hereby grants Defendant's Rule 12(b)(6) motion to dismiss with respect to any action in the Complaint seeking to void the Settlement Agreement.

c. Voiding of Notice

Plaintiff also seeks to have the Notice of Disallowance issued by Defendant Bauknight declared void. (Compl. ¶ 221.) To the extent this cause of action reasonably is based on the allegedly void appointment of Defendant Bauknight as special administrator prior to the

Handwritten signature and initials, possibly "MRE" and "#7", in the bottom right corner of the page.

Supreme Court's issuance of remittitur, the Court grants dismissal of the claim based on Defendant Bauknight's appointment as special administrator pursuant to the Probate Court's June 13, 2013 order as discussed above.

Even assuming, *arguendo*, that Defendant Bauknight's appointment as special administrator is void, Plaintiff's request to void the Notice of Disallowance is moot because Plaintiff has filed a Petition for Allowance of Claim and requested the court to consider her claim. S.C. Code Ann. § 62-3-806(a), (b) (providing procedure for filing petitions for allowance of claim before or after personal representative mails notice of disallowance.).

d. Granting of Claim

To the extent that Plaintiff alleges that her claim should not be denied and requests an order of this Court granting payment of the claim, the Court presumes that this request for relief is subsumed by the Petition for Allowance of Claim simultaneously filed by the Plaintiff with the Complaint. The Court, therefore, denies Defendant Bauknight's motion to dismiss to the extent it requests dismissal of Plaintiff's claim for payment pursuant to her Petition for Allowance of Claim.

2. Second Cause of Action: Removal and Accounting of Bauknight; Appointment of SA/ST for Litigation on Behalf of Will/2000 Trust & SA/ST for Management under Will/200 Trust

The Second Cause of Action in Plaintiff's Complaint appears to request a general removal of Defendant Bauknight as special administrator of the Estate and as special trustee of the Trust, an accounting by Defendant Bauknight, and appointment of a special administrator and trustee. (Compl. ¶ 282.)

a. Removal of Special Administrator, Accounting with respect to the Estate, and Appointment of a Special Administrator

*WAC*  
#8

A general personal representative may be removed for cause on the petition of a person interested in the estate. S.C. Code Ann. § 62-3-611. A special administrator may be removed for cause by the same procedure. S.C. Code Ann. § 62-3-618.

An interested person with respect to an estate includes heirs, devisees, children, spouses, creditors, beneficiaries, and any other having a property right in or claim against a trust or estate of a decedent that may be affected by the proceeding. S.C. Code Ann. § 62-1-201(20).

In relevant part, Plaintiff's claim for removal of Defendant Bauknight as special administrator of the Estate will survive dismissal if the allegations in the Complaint establish that she is a creditor with a claim against the Estate which may be affected by the proceeding. S.C. Code Ann. § 62-1-201(20). The Court finds that the well-pled allegations of the Complaint, which are presumed to be true, fail to establish that the Plaintiff is an interested person entitled to seek removal of Defendant Bauknight as special administrator of the Estate.

Plaintiff's Complaint does not contain any allegation, nor any reasonable inference therefrom, that Defendant Bauknight's actions as special administrator jeopardize or will cause the Estate to be unable to make payment on Plaintiff's claim against the Estate. Other than the mere fact of denial of her claim, nowhere in the Complaint does Plaintiff allege that Defendant Bauknight is wasting or administering the Estate in any manner that will cause assets to be unavailable for payment of her claim in the ordinary course of administration of the Estate. To hold otherwise would be to find that any alleged creditor of an Estate could bring an action for removal of a personal representative for no reason other than preliminary denial of the alleged creditor's claim.

Plaintiff's Complaint contains numerous allegations questioning the date of death value Defendant Bauknight established for the Estate. (Compl. ¶ 232-33, 240, 243, 270, 274.) In the

*TOMC*  
#9

Complaint, Plaintiff alleges that the date of death value of the Estate was far more than the value purportedly established by Defendant Bauknight, and also that after the decedent's death the Estate has generated funds to pay down substantial debts associated with the Estate. (Compl. ¶ 17, 113, 228.) The Complaint, however, contains no allegations reasonably establishing how the date of death value claimed by Defendant Bauknight, or any other action other than his mere denial of Petition's alleged claim against the Estate, jeopardizes payment of her claim from the current assets of the Estate.

Based on the foregoing, the Court grants Defendant Bauknight's motion to dismiss Plaintiff's claim for removal of Defendant Bauknight as special administrator for lack of standing. As such, the Court additionally grants Defendant Bauknight's motion to dismiss Plaintiff's claims for an accounting with respect to the Estate and appointment of another special administrator as moot.

b. Removal of Special Trust, Accounting with respect to the Trust, and Appointment of a Special Trustee

Plaintiff also seeks to have Defendant Bauknight removed as special trustee of the Trust. (Compl. ¶ 282.) Plaintiff alleges that she is an "other" entitled to enforce the Trust. (Compl. ¶ 1.c.)

A beneficiary may request the court to remove a trustee for any of the reasons set forth in subsection (b) of § 62-7-706 of the South Carolina Trust Code. S.C. Code Ann. § 62-7-706(a). With respect to a charitable trust, a beneficiary includes any person entitled to enforce the trust. S.C. Code Ann. § 62-1-201(2). With respect to a person entitled to enforce a charitable trust, the South Carolina Trust Code provides as follows:

The settlor of a charitable trust, the trustee, and the Attorney General, *among others*, may maintain a proceeding to enforce the trust.


Handwritten signature and initials, possibly "TMC" and "A10".

S.C. Code Ann. § 62-7-405(c) (emphasis added).

The comments to S.C. Code Ann. § 62-7-405(c) cite to Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. Hawaii L. Rev. 593 (1991) for the law on the enforcement of charitable trusts. In relevant part, that article discusses how courts have occasionally permitted private persons with a "special interest" in a charitable organization to sue that organization. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. Hawaii L. Rev. 593, 627 (1991). Persons with a special interest in the charity include persons who are members of an identifiable class of beneficiary of the charity, and not merely a member of the general public who is concerned that the charity be run properly. *Id.* The article cites to a study highlighting factors most likely to induce a court to grant standing to sue a charity to private persons: (1) the extraordinary acts complained of and the remedy sought by the plaintiff; (b) the presence of fraud or misconduct on the part of the charity or its directors; (c) the attorney general's availability or effectiveness; and (d) the nature of the benefitted class and its relationship to the charity. *Id.*

In construing the factual allegations in the Complaint in the light most favorable to the Plaintiff, the Court finds that Plaintiff has not alleged that she is reasonably included amongst those persons statutorily listed to maintain a proceeding to enforce the Trust. The factual allegations of the Complaint allege that the Trust was intended to provide private scholarships to needy students. (Compl. ¶¶ 3, 12, 21, 43, 71.) Plaintiff makes no allegations that she is a member of this class, or in a position to represent a member of this class.

To support her claim that Plaintiff is an "other" entitled to enforce the Trust, Plaintiff relies solely on allegations related to her previous fiduciary relationship with the Trust and her alleged continuing duty to protect the Estate and Trust. (Compl. ¶¶ 155, 157, 166-67, 215, 218.)

  
# 11

The Court takes judicial notice of the South Carolina Supreme Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), which is relied on heavily by the Plaintiff in the Complaint. (See Compl. ¶¶ 3, 169, 269.) In that decision, the Supreme Court stated as follows with respect to Plaintiff's removal as a co-fiduciary of the Estate:

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

*Wilson*, 403 S.C. at 448-49, 743 S.E.2d 766-67.

The Court finds that, taken together with the factual allegations contained in Plaintiff's Complaint, Plaintiff cannot reasonably be included in the category of the settlor, trustee, Attorney General, or others with an interest in enforcing the Trust. To rule otherwise would be to allow Plaintiff to attempt to enforce the Trust in an individual capacity where she has previously been removed from a position to enforce the Trust in a fiduciary capacity. Because the statute cannot reasonably be read to allow Petitioner to enforce the Trust in an individual capacity, after the removal of Plaintiff in a fiduciary capacity, the Court grants Defendant Bauknight's motion to dismiss Plaintiff's claim to remove Defendant Bauknight as special trustee, for an accounting, and for appointment of another special trustee.

3. Third Cause of Action: Leave to Amend After Removal and/or Appointment of SA/ST

  
#12

In her third cause of action, Plaintiff requests leave to amend after the Court considers issues related to the appointment of a special administrator or special trustee. (Compl. ¶ 286.)

Because the Court grants Defendant Bauknight's motion to dismiss with respect to any claims in the Complaint relating to removal of Defendant Bauknight as special administrator or special trustee and appointment of another special administrator or special trustee, the Court dismisses Plaintiff's Third Cause of Action as moot.

4. Fourth Cause of Action: Attorney's Fees

Because the Court grants Defendant Bauknight's motion to dismiss with respect to any claims in the Complaint other than Plaintiff's Petition for Allowance of Claim, the Court dismisses Plaintiff's Fourth Cause of Action as moot with respect to any claim for attorney's fees other than those related to Plaintiff's Petition for Allowance of Claim.

CONCLUSION

Viewing the facts alleged in the complaint, and any inferences drawn therefrom in the light most favorable to the Plaintiff, it is clear that Plaintiff, in large part, has not stated claims upon which relief may be granted. For that reason, Defendant Bauknight's Motion to Dismiss is **DENIED** to the extent that it seeks to dismiss Plaintiff's request for payment of her claim in accordance with the Petition for Allowance of Claim, and is **GRANTED** to the extent of all other claims set forth in the Complaint.

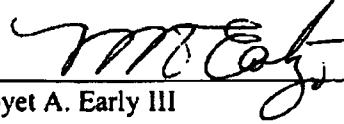
The Court notes that the Complaint contains no allegations bringing causes of action against Defendant Bauknight as general personal representative of the Estate or general trustee of the Trust, and as such the Court grants Defendant's Bauknight's motion to be dismissed as a party to the action in those capacities.

In light of this ruling on Defendant Bauknight's Motion to Dismiss, Defendant's Rule 12(e) Motion for More Definite statement is not considered at this time.

*JMC*  
*6/15*

Defendant Bauknight has fifteen (15) days from receipt of this order to respond to Plaintiff's Petition for Allowance of Claim.

IT IS SO ORDERED.



\_\_\_\_\_  
The Honorable Doyet A. Early III  
Second Judicial Circuit

Aiken, South Carolina

2-7, 2014.

**RECEIVED**

FEB 07 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-02-1337

Adele J. Pope

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and the James Brown 2000 Irrevocable Trust

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: Adele J. Pope's Motion to Alter or Amend and/or Reconsider and Vacate Order Dated January 7, 2014 Dismissing Claims Under Rule 12(b) is DENIED.

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

*2 4 14*  
*Dei Padard*  
 C.C.P. & S.  
*Anita Knoepke HAD*  
 Deputy Clerk

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest



STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

vs.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

IN THE PROBATE COURT

Estate File No. 2007-ES-02-0056

2013-CP-02-1337

**ORDER DISMISSING CASE WITH  
PREJUDICE**

3.10.14  
~~FILED~~  
*Liz Anderson*  
C.C.P. & G.S.  
*Anita Knoepfle* 820  
Deputy Clerk

THIS MATTER came before the Court on December 3, 2013 upon Defendant Russell L. Bauknight's July 10, 2013 Notice of Motion and Rule 12 Motion to Dismiss (the "Motion"), filed in his **individual** capacity. The Court, having reviewed the Complaint and considered the arguments presented by counsel, grants the Motion to Dismiss Russell L. Bauknight, **individually**, with prejudice, and finds as follows:

**FINDINGS OF FACT**

1. The Plaintiff filed this action on June 10, 2013.
2. In her Complaint spanning sixty-three (63) pages, the Plaintiff makes numerous allegations against Defendant Bauknight as a fiduciary of the Estate of James Brown (the "Estate") and The James Brown 2000 Irrevocable Trust (the "Trust").

*WAE*  
#1

3. The only allegations against Defendant Bauknight, in his **individual** capacity, deal with the Plaintiff's desire for Mr. Bauknight to pay both his and Plaintiff's attorney's fees, incurred in the defense of this action, from his personal assets and not from the assets of the Estate or the Trust. See, e.g., Complaint ¶ 289 ("Russell, **individually**, should pay all costs of the Notice, his **Individual** Defense of this Case, and the Estate's defense . . . ."); Complaint Prayer ¶ 6 ("Directing Russell, **individually**, to pay all costs and attorneys' fees of this action, with the Estate/2000 Trust to pay no portion of Russell's fees and costs . . . .").

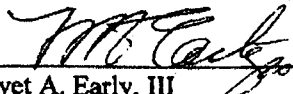
#### CONCLUSIONS OF LAW

4. As an initial matter, the Court finds that, even giving the Plaintiff every benefit of the doubt as a pro se litigant and taking all matters pled by the Plaintiff as being true, the Complaint, on its face, fails to meet the minimum pleading requirements of the South Carolina Rules of Civil Procedure. Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). A Complaint must contain "a short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a), SCRPC. Here, the Complaint does not contain "a short and plain statement of the facts" and fails to show that the Plaintiff "is entitled to relief" against Defendant Bauknight, in his **individual** capacity. Id. Instead, the Complaint is mostly comprised of allegations against Defendant Bauknight in his fiduciary capacity. More specifically, Plaintiff's Complaint does not sufficiently plead any single cause of action against Defendant Bauknight, in his **individual** capacity, but rather relates to, references, and cites actions taken by Defendant Bauknight as a fiduciary of the Estate and the Trust. As a result, dismissal is proper under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a claim against Defendant Bauknight in his **individual** capacity.

MAE  
#2

IT IS HEREBY ORDERED that the Complaint against Defendant Russell L. Bauknight, **individually**, be dismissed, with prejudice.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Judge, Second Judicial Circuit

Aiken, South Carolina

March 4, 2014.



without merit. Based on the foregoing, and for good cause shown, Plaintiff's Motion to Strike is hereby DENIED.

IT IS SO ORDERED.



\_\_\_\_\_  
The Honorable Doyet A. Early III  
Second Judicial Circuit

Aiken, South Carolina

9-8, 2014.

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP0201337

Adele Pope	James Estate Of Brown Russell L Trustee Banknight
------------	--

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Sealed);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order. (formal order to follow)  Statement of Judgment by the Court:

**Plaintiff Adele Popes motion for partial summary judgment for attorney fees and Russell L Banknight, Trustee cross motion for partial summary judgment are denied – material issues of fact exist which preclude summary judgment.**

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

CPFORM4Cm  
 SCCA SCRPC Form 4C (Revised 3/2013)

12-15-13  
*Liz Hodasch*  
 J.C.C.P. & S.  
**EXHIBIT A**

12-22-13  
*Liz Hodasch*  
 J.C.C.P. & S.  
*Anita Knoeller*  
 Deputy Clerk

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
Adele J. Pope, )  
Plaintiff, )  
v. )  
Estate of James Brown, Deceased; The )  
James Brown 2000 Irrevocable Trust; )  
Russell L., Bauknight, Individually, as )  
former *Executor de son tort*, and in every )  
current and former fiduciary status claimed )  
or held as to the Estate of James Brown and )  
the James Brown 2000 Irrevocable Trust, )  
Defendants. )  
AND: )  
Robert L. Buchanan, Jr., )  
Interested Party. )

IN THE COURT OF COMMON PLEAS  
Case No. 2013-CP-02-1337 - *original*

ORDER

*1.20.15*  
\_\_\_\_\_  
*Liz Godard*  
C.C.P.&G.S.  
\_\_\_\_\_  
*Anita Knoepfle* *10/11*  
Deputy Clerk

The Court after conferring with counsel, Judge Manning, and I have determined that judicial economy would be served by a joint, Court-ordered mediation of the of Aiken County Case 2013-CP-02-1337 ("Case 1337") and Richland County Case 2010-CP-40-4900 ("Case 4900").

IT IS, THEREFORE, ORDERED:

1. That Karl Folkens, Esquire, is here by appointed as the mediator and shall choose the time, place, and date of the mediation as soon as possible.
2. All parties and counsel of record are directed to participate in and attend the mediation in person.
3. Counsel must ensure full compliance with Rule 6(b), SCRADR, regarding attendance at the mediation settlement conference.
4. Counsel must certify to the mediator that each has disseminated the mediators "Frequently Asked Questions" to their respective clients within ten (10) days of the scheduled mediation settlement conference.

*[Handwritten signature]*


5. The Estate shall advance the cost and expenses of the mediation but will be allowed to deduct said advancements once a distribution is made.

6. Regarding the allocation of the costs of the mediation, the mediator shall have authority to group parties with common interests as one.


7. Within twenty (20) days, counsel shall participate in a pre-mediation telephone conference with the mediator for the purpose of scheduling the mediation and addressing location, timing, and procedure of the mediation settlement conference.

8. The parties shall provide the mediator with a memorandum setting forth their respective positions regarding the issues that need to be resolved within twenty-five (25) days of the date of this order.

AND IT IS SO ORDERED.

  
The Honorable Doyet A. Early, III  
Resident Judge  
Second Judicial Circuit

January 17, 2015  
Aiken, South Carolina

  
The Honorable L. Casey Manning  
Resident Judge  
Fifth Judicial Circuit

January 6, 2015  
Columbia, South Carolina

# The Supreme Court of South Carolina

Ex Parte: Susan D. Summer, Petitioner,

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

Appellate Case Nos. 2015-000186 and 2015-000215

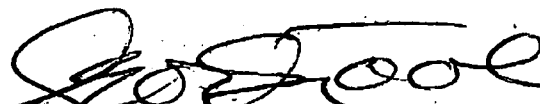
---


## ORDER

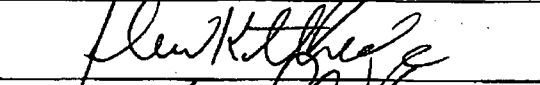
---


Petitioner has appealed an order temporarily restraining her from publishing or disseminating documents in her possession purported to be the diary of Tommie Rae Hynie a/k/a Tommie Rae Brown. She seeks a writ of supersedeas to stay enforcement of the order and a writ of prohibition to prevent the Aiken County Circuit Court from exercising jurisdiction over her. We deny the requests.

The temporary restraining order clearly violates petitioner's First and Fourteenth Amendment rights and will not be upheld by this Court. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976) (prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights, and truthful reports of public judicial proceedings have been afforded special protection against subsequent punishment); *State-Record Co. v. State*, 332 S.C. 346, 504 S.E.2d 592 (1998) (the party seeking to uphold a prior restraint on the media's First Amendment right of free speech bears an extremely heavy burden). Accordingly, the temporary restraining order is dissolved, and the appeal is dismissed as moot.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Justice Costa M. Pleicones, not participating.

Columbia, South Carolina

March 4, 2015

cc:

Jerry Jay Bender, Esquire

Thomas H. Pope, III, Esquire

Robert N. Rosen, Esquire

Corey Ty Landon Smith, Esquire

**FORM 4 ORDER**  
**7/18/16**

FILED 9/16 2016  
Liz Godard  
C.C.C.P. & G.S.  
Debbie Stenson 1:15p  
LDA

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

IN THE CIRCUIT COURT

SEP 01 2016 *al*

Adele J. Pope,

Liz Godard  
C.C.C.P. & G.S., Aiken County, S.C.  
Plaintiff  
Anita Knoetze  
Deputy Clerk

Case No. 2013-CP-02-1337

vs.

Estate of James Brown, The James Brown  
2000 Irrevocable Trust,  
  
Defendants.

**CONFIDENTIALITY ORDER**

FILED 9.1.16  
Liz Godard  
C.C.C.P. & G.S.  
Anita Knoetze 12:30  
Deputy Clerk

Whereas, upon separate order, this Court has determined that a Confidentiality Order is necessary in this case and certain discovery material herein is and should be treated as confidential; accordingly, it is ORDERED:

1. **Scope.** All documents produced in the course of discovery herein, all responses to discovery requests, and all deposition testimony and deposition exhibits, and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information, as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. However, the inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as CONFIDENTIAL, as otherwise allowed by this Order.

*POPE*  
*al*

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information properly protected from disclosure by statute or regulation, or which contain sensitive personal information, trade secrets, research, development, or business/commercial information that justifies protection from disclosure. The certification shall be made concurrently with the disclosure of the documents, using the form attached hereto at **Attachment A**, which shall be executed subject to the standards of Rule 11 of the South Carolina Rules of Civil Procedure. Information or documents which are publicly available may not be designated as CONFIDENTIAL.

4. **Depositions.** Portions of depositions shall be deemed CONFIDENTIAL only if designated as such when the deposition is taken or within seven business days after receipt of the transcript by the designating party's attorney. Such designation shall specify the portions to be protected, by page and line numbers.

5. **Protection of Confidential Material.**

(a) **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties, or any other persons identified below (See ¶ 5.b.), for any purposes whatsoever, other than preparing for and conducting the instant litigation (including any appeal in this litigation).

(b) **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at **Attachment B** hereto), that he or she has read and

*TORE*  
*#2*

understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

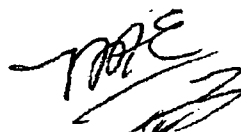
- (i) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (ii) parties and employees of a party to this Order, but only to the extent that prior to disclosure, counsel shall certify that the specifically named individual's assistance is necessary to the conduct of the litigation;<sup>1</sup>
- (iii) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
- (iv) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
- (v) other persons only upon consent of the producing party or upon Order of the Court, and on such conditions as are agreed to or Ordered.

Nothing contained in this paragraph 5 is intended to or shall prevent counsel for any party from questioning a deponent about a document designated CONFIDENTIAL pursuant to this Order where the deponent: (a) is the direct or indirect subject of the document(s); (b) is the author of or recipient of the document(s) designated CONFIDENTIAL. In this event, counsel shall comply with the provisions of paragraph 4 above regarding designating appropriate portions of the subject deposition(s) CONFIDENTIAL. Further, Attachment B need not be obtained from the deponent prior to counsel questioning the deponent regarding the subject document(s).

(c) **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to

---

<sup>1</sup> Counsel shall identify any such person to opposing counsel at least ten (10) business days prior to disclosure, so that counsel may object to the proposed disclosure if deemed appropriate.



the terms of this Order. Counsel shall maintain the originals of the forms signed, pursuant to Paragraph 5(b), by persons acknowledging their obligations under this Order.

(d) **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as CONFIDENTIAL under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the Court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure, including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (e.g. in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in the applicable South Carolina Rules of Civil Procedure. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the Court under seal shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the Court, after proper Motion pursuant to any applicable South Carolina Rules of Civil Procedure.

Handwritten signature and initials, possibly "TAC" and "2019".

(7) **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order, unless that party moves for an Order providing such special protection.

(8) **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

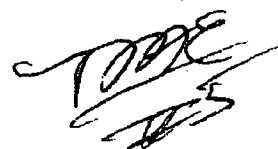
(a) The burden of proving the necessity of a CONFIDENTIAL designation rests with the party asserting confidentiality.

(b) A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of said written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the CONFIDENTIAL designation.

(c) Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

- (i) the party who claims that the documents are CONFIDENTIAL withdraws such designation in writing;
- (ii) the party who claims that the documents are CONFIDENTIAL fails to move timely for an Order designating the documents as confidential as set forth in paragraph 8.b. above; or
- (iii) the court rules that the documents should no longer be designated as confidential information.

(d) Challenges to the confidentiality of documents may be made at any time, and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.



**9. Treatment on Conclusion of Litigation.**

(a) **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation, unless otherwise agreed or ordered.

(b) **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (See ¶ 5.d.) shall be returned to the producing party, unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL, so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be CONFIDENTIAL under the terms of this Order. An attorney may use his or her work product in a subsequent litigation, provided that its use does not disclose the confidential documents.

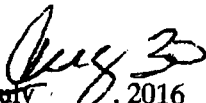
**10. Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who demonstrates an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

*TOOK*  
*TEC*

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure, or otherwise, until such time as a document-specific ruling shall have been made by the Court.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.

**IT IS SO ORDERED.**

  
July 2, 2016

Aiken, South Carolina.

  
\_\_\_\_\_

ATTACHMENT 9.1.16  
CERTIFICATION BY COUNSEL OF DESIGNATION  
OF INFORMATION AS CONFIDENTIAL

FILED  
J. P. G. S.  
230  
Deputy Clerk

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE CIRCUIT COURT

Adele J. Pope,  
Plaintiff,

Case No. 2013-CP-02-1337

vs.

Estate of James Brown, Deceased; The James  
Brown 2000 Irrevocable Trust; Russell L.  
Bauknight, Individually, as former Executor de  
son tort, and in every current and former  
fiduciary status claimed or held as to the Estate  
of James Brown and The James Brown 2000  
Irrevocable Trust,  
Defendants.

CERTIFICATION OF COUNSEL OF  
DESIGNATION OF INFORMATION AS  
CONFIDENTIAL

AND:

Robert L. Buchanan, Jr.,  
Interested Party.

Documents produced herewith [whose bates numbers are listed below (or) which are listed on the attached index] have been marked as CONFIDENTIAL subject to the Confidentiality Order entered in this action.

By signing below, I am certifying that I have personally reviewed the marked documents and, in good faith believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order.

Date: [date Attachment A signed]

[Signature of Counsel [s/name]]  
Signature of Counsel

[Printed Name of Counsel [A]]  
Printed Name of Counsel

~~ATTACHMENT B~~  
~~ACKNOWLEDGMENT OF UNDERSTANDING~~  
~~AND AGREEMENT TO BE BOUND~~

9.1.16  
JPM  
C.C.P. 12  
Deputy Clerk

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE CIRCUIT COURT

Adele J. Pope,  
Plaintiff,

Case No. 2013-CP-02-1337

vs.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,

**ACKNOWLEDGEMENT OF  
UNDERSTANDING AND AGREEMENT  
TO BOUND BY CONFIDENTIAL ORDER**

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

The undersigned hereby acknowledges that he or she has read the Confidentiality Order in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the above Court in matters relating to the Confidentiality Order, and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Confidentiality Order may result in penalties, potentially including contempt of court.

Name: [undersigned name [att B]]

Employer: [Employer [att B]]

Business Address: [Business Address [att B]]

Date: [date Attachment B signed]

[Signature [attachment B]]

Signature

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 COURT OF COMMON PLEAS  
) FOR THE SECOND JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-02-1337

) **ORDER DENYING PLAINTIFF'S**  
) **MOTION TO ALTER, AMEND OR**  
) **VACATE ORDER DENYING MOTION**  
) **TO DISQUALIFY RUSSELL**  
) **BAUKNIGHT AND HIS COUNSEL**

FILED

1-18-2017

*Robert J. White*  
C.C.P. & G.S.

*Anita Knepple* 459  
Deputy Clerk

After careful consideration, I respectfully deny the Plaintiff's Motion to Alter, Amend, or Vacate the Order Denying Motion to Disqualify Russell Bauknight and His Counsel.

**IT IS SO ORDERED.**

January 17, 2017

*Doyet A. Early III*

Doyet A. Early III  
Circuit Court Judge

FILED 1.17.17  
Robert L. White  
CCJP. & GS.  
Anita Kneepel  
Deputy Clerk

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

ADELE J. POPE,  
  
Plaintiff,  
  
vs.  
  
ESTATE OF JAMES BROWN ET AL.,  
  
Defendants.

Case No. 2013-CP-02-1337

**ORDER DENYING PLAINTIFF'S  
MOTION TO DISQUALIFY RUSSELL  
BAUKNIGHT AND HIS COUNSEL AND  
FOR RELATED RELIEF**

After careful review of the memoranda submitted by the parties and hearing arguments on November 21, 2016, I respectfully deny the Plaintiff's Motion to Disqualify Mr. Russell L. Bauknight and for Related Relief, dated September 22, 2016.

AND IT IS SO ORDERED.

*Doyet A. Early III*  
Honorable Doyet A. Early III  
Presiding Circuit Court Judge

December 16 2016  
Bamberg, South Carolina

FILED 1.3.17  
Robert L. White  
CCJP. & GS.  
Anita Kneepel 1230  
Deputy Clerk

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
Adele J. Pope, )  
Plaintiff, )  
 )  
v. )  
 )  
Estate of James Brown and The )  
James Brown 2000 Irrevocable Trust, )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No.: 2013-CP-02-1337

ORDER

FILED 1.20.17  
[Signature]  
Clerk of Court  
Anita Knoepfle 1239  
Deputy Clerk

This matter came before the Court on January 4, 2017 pursuant to the motion of Defendants for a protective order related to the noticed depositions of Defendants' experts.

At the hearing Plaintiff and Defendants advised the Court that more than twenty experts have been designated in this case. The Court urged the parties to schedule expert depositions by agreement. To date, however, Plaintiff and Defendants have been able to agree only as to the depositions set out herein.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

The following depositions of experts of Defendants and Plaintiff, having been consented to by the parties, shall take place on the dates and at the times and places set out below:

- **Jonas Herbsman** – Thursday March 16, 2017 to Friday, March 17, 2017 at 9am at the office of Shukat Arrow Hafer Weber & Herbsman, LLP, 494 8<sup>th</sup> Avenue, 6<sup>th</sup> Floor, New York, New York 10001.
- **Roger Miller** - Thursday, March 16, 2017 to Friday, March 17, 2017 immediately following Herbsman deposition at the offices of Shukat Arrow Hafer Weber & Herbsman, LLP, 494 8<sup>th</sup> Avenue, 6<sup>th</sup> Floor, New York, New York 10001.

[Signature]  
JCF

• **Mark Hobbs** - Monday, **March 20, 2017**, at 10 am at the Columbia office of Nexsen Pruet, LLC.

• **Tiffany Provence** – Wednesday, **March 29, 2017**, at 9am., at Provence Messervy LLC, 300 North Cedar Street Suite A, Summerville, South Carolina 29843

• **Elle Thomas** - Tuesday, **April 4, 2017** at 9am at the Columbia office of Nexsen Pruet, LLC.

• **Laura Wooley** - Thursday, **April 6, 2017**, at 9am at the offices of FTI Consulting, 1840 Century Park East Suite 400, Los Angeles, California 90067.

• **Brad Sharp** - Thursday, **April 6, 2017**, immediately following Laura Wooley's deposition, at the offices of FTI Consulting, 1840 Century Park East Suite 400, Los Angeles, California 90067.

• **Mary Jo Cole** - 10:00 am Tuesday, **April 25, 2017**, at the Offices of Sellars, Cole & Bachkowsky, LLC, 3205 Devine Street, Columbia, South Carolina 29205

• **William Sellars** - Tuesday, **April 25, 2017**, immediately following the deposition of Mary Jo Cole, at the Offices of Sellars, Cole & Bachkowsky, LLC, 3205 Devine Street, Columbia, South Carolina 29205

All other depositions shall be taken in accordance with the Scheduling Order in this Case, filed February 15, 2016, and the South Carolina Rules of Civil Procedure.

Except as specifically stated herein, and as provided by the Scheduling Order, all depositions shall be concluded on or before **April 14, 2017**.

In accordance with the Scheduling Order and requests for a day certain trial, when the Court's schedule becomes available, this matter shall be set for trial as soon after **July 1, 2017**, as can reasonably be scheduled.

AND IT IS ORDERED.

  
\_\_\_\_\_  
The Honorable Doyet A. Eady, III  
Resident Judge, Second Judicial Circuit

L 17-17

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Russell L. Bauknight, et al.

and

ALAN WILSON, in his capacity as Attorney  
General of the State of South Carolina; et al.  
Plaintiffs

v.

Adele J. Pope,

Defendant

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Adele J. Pope,

Plaintiffs

v.

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

Defendants

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

ORDER DENYING MOTION TO  
CONSOLIDATE DEPOSITIONS OF  
EXPERTS

2017 FEB 13 AM 8:56  
JEANNETTE M. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

IN THE COURT OF COMMON PLEAS

FOR THE SECOND CIRCUIT

Civil Action No. 2013-CP-02-1337

ORDER DENYING MOTION TO  
CONSOLIDATE DEPOSITIONS OF  
EXPERTS

Plaintiffs in Richland Case 4900 and Defendants in Aiken Case 1337 moved this Court for an order consolidating the cases for the limited purpose of the depositions of certain experts jointly named by Case 4900 Plaintiffs and Case 1337 Defendants. A hearing was held on the motion on January 23, 2017, at which time all parties were heard. The Defendant in Case 4900 and Plaintiff in Case 1337 opposed the motion on various grounds. After having considered the arguments, the court denies the motion to consolidate the cases for the limited purpose of the depositions of the jointly named experts.

copy 2 23 2017  
FILED

*[Signature]*  
C.C.P. & G.S.  
Anita Knoepfel  
Deputy Clerk

IT IS SO ORDERED.

*T. A. Early III*

Doyet A. Early, III  
Presiding Judge

CERTIFIED TRUE COPY  
OF ORIGINAL FILED,  
*Jeaneette W. B. Bude*  
C.C.C.P.&G.S. *Feb*  
RICHLAND COUNTY  
SOUTH CAROLINA

*Feb 6*, 2017  
*Bankery*, South Carolina.

STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 IN THE COURT OF COMMON PLEAS

FORM 4

Case No. 2013 CP02 1537  
 Pending in Aiken Court  
 JUDGMENT IN A CIVIL CASE

CASE NUMBER:

*In re: Motion of Kenneth B. Wingate and Everett A. Kendall  
 Adele Pope*

PLAINTIFF(S)

*v. Estate of James Brown on  
 The James Brown 2000 Trust*

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk:

*Motion of Kenneth B. Wingate and  
 Everett A. Kendall to quash their  
 Deposition Subpoenas Denied.*

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

*[Signature]*

Judge Code

*2759*

Date

*3-1-12*

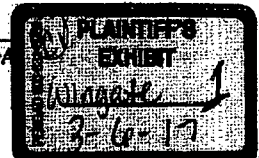
For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

*\*Plaintiff will be permitted to question each of these attorneys on their authorization to file*

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Clerk of Court

*and continue the lawsuit of the Attorney General  
 and others against Robert Buchanan and  
 Adele Pope, filed May 19, 2010 and continuing today.*

SCRPC Form 4C (10/2011)

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 GRANTING MOTION TO CONFIRM  
CONFIDENTIALITY DESIGNATIONS**

Before the Court is the Estate of James Brown and The James Brown 2000 Irrevocable Trust's ("Defendants") Motion to Confirm Confidentiality Designations. The documents that Defendants have produced and labeled confidential all relate to the Philpot Ball and Werner Valuation and Appraisal (the "appraisal") and the estate tax return of James Brown (the "estate tax return"). Courts regularly conclude that these types of documents are confidential. Indeed, this Court has already held, in its August 30, 2016 Administrative Order, "that the appraisal shall remain confidential." (Administrative Order, p. 4; *see also id.* at 5 (noting that Plaintiff is entitled to a copy of the appraisal, "however, she must keep it confidential and not disseminate the document to anyone outside of this litigation.")). For the reasons discussed herein, the Court grants Defendants request to Court confirm all confidential designations.

**I. BACKGROUND AND OPERATION OF THE ORDER**

On August 30, 2016, this Court signed a Confidentiality Order for this case (the "Order"). Under the terms of the Order, "[a]ny party may designate documents as confidential, . . . after review of the documents by an attorney who has, in good faith, determined that the documents contain . . . sensitive personal information, trade secrets, . . . or business/commercial information that justifies protection from disclosure." (Order, ¶3).

Under the terms of the Order, a party may challenge a confidential designation. (Order, ¶8). “A party who contends that documents designated confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation . . . .” (*Id.* at ¶8(b)). Once the party that designated the document as confidential receives the challenge, it has fifteen days to attempt to resolve the dispute. If it cannot resolve the dispute, then the party that designated the document must “move for an Order confirming the confidential designation.” (*Id.*)

## II. PLAINTIFF’S CHALLENGE TO THE DESIGNATIONS

On January 24 and January 30, Plaintiff sent e-mail correspondence challenging Defendants’ confidential designations. Defendants subsequently sought to resolve the challenge. Defendants’ efforts included acknowledging that some of the estate tax return confidential designations may need to be removed. Defendants also requested that Plaintiff withdraw the challenges to the appraisal documents. The parties were unable to resolve this issue.

## III. PHILPOTT BALL AND WERNER APPRAISAL AND UNDERLYING DOCUMENTS ARE CONFIDENTIAL

Defendants have labeled all documents relating to the appraisal as confidential, and the designation will be confirmed by this Court.

### A. This Court Previously Held the Appraisal is Confidential

As noted above, in this Court’s Administrative Order, it noted “that the appraisal shall remain confidential,” that Plaintiff is entitled to a copy of the appraisal, but “she must keep it confidential and not disseminate the document to anyone outside of this litigation.” (Administrative Order, pp. 4-5). Accordingly, this Court’s prior ruling forecloses Plaintiff’s efforts to challenge the confidential designations related to the appraisal.

B. The Appraisal and the Underlying Documents Contain Confidential Financial and Commercial Information

The appraisal is a private document that is owned and controlled by the Estate. The appraisal was created for the purpose of valuing the Estate of James Brown (a private citizen), and for the purpose of determining whether the Estate owed any taxes to the federal government.<sup>1</sup> The appraisal is not a public document. It contains confidential financial and commercial information, and has been treated as confidential since its inception. For decades, courts across this Nation have recognized that these types of business documents are confidential and should be accorded the shield of a protective order. *See, e.g., Landco Equity Partners, LLC, v. City of Colo. Springs, Colo.*, 259 F.R.D. 510, 515 (D. Colo. 2009) (recognizing that “protective orders issued pursuant to Rule 26(c) are common in litigation to protect sensitive information exchanged during the course of discovery, particularly when the documents reflect confidential financial information”); *Nutrastech, Inc. v. Syntech (SSPF) Int’l*, 242 F.R.D. 552, 554 (C.D. Cal. 2007) (noting that **both parties agreed** to the need for a protective order but disagreed whether the information (“sales and revenue figures”) should be afforded protection of “attorney’s eyes only”); *Palmer v. Reader’s Digest Assoc.*, 122 F.R.D. 445, 447 (S.D.N.Y. 1988) (recognizing the confidential nature of a company’s financial information and the requirement that its production requires “strict non-disclosure provisions”). Accordingly, Defendants have met their burden. The appraisal and all underlying documents are confidential.

C. Irreparable Harm Will Result if the Valuation Report is Turned into a Public Document

The appraisal analyzes copyright royalty details and sources of royalty payments, among other confidential business information. The appraisal also projects future revenues of the Estate

---

<sup>1</sup> The Internal Revenue Service independently reviewed the appraisal and agreed with its findings regarding the date of death valuation for the James Brown Estate.

and Trust in an effort to arrive at the final business value of the James Brown music empire. That information is highly confidential. It is highly confidential because it completely exposes the strengths and the weaknesses of the music catalog, and discloses confidential future revenue projections of the Estate and Trust. If made public, that information will likely be used against the Estate and Trust during future business negotiations. Moreover, dissemination of this confidential information could damage James Brown's vision of providing charitable scholarships to deserving and needy students by decreasing the amount of funds available for those scholarships.

Courts have defined confidential commercial information as "information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained." *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697 (D. Nev. 1994); *Massey Coal Services, Inc. v. Victaulic Co. of Am.*, 249 F.R.D. 477, 482 (S.D.W. Va. 2008) (same). Defendants' have met their burden; the appraisal and all underlying documents are confidential.

#### IV. THE ESTATE TAX RETURN AND UNDERLYING DOCUMENTS ARE CONFIDENTIAL

The Defendants have produced the estate tax returns and underlying documents of the late James Brown, and have designated those documents confidential. Accordingly, Defendants do not dispute that the estate tax returns are discoverable. Rather, they submit that the estate tax returns of an individual are confidential and should not be made public. *See Minter v. Wells Fargo Bank, NA*, 675 F. Supp. 2d 591, 597 (D. Md. 2009) (noting that "tax returns are not privileged, but that courts should order discovery of them only under a protective order" (citing MUELLER & KIRKPATRICK, *Federal Evidence* §5:5)). "Where tax returns are produced in discovery, protective orders are the norm, not the exception." *Closed Joint Stock Co. "CTC Network" v. Actava TV, Inc.*, 2016 WL 1364942, at \*4 (S.D.N.Y. 2016). Indeed, "[c]ertain categories of information and documents are 'presumptively confidential,' including tax returns." *Id.* The Court finds that all

confidential designations related to the estate tax returns are proper under the Order. Accordingly, the Court finds that Defendants' have met their burden.

**V. CONCLUSION**

Defendants have met their burden to show that the documents produced and labeled confidential are, in fact, confidential and should maintain that designation under the Order. Accordingly, this Court hereby finds that the documents that have been designated as confidential shall remain confidential pursuant to this Court's August 30, 2016 Confidentiality Order.

**IT IS SO ORDERED.**

\_\_\_\_\_  
The Honorable Doyet A. Early, III

June \_\_\_\_, 2017

\_\_\_\_\_, 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 2017-06-15 18:16:35 page 6 of 6

ELECTRONICALLY FILED - 2017 Jun 16 8:28 AM - AIKEN - COMMON PLEAS - CASE#2013CP0201337  
ELECTRONICALLY FILED - 2017 Dec 13 4:21 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

ELECTRONICALLY FILED - 2017 Jun 16 8:38 AM - AIKEN - COMMON PLEAS - CASE#2013CP0201337  
ELECTRONICALLY FILED - 2017 Dec 13 4:21 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

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 GRANTING MOTION TO  
CONFIRM ROGER MILLER  
CONFIDENTIALITY DESIGNATIONS**

Before the Court is the Estate of James Brown and The James Brown 2000 Irrevocable Trust's ("Defendants") Motion to Confirm Confidentiality Designations. The confidentiality designations at issue relate to various exhibits introduced at the deposition of Roger Miller and certain questioning and testimony elicited during the deposition (the Miller Deposition Confidential Designations). The Miller Deposition Confidential Designations relate to the copyrights that generate the majority of the revenue for the Estate of James Brown. For the reasons discussed herein, the Court grants Defendants request to Court confirm all confidential designations.<sup>1</sup>

**I. BACKGROUND AND OPERATION OF THE ORDER**

On August 30, 2016, this Court signed a Confidentiality Order for this case (the "Order"). Under the terms of the Order, "[a]ny party may designate documents as confidential, . . . after review of the documents by an attorney who has, in good faith, determined that the documents

---

<sup>1</sup> The Court notes that Defendant withdrew two designations after further consultation with Plaintiff at the hearing held on May 24, 2017 at the Aiken County Courthouse. Those designations are: Miller Deposition, p. 30, ln. 9-13; p. 46, ln. 19-24.

contain . . . sensitive personal information, trade secrets, . . . or business/commercial information that justifies protection from disclosure.” (Order, ¶3).

Under the terms of the Order, a party may challenge a confidential designation. (Order, ¶8). “A party who contends that documents designated confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation . . . .” (*Id.* at ¶8(b)). Once the party that designated the document as confidential receives the challenge, it has fifteen days to attempt to resolve the dispute. If it cannot resolve the dispute, then the party that designated the document must “move for an Order confirming the confidential designation.” (*Id.*)

## II. PLAINTIFF’S CHALLENGE TO THE DESIGNATIONS

On April 7, 2017, Plaintiff sent e-mail correspondence challenging Defendants’ Miller Deposition Confidential Designations. Defendants subsequently sought to resolve the challenge. The parties were unable to resolve this issue.

## III. CONFIDENTIAL DESIGNATIONS FROM ROGER MILLER’S DEPOSITION

Roger Miller provided expert testimony related to the value of certain termination rights for certain copyrights owned by Defendants. Mr. Miller based his valuation testimony upon excerpts from the Philpott Ball and Werner valuation (the appraisal). Mr. Miller also generated various exhibits demonstrating his valuation analysis by employing the information found in the appraisal.

### A. This Court Previously Held the Appraisal is Confidential

In this Court’s Administrative Order dated August 30, 2016, it noted “that the appraisal shall remain confidential,” that Plaintiff is entitled to a copy of the appraisal, but “she must keep it confidential and not disseminate the document to anyone outside of this litigation.” (Administrative Order, pp. 4-5). Accordingly, this Court’s prior ruling forecloses Plaintiffs efforts to challenge the Miller Deposition Confidential Designations.

B. The Appraisal and the Underlying Documents Contain Confidential Financial and Commercial Information

The appraisal is a private document that is owned and controlled by the Estate. The appraisal was created for the purpose of valuing the Estate of James Brown (a private citizen), and for the purpose of determining whether the Estate owed any taxes to the federal government.<sup>2</sup> The appraisal is not a public document. It contains confidential financial and commercial information, and has been treated as confidential since its inception. For decades, courts across this Nation have recognized that these types of business documents are confidential and should be accorded the shield of a protective order. *See, e.g., Landco Equity Partners, LLC, v. City of Colo. Springs, Colo.*, 259 F.R.D. 510, 515 (D. Colo. 2009) (recognizing that “protective orders issued pursuant to Rule 26(c) are common in litigation to protect sensitive information exchanged during the course of discovery, particularly when the documents reflect confidential financial information”); *Nutratch, Inc. v. Syntech (SSPF) Int’l*, 242 F.R.D. 552, 554 (C.D. Cal. 2007) (noting that **both parties agreed** to the need for a protective order but disagreed whether the information (“sales and revenue figures”) should be afforded protection of “attorney’s eyes only”); *Palmer v. Reader’s Digest Assoc.*, 122 F.R.D. 445, 447 (S.D.N.Y. 1988) (recognizing the confidential nature of a company’s financial information and the requirement that its production requires “strict non-disclosure provisions”). Accordingly, Defendants have met their burden. The Miller Deposition Confidential Designations are confidential and shall remain as such under the Order.

C. Irreparable Harm Will Result if the Miller Deposition Confidential Designations Become Public

The Miller Deposition Confidential Designations analyze copyright royalty details and sources of royalty payments, among other confidential business information. That information is

---

<sup>2</sup> The Internal Revenue Service independently reviewed the appraisal and agreed with its findings regarding the date of death valuation for the James Brown Estate.

highly confidential because it completely exposes the strengths and the weaknesses of the music catalog. If made public, that information will likely be used against the Estate and Trust during future business negotiations. Moreover, dissemination of this confidential information could damage James Brown's vision of providing charitable scholarships to deserving and needy students by decreasing the amount of funds available for those scholarships.

Courts have defined confidential commercial information as "information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained." *Diamond State Ins. Co. v. Rebel Oil-Co.*, 157 F.R.D. 691, 697 (D. Nev. 1994); *Massey Coal Services, Inc. v. Victaulic Co. of Am.*, 249 F.R.D. 477, 482 (S.D.W. Va. 2008) (same). Defendants' have met their burden; the appraisal and all underlying documents are confidential.

#### IV. CONCLUSION

Defendants have met their burden to show that the Miller Deposition Confidential Designations are, in fact, confidential and should maintain that designation under the Order. Accordingly, this Court hereby finds that the confidential designations shall remain confidential pursuant to this Court's August 30, 2016 Confidentiality Order.

**IT IS SO ORDERED.**

\_\_\_\_\_  
The Honorable Doyet A. Early, III

June \_\_, 2017

\_\_\_\_\_, 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 2017-06-15 18:15:45 page 5 of 5

ELECTRONICALLY FILED - 2017 Jun 16 8:38 AM - AIKEN - COMMON PLEAS - CASE#2013CP0201337  
ELECTRONICALLY FILED - 2017 Dec 13 4:21 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
Adele J. Pope, )  
Plaintiff, )  
v. )  
Estate of James Brown and The James )  
Brown 2000 Irrevocable Trust, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No.: 2013-CP-02-1337

**ORDER GRANTING DEFENDANTS'  
MOTION FOR TRANSFER TO  
NON-JURY ROSTER**

This matter comes before me on Motion of Defendants filed July 31, 2017 to transfer this case, set for a Day Certain Jury Trial on September 5, 2017, to the non-jury roster.

By Return to Motion filed August 10, 2017 Plaintiff opposed the Motion to

Transfer on five grounds:

1. Defendants' Motion was not timely, having been made four years after a jury trial was timely demanded in the Complaint in this case, filed June 10, 2013.
2. Defendants have waived the right to demand a Non-jury trial by not timely seeking reconsideration of this Court's Order for Order Setting Day-Certain Trial by jury filed May 4, 2014, and other actions.
3. The Motion was made in bad faith to cover up evidence of wrongful IRS and Court filings by Defendants which the Attorney General joined in or condoned.
4. Plaintiff is entitled to a jury trial as to the \$100 Million value of James Brown's assets and other issues of fact in this case under S.C. Probate Code Section 62-1-302 and other applicable law and cases.
5. Defendants' access to this Court from June 13, 2013 to 2016 to the exclusion of Robert L. Buchanan, Jr. and Plaintiff would make depriving Plaintiff of a jury trial manifestly unjust (a violation of Plaintiff's Due Process Rights).

A hearing was held before me on August 15, 2017. Present were: Plaintiff, *pro se*; Burl Williams, Esq., and William Newsome, Esq., counsel for defendants.

Both sides provided memoranda and argued extensively as to their respective positions. As to Plaintiff's argument that Defendants are seeking a delay, Defendants advised that they do not seek delay, and that they ask the Court to proceed to the Day-Certain Trial on September 5, 2017, as scheduled in May.

Based on the voluminous record in this case, the returns and memoranda, and arguments of counsel, the Court finds:

1. The only issue to determine in this case is whether Mrs. Pope is owed any commission, expenses and costs by the Estate and 2000 Trust, as per this Court's Order affirmed by Order of the Supreme Court, Opinion Number 2015-MO-032.
2. Actions in equity are to be tried by the Court, *Pelfrey v. Bank of Greer*.
3. A claim for a commission is an action in equity. See *Matter of Estate of Kay* and S.C. Probate Code Section 62-3-719.
4. Relying on all cases from other jurisdictions cited in Defendants' brief, questions concerning the entitlement to commissions are matters in equity.

Based on the foregoing, IT IS ORDERED, ADJUDGED AND DECREED that this case is hereby transferred to the non-jury roster, and shall be tried as such on September 5, 2017.

AND IT IS ORDERED.

Aiken, South Carolina  
August , 2017

---

The Honorable Doyet A. Early, III  
Resident Judge, Second Judicial Circuit



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 2017-08-18 08:46:34 page 3 of 3

ELECTRONICALLY FILED - 2017 Aug 18 8:14 AM - AIKEN - COMMON PLEAS - CASE#2013CP0201337  
ELECTRONICALLY FILED - 2017 Aug 24 3:42 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

Adele J. Pope,

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Adele J. Pope, Esq.

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy.  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: After full consideration, Plaintiff Adele J. Pope's Motion to Reconsider is hereby respectfully DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk:

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2017 Aug 29 4:29 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Handwritten Signature]*

Circuit Court Judge 2136 Judge Code 08/29/2017 Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_

\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**Court Reporter:**

ELECTRONICALLY FILED - 2017 Aug 29 4:29 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF AIKEN

Civil Action No. 2013-CP-02-1337

Adele J. Pope,

Plaintiff,

**ORDER**

vs.

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

Defendants.

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).<sup>1</sup>

---

<sup>1</sup> 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 Appraisement 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.<sup>2</sup>

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.

<sup>2</sup> 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.** <sup>3</sup> *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.

---

<sup>3</sup> 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), SCRCP, 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 10<sup>th</sup> 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 29<sup>th</sup> 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 fiduciary 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 Marville'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 75<sup>th</sup> 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 Carolina<sup>4</sup> 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.<sup>5</sup> 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*

<sup>4</sup> Mrs. Pope’s hometown is Newberry, South Carolina.

<sup>5</sup> 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.

I. *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.<sup>6</sup>

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.

---

<sup>6</sup> 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.<sup>7</sup> 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

---

<sup>7</sup> 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.<sup>8</sup>

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.

---

<sup>8</sup> 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.<sup>9</sup> 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

---

<sup>9</sup> 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.<sup>10</sup>

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

---

<sup>10</sup> 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.

I. *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 Appraisement (“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.<sup>11</sup> 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.

<sup>11</sup> 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.<sup>12</sup> 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.

---

<sup>12</sup> 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

ELECTRONICALLY FILED - 2019 Jan 16 2:10 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337



**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

ELECTRONICALLY FILED - 2019 Feb 07 4:48 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337



**Aiken Common Pleas**

**Case Caption:** Adele Jeffords Pope VS James Estate Of Brown , defendant, et al

**Case Number:** 2013CP0201337

**Type:** Order/Electronic Form 4

So Ordered

s/D.A. Early III 2136

Electronically signed on 2019-02-07 16:10:01 page 3 of 3

ELECTRONICALLY FILED - 2019 Feb 07 4:48 PM - AIKEN - COMMON PLEAS - CASE#2013CP0201337

STATE OF SOUTH CAROLINA

) IN THE PROBATE COURT  
) PROBATE COURT #2007-ES-02-0056

COUNTY OF AIKEN

Robert L. Buchanan, Jr. and Adele J. Pope  
as Trustees of the James Brown 2000 Irrevocable  
Trust and as Personal Representatives of the  
Estate of James Brown, deceased  
Plaintiffs,

v.

) COMPLAINT FOR DECLARATORY  
) JUDGMENT AND RELATED RELIEF  
) INCLUDING EXPEDITED  
) EMERGENCY RELIEF

Deanna J. Brown Thomas, Yamma N. Brown Lumar)  
Venisha Brown, Daryl J. Brown, Larry Brown, and )  
Terry Brown, each individually and as parent and )  
natural guardian of his and her minor and unborn )  
issue; Romunzo Brown, Forlando Brown, Tonya )  
Brown, Sydney Lumar, Carrington Lumar, Jason )  
Brown-Lewis, Lindsey Delores Brown and Janise )  
Vanisha Brown; Henry Dargan McMaster, in his )  
capacity as Attorney General for the State of South )  
Carolina; Tommie Raye Hynie Brown; and James )  
Brown II, a minor, by Stephen Slotchiver, his )  
guardian ad litem, )

Defendants.

Plaintiffs would respectfully show unto the Court:

1. This Court has jurisdiction to hear and determine this matter pursuant to South Carolina Probate Code Section 62-1-302, the South Carolina Trust Code Section 62-7-101 et seq. and other applicable law.

2. Plaintiffs are the duly appointed Trustees of the James Brown 2000 Irrevocable Trust (the "Irrevocable Trust") and Personal Representatives of the Estate of James Brown. They are serving under the terms of the Trust and the Will of James Brown (the "Will"), both dated August 1, 2000. They were appointed on November 20, 2007.

2013/11  
1913

3. Defendants Deanna J. Brown Thomas, Yamma N. Brown Lumar, Venisha Brown, Daryl J. Brown, Larry Brown, and Terry Brown are, on information and belief, the acknowledged children of James Brown under the Will.

4. Defendants Romunzo Brown, Forlando Brown, Tonya Brown, Sydney Lumar, Carrington Lumar, Jason Brown-Lewis, Lindsey Delores Brown and Janise Vanisha Brown, on information and belief, are the grandchildren of James Brown and (provided that they do not contest the Estate Plan) are beneficiaries of the Brown Family Education Trust, a subtrust of the Irrevocable Trust. To the extent that these defendants are minors, they are properly represented herein by their parents.

5. Defendant Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina, has an interest in the James Brown "I Feel Good" Trust, a subtrust of the Irrevocable Trust, by virtue of his statutory interest in the protection of charities domiciled in the State of South Carolina.

6. Defendants Tommie Raye Hynie Brown and James Brown II, by virtue of their claims to be the spouse and after-born child, respectively, of James Brown, may have an interest in this proceeding. Further, each is a representative of persons not named or designated in either the Will or the Irrevocable Trust, but claiming an interest in the Estate of James Brown and/or the Irrevocable Trust.

#### BACKGROUND

7. James Brown, also known as the Godfather of Soul, died on December 25, 2006 a resident of Beech Island, Aiken County, South Carolina.

REB/h  
2/13

8. Prior to his death, on August 1, 2000, Mr. Brown executed the Will and Irrevocable Trust.

9. On information and belief, the Will and Irrevocable Trust, read together, constitute the entire estate plan (the "Estate Plan") of James Brown.

10. The Estate Plan of Mr. Brown generally provides as follows:

- a. Any beneficiary who interferes with Mr. Brown's Estate Plan shall forfeit his or her entire interest in the Estate Plan. (Item X of Will and Article XXI of Irrevocable Trust)
- b. Only the children of James Brown named as defendants herein shall be considered his children and "their legitimate issue who shall also be the lineage issue of [Mr. Brown] shall be the entire class" acknowledged to be Mr. Brown's heirs and issue.
- c. Mr. Brown's Personal and Household Effects (PHE) are devised to his children. (Item I of the Will)
- d. All assets owned by Mr. Brown at death are added to the Irrevocable Trust. (Items II and III of the Will)
- e. Upon the death of Mr. Brown, the Irrevocable Trust is divided into two separate shares designated as "Brown Family Education Trust" and "The James Brown 'I Feel Good' Trust". The two shares shall be equal, subject only to the generation-skipping transfer exemption as computed by the formula in the Trust. (Article V of the Trust)

7203/1.  
3/13

- f. As provided in Article V of the Irrevocable Trust, the Brown Family Education Trust is "undiminished by estate, inheritance, succession, death or similar taxes" and, thus, to the extent that at least an equal amount goes into The James Brown "I Feel Good" Trust, will ultimately have a value of approximately \$2,000,000.

11. On information and belief, because there is no estate tax apportionment clause in the Will or Irrevocable Trust, the children of James Brown must pay, or bear from their devise, the full value of estate taxes attributable to assets they receive, with all interest until paid.

12. The James Brown "I Feel Good" Trust (subject to equalization with the Brown Family Education Trust up to \$2,000,000) is the remainder of the assets of Mr. Brown.

13. As a result of improper financial administration of Mr. Brown's assets both prior to and after his death, when Plaintiffs became Personal Representatives and Trustees, the Estate and Trust were in jeopardy. Factors contributing to such state include:

- a. The resignation on August 10, 2007 of David G. Cannon, Mr. Brown's financial advisor, attorney-in-fact, Personal Representative and Trustee.
- b. The lack of ability to verify documents and representations related to Mr. Brown's assets.
- c. The numerous issues related to income taxes, gift taxes and other transfers.

14. As a result of their appointment on November 20, 2007, Plaintiffs, on information and belief, are now charged with the duty of upholding, defending and implementing the Estate Plan of Mr. Brown, as embodied in the Will and Irrevocable Trust.

7203.h  
4/27/13

**FOR A FIRST CAUSE OF ACTION  
(Approval of Emergency Plan of Administration)**

15. Plaintiffs ask that the Court approve and implement, in general, their emergency plan of administration, together with each matter requested herein.

16. The general outline of the emergency plan of administration is as follows:

- a. Completion of Application for Recognition of Exemption of the James Brown "I Feel Good" Trust under section 501(c)(3) of the Internal Revenue Code;
- b. Filing of 2006 income tax returns for James Brown, with full disclosure of problems associated with unauthorized filings of returns of Mr. Brown's corporation;
- c. Determination of gifts, if any, so that estate tax returns, and, if appropriate, gift tax returns, can be completed;
- d. Orderly liquidation of the Tangible Personal Property (TPP) as set out herein.
- e. Expedited decision-making related to the Home of James Brown, including orderly sale, if appropriate;
- f. Preservation of the name, image, likeness and persona, along with royalties, for the long-term benefit of the beneficiaries of the Irrevocable Trust and its subtrusts;
- g. Review and, as appropriate, total or partial disallowance of claims;

TRP h.  
5/13

- h. Engagement of counsel to pursue loss of funds to Mr. Brown, the Estate, the Irrevocable Trust and the Brown Entities from approximately January 1, 1999 to the present.

17. Plaintiffs ask that the Court approve the emergency plan, and implement all aspects of it as set out herein on an expedited basis. To the extent that the implementation of the plan requires bifurcation or further division into separate proceedings, they request this Court do so in order that emergency matters may be heard and resolved at the Court's earliest convenience.

18. Plaintiffs further request that the Court approve the payment of all fees and costs for their service as Special Administrators from March 7, 2007 until November 20, 2007 on an hourly basis as follows: Attorney Service -- \$300 per hour; Paralegal services -- \$50 per hour; other support personnel -- \$25 per hour. And that the total amount of these services be treated as a priority expense of administration.

19. Plaintiffs request that the Court continue their payment on a time and cost basis as set out in 18, with leave to seek such an additional full commission in the future.

**FOR A SECOND CAUSE OF ACTION  
(Approval of Engagement of Attorneys)**

20. Plaintiffs reallege Paragraph 1 through 19 as fully as if set out herein.

21. In order to implement the emergency plan, the Plaintiffs are informed and believe that the Court should approve the immediate engagement by the Personal Representatives, the Irrevocable Trust and the Brown Entities of J. Kendall Few, Esquire and James R. Gilreath, Esquire so that assets of David G. Cannon, his entities and others may be recovered for the benefit of the Estate, Irrevocable Trust and Brown Entities as their interests appear.

Test Sub.  
6/15

**FOR A THIRD CAUSE OF ACTION  
(Expedited Action to Determine Gifts and Location of Estate/Trust Property)**

22. Plaintiffs reallege Paragraph 1 through 21 as fully as if set out herein.

23. The Personal Representatives lack information to determine whether Decedent made prior gifts, including gifts which would affect Mr. Brown's available generation-skipping transfer exemption which must be known to determine final value of the Brown Family Education Trust.

24. Plaintiffs are informed and believe no gift tax returns were previously filed by Mr. Brown.

25. Plaintiffs are informed and believe that all persons who are parties to this action should be required, under oath, to state the following:

- a. the date, value and amount of any gifts from James Brown during the three years prior to his death.
- b. whether they are aware of any gift tax returns filed by Mr. Brown

26. On information and belief, any devisee who received a gift from Mr. Brown prior to death should be charged with all gift/estate tax attributable to such gift, with applicable interest, to be charged, to the extent possible, against any property to which the donee may be entitled from the Estate Plan.

27. On information and belief, all parties to this action should also be required to state under oath the following:

- a. whether they have received since the date of Mr. Brown's death any property belonging to the Estate or Trust

7243, h.  
7913

- b. whether they are aware of any property belonging to the Estate or Trust which has been transferred to any other person since the death of Mr. Brown.

28. On information and belief, these declarations are necessary in order to complete the estate tax return of Mr. Brown and any gift tax returns that may be due. Further, they are necessary for determination of the final value of the Brown Family Education Trust.

**FOR A FOURTH CAUSE OF ACTION  
(Expedited Action with Respect to Tangible Personal Property)**

29. Plaintiffs reallege Paragraph 1 through 28 as fully as if set out herein.

30. The Estate, the Irrevocable Trust and the Brown Entities, on information and belief, own valuable items of tangible personal property ("TPP"), and mixed property, including valuable unpublished masters.

31. Among the items of TPP, on information and belief, are Personal and Household Effects ("PHE") devised to the children of James Brown.

32. On information and belief, subject to his confirmation of the validity of the Estate Plan, the maximum interest to which James Brown II might be entitled in the assets of the Estate, if he is determined to be a child, is of a one-seventh interest in the PHE Mr. Brown owned at death.

33. James Brown II, should he elect to contest the Will or Trust, would forfeit his entire interest in the PHE and Estate.

34. Because of the emergency need to expedite the sale of the TPP, on information and belief, the interest, if any, of James Brown II should be set aside as a one-seventh interest in the

PJB.L  
8/13

TPP and held in a Certificate of Deposit, unless and until his entitlement, if any, is determined.

Prior to this set aside, a proportionate share of estate taxes should be paid.

35. As to the remainder of the TPP, Plaintiffs request that the Court inquire into the matter and declare the ownership of the TPP under the Estate Plan as follows:

- a. All published or unpublished masters constitute business personal property and were not devised to the children under Item I of the Will because they are not PHE.
- b. All cars titled in the name of James Brown Enterprises, Inc., and/or James Brown Enterprises shall constitute business personal property, and were not devised to the children under Item I of the Will.
- c. The Court should declare, based on the inventory filed by the former Personal Representatives (and any additional assets identified under the Third cause of action) which items are PHE devised to the children under Item I of the Will. (To be divided by the Personal Representatives into lots)
- d. To the extent that property is devised to the children, they should be required to remove it, under supervised conditions, within thirty days, upon payment to the Estate of fifty (50%) percent of its estate tax value. In the alternative, each such child shall leave his or her share of PHE on deposit for sale as set out herein.
- e. The amount which each child should be allowed to take (subject to the tax deposit required above) should be limited to one-seventh of the value of

TPP, h.  
01/13

the PHE.

- f. All remaining TPP, together with the one-seventh potential share of James Brown II and any portions left on deposit should be delivered to, and sold by, the auction house selected by Plaintiffs from among Christie's, Julien's, Sotheby's and/or such other auction house as they shall choose.

36. On information and belief, this expedited procedure for determination and sale of TPP is appropriate; is authorized by the Will and the Irrevocable Trust; and is critically important because the Estate and the Irrevocable Trust lack the capacity to continue to preserve and protect these assets.

37. On information and belief, the Defendant Attorney General and the children of James Brown should be encouraged, to the extent possible, to resolve all differences with respect to which assets are PHE devised to the children under Item I of the Will.

38. On information and belief, the estate tax valuation provided by the auction house selected by the Personal Representatives should in all respects be binding on the parties unless adjusted by the Internal Revenue Service upon audit of the Estate's estate tax return.

**FOR A FIFTH CAUSE OF ACTION  
(Sale or Other Disposition of Trust Real Estate)**

39. Plaintiffs reallege Paragraph 1 through 38 as fully as if set out herein.

40. On information and belief, the Irrevocable Trust is the owner of Mr. Brown's home located at 430 Douglas Drive, Beech Island, South Carolina, with improvements and surrounding real estate (the "Home").

P.B.K.  
10/13

41. Under the Irrevocable Trust, the Trustees are authorized to sell the real estate.

Because of Mr. Brown's unique contribution to music history, they, however, ask for Court guidance with respect to the disposition of the Home:

42. The purposes of both the Brown Family Education Trust and The James Brown "I Feel Good" Trust are primarily educational.

43. On information and belief, the Court, upon considering input of all beneficiaries of the Irrevocable Trust, but especially Defendant Attorney General, should inquire into the matter and declare whether the Home, or any portion thereof, is:

- a. A significant asset that should be maintained for the benefit of The James Brown "I Feel Good" Trust.
- b. If the Court does not determine that the Home should be maintained for The James Brown "I Feel Good" Trust, ordering a sale; approving a plan; and setting a minimum value at which the Home should be offered for sale;
- c. If the Court determines that retention of the Home is appropriate, specifically authorizing the Trustees to obtain financing, including a mortgage of the Home, as necessary to pay for the substantial and continuing costs of upkeep.

44. Upon a finding that retention would be inappropriate, the Court should direct and approve a plan for sale of the Home because its costs of upkeep are a burden to the trust.

12036.  
11/13

**FOR A SIXTH CAUSE OF ACTION  
(No Probable Cause for Contesting Estate Plan)**

45. Plaintiffs reallege Paragraph 1 through 44 as fully as if set out herein.

46. On information and belief, the Court should declare that no probable cause exists for contesting the Estate Plan of James Brown and that his entire Estate passes pursuant to terms of the Will and the Irrevocable Trust.

47. On information and belief, the Court should also declare that any person contesting any component of the Estate Plan, whether the Will or the Irrevocable Trust, shall forfeit his or her entire interest under both the Will and the Trust.

**FOR A SEVENTH CAUSE OF ACTION  
(Expedited Discovery)**

48. Plaintiffs reallege Paragraph 1 through 47 as fully as if set out herein.


49. On information and belief, a delay in the final determination of these matters will cause irreparable harm to the Estate, the Irrevocable Trust and the Estate Plan of James Brown.

50. The Estate Tax Return of the Estate of James Brown is now overdue, and many of the issues raised herein must be resolved prior to its proper completion.

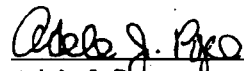
**WHEREFORE,** plaintiffs pray that the Court inquire into this matter and issue its Order or Orders as follows:

120B, h.  
12/13

- (a) expediting, to the extent allowed by law, any answers and discovery in this matter, and scheduling a final hearing, if possible, before the end of January, 2008.
- (b) approving the emergency plan of administration and related relief requested in Plaintiffs' first cause of action;
- (c) approving the engagement of counsel as set out above;
- (d) determining gifts and requiring the parties to assist in the location of assets as set out herein;
- (e) granting all relief with respect to the tangible personal property requested in the fourth cause of action;
- (f) providing for the sale or other disposition of the home as set out herein;
- (g) declaring that there is no probable cause for contesting the Estate Plan of James Brown and requiring forfeiture of any contesting party as set out herein.
- (h) for all additional relief requested herein, and such additional relief as the Court may deem just and proper.

  
Robert L. Buchanan, Jr.

AND

  
Adele J. Pope  
Personal Representatives  
and Trustees

November 27, 2007

2/3/11  
13/13

STATE OF SOUTH CAROLINA )

IN THE PROBATE COURT  
CASE NUMBER: 2007-ES-02-0056

COUNTY OF AIKEN )

Robert L. Buchanan, Jr. and Adele J. Pope as Trustees of the James Brown 2000 Irrevocable Trust and as Personal Representatives of the Estate of James Brown, Deceased

)  
)  
)  
) COMPLAINT FOR DECLARATORY JUDGMENT; REVIEW OF COMPENSATION AND EMPLOYMENT; GUIDANCE AS TO OF SUCCESSION PLAN; APPROVAL OF ACCOUNTING OF PR/TRUSTEES AND FOR ORDER GRANTING PROTECTION FOR TRUSTEES UPON RESIGNATION

Plaintiffs,

vs.

The Honorable Henry Dargan McMaster, as Attorney General for the State of South Carolina.

Defendant.

IN RE: The Estate of James Brown and the James Brown 2000 Irrevocable Trust

Plaintiffs would respectfully show unto the Court:

**FOR A FIRST CAUSE OF ACTION**

**(Declaration of Rights, Duties and Responsibilities as between AG and PR/Trustees)**

**JURISDICTION, VENUE AND PARTIES**

1. This Court has jurisdiction and venue to hear this matter which involves the Irrevocable Trust (the "2000 Trust") and last Will of James Brown, both executed on August 1, 2000. Brown died on December 25, 2006 a resident of Aiken County, S. C. The situs of the 2000 Trust has for 9 years been in South Carolina. The 2000 Trust has both charitable and noncharitable subtrusts, neither of which is currently funded. The Will was informally admitted to probate in Aiken County in File No.2007-ES-02-0056.

2. On information and belief, this Court has authority, should it elect to do so, to remove this matter to Circuit Court pursuant to S. C. Code Ann. §62-7-201 and §62-1-302(d).

Filed: 5-22-2009

Sue H. Roe  
Judge of Probate

*B. G. Ouellet*

3. Plaintiffs are the Personal Representatives (PRs) of the Estate and Trustees of the 2000 Trust.

4. Defendant Attorney General ("AG"), on information and belief, has certain rights and/or responsibilities with respect to charitable trusts, including:

a. The right to enforce the criminal laws of South Carolina. See S.C. Const. Art. V, §24.

b. the right, along with Plaintiff Trustees, to enforce the proper operation of charitable trusts, including enforcement of The James Brown "I Feel Good" Trust, a private foundation. [See S.C. Code Ann. §§1-7-130, related to public charities; and 62-7-405(c).]

5. Plaintiffs replaced former PR/Trustees David G. Cannon, Albert H. Dallas and Alfred A. Bradley (the "Cannon Group"), who resigned after Plaintiffs discovered certain of their misdeeds. By January, 2008 Plaintiffs had discovered that between 1999 and 2007, the Cannon Group siphoned off more than \$12 Million of Brown assets. Plaintiffs' discoveries are set out in the Complaint in Case No. 2008-02-CP-0322, which is incorporated herein by reference.

6. The Orders accepting the resignations of the Cannon Group and appointing Plaintiffs, contained in Case 2007-CP-02-0122 ("Case 122"), are dated August 10, 2007, November 20, 2007, March 7, 2008 and April 8, 2008. On information and belief, all parties to Case 122, constituting all Interested Persons in the Estate and Trust, other than Dallas and Bradley, are bound by the finding, conclusions and directive of said Orders. Dallas and Bradley have appealed portions of the November 20, March 7 and April 8 Orders, but are otherwise bound.

7. All Interested Persons in the Estate and 2000 Trust, including the Cannon Group, are bound by the Court's correct findings that Plaintiffs are the duly appointed PRs of the Estate; that their service as Special Administrators, PRs, and Trustees from through April 8, 2008 was

both ethical and appropriate; and that all Interested Persons other than the AG's sought and approved their appointment as PR's and Trustees.

8. Because Messrs. Dallas and Bradley assert on appeal that they are still Trustees, some of the relief requested herein may be delayed until the decisions of the Court of Appeals. The record and briefs have been filed in that matters.

9. All acknowledged adult children, 3 adult grandchildren, 3 determined heirs of James Brown, and others, have contested Brown's Estate Plan in Case No. 2007-CP-02-0872 (the "Will/Trust Contestants"). By virtue of Item X of the Will and Article XXI of the 2000 Trust (the "*In Terrorem* Clauses"), on information and belief, all Will/Trust Contestants lack standing to be parties to this proceeding.

10. On information and belief, Brown's grandchild Forlando/William Brown lacks standing to participate herein under the *In Terrorem* Clauses; because he and others have committed fraud upon the Court as defined in S.C. Code Ann. §62-1-106 in connection with statements and filings with the Court in James Brown cases; he is a joint venturer with Terry Brown and the Cannon Group. [See S.C. Code Ann. §62-7-104] See Eoff v. Forrest, 109 N.M. 695, 789 P.2d 1262 (N.M. 1990) (citing Cargill v. Sherrod, 96 N.M. 431, 432-433, 631 P.2d 726, 727-728 (N.M. 1981)). On information and belief, said false and/or misleading filings and statements constitute a fraud upon the court.

11. On information and belief, the Court, prior to the final hearing herein, should appoint a Guardian ad Litem ("GAL") for the minor beneficiaries of the 2000 Trust, to review the positions of Plaintiffs and the AG, and to make recommendations to the Court as to the protection of their interests. On information and belief, the appointment and participation of

such GAL will help ensure the finality and enforceability of the relief requested and granted herein.

12. On information and belief, parents who are Will/Trust Contestants, may not represent the interests of minor beneficiaries of the 2000 Trust. See S.C. Code Ann. §62-1-403(4).

13. On information and belief, as a result of the grave financial condition of the Estate, the appointment of the GAL should be delayed until the AG has answered and the parties' positions have been narrowed.

#### ASSETS OF THE ESTATE AND TRUST

14. The Estate has a gross value of approximately \$98 Million, which is subject to a super-priority Royalty debt obligation of approximately \$13 Million (the "TIAA Note"), resulting in a net value of approximately \$85 Million, all as more fully shown on Interim Accounting #1A filed by Plaintiffs with this Court, the terms of which are incorporated herein by reference. The sole assets currently titled in the name of the 2000 Trust are Brown's home ("Beech Island") and an interest in Geronimo, LLC. Beech Island had a date-of-death appraised value of \$1,215,000.00.

15. As a result of improper management, failure to account, and false and conflicting statements of the Cannon Group, actual ownership of certain Brown assets has not been finally determined. All Will/Trust Contestants have stipulated that the Estate owns all assets except Beech Island and possibly \$50.

16. The primary assets of the Estate are its royalty rights related to Brown's more than 750 published songs (the "Royalty Rights"), most of which are pledged on the TIAA Note, and the Estate's rights to exploit Brown's image and persona (the "Publicity Rights"). On

information and belief, the Royalty and Publicity Rights make up more than 90% of the Estate's value.

17. By 2006, the Cannon Group was ignoring enhancement of both the Royalty and Publicity Rights and seeking a quick sale of Brown's assets for their personal gain. Cannon planned to retire to Honduras by 2008.

18. Since the resignations of the last of the Cannon Group on November 20, 2007, Plaintiffs have stabilized the Royalty Rights clearance procedure, and reviewed and acted on more than 150 clearance requests. The Estate has earned more than \$5 Million of royalties, and the TIAA Note has been reduced by more than \$4 Million.

19. But for the direct and intentional interference of the Will/Trust Contestants and others, the Estate would already have in place a high-quality international Publicity Rights management Plan with GreenLight, LLC, a Bill Gates company. The GreenLight agreement was scheduled to be in place on May 1, 2009.

20. As a result of the direct and intentional interference of the Will/Trust Contestants and Forlando, despite the Estate's successes, there is only approximately \$12,000 in the bank; Beech Island and its contents are in jeopardy; and the GreenLight Publicity Rights contract may be lost. On information and belief, the AG condones the interference by the Will/Trust Contestants.

**NEED FOR DECLARATORY JUDGMENT AS TO ABILITY OF AG TO SUBSTITUTE HIS JUDGMENT FOR THAT OF PRS AND TRUSTEES**

21. While Plaintiffs have great respect for the office of the AG, their position as to what is in the best interest of the Estate and 2000 Trust differs so fundamentally from that of the AG that they are informed and believe they are entitled to Court guidance and a declaration of the

respective rights and obligations of the PRs, Trustees and AG.

22. Plaintiffs are informed and believe that the Attorney General has elected to take certain positions which, if taken by them as Trustees, would place the Estate and Trust in grave danger, including:

- A. Exposing the estate to unnecessary and inappropriate estate and income taxes.
- B. Causing disqualification of the James Brown "I Feel Good" Trust.
- C. Causing the Estate and Trust to incur substantial additional and unnecessary taxes.
- D. Transferring up to \$50 Million of Estate and Trust assets to or for the benefit of non-beneficiaries without probable cause contrary to the terms of the 2000 Trust.
- E. Managing the Estate and Trust for the benefit of private individuals and not pursuant to the Estate Plan of James Brown.
- F. Proposing modifications to the terms of the 2000 Trust even though such modifications are contrary to the wishes of the Settlor, James Brown.

23. Plaintiffs are informed and believe that in all instances where the AG takes positions which the PRs/Trustees reasonably believe are inconsistent with their duties, and when such actions are approved by the Court, Plaintiffs should be released, exonerated, indemnified and held harmless by all appropriate Courts, by the AG and by all parties consenting to and promoting the positions and actions of the AG.

24. On information and belief, the AG has asserted that by becoming a party to certain James Brown cases he may substitute his judgment for that of the PRs and Trustees. Plaintiffs, as both PRs and Trustees, disagree.

25. Between August 10, 2008 and March 26, 2009 the AG entered into certain agreements which resulted in a March 26, 2009 filing (the "March 26 Document") which, on

information and belief, will, if implemented, cause irreparable harm to the Estate and Trust as set out above. The AG also seeks Plaintiffs' removal for cause for failing to defer to the AG's substituted judgment, but the AG has not acknowledged or agreed to legal or financial responsibility for the consequences to the Estate and 2000 Trust of implementing the AG's proposals.

26. So that the PR/Trustees may conduct themselves appropriately as to any settlement proposed by the AG and strenuously objected to by both the PR and Trustees, whether approved by a Court or not, Plaintiffs ask the Court to answer these questions, declaring the respective rights and duties of the AG and PR/Trustees:

A. May the AG substitute his judgment for that of either the PRs, the Trustees, or both?

B. If substituted judgment is permitted, is the AG liable for losses caused by such substituted judgment? How do the AG, Estate, and Trust properly release, exonerate, indemnify and hold the PRs and Trustees harmless from liability for damages caused by the AG's substituted judgment?

C. Where the AG substitutes his judgment for that of the PR/Trustees, is the AG responsible for proper reporting to the IRS with respect to the "I Feel Good" Trust, including notification of changed circumstances and transfers and grants to disqualified individuals which violate the conflict of interest provisions of the 2000 Trust and Internal Revenue Service?

D. Is the AG responsible for paying, or any failure to pay, the Estate's administrative expenses and protecting the interests of valid creditors and non-settling parties?

E. Who is responsible for the filing and correction of all income tax returns for current and prior years, particularly where taxes due have dramatically increased as a result of the AG's actions, and payments for all taxes, interest and penalties associated therewith? How will the AG, Trust and Estate indemnify and hold Plaintiffs harmless if this is not done?

F. What are the respective rights, obligations and liabilities of the AG, PRs,

Trustees and any successor PRs and/or Trustees to continue to defend the Estate Plan where the AG has agreed with the Will/Trust Contestants and asserted that continued defense of the Estate Plan constitutes cause for removal of the PR/Trustees?

G. What are the respective rights, obligations and duties of the PR/Trustees, AG, and any successors fiduciaries to the Court, to non-settling parties, and to creditors, to administer the Estate; prevent tax fraud and/or maladministration and/or failure to report changes in Estate Taxes resulting from any Settlement; and the liability of the AG, the Estate, the Trust, successor PR/Trustees and others to release, defend, exonerate and make whole the current PR/Trustees where the AG, through substituted judgment, and without cause, seeks their removal?

H. What is a proper Succession Plan, and which Courts must approve the Succession Plan under the current circumstances, so that the PRs and Trustees may take such action as is appropriate for the protection of the Estate and Trust and the proper fulfillment of their duties prior to their resignations?

27. To the extent that the AG substitutes his judgment for that of the PR/Trustees, or continues to assert that he may substitute his judgment for that of the PR/Trustees, Plaintiffs are informed and believe that they are entitled to the above answers and to an Order declaring that the AG and/or any successor PRs and Trustees have both the obligation and legal responsibility to take such actions, and directing them, prior to the voluntary resignation of the current PRs or Trustees, to acknowledge in writing such responsibility.

**FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment and Guidance as to Succession Plan)**

28. All allegations hereinabove made are incorporated herein where relevant.

29. Plaintiffs since their appointment on November 20, 2007 have advised the Court, the AG and others that they intend to serve only so long as is necessary to complete their proper service as PR/Trustees; be assured that the Brown assets and Estate Plan of James Brown are protected; and that proper successors have been appointed, confirmed and put in place by all

appropriate Courts. On information and belief, this will avoid some of the problems which resulted from the precipitous resignations of the Cannon Group.

30. On information and belief, upon the Court's approval of a third trustee; review and final approval of employment and compensation as set out herein, and upon final confirmation by all courts of competent jurisdiction of an appropriate Succession Plan, it is the intention of Plaintiffs to resign as both PRs and Trustees, such resignation to be effective upon, and only after the following:

- a. The ratification and appointment of the third Trustee selected by the Plaintiffs, or as otherwise approved by all appropriate Courts;
- b. Clarification of the rights and responsibilities of the AG and the PR/Trustees in the management of this mixed charitable and non-charitable Trust and the Estate, as requested above, by all courts of competent jurisdiction.
- c. The proper payment for, defense, and dismissal of, the frivolous federal claim brought by Forlando Brown, with proper indemnity by the Estate and Trust.
- d. Approval and implementation of the Succession Plan.
- e. Acceptance by any successor PR/Trustees of the terms and conditions set out by the Courts and all other terms and conditions of the Estate and 2000 Trust, including the conflict of interest and compensation policy of the "I Feel Good" Trust.
- f. Acceptance by the successor Trustees upon the funding of the James Brown "I Feel Good" Trust of total commissions for all Trustees of one-half of 1% per year of the value of the "I Feel Good" Trust which, according to the Internal Revenue Code and the terms of the Trust, must be commensurate with the service performed by said 3 Trustees.

31. In developing a Plan of Succession, Plaintiffs have taken into account the following,

and other, factors:

- a. The Estate Plan of James Brown and its succession provisions:

- b. The need to prevent the return and/or influence of the Cannon Group, who continue to interfere with and damage the Estate and Trust;
- c. The need for integrity and approval of a Succession Plan, including established reasonable compensation, in order to insure competent and independent Trustees;
- d. Because of the Cannon Groups attempts to remove the Trust from the State to avoid Court scrutiny and proper oversight, the need to retain the Trust within the State of South Carolina for the protection of Mr. Brown's Estate Plan.
- e. The need to comply with IRS Provisions.

32. In order to implement the Succession Plan, and prior to such implementation, the Plaintiffs are informed and believe, that they are entitled to a ruling of this Court as follows:

- a. The PRs are the sole persons appropriate to appoint a third PR and Successor, PRs;
- b. The Trustees are the sole persons to appoint a third Trustee and their Successors;
- c. At least temporarily it is appropriate for a majority of the Trustees to be South Carolinians so that the Court may, as needed, supervise the 2000 Trust.

33. Whether or not the Court allows the AG to substitute his judgment for theirs.

Plaintiffs seek guidance as to the approval of a Succession Plan which will honor their Court appointment; fulfill their duty to protect the Brown assets; and carry out the Estate Plan of James Brown, including his desire to have 3 Trustees.

**FOR A THIRD CAUSE OF ACTION**  
**(Approval of Accounting and Actions of PR/Trustees)**

34. All allegations hereinabove made are incorporated herein where relevant.

35. The assets of the Estate and Trust were so totally commingled by the Cannon Group that it would not be reasonable at this time to attempt to segregate assets. As found by the South Carolina Court of Appeals in its Order dated July 14, 2008, such adjustments as are appropriate

may be made at the appropriate time.

36. Plaintiff Trustees have not, and will not, commingle charitable funds of the "I Feel Good" Trust with those of any other subtrust of the 2000 Trust. Nor should any other Trustee be allowed to do so.

37. On information and belief, the accounting and all acts of Plaintiffs as PRs and Trustees to date should be reviewed and accepted by this Court as a complete accounting of the acts of the PR and the Trustees to date, and approved by this Court. On information and belief, a review of their Royalty Rights clearances and contracts, and Publicity Rights contracts contain trade secrets and proprietary information and, in the discretion of the Court, should be conducted in a closed courtroom.

#### **FOR A FOURTH CAUSE OF ACTION**

**(Review of Employment, and of Compensation of Plaintiffs and Others)**

38. All allegations hereinabove made are incorporated herein where relevant.

39. On information and belief, it is the duty of Plaintiffs pursuant to the Will, 2000 Trust and applicable law, including Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873 (2007), to uphold and defend the Estate Plan of James Brown until relieved by all proper Courts from such duty or properly replaced by a Successor who acknowledges and agrees to perform such duty. On information and belief, failure to perform such obligation could result in the unnecessary loss of millions of dollars to the Estate of James Brown and the 2000 Trust. To date the AG has not agreed to accept legal responsibility for such loss.

40. In the performance of their duties, pursuant to their authority to do so under the documents and/or Orders of the Court, Plaintiffs have incurred proper expenses in the administration of the Estate, including the engagement of counsel as set out in the attachment to

the Accounting on Chart 2, Items 2, 3, 4, 6 and 7, a copy of which is attached hereto as Exhibit A. Plaintiffs will continue to incur such expenses until the proper termination of their appointment through final, approved orders of all appropriate Courts: delivery of all assets of the 2000 Trust and Estate to Successor PRs and Trustees; and substitution of parties and legal responsibility as set out herein before the IRS, the South Carolina Department of Revenue, and in all Courts with respect to all pending matters.

41. Pursuant to Item IV and VI of the Will and Article VIII and X of the 2000 Trust, their reasonable compensation, all expenses and described above, and the employment and compensation of all persons they have engaged is appropriate, in the best interest of the Estate and Trust; and should be approved and paid as priority expenses of administration prior to the payment of any expenses other than those in the same category.

42. On information and belief, attempts by certain Will/Trust Contestants to circumvent the responsibility of the PR's to pay all such expenses, taxes, debts and claims in proper order, and prior to any distributions to the 2000 Trust or beneficiaries (other than small, court-approved educational distributions for beneficiaries over 21) should not be condoned by the AG or allowed by the Court. On information and belief, proper administration will promote the purposes of the Estate Plan of James Brown, to provide education benefits for needy and deserving students in perpetuity.

43. On information and belief, the Court pursuant to S.C. Code Ann. §§62-3-721 and 62-7-201(3), this Court should review and approve the service and compensation of Plaintiffs and the employment, service and compensation of all persons engaged by them as designated in Schedule A, as well as all others engaged by Plaintiffs, and determine that their employment,

service and compensation has been for the benefit of the Estate and 2000 Trust, and is a priority expense of administration. The Court, on information and belief, should further determine that the contractual basis for services to be rendered is reasonable.

44. On information and belief, Plaintiffs, for their joint service as PRs and Trustees, and as a result of the extraordinary commitment necessary to fulfill their jobs, are entitled to a full commission under South Carolina law, based on the combined value of all Estate and Trust assets, for their joint service as PR/ Trustees, together with payment or reimbursement for all expenses and costs.

45. On information and belief, Plaintiffs' full commission (after a reasonable allocation to the third PR/Trustee) should be shared as follows:

- A. One-Half (½) Based on Time;
- B. One-Half (½) Equally, because of equally shared responsibility.

46. On information and belief, no fees or expenses of Will/Trust Contestants can or should be paid from the Estate or Trust, even if approved by the AG, until all of the above priority expenses of administration have been paid and all valid creditors of equal or higher priority paid. On information and belief, the Court should declare that the PRs may not pay any such claims for fees and expenses until properly presented, reviewed and approved by all proper Courts or approved by Plaintiffs.

47. On information and belief, the establishment of a reasonable, known commission structure for future Trustees, will provide the following benefit to the Estate and Trust:

- A. It will confirm that claims of Cannon, Dallas and Bradley to commissions in excess of 15 % were unreasonable, even if they had performed properly.
- B. It will enable the Trust and Estate to engage, competent Successors to Buchanan and Pope upon their voluntary resignation, with such Successor being independent

and not indebted to the Will/Trust Contestants.

48. Plaintiffs are informed and believe that they are entitled to, and request that this Court review and approve, their compensation and service, and the employment and compensation of all persons engaged by them as designated on Schedule A, as well as that of the third Trustee, and approve same.

**FOR A FIFTH CAUSE OF ACTION**  
**(Confirmation of Appointment of Third Trustee and Successors)**

49. All allegations hereinabove made are incorporated herein where relevant.

50. Plaintiffs are informed and believe that a third Trustee selected by them is a proper person to serve as Trustee and PR, and pursuant to their authority under the Estate Plan of James Brown have identified a third Trustee, with alternates, and request ratification and approval for such Trustee as set out herein..

51. On information and belief, upon the voluntary resignation of Plaintiffs, their replacement Trustees should be:

A. For Robert L. Buchanan, Jr. : Ray Gonzalez, Esq., Warner Music Group Business Affairs Executive for almost 20 years, now Partner in prominent Nashville Entertainment Firm of Zumwalt, Almon & Hayes, PLLC.

B. For Adele J. Pope: H. Ronald Stanley, Esq, a prominent South Carolina attorney.

52. On information and belief, for the protection of the nominees, the Estate and the 2000 Trust, Plaintiffs, prior to tendering their resignations, are entitled to a final Order of all proper Courts confirming their authority to appoint both successor PR s and successor Trustees.

**FOR A SIXTH CAUSE OF ACTION**  
**(Termination, Protection, Compensation and Exoneration for Frivolous Federal Suit)**

53. All allegations hereinabove made are incorporated herein where relevant.

54. On January 2, 2008, fewer than 45 days after their appointment, Forlando Brown, on information and belief, a joint venturer with the Cannon Group and Terry Brown, and, based on his own testimony, a majority owner of a company attempting to purchase the James Brown assets for personal profit, filed a false and frivolous lawsuit against Plaintiffs, making false and scurrilous accusations both against the South Carolina courts and against Plaintiffs.

55. On information and belief, this suit was commenced and is being continued for an improper purpose and, among other wrongdoing, counsel for Plaintiff Forlando Brown therein, also counsel for Forlando Brown, Terry Brown and Romunzo Brown in State Court, has filed a false affidavit which he knew to be false at the time of filing, which was intended to pollute the judicial system and which brings discredit not only upon himself but upon the Courts.

56. On information and belief, both Forlando Brown and his counsel have committed a fraud upon this Court which, on information and belief, should not be tolerated.

57. On information and belief, the defense of this frivolous suit was necessary and appropriate for the protection of the Estate and 2000 Trust and all costs therefor should be advanced from the Estate/Trust, with Plaintiffs assigning to the Estate/Trust upon such payment in full such rights as are appropriate for the recovery from Forlando Brown of legal fees and costs incurred therein.

58. On information and belief, to the extent that they have not already forfeited their entire interest thereunder, Forlando Brown and Terry Brown should be equitably charged by this Court, from any interest they have in the Estate and Trust, with all costs proximately caused to the Trust and/or Estate by this frivolous, inappropriate proceeding.

59. Plaintiffs are informed and believe that they are entitled, in addition to their commissions set out above, to all costs of the Forlando Brown action upon their assignment to

the Estate/Trust and successor PRs and Trustees of their rights against Forlando Brown and Terry Brown as set out herein.

**FOR A SEVENTH CAUSE OF ACTION**

**(Proper Substitution of Parties and Transfer of Responsibility for Litigation)**

60. All allegations hereinabove made are incorporated herein where relevant.

61. In the course of their service Plaintiffs have been named as individual defendants in various cases. On information and belief, prior to their resignations, they should be released from such cases, or properly indemnified.

62. On information and belief, upon final approval by all proper Courts of the Succession Plan, and all other items above, in addition the PR/Trustees should be substituted by the successor PR/Trustees, as appropriate, in all pending litigation and before the Internal Revenue Service and South Carolina Department of Revenue.

63. On information and belief, most of the pending claims and litigation will be resolved prior to the final implementation of the Succession Plan. Nevertheless, such transfer of privilege and responsibility for such tax matters, claims and litigation is essential for the protection of the Estate and 2000 Trust and specific direction for such transfer of privilege and responsibility should be part of the Succession Plan requested herein.

**PRAYER FOR RELIEF**

Having set forth their positions herein Plaintiffs pray that the Court consider this matter, take testimony and:

- a. Grant all declaratory relief requested herein as set out above;
- b. Approve the Succession Plan set out herein;
- c. Approve the accounting, compensation and acts of Plaintiff PR/Trustees, and the employment and compensation of others as requested herein; and

d. Grant such other and further relief as is appropriate.

Plaintiffs further request that this Court retain jurisdiction of this matter unless and until all impediments to the implementation of the said proper Succession Plan and other issues raised herein are resolved, and Plaintiffs may appoint a third Trustee and submit their voluntary resignations in a manner which will provide proper protection for the James Brown Estate Plan, the assets of the Estate and the 2000 Trust, and necessary guidance for the current and successor fiduciaries.

LAW OFFICE OF JAMES D. BAILEY, PC

By: 

James D. Bailey, Esquire  
Law Office of James D. Bailey, PC  
100 Park Avenue SW  
PO Box 2376  
Aiken, South Carolina 29802  
803/648-9529

May 22, 2009

Attorney for Plaintiffs

**EXHIBIT A**

**2: VALID CLAIMS/PRIORITY EXPENSES OF ADMINISTRATION (SECTION 62-3-805(a)(1))<sup>2</sup> BY ALLOWANCE, ACKNOWLEDGMENT OR JUDGMENT/ORDER AND CLAIMS HAVING SPECIAL STATUS**

May 20, 2009

No.	CREDITOR	EXPLANATION	CLASS	PAYMENT STATUS
1	M&T Bank, Trustee TIAA	Claim secured by Assignment and terms of indenture. Also see claim file 9/20/07 for \$473,595.46		Current - \$13,165,163.25
2	Hogan and Hartson, LLP	Counsel Pullman NY litigation. Engaged by Ct. Orders dtd. 6/22/07 and 8/10/07, Case 122. Hrly. rate and costs, as per contract	Priority (Admin.)	\$109,523.56 (5/1/09)
3	Law Office of James D. Bailey, PC	Counsel, Probate and Circuit Court matters including claims resolution; Will/Trust Defense; Spousal/Heirs Claims; and other general matters; co-counsel, Appellate matters. Hrly. rate and costs, as per contract	Priority (Admin.) allowed by PRs	\$116,605.42 (5/1/09)
4	Shipley & Hayes, PC	Primary Appellate counsel and co-counsel in certain Circuit Court matters. Hrly rate and costs as per contract	Priority (admin.) allowed by PRs	\$29,580 (5/1/09)
5	Smith, Massey, Brodie & Thurmond	Counsel to former PRs/Trustees. Allowed as per Court Order (Hearing 10/23/08) claim plus interest at Jmt. rate.	Priority (Admin.)	\$53,322.20, plus interest unpaid
6	Art Gold (Gold and Coulson LLC)	Counsel fee and costs Corbis/Illinois litigation: counsel Hollander vs. Estate/Trust, filed 5/09. Hrly rate plus costs as per contract	Priority (Admin.)	Unpaid
7	Harley Ruff	Tax consultations etc., hrly rate plus costs as per contract		\$1,500 paid; approx. \$1,500 due (5/20/09)

<sup>2</sup> SECTION 62-3-805. For Classification of claims.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

HENRY DARGAN McMASTER, in his  
capacity as Attorney General of the State of  
South Carolina; and others

Petitioners,

ALBERT H. DALLAS and others

Respondents.

IN RE:

The Estate of James Brown and the James Brown  
2000 Irrevocable Trust u/a/d August 1, 2000

) IN THE COURT OF COMMON PLEAS  
) SECOND JUDICIAL CIRCUIT

) Case No.: 08-CP-02-1647

) MOTION FOR PAYMENT OF  
) COMMISSIONS AND RELATED  
) RELIEF

AND

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Robert L. Buchanan, Jr. and Other,  
Plaintiffs,

vs.

The Honorable Henry Dargan McMaster,  
as Attorney General for the State of South  
Carolina,

Defendant.

IN RE: The Estate of James Brown  
and the James Brown 2000 Irrevocable  
Trust

) IN THE COURT OF COMMON PLEAS  
) SECOND JUDICIAL CIRCUIT

) Case Number: 2009-CP-02-1140

AND

THE STATE OF SOUTH CAROLINA  
IN THE CIRCUIT COURT FOR THE  
SECOND JUDICIAL CIRCUIT

APPEAL FROM AIKEN COUNTY  
PROBATE COURT

THE HONORABLE SUE H. ROE,  
PROBATE COURT JUDGE

---

Case No. 09-CP-02-01341

---

IN THE MATTER OF: James Brown

Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.....  
.....Appellants

YOU WILL PLEASE TAKE NOTICE that Robert L. Buchanan, Jr. and Adele J. Pope individually and in all fiduciary capacities, will move before the Circuit Court before the Honorable Doyet A. Early, III, at the Aiken County Courthouse located at 109 Park Avenue S.E., Aiken, South Carolina, ten days after service hereof, or as soon thereafter as they may be heard for an Order as follows:

1. Directing payment of the unpaid portions of their previously approved Special Administrators' fee and PR/Trustees' commissions as priority expenses of administration of the Estate and Trust, in accordance with the Judgment of this Court dated January 8, 2008 in Case 2007-CP-02-0122 (Case 122), and setting such additional commissions, costs and reimbursements for their service to date as the Court shall deem appropriate.

2. Directing payment or reimbursement of attorneys' fees and costs incurred by them, as priority expenses of administration of the Estate and Trust, as contemplated in the Orders of this Court including the Order dated February 20, 2008 in Case 122 (Declaratory Judgment) and applicable law, including all costs associated with the defense of the Estate Plan of James Brown; the administration of the Estate of James Brown and the James Brown 2000 Trust; and the defense

of all attempts to return David G. Cannon, Albert H. Dallas and Alfred A. Bradley to any position of authority or trust with the Estate/Trust or Brown Entities. Such payments are consistent with or contemplated by Orders of this Court dated August 10, 2007, March 7, 2008 and April 8, 2008 in Case 122; the Estate Plan of James Brown, and applicable law, including but not limited to Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873 (2007) and S.C. Probate Code Sections 62-3-715(19) and 62-7-201.

3. Directing that the above amounts be paid prior to any non-priority expenses of the Estate or Trust or distributions, and paid proportionately as funds are available with other Court-approved priority expenses of administration of the Estate and Trust.

The Grounds of this motion are:

1. On March 7, 2007 Robert L. Buchanan, Jr. and Adele J. Pope, upon the request of the "Settling Parties" and pursuant to Court Order in Case 122 were appointed as limited, non-fiduciary Special Administrators (SAs) of the Estate of James Brown.

2. By Order of this Court dated August 10, 2007, after the resignation of David G. Cannon as PR/Trustee, the duties and oversight responsibilities of the SAs were increased.

3. By Order of this Court dated November 20, 2007, upon the resignations of Dallas and Bradley, Buchanan and Pope were appointed PR/Trustee, at which point they were required by law and the applicable documents to defend the Estate Plan of James Brown.

4. Buchanan and Pope inherited an Estate and Trust which were in shambles from years of maladministration, as was found by this Court in Orders dated February 20, 2008 and April 1, 2008 in Case 122. Also see S.C. Court of Appeals Opinion Number 4570, filed June 23, 2009 (Cannon Appeal).

5. On January 2, 2008, fewer than 35 days after their appointment, Forlando Brown filed a frivolous federal lawsuit asserting that Judge Early had no jurisdiction to act in matters related to the James Brown 2000 Irrevocable Trust; that the 2000 Trust and its Trustees should be enjoined from taking any action; and that Cannon, Dallas and Bradley should be reinstated as Trustees.

6. Within the same period, 5 of Mr. Brown's children, many of whom had ratified the 2000 Will and 2000 Trust, contested the validity of both the Will and the Trust.

7. For the protection of the Estate/Trust, Buchanan and Pope were required to defend or prosecute more than twenty legal proceedings.

8. On January 8, 2008 this Court issued its unappealed Order in Case 122 directing payment for the services and costs of Buchanan and Pope as Special Administrators and directing a minimum payment to them for their services as PR/Trustees, the terms of which Judgment are incorporated herein by reference.

9. From November 20, 2007 until May 26, 2009 Buchanan and Pope fully and faithfully performed their duties as PR/Trustees.

10. On May 26, 2009 this Court issued an Order replacing Buchanan and Pope with Russell Bauknight.

11. On May 26, 2009 the Probate Court issued an ex parte Order terminating the appointment of Buchanan and Pope.

12. In the fewer than 30 days between May 26 and June 24, 2009, and without prejudice to their appeal of the Probate Court Order of May 26 and rights of reconsideration and other rights under the May 26 Order, Buchanan and Pope have taken numerous steps to ease the transfer of temporary management, protection and preservation of the Estate/Trust, without prejudice to their

remaining rights and duties to defend the Estate Plan of James Brown. They have:

- A. Delivered possession and control of all Estate/Trust assets to Bauknight on May 27, 2009 for management pending a final Order in McMaster v. Dallas.
- B. Fully accounted to the Court pursuant to their 18-month accounting filed on May 22, 2009 and their Final Accounting (without prejudice) filed on June 24, 2009, by which they have fully accounted and delivered to their appointed successor. A copy of their Final Accounting with attachments, is attached hereto as Exhibit A.
- C. Delivered to Russell Bauknight on or before May 24, 2009 all documents and records delivered to them by Messrs. Cannon, Dallas and Bradley, and approximately 55 additional boxes of documents related to their service.

13. The May 26, 2009 Order of this Court terminated the appointment of Buchanan and Pope, but failed to fully relieve them of their duties and obligations under the Estate Plan of James Brown.

This motion is based on the Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope filed herewith and others on file in these cases; the pleadings in all cases referenced in Exhibit I; the Estate Plan of James Brown; and additional affidavits and documents to be provided prior to the hearing.

Respectfully submitted,

---

James D. Bailey  
Law Office of James D. Bailey, PC  
100 Park Avenue SW  
PO Box 2376  
Aiken, South Carolina 29802  
Telephone: 803-648-9529  
Facsimile: 803-642-6041

Tressa Hayes  
Shiple & Hayes, PC  
45 Meeting Street  
West Columbia, SC 29169  
Telephone: 803-794-7588

Facsimile: 803-739-2024

June 24, 2009

Attorneys for Respondents Robert L. Buchanan, Jr.  
and Adele J. Pope

**AFFIRMATION OF COUNSEL**

**I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation with opposing counsel would serve no useful purpose concerning this Motion.**

\_\_\_\_\_  
James D. Bailey

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

PROBATE COURT

IN THE MATTER OF: ESTATE OF JAMES BROWN  
JAMES BROWN 2000 IRREVOCABLE TRUST

CASE NUMBER 2007-ES-02-0056

Decedent's Date of Death (if known): December 25, 2006  
Decedent's Last Mailing Address: 430 Douglas Drive  
Beech Island, SC 29842

**PROTECTIVE STATEMENT AND NOTICE OF CREDITOR'S CLAIM**

Creditor: Robert L. Buchanan, Jr. and Adele J. Pope  
Address: c/o 212 Newberry Street  
P.O. Box 463  
Aiken, South Carolina 29802-0463  
Telephone: 803/649-2586

Basis of claim: In accordance with Section 62-3-804(2).

Amount of claim:

(a) Full PR/Trustees' commissions in the amount of \$4,993,151, with immediate deposit payment of \$2,153,983 plus interest at the legal rate from September 1, 2009, pursuant to Judgment dated January 8, 2008, in Case No. 2007-CP-02-0122, together with all other relief sought in the Motion for Payment of Commissions and Related Relief and Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope Related to Commissions and Expenses dated June 24, 2009; supplemental Affidavit of Adele J. Pope and Robert L. Buchanan, Jr.; Affidavit of Adele J. Pope dated July 17, 2009; Complaint for Declaratory Judgment; Review of Compensation and Employment; Guidance as to Succession Plan; Approval of Accounting of PR/Trustees and for Order Granting Protection for Trustees upon Resignation dated May 22, 2009 and filed in this Court, which matters are now being heard in the Circuit Court for Aiken County in Case No. 08-CP-02-1647, each of said referenced documents being incorporated herein by reference and made a part hereof as fully as if set out herein. ERH.

(b) The relief requested herein, in addition to payment of PR/Trustees' commissions, with applicable interest, includes, but is not limited to, payment or reimbursement for all attorneys' fees incurred by Mr. Buchanan and Ms. Pope in connection with their service to the Estate of James Brown, the James Brown 2000 Irrevocable Trust and Brown Entities, including payment of all attorneys' fees and costs of the Forlando Brown Federal lawsuit referenced therein and all other relief requested therein.

FORM #371PC (1/91)  
62-3-804, 62-5-428

PAGE 1 OF 2

(c) Reference to the said documents is craved for a more specific description and detail of the claim.

Date claim will become due (if not already due): Commissions now due. Other amounts due or to become due as stated.

Nature of uncertainty as to amount of claim and due date, if any:

Description of any security as to claim:

Signature: Robert J. Searles  
Date: July 17, 2009  
Signature: Adelle J. Piro  
Date: July 17, 2009

**INSTRUCTIONS:** Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see Section 62-3-803, 62-3-804 and 62-3-806 on reverse).

The law provides that a creditor has up to thirty days from mailing of notice of disallowance to file a petition for the allowance of the claim (Form #373PC) in the Probate Court or to commence a proceeding on the claim against the Personal Representative (see Section 62-3-806 on reverse). Failure to file such a petition or to commence such a proceeding will result in the claim being forever barred.

**SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED**

**§ 62-3-803. Limitations on presentation of claims.**

"(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

- (1) one year after the decedent's death or
- (2) within the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication; provided, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors barred in this State are also barred in this State.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) a claim based on a contract with the personal representative within eight months after performance by the personal representative is due;
- (2) any other claim, within the later of eight months after it arises, or the time specified in subsection (a)(1).
- (c) Nothing in this section affects or prevents:
  - (1) any proceeding to enforce any mortgage, pledge, lien, or other security interest upon property of the estate; or
  - (2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or
  - (3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

**§ 62-3-804. Manner of presentation of claims.**

"Claims against a decedent's estate may be presented as follows:

- (1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with

the clerk of the probate court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

- (2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim, and the claimant must file a written statement of the claim as in (1) above, with the clerk of the probate court. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.
- (3) If a claim is presented under subsection (1), no proceeding may be commenced more than thirty days after the personal representative has mailed a notice of disallowance with warning of the impending bar; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the thirty day period, or to avoid injustice the court, on petition presented to the court prior to the expiration of such thirty day period, may order an extension of the thirty day period, but in no event may the extension run beyond the applicable statute of limitations."

§ 62-3-806. Allowance of claim.

"(a) As to claims presented in the manner described in Section 62-3-804 within the time limit prescribed in Section 62-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than thirty days after the mailing of the notice of disallowance of partial allowance if the notice warns the claimant of the impending bar. It is the responsibility of the personal representative to notify the claimant if a claim is disallowed."

ALSO SEE TITLE 62, ARTICLE 3, PART 8 (I.E., SECTIONS 62-3-801, ET SEQ.)

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN ) SECOND JUDICIAL CIRCUIT  
) Case No.: 08-CP-02-1647 (Original)  
) Case No.: 07-CP-02-0122 (Copy)  
) Case No.: 08-CP-02-0872 (Copy)  
HENRY DARGAN McMASTER, in his )  
capacity as Attorney General of the State of )  
South Carolina; and others )  
) **SUPPLEMENTAL AFFIDAVIT**  
Petitioners, ) **OF ROBERT L. BUCHANAN, JR.**  
) **AND ADELE J. POPE IN**  
ALBERT H. DALLAS and others ) **SUPPORT OF COMMISSIONS AND**  
Respondents. ) **PAYMENT OF CERTAIN PRIORITY**  
) **EXPENSES OF ADMINISTRATION**  
IN RE: )  
The Estate of James Brown and the James )  
Brown 2000 Irrevocable Trust u/a/d August )  
1, 2000 )  
\_\_\_\_\_ )

**AND**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN ) SECOND JUDICIAL CIRCUIT  
) Case Number: 2009-CP-02-1140  
) Robert L. Buchanan, Jr. and Other, )  
) Plaintiffs, )  
) vs. )  
) The Honorable Henry Dargan McMaster, )  
) as Attorney General for the State of South )  
) Carolina, )  
) Defendant. )  
) IN RE: The Estate of James Brown )  
) and the James Brown 2000 Irrevocable )  
) Trust )  
\_\_\_\_\_ )

**AND**

THE STATE OF SOUTH CAROLINA  
IN THE CIRCUIT COURT FOR THE  
SECOND JUDICIAL CIRCUIT

APPEAL FROM AIKEN COUNTY  
PROBATE COURT

THE HONORABLE SUE H. ROE,  
PROBATE COURT JUDGE

---

Case No. 09-CP-02-01341

---

IN THE MATTER OF: James Brown

Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.....Appellants

PERSONALLY APPEARED BEFORE ME, Robert L. Buchanan, Jr. ("Bob") and Adele J. Pope ("Adele"), who being duly sworn, depose and say:

**I. AFFIDAVIT BASED ON PERSONAL KNOWLEDGE**

1. This affidavit is made from our personal knowledge, including knowledge gained from the books and records of the Estate of James Brown (the "Estate"), the James Brown 2000 Irrevocable Trust (the "2000 Trust") and records reviewed during our service as Special Administrators (SAs) of the Estate of James Brown from March 7 to November 20, 2007 and as Personal Representatives (PRs) of the Estate and Trustees of the 2000 Trust from November 20, 2007.<sup>1</sup>

2. In 2000 James Brown created what appears to have been<sup>2</sup> the largest South Carolina Private Foundation created by one individual solely to provide scholarships for

---

<sup>1</sup> (a) Subject to subsection (b), a person has knowledge of a fact if the person: (1) has actual knowledge of it; (2) has received a notice or notification of it; or (3) from all the facts and circumstances known to the person at the time in question, has reason to know it. S.C. Code Ann. Sec. 62-7-104

<sup>2</sup> If fully implemented as James Brown mandated in 2000, the Brown Family Education Trust will provide 7 designated grandchildren with adequate funding for a full education, including pre-college, college and professional and/or post-graduate work (about \$300,000 each). Within 5 years The James Brown "I Feel Good" Trust, a private foundation, will have a fund of at least \$100 Million, providing, in perpetuity, \$5 Million of scholarships to needy and deserving students desiring to attend schools in South Carolina and Georgia. [ See Trust]

needy and deserving children desiring to be educated in South Carolina and Georgia.<sup>3</sup> We believe that it is our duty to preserve the James Brown Legacy for the State of South Carolina.

3. After August 10, 2007, approximately 80 boxes of documents were delivered to 1218 Taylor Street, the back of Adele's office, by or on behalf of the predecessor PR/Trustees David G. Cannon (Cannon), Albert H. "Buddy" Dallas (Dallas) and Alfred A. Bradley (Bradley), and more than 65 additional boxes of documents, records and pleadings have been gathered since November 20, 2007, during our service as PR/Trustees.<sup>4</sup>

## II. SUMMARY OF RELIEF REQUESTED

4. Reserving all rights and objections to our removal as PR/Trustees, and orders of this Court related to the March 26 Document and appointment of Russell Bauknight as Successor PR/Trustee, we ask the Court for the following relief:

- a. Payment of a full commission of \$4,993,151, to be divided between Bob and Adele, based 1/3 on relative time and staff time spent; and 2/3 equally, based on our shared responsibility, as follows:

Bob: \$ 2,147,221

Adele: \$ 2,845,930

- b. Payment of attorneys' fees for all counsel engaged or continued by us, as a priority expense of administration.
- c. Payment from the first available monies of \$2,153,983, plus interest from

---

<sup>3</sup>According to *Philanthropy in the Sunshine State*, in 2001, the year after which James Brown created the 2000 irrevocable Trust and executed his Will, both of which would fund, in addition to the Grandchildren's Trust, The James Brown "I Feel Good" private foundation, only 19 private foundations in Florida had assets in excess of \$100 Million, the size of James Brown's Gross Estate, even though Florida housed 2 of the nation's 100 largest private foundations and 5.3% of the nation's private foundations.

<sup>4</sup> 145 boxes have been delivered (without prejudice) to Russell Bauknight.

September 1, 2009<sup>5</sup> at the judgment rate, being the unpaid amount due under January 8, 2008<sup>6</sup> Order for SAs and as a deposit towards our commissions set out above.

- d. Payment of all other amounts requested herein<sup>7</sup> before payment of any other commissions, accounting and/or attorneys' fees other than those which have been approved by the Court, after notice and hearing, which amounts shall be paid pro-rata with all remaining court-approved expenses of the same priority<sup>8</sup> as funds are available either in the Estate or Trust.
- e. Full access to all books, records and transactions of the Estate/Trust until the conclusion of all appeals related to our appointment and service.

### III. OUR QUALIFICATIONS, PREPARATION AND APPOINTMENT (WITHOUT WARNING) AS PR/TRUSTEES

5. Neither of us sought the position of SA or PR/Trustee. As Judge Early found in ¶ 3 of his Order dated November 20, 2007 (Case 122), we were nominated and approved as PR/Trustees by all parties except the Attorneys General (AGs) of Georgia (GA) and South Carolina (SC). [Order dtd. 11/20/07]

6. Our education and a summary of our prior experience is set out on **Exhibit 6** (Bob) and **Exhibit 7** (Adele). Adele's time records, which reflect in detail what we were

---

<sup>5</sup> This does not include any time or costs for the many hours we have expended in inventorying and delivering documents (without prejudice) to R. Bauknight for temporary management; meeting with Bauknight and 2 of his attorneys engaged since May 26; responding to correspondence from 5 of his 10 attorneys; and offering to meet weekly to assist Bauknight and his attorneys begin to understand the operation of the Estate/Trust. [The offer was rejected when offered, but recently accepted on July 10, 2009.] Further, it does not include any time or costs for anticipated deposition preparation and testimony or other matters, including an appeal which we believe is required. (See § XII, ¶33)

<sup>6</sup> A copy of the Complaint in the Declaratory Judgment (part of Case 122) is attached as **Exhibit 1**; the 1/8/08 Order as **Exhibit 2**; the February 20, 2008 Order as **Exhibit 3**; and the April 1, 2008 Order as **Exhibit 4**. A copy of the calculation of the minimum amount due as of September 1, 2009 is attached as **Exhibit 5**.

<sup>7</sup> Most of our costs through May 26, 2009 have been paid. However, mileage since January 1, 2009 and certain other expenses incurred prior to May 26, along with all costs and advances on and after May 27, 2009, are requested in addition to the specific amount stated above.

<sup>8</sup> And prior to any distributions or payment of unapproved amounts or amounts of lower priority.

both doing, are attached as **Exhibit 8**. Bob's are attached as **Exhibit 9**.

7. Among those approving our appointment as PR/Trustee was Dallas, who immediately after his resignation, asked to speak to the Court and parties. Dallas, under oath, advised the Court he had worked "hand in glove" with us as SAs. Dallas also thanked Judge Early for his courtesy<sup>9</sup> [Tr. 11/20/07, pp. 428, 430]. Shortly thereafter Dallas made false statements [in an affidavit presented by the AGs] and filed documents asserting both we and Judge Early had coerced his involuntary resignation. [Transc. Hrg. 2/7/08 pp. 202-203; Motion Recusal]. Likewise Terry and Forlando Brown approved our appointment, but Forlando, through counsel he shares with his father Terry, sued us in Federal Court fewer than 45 days later. [Terry, Forlando and Dallas concealed from the Court their joint venture related to the purchase and sale of the James Brown assets.]<sup>10</sup> [Federal Complaint dtd. 12/31/07, filed 1/2/08]

8. We were appointed PR/Trustees under the August 1, 2000 Will and 2000 Trust. Both provided for 3 fiduciaries, but the November 20 Order, ¶ 2 provided that we were not required to appoint a third Trustee, as contemplated by Item IV of the Will and Article VIII of the 2000 Trust.

9. Our predecessors, as selected by James Brown, had spent full time as PRs

---

<sup>9</sup> Other parties to Case 122 other than the AGs supported and repeatedly praised our appointment as PR/Trustees. [See Order dtd. 11/20/07.] until November 7, 2008, when the Plaintiffs in Case 1647 asserted we should be removed for cause for: using, in part, values obtained from Dallas & Bradley for the Estate Tax Return and for not approving the proposed "settlement" which, in modified form, became the March 26<sup>th</sup> Document. [Am. Complaint, McMaster]

<sup>10</sup> The S. C. AG was asked to intervene in the Forlando suit to protect the Trust. He refused, asserting he was prevented from doing so by 11<sup>th</sup> Amendment immunity. [Ltr. Buchanan/Pope, SCAG dtd. 6/13/08; response dtd. 6/16/08] On January 2, 2008, Forlando Brown, filed a false and misleading Federal Court complaint asserting that Judge Early had no authority to appoint us; had acted improperly in doing so; and that Cannon, Dallas and Bradley should be returned as Trustees.

since Brown's death and at least one as Trustee for years. Dallas was an attorney; Cannon an accountant; and Bradley a person who had previously worked on the road with Mr. Brown. Except for their 7 years as Trustees for James Brown, they did not appear to have other Trust experience.

10. Between March 7 and November 20, 2007, Cannon, Dallas and Bradley appeared to devote much of their time to preparing for an anticipated Will contest and defending their own actions. They also concealed some of their actions – including their attempt to receive a “kickback” or options on a proposed sale of the James Brown assets.<sup>11</sup>

11. Between June 22, 2007, when we as SAs were first given access to the James Brown documents, and November 20, 2007 (especially after August 10), we learned a lot about the operation of Mr. Brown's business from Dallas and Bradley.

12. We learned that for several years Bradley's participation as a Trustee had been minimal.<sup>12</sup> We learned that the Trust's and Cannon's record-keeping and tax preparation were a mess; and that Dallas and Cannon had grossly mismanaged the Trust in numerous ways, including Cannon's \$900,000.00 misappropriation in 2006; the disappearance of Hallmark card ad funds in 2007; and the unexplained loss of \$7 Million

---

<sup>11</sup> Cannon and Dallas also worked together with Attorney William Hammond to undermine the investigation into Cannon's actions at the same time Dallas was representing to the Court that he was spearheading the investigation against Mr. Cannon. [See Complaint, interference suit.]

<sup>12</sup> After Brown's death, his daughter Deanna, who had earlier served as Brown's attorney-in-fact with Cannon, Dallas and Bradley, accepted the position of Trustee along with Cannon and Dallas. She apparently withdrew on January 3 when Bradley asserted his right to return to service. [See Appt. Docs.]

between 1999 through 2007.<sup>13</sup>

13. Cannon resigned his position as PR/Trustee, as well as all other positions with any Brown Entity (except 7<sup>th</sup> Decade) on August 10, 2007. This resignation was memorialized in an Order of that date. Between August and November, 2007, Mr. Dallas appeared to be helping investigate Cannon. It was only in mid-November that we learned that Dallas was, instead, working with Cannon, as well as with Forlando/Terry Brown, against the Estate and Trust. Despite his repeated false and misleading representations both to us and to the Court, we learned much from Dallas about Mr. Brown, the operation of his business, and about Cannon. We have learned over time to believe either none of what Mr. Dallas says, all of what he says, or some of what he says, depending on the circumstances at the time.

14. On August 10, the Court directed that Dallas and Bradley, as remaining PR/Trustees, working with the new court-appointed accountant, to complete the following actions (many long overdue) within 6 months:

- a. Preparing and filing the Inventory & Appraisalment (I&A).
- b. Applying for Recognition of Exemption of the James Brown "I Feel Good" Trust.
- c. Preparing and filing U.S. and S.C. Estate Tax Returns or Requests for Extensions.
- d. Preparing and filing 2006 Income Tax Returns for James Brown, The James Brown Irrevocable Trust, James Brown Enterprises, Inc., James Brown, LLC, James Brown Royalty Venture I SPC, Inc., Seventh Decade.

---

<sup>13</sup> This was the missing amount reported to the Court on September 24, 2007. [Tr. Hearing, p. 50 ] By the time we filed suit against Cannon, Dallas and Bradley on behalf of the Estate and Trust in February, 2008, the figure for missing and unexplained funds had grown to \$12+ million. We hired attorneys J. Kendall Few and James Gilreath, over the strong objection of the AG, to pursue return of these funds. Several lawsuits and an Arbitration have been commenced.

Productions, Geronimo Music, Ltd.

- e. Holding meetings to appoint officers and directors of:  
James Brown Enterprises, Inc. (JBE, Inc.)  
James Brown Royalty Venture I SPC, Inc.  
James Brown, LLC

[Order dtd. 8/10/07] By November 20, only the I&A had been filed.

15. Both our legal training and practices, described on **Exhibits 6 and 7**, and our extensive contact with Dallas and Bradley from August - November, 2007, including the investigation into Cannon's misappropriation and other wrongdoing,<sup>14</sup> prepared us for the tremendous task of managing the troubled James Brown Estate/Trust.

16. James Brown's documents contemplated three full-time, non-music-industry trustees who had broad latitude to coordinate his vast empire, including managing significant litigation. As attorneys with substantial litigation experience, including

---

<sup>14</sup>Between August 10 and November 20, Dallas and Bradley represented to the Court and to us that they were investigating Cannon's wrongdoing, [See their Mot. For Acct. dtd. 8/27/07, Case 122] They told us they knew nothing about Cannon's and Brown's financial dealings, which, they represented, were conducted outside the 2000 Trust. They asserted that the 2000 Trust had no assets after it lost the Augusta bank building in 2002. Only later did we learn that in early September 2007 Cannon and Dallas had gone to the Attorneys General (AGs) in 2 states (SC & GA) to assert Cannon's innocence; that we had done a "hatchet job" on Cannon after we discovered his \$900,000 misappropriation; and that we [Bob and Adele] were pawns of the family trying to destroy the 2000 Trust. The AG s were receptive to Cannon & Dallas.

On October 27, 2007 Cannon emailed a friend to say " ...The tide seems to be turning. I went to the Attorneys General of SC and GA and they have entered the proceedings. The Judge and other attorneys have been quite [sic]. I have told my story to both and hopefully we can move on and get this THING over with ... David " [Cannon email to Walt Inabinet dtd. 10/27/01].

One month later, AG Jones was reported to tell Terry Cox that he would be filing a motion to replace us [Bob and Adele] with a Trustee Cox [whose joint venturers were Forlando, Cannon, Dallas & Terry Brown] could work with.

Fewer than 2 months after that, AG McMaster and Forlando were on the WIS TV Special asserting that it was improper for us to serve as both PR s and Trustees, even though James Brown's documents specifically contemplated the same persons service as PR and as Trustee.

fiduciary litigation,<sup>15</sup> we were fully qualified to serve.

#### IV. THE FIRST THIRTY DAYS OF OUR APPOINTMENT

17. On November 20<sup>th</sup>, after we were appointed PR/Trustees, we conducted elections for JBE, Inc., the most significant Brown Entity.<sup>16</sup> We also outlined our duties, which had changed and increased radically, and now included:

- a. Defending James Brown's Estate and Trust against more than \$30 Million of claims, about \$16.4 Million by Cannon/Dallas & Bradley; the Pullman claims; and claims of Hynie Brown, James II, Pettit, Parris and others.
- b. Preventing the "Fire Sale" of Mr. Brown's valuable Royalties and Publicity Rights<sup>17</sup> sought by Cannon, Dallas & Bradley since our first meeting on March 26. [Cannon had just revealed his recent cash purchase of a Million Dollar turnkey retirement home to be built in Honduras; Tr. 11/15/07, pp. 46, 80-82.]
- c. Recovering from the Cannon/Dallas Group, and others as appropriate, the approximately \$7 million then known to be missing since 1999, including the rest of Cannon's \$900,000 2006 misappropriation.<sup>18</sup>
- d. Taking emergency measures to correct the dire financial circumstance of the Estate/Trust, and improper administration of the Estate and Trust.

18. We knew the job of PR/Trustees was a full-time job for two people, but had

---

<sup>15</sup> Adele had 30 years of Estate and Trust experience and Bob 25 years of transactional and litigation experience.

<sup>16</sup> As described below, we knew that JBE, Inc. was owned either by the Estate, the 2000 Trust, or partly by each. In all cases, it would end up in the 2000 Trust under the residue of Mr. Brown's Will.(Item II). In order to proceed with the administration, we held the Shareholders' election as both PRs and Trustees, as our respective interests (which were identical) might appear. Except for a brief period between May 28, 2008 and July 14, 2008, unless we were certain an asset was owned either by the Estate or Trust, we took action in both capacities, with full disclosure to taxing authorities and others.

<sup>17</sup> Numerous sources have confirmed that Mr. Brown's Royalties and Publicity Rights make up more than 80% of the gross value of his assets at death. [See assets summary of T. Cox dtd. June, 2007.]

<sup>18</sup> Preventing the return of Cannon, Dallas and Bradley to any position of trust or confidence with the Estate, 2000 Trust or Brown Entities was an important component of this.

almost no warning that we might be appointed.<sup>19</sup> Adele's estate and trust experience, and our legal training and experience, however, helped us make immediate and necessary decisions. We decided:

- a. Adele, and her larger staff would do much of the "footwork" such as paying bills, maintaining accounting records, granting access to beneficiaries' Counsel, day-to-day dealing with the accountant and others, and distributing faxes and mailouts to beneficiaries.<sup>20</sup>
- b. Bob and Adele would meet in person every week, and by telephone as often as needed. [Usually first thing in the morning and 3 - 5 times daily.]
- c. All decisions were to be approved by both of us, in advance.

**A. THE CRISIS AT BEECH ISLAND (MR. BROWN'S HOME ESTATE)**

19. By Saturday, November 24, 2007, we confirmed that maintaining the same level of security for Beech Island and its contents would cost more than \$250,000.00 per year. Critical security costs were more than \$20,000 in arrears. Not much later the plumber advised us that troublesome overhead copper pipes threatened to destroy the contents of Mr. Brown's home. As he described, the next overhead leak, rather than being a traditional drip, would be "like a fire hose".

---

<sup>19</sup> We were appointed, without warning, 2 days before Thanksgiving, 2007. Beginning 10 days after our appointment, one or more of Cannon, Dallas, Bradley, the AG of Georgia, the AG of S.C, and Forlando Brown, asserted that our appointment was invalid. Only Dallas and Bradley timely appealed our appointment Order. [Cannon also tried unsuccessfully to assert the Court was without jurisdiction. See SC Ct. Appeals Opinion No. 4570, filed June 23, 2009].

<sup>20</sup> Adele's legal assistants and Law Clerk, who worked thousands of hours on James Brown matters over 2½ years, have provided valuable and competent help. Fletcher Rinehart worked extensively on Beech Island, museum and Royalty clearance matters; Laura Mangum, an accounting major, kept financial records and helped meet requests by the AG for financial information. Adam Silvermail, a law clerk, performed legal research tasks and discovered the James Brown Music Education Foundation online. This entity, whose website competes with the Estate, was formed 1 day after Brown's death by Joel Katz and Greenberg Traurig ("GT"), attorneys for Mr. Brown and the Cannon Group, with Brown's daughters Deanna and Yamma named as designated Trustees. All at first denied knowledge of the Foundation.

20. We continued the same security service by agreeing with Sizemore to pay the weekly bill and \$1,000 per week towards the arrearage while its personnel remained in place.<sup>21</sup>

21. The 2000 Trust had no cash, and the Estate's money would run out in March if it continued to advance the Beech Island costs. Although we wanted Beech Island to be preserved as a museum, if possible, we could not let it jeopardize Mr. Brown's primary goal, which was for scholarships for his grandchildren and others. We had to avoid the forced sale of Mr. Brown's Royalties and image/Publicity Rights.<sup>22</sup>

22. We needed emergency relief both for Beech Island and its contents, and sought it in the Declaratory Judgment Complaint filed on November 27. [Exhibit 1]

#### **B. ESTATE AND TAX INCOME TAX ISSUES**

23. As SA s we had requested copies of tax returns for the 2000 Trust and Mr. Brown prior to our first (March 26) meeting. We were not given copies of the returns until June 15, 2007. Attorney Bill Hammond kept insisting that we did not need to see the tax returns because they were wrong, and had to be amended. We disagreed, believing that even if incorrect, they could provide valuable background information. When requests failed, we asked the Court for access to the tax returns and other records.

---

<sup>21</sup> A balance of about \$5,000 on the Cannon Group arrearage (reduced from about \$16,000) remained when Sizemore stopped working in March, 2008.

<sup>22</sup> At our first meeting as SA s with the Cannon Group (March 26, 2007), they insisted that if we did not approve a sale of Brown's royalties for \$26 Million (without conducting any due diligence) we would be responsible for the collapse of the Estate. By late May, the Cannon/Dallas Group wanted to sell all of the Brown assets for about \$45 Million. After Cannon's resignation on August 10, 2007 Dallas advised us that the sale price should be \$100 Million, of which \$50 Million would be "for the children". [Dallas apparently based this small return on the "October 18 Letter", discussed below, which purported to set forth commissions and payments to various persons in the event of a sale or refinance, and would have paid Dallas about \$5.5 Million of the sale and Cannon about \$6.4 Million.]

Judge Early orally ordered us to have access to the tax returns and other records on June

13. An order followed ( the "Access Order") on June 22.

24. In June, 2007 accountant Phil Farr advised, and we confirmed by letter:

- a. Farr filed only one income tax return for James Brown, LLC, for 1999.
- b. Farr had never filed an income tax return for the 2000 Irrevocable Trust.
- c. JBE, Inc. tax returns listed James Brown as its sole owner from 1999-2005.

25. Between August 10 and November 20, 2007 we attempted to assist Dallas, Bradley and a new Court-appointed accountant with the mess which had been made of the Trust, JBE, Inc. and James Brown tax returns without interfering with Dallas and Bradley's administration of the Estate/Trust.

26. While Sellars, the new CPA, was trying to gather information to begin to straighten out the mess caused by the Cannon/Dallas Group, Cannon, Hammond and Farr, who was terminated by the August 10, 2007 Order as accountant,<sup>23</sup> and was also Dallas' personal CPA, were secretly changing, signing and filing the tax returns of JBE, Inc. to show that JBE, Inc. was owned before Mr. Brown's death by the 2000 Trust, and not by James Brown. [See Tr. Hearing 11/15/07, pp. 100-107]

27 Within 30 days of our appointment, we made contact with the South Carolina Department of Revenue (SCDOR) and the Internal Revenue Service (IRS). We advised them in detail of the problems we had identified to date. Because virtually all of Mr. Brown's Estate and Trust was "paid or permanently set aside" for charitable purposes, we

---

<sup>23</sup> Farr prepared, signed and filed 4 years of amended income tax returns, and the 2006 return, for JBE, Inc. in September and October, 2007. We received copies after they were filed. Cannon testified on November 15 that he consulted with Farr and Hammond and authorized these filings. Hammond's services as attorney were also terminated by the August 10 Order. Dallas asserted he knew nothing of Farr's preparing, signing and filing the returns.

hoped to work with them to straighten out the years of problems. [Ltrs. SCDOR, IRS, dtd. 12/11/07].<sup>24</sup> We have consistently worked with the IRS and SCDOR since December, 2007, but progress has been slow because of lack of cooperation of Cannon and Dallas, and, after August 10, 2008, the Settling Parties.

28 We have been advised that Cannon had an audit conducted, but he has refused to disclose it.<sup>25</sup> Dallas and Bradley have been wholly uncooperative in producing even the most minimal information, even though their attorney represented to the Court and others in January, 2008 they would provide an accounting within 30 days. They have appealed the Court's Order dated March 7, 2008 directing them to provide an accounting, and – nearly 1 ½ years later – have not accounted for their acts as Trustees.<sup>26</sup>

29. We estimated about \$500,000 of Estate Taxes and interest was then overdue.

### C. CONTACT WITH THE ATTORNEY GENERAL

---

<sup>24</sup> We have been working for more than a year with the IRS and SCDOR on these issues. Because of Cannon and Dallas' refusal to provide the necessary background information, which we have repeatedly requested for 1 ½ years, we have been unable to prepare the 2007 Returns or correct the earlier filings. Beginning August 10, 2008, the "settling parties" including the AG, asserted that a large part of Mr. Brown's Estate/Trust should not be paid or permanently set aside for charity. This would mean that there are additional estate tax consequences, as well as income tax consequences for all years since Mr. Brown's death which must be addressed. In September, 2008, A. Medlin refused our offer for the "Settling parties" accountant to prepare the Estate tax Return with us, instead insisting on Mr. Sellars. He said they had no accountant, and the "settling parties" were happy with Mr. Sellars. In February, 2009, we contacted A. Medlin and Heyward Carter, one of the tax attorneys for the "settling parties", seeking their input into the Income and Estate Tax issues raised by the proposed Settlement, because we were working with the IRS on these issues. Mr. Carter refused to work with us.

<sup>25</sup> Four months after our discovery of Cannon's \$900,000 misappropriation, Cannon began asserting his Fifth Amendment privilege as to all matters related to his income. [Transcript 11/15/07, pp. 137, 184-186]. According to AG Jones .. "It is a criminal investigation." [Tr. 11/15/07, pp. 293-294.] So far as we know, to date [July, 2009] Cannon has not been charged with any crime related to the Estate, the 2000 Trust or James Brown.

<sup>26</sup> Cannon also failed to file an accounting. Dallas and Bradley filed an accounting of the post-death checkbook, but have refused to file an accounting of their acts as Trustees. (Successor PR/Trustee Bauknight has instructed us not to communicate with Cannon, Dallas and Bradley for the purpose of seeking to obtain information or documents [ See ltr. of 6/19/09].)

30. On November 21, 2007, AG Jones contacted Adele and asked that we resign. When she said that was not in the best interest of the Estate/Trust, AG Jones asserted it was unethical for us to serve as both PRs and Trustees.<sup>27</sup> Our 8 months experience with the Estate/Trust – along with the Cannon/Dallas Group – confirmed the confusion about who owned what. The fact that Mr. Brown's Will left almost everything to the Trust made it important for the same persons to be both PRs and Trustees. Mr. Brown's unified Estate Plan permitted it, and Adele's 30 years of experience supported it.

31 AG Jones asserted it was improper and might be an ethical violation solely for us to accept the two positions. Since it was the day before Thanksgiving, Adele wrote Jones without talking to Bob. A copy of her letter is attached as **Exhibit 10**, and states in part:

November 21, 2007

Dear Sonny:

I am in receipt of your e-mail sent at 11:15 this morning and am responding to it quickly because of the coming holidays. Bob may want to answer this separately.

I do not fully understand your position with respect to the obvious conflict, since Mr. Brown himself designated the same persons to be personal representatives and trustees, and there is incorporation by reference language in the Will. Also, whereas our obligations prior to yesterday were to oversee preservation and protection of assets, I believe, as personal representatives, we now have the obligation to support and uphold the Will and Trust, which are wholly compatible with each other and which, together, constitute Mr. Brown's known estate plan.

....

I am concerned about your assertion of a possible ethical conflict, as I take very seriously such a remark. Please let Bob and me know the basis for such an

---

<sup>27</sup> This assertion was subsequently mirrored in the allegations of the Forlando Federal Court actions but ultimately rejected.

allegation, as we would want that matter fully explored in connection with any motion filed by you, and, if appropriate, ruled on by the Court.<sup>28</sup>

32 On or about November 29, 2007, AG Jones and AG Lewis of Georgia obtained from Dallas, by then a target of investigation for impropriety with respect to the 2000 Trust, an Affidavit and presented the Affidavit (along with an affidavit of former lawyer Hammond)<sup>29</sup> to support the position that the we should not serve as PR/Trustees. [See Aff.Dallas dtd. Nov. 29, 2007]. The affidavit contained both false and misleading statements.

33 We could not understand then, and we do not understand now, why the AG would take these actions, which made recovery from Cannon and Dallas more difficult, especially since the AG now supports Bauknight's role as both Successor PR and Successor Trustee, in addition to Bauknight's role as Trustee of the "Legacy Trust."

#### **D. THE DECLARATORY JUDGMENT CASE**

34 To resolve many of our concerns, 7 days after our appointment we filed, pro se, a Complaint for Declaratory Judgment and Related Relief Including Expedited Emergency Relief [Exhibit 1]<sup>30</sup> to allow us to sell the home to a museum purchaser (hopefully family); and take other action to prevent bankruptcy of the Trust; sell tangible personal property (TPP) of the Estate/Trust and take certain other protective actions. [See

---

<sup>28</sup> Judge Early's Order of April 8, 2008 found that our service as PR/Trustees was both ethical and appropriate. The Order was not timely appealed by the AGs or the settling parties.

<sup>29</sup> Hammond was actually made a Trustee by Dallas and Bradley in July 2007, but his law firm would not permit him to accept the position.

<sup>30</sup> Like many other cases, the Declaratory Judgment was commenced in the Probate Court; removed to Circuit Court; bears the Number Case 122. Since April, 2008 certain separate cases have been assigned separate numbers.

**Exhibit 1].**

**E. THE TANGIBLE PERSONAL PROPERTY**

35 Between November 27 and January 4 we interviewed Sotheby's, Christie's and Julien's, all auction houses equipped to handle a James Brown TPP sale. The Sotheby's and Christie's representatives visited Beech Island with us. Mr. Julien had visited earlier.

36 Mr. Julien, at the request of Dallas, made statements to the press which bothered Mr. Levenson's client and posed a security threat to the contents of Beech Island, thus making working with him difficult. Sotheby's visited and showed interest, but for internal reasons, advised us in early January they would not take on a James Brown sale.

37 Christie's was very responsive and proposed a reasonable contract. In addition, they were able to act quickly to remove threatened items from Beech Island. And they would advance the cost of the long-overdue Estate Tax Appraisal of the TPP.

38 On January 9, 2008 we advised the Court that we had selected Christie's to sell certain TPP and sought approval of the contract which was part of the Declaratory Judgment case. [Transcript, 1/9/08, pp. 58-60]

39 The Court's decision was delayed by calls from Dallas and Bradley for Judge Early's recusal, and Terry and Forlando Brown also interfered.<sup>31</sup> The hearing was finally

---

<sup>31</sup> Even though they had supported our appointment [See Order dtd. 11/20/07], and did not appeal it, Terry and Forlando now asserted in Circuit Court that Judge Early had no jurisdiction over 2000 Trust matters. Also, by January 2 F. Brown had filed a Federal Lawsuit seeking to enjoin the 2000 Trust from any action and to return Cannon, Dallas and Bradley as Trustees. Forlando concealed from State and Federal Courts his financial relationship to Cannon and Dallas, and his majority financial interest in his father's Terry Brown's joint venture with TJBL, LLC, which had been formed on December 5 to acquire Brown Assets. For the next year, F. Brown represented to the Federal Court that he was not a party to any state court case

held on February 7, resulting in an Order on February 20.

40. As the Court found in its Order of February 20, 2008 and its subsequent Order of April 1, 2008, the Estate/Trust's financial status was critical on November 20, 2007 and did not improve during the period.<sup>32</sup>

#### F. THE CHRISTIE'S SALE

41. After a hearing on February 7, the Court issued an Order which allowed the following:

- a. Sale by Christie's;
- b. Placement of non-sale items of TPP in museums;
- c. Sale of Beech Island, to a museum purchaser if possible. [Order dtd. 2/20/08]

42. As described below, had Forlando and Terry Brown, Dallas and others not directly interfered with the Christie's sale, authorized by two Court Orders,<sup>33</sup> it is more probable than not that the Estate/Trust would have had adequate funds to meet its projected \$1.6 Million budget for 2008. Unfortunately, that did not happen.

---

involving the Trust, although he and/or his attorney appeared and participated in many Brown Trust/Estate case hearings. Moreover, until his attorney, David Bell, was pressured by state court Judge Early, he and Bell did not disclose to the federal court that the copy of the 2000 Trust attached to the federal court complaint contained the Schedule B prepared by Dallas after Brown's death.

<sup>32</sup>The February 20 Order found that several factors interfered with our seeking traditional funding, including Forlando's Federal lawsuit and challenges to the Trust. Judge Early also found that the challenges of the AG and certain beneficiaries to our appointment "negatively affects their [Buchanan and Pope's] ability to perform their duties without seeking court approval or to seek long-term arrangements."

In both the February 20 and the April 1 Orders Judge Early ordered that any party delaying or interfering with the Christie's sale should be charged with all costs and damages of such interference. He retained jurisdiction to enforce implementation of the Orders and hear enforcement issues. Despite this, Dallas, Bradley, Deanna, Forlando and, according to Forlando, other family members, intentionally interfered. We filed a motion in July, 2008, just after the Christie's sale, for the loss to the Estate/Trust from this interference. A year later it has not been heard.

<sup>33</sup>Order dtd. 2/20/08 and Order dtd. 4/1/08.

43. According to Forlando Brown's sworn testimony, the family, which disagreed among themselves about a number of things, agreed to take action to prevent the Christie's sale despite the two Court Orders.<sup>34</sup>

44. The Christie's sale, placement of TPP at museums<sup>35</sup>, and removal of the masters<sup>36</sup> allowed us to reduce the very basic security and maintenance costs of Beech Island from \$250,000 per year to about \$70,000 per year.

45. The Court's Order dated February 20, 2008 allowed us to seek a purchaser for the Beech Island real estate, with reservation of a site for a future home of the "I Feel Good" Trust if feasible. Despite our authority under both the Trust and Court's Order,

---

<sup>34</sup>See deposition of F. Brown, Federal Suit, September 27, 2008, p. 147. On September 27, 2008 Forlando testified "... all the children had agreed to this \$2 Million dollar thing. ....And .... the family got together and decided it's more important to keep those assets together, beside our differences ... [The "family" attempt to stop the sale, in the face of two separate Court Orders approving it, served to damage the value of the TPP, a portion of which (PHE) was James Brown's only devise to children.]

<sup>35</sup> We have placed James Brown memorabilia and papers for protection and exhibition (loans up to 3 years) with the I. P. Stanback Museum at S. C. State University; the South Carolina State Museum; the Augusta Museum of History; and the Lucy Craft Laney Museum of Black History. All have been extremely helpful, in particular Dr. Leonard McIntyre and Ellen Zisholtz (S. C. State); Elaine Nichols and Dr. Fritz Hamer (S. C. State Museum); and Nancy Glazer, Augusta Museum of History. Dr. McIntyre and Ellen Zisholtz organized a team of alumni and professors from S. C. State for the emergency process of removing hundreds of items from Beech Island before we ran out of money for security costs. Many of the S. C. State items are currently on display at the Stanback. The Exhibit has received rave reviews, and has potential for promoting Beech Island as a museum. Ms Nichols and Dr. Hamer have also helped in numerous ways, including storage for items returned from the Christie's sale, and finding a volunteer to repair the Grammy award (which was damaged prior to being sent to Christie's).

<sup>36</sup> To secure and protect the masters and certain other audio materials, on the night of January 17, 2008 Adele, Fletch Rinehart, Cpt. Pounds of Sizemore, Mr. David Washington and Adele's son packed 66 boxes of masters and audio materials for shipping the next morning. By coordination with Barry Cardinale of the secured storage facility for sound and movies, we had the items sent through Custom Critical, one day arrival, for storage. Because of security concerns, this was done secretly, but everyone was notified after the objects arrived safely. This removed additional critical objects from the dangers they had faced for more than a year.

After the removal of the Christie's items [April 5], the 66 boxes of masters/related materials and more than 2000 items for temporary museum placement, Sizemore was terminated. Mr. David Washington, a critical assets to the Estate/Trust has remained, and has served the Estate/Trust with distinction.

direct interference has prevented the Beech Island sale.<sup>37</sup>

**V.APPLICATION FOR RECOGNITION OF THE "I FEEL GOOD"  
TRUST AND OTHER STEPS TO CORRECT TAX PROBLEMS CAUSED  
BY THE CANNON/ DALLAS GROUP.**

46. In his Order dated August 10, 2007, Judge Early directed that Dallas and Bradley, as remaining PR/Trustees, apply for IRS recognition of the "I Feel Good" Trust within 6 months. [ Order. Dtd. 8/10/07, Para.1(b)].

47. Application for IRS recognition of the "I Feel Good" Trust, a charitable subtrust of the 2000 Trust, should have been made in 2000. It was not. It was a first priority for us to complete the application process.<sup>38</sup> The approximately \$83 Million Estate Tax deduction, resulting in an approximately \$40 Million estate tax and interest savings, was dependent on this IRS recognition of the "I Feel Good" Trust.

48. One of the components of the application was preparation of a Scholarship Application form to be submitted to the IRS with the Application for Recognition. We asked distinguished educators Dr. Leonard McIntyre (Dean, S. C. State University) and Ms. Inez Tenenbaum (former S. C. State Superintendent of Education) to serve on an Advisory Committee for the "I Feel Good" Trust, and to assist us with the scholarship forms. They both agreed to do so, and did.<sup>39</sup>

49. In November we encouraged one of Mr. Brown's children named in the Will

---

<sup>37</sup> In January, 2009 we offered the Beech Island Real Estate to family members for \$925,000 agreeing for the Trust to hold a Note for most of the purchase price. All Brown family members refused to purchase Beech Island.

<sup>38</sup> As SAs we had reported to the former PR/Trustees the need to complete this process, and the Court's Order dtd. 8/10/07 in Case 122 had directed that Dallas and Bradley do it within 6 months.

<sup>39</sup> Both later agreed to serve on the Advisory Board, but Ms. Tenenbaum has resigned because of a federal appointment. Dr. McIntyre became Interim President of S. C. State University, and, as such, helped us preserve, house and display James Brown memorabilia at the I.P. Stanback Museum and Planetarium.

[Daryl], Terry, Larry, Deanna, Yamma or Venisha] to serve on the Advisory Committee of the "I Feel Good" Trust.<sup>40</sup> None accepted. We worked with the Court-appointed accountant and the Application for Recognition was filed on December 5, 2007.

50. The 2000 Trust was irrevocable. It did, however, give the Trustees a right to amend the 2000 Trust "in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as an exempt entity in compliance with the Internal Revenue Code, as amended." [Tr., Article VII(b)]. We knew from the Cannon/Dallas Group that they were claiming a 15% PR/Trustees' fee, which we believed to be unacceptable. Further, the Cannon/Dallas Group had filed claims against the Estate asserting more than \$16 Million, much of it these claimed commissions. In order to insure IRS qualification, as provided in Article VII of the 2000 Trust, we adopted a resolution limiting the Trustees' fees, once the "I Feel Good" Trust is funded, to ½% per year.<sup>41</sup>

---

<sup>40</sup> This "Advisory Committee" was not, and was not intended to be, the Advisory Board, as contemplated by James Brown in Item IV of the Will and Articles VIII and XIII of the Trust, and as set out in the Advisory Board document dated August 1, 2000. As Judge Early found in his Order dtd. 4/8/08, Case 122, that Advisory Board was not in place on November 20, 2007. Subsequently, as of March 15, 2008 we asked Dr. McIntyre, Ms. Tenenbaum, Dr. Ann Carmichael, and Judge (Ret'd.) Walter Williams to serve on the Advisory Board for 6-month periods, the most recent to expire October 15, 2009. Ms. Tenenbaum resigned in 2009 when she was placed into consideration for a federal appointment. Mr. Brown's original Advisory Board, appointed in the August 1, 2000 document witnessed by Hynie Brown and Venisha, appointed: Deanna Thomas (disqualified by virtue of contesting the Trust's validity); Willie Glenn (deceased); and Ella Overton (deceased); [Advisory Board document]

<sup>41</sup> ½ % per year, upon funding, after the difficulties of the Estate/Trust administration related to the asserted spousal, heir and Elective Share claims, and the then- more- than \$30 Million of other claims, seemed reasonable to us and acceptable to the IRS. As required by the IRS, the commissions were required to be reasonable and based on service to the Trust, so that among the 3 Trustees, the pay could be allocated based on various factors, including time involved. At the time of the application, the "I Feel Good" Trust had no assets, and Dallas and Bradley had just filed their motions accusing Judge Early of impropriety. The AG s of Georgia and SC had already obtained November 29 affidavits of Dallas and Bradley falsely accusing us of impropriety. Based on what we knew on December 5, 2007 we estimated that full funding of the "I Feel Good" Trust would take place in 2-5 years (after the more than \$30 Million of claims and claims of Hynie Brown etc., were resolved). [The Will/Trust contests were filed between December 20-26.]

## VI. PROTECTION OF PUBLICITY RIGHTS AND ROYALTIES

51. In May of 2007 Dr. Terry Cox, an Atlanta "Branding" expert, was solicited by Cannon, Dallas and Forlando Brown to make a proposal to enhance the James Brown Publicity Rights, variously known as his "brand", and/or image/persona/likeness rights. [We will use the term "Publicity Rights" to describe the various names given by Dr. Cox and others.]<sup>42</sup>

52. In his June, 2007 report, which proposed an IPO<sup>43</sup> Cox estimated the James Brown assets to have the following value:

---

<sup>42</sup>According to Forlando Brown's sworn testimony, Forlando met Cox in Jan. or Feb. 2007 at a meeting at Yamma and Darren Lumar's house with Deanna, her husband, a "UBS guy Jim Blackwell and a host of investors, Louis [Levenson], David Yonk [sic.] from his firm.. where they were going to basically take over these assets and manipulate these assets to make money for them basically is what they were going to do." [Depos. F. Brown, 9/27/08, pp. 101 -102]. Cox next surfaced with Forlando (who was then using the name "William" Brown) after an email purportedly from Forlando, "My Grandfather's Final Shame", surfaced in May, 2007. The "Grandfather's Shame" letter threatened to expose both family and the Cannon Group to the media if certain actions were not taken. Cannon hastily called a meeting at Greenberg Traurig law firm (GT). Cox made the brand enhancement proposal for the Estate/Trust. [Although we were SAs we were not invited.] By June, 2007, at the request of the Cannon/Dallas Group, Cox put together a proposed \$100 Million plan to sell the Estate/Trust assets to a group to do an IPO, with "kickbacks" or options for the Dallas/Cannon Group.[See Affidavit AJP, dtd. 2/17/08, Ex. L ]

On October 22, 2007 Cox made a proposal to purchase Estate/Trust assets for \$90 - \$100 Million. [See Ltr.,Cox, dtd. 10/22/07].

At his October 31, 2007 State Court deposition, Forlando said he had never heard of a \$100 Million offer.[Depos. 10/31/07 Case 122, pp. 29-30]

On November 20 after the resignation of Dallas & Bradley, Cox called the kickback proposal a "mistake" [Transcript 11/20/07, pp. 445-446]

On December 5, 2007 TJBL,LLC (TJBL)was formed. According to Forlando in his Federal Court deposition almost a year later, '[m]y role was to be majority owner. "[Depos. F. Brown, 9/27/08 Federal case, pp. 138.]

On March 27, 2008 TJBL and Terry Brown offered to purchase "all assets of the James Brown Estate", and all assets of the Trust [letter of intent] for \$90-100 Million.] [F. Brown Depos., 9/27/08, Def. Ex. 10., Depos. pp. 140.] Though not putting up any money, Forlando said he would have "one hundred percent [management] control." [Depos. 9/27, p 140.]

<sup>43</sup> The report states "as part of the sales agreement the trustees [Cannon, Dallas/Bradley] want options or a 'kickback' on the IPO." [Aff.Buchanan/Pope, 2/17/2008, Ex. L, p. 3].

- a. Image/Likeness value: \$40-50 MM
- b. Property: \$10 - 15 MM
- c. Music Catalogue: \$36-45 MM

53. Toby Byron, who had worked with Dallas and Bradley on a Shout! Factory project for the Estate/Trust completed November 1, 2001 (and had been fully paid) also spoke under oath on November 20, 2007 of the importance of marketing and other aspects of the James Brown brand.<sup>44</sup> [Trans., 11/20/07, pp. 435-443, ]

54. On November 20, 2007 there was a question as to whether Mr. Brown's management contract with Intrigue Music Management International ("Intrigue"), which was headed by Frank Copsidas (Copsidas),<sup>45</sup> was still in effect.<sup>46</sup>

55. During December 2007 and January 2008, we began working on marketing the Publicity Rights, but were faced with (disputed) claims by Cannon/Dallas and their associates to a large percentage of any deal. These claims would have been in addition to the legitimate fees and costs of a Publicity Rights manager. Their claims (all disputed) included, but were not limited to, the following: Intrigue/Copsidas: 15 %; Cannon: 5%; Dallas: 5%; Bradley: 5%; Byron 5-10%. We determined that clarifying the Cannon/Dallas Group's relationships, and terminating unproductive relationships, was critical to the stability of the Estate/Trust and the marketing of Publicity Rights.

---

<sup>44</sup> Byron, however, failed to inform the Court or the parties that in November 2007 Dallas had promised him 5% of any sale. [ At the time, the Cannon/Dallas Group and others were claiming at least the following percentages to any deal, whether a sale or exploitation: Dallas: 5% plus about \$.5 Million; Cannon 5% plus \$1.4 Million; Bradley, 5%; Byron, 5%; GT, 5% (sale or refinance only); Copsidas 15% ; Pullman 12.5% (sale or refinance of TIAA royalties only);

<sup>45</sup> Who referred to himself as "Superfrank".

<sup>46</sup> By its terms the Intrigue Contract could be terminated on March 31, 2008 if properly terminated. Buddy Dallas had told us the Intrigue Contract was terminated at Mr. Brown's death, but Copsidas did not agree.

56. In December 2007 we attempted to negotiate a 1-year short-term arrangement with Copsidas/Intrigue, without prejudice to the various claims between us. It was unsuccessful.

57. In December 2007 we also made contact with Royalty agencies and various other music-related contacts<sup>47</sup> and with Global Gaming (GG), with which a contract had been finalized in February, 2007.<sup>48</sup> [Cannon, Dallas, Bradley and Copsidas are claiming 30 % of GG funds. The Estate/Trust disputes their claims.]

58. From January 2, 2008 until today, the Forlando/Terry Group as well as Dallas, have directly interfered with and have damaged the Publicity Rights in numerous ways, including, inter alia, Forlando seeking a Federal Court injunction against any action by the Trust.

59. In February 2008 we learned that in 2007 funds from a James Brown Hallmark card Publicity contract may have gone into Cannon's company, 7<sup>th</sup> Decade. Because Cannon is asserting his Fifth Amendment rights and there is no discovery available, this information has not been corroborated. To the extent such funds were also misappropriated, they have not been recovered.

#### **A. THE CORBIS/GREENLIGHT AGREEMENT**

60. In December 2008 Illinois counsel for the Estate/Trust arranged a settlement conference in New York for January 19, 2009 in the CORBIS matter. This Illinois litigation relates to a publicity rights issue which attracted Mr. Brown's attention in 2000.

---

<sup>47</sup> Contacts included BMI, Warner Chappell, Fort Knox, BMI, SoundExchange and others.

<sup>48</sup> The GG contract was begun before Brown's death and completed Feb. 2007, and, to date, has produced no funds to the Estate.

Mr. Brown brought suit, through attorneys Jay Ross and Art Gold, in 2002.<sup>49</sup> We invited all of the “settling” parties. None attended.

61. After negotiation, on March 23, 2009, after 7 years of Mr. Brown’s efforts, and 2 years since his death, we reached a favorable settlement which incorporated a 2-year agreement related to the management of Mr. Brown’s Publicity Rights – just what the Estate/Trust needed. [We incorporate by reference, and urge the Court to review, our pleadings, motion for Summary Judgment and Affidavits related to the GreenLight 2-year contract in Case No. 2009-CP-0597.]

62. In order not to delay the South Carolina Court approval, which was a component of the settlement, we filed a simple action with the AG as Defendant. We could have filed an ex parte request, but this seemed most reasonable. We served it the day we filed it, in the hopes that the AG would quickly consent so that the Publicity Rights Agreement could begin on May 1 as contemplated. We urged the AG, and later Russell Bauknight and others, to embrace this fine contract which we especially negotiated for the shortest reasonable term – 2 years.

63. We have been troubled to learn from Russell Bauknight that the GreenLight contract – which, but for interference, could have been in place on May 1, 2009 – is being delayed, and may be lost, because Terry Brown claims that it interferes with his “Right of First Refusal.” Even if our settlement appeal is unsuccessful, we do not believe that Terry Brown can or should control what happens in the Estate and Trust prior to the funding of the Legacy Trust, while creditors, non-settling parties and taxing authorities

---

<sup>49</sup> We were both deposed by Corbis’ Chicago counsel prior to the commencement of settlement talks.

must be protected.

64. . We discussed our position with one of Bauknight's attorneys, and thought he agreed. But so far we are unaware of any settlement.

#### B. ROYALTY AND RELATED CLEARANCE REQUESTS

65. While there was much interference with Publicity Rights, there was much less with Royalty Clearances, which were in shambles in November, 2007.

66. Between November 20, 2007 and May 26, 2009 we processed close to 200 royalty rights clearance requests worldwide, for diverse matters from yogurt to automobiles, and from Poland and Bulgaria to Mexico and Japan. The funds from these requests go to payoff the TIAA debt, which has now been reduced from about \$19 Million in the summer of 2006 to about \$11 Million on May 26, 2009. While these clearance approval/requests have not increased the current cash flow into the Estate/Trust, they have been essential to the preservation of the overall Royalty/Publicity<sup>50</sup> and reduction of TIAA's lien on Mr. Brown's royalties.

67. In early 2008 Terry B. Cox emphasized the importance of brand strategy to the offices of the Attorneys General of SC and Georgia as follows:

The value for the trust is that this additional revenue [increased royalties through brand (publicity) development] is not connected to the sale price, **but to the success of the brand strategy**. My opinion, the present trustees, if questioned, do not understand the magnitude that this additional value would provide the trust . . . in four years an additional \$5 million. This additional \$5 MM can not be realized if the assets are sold off in pieces to different buyers, or even to a single buyer with no brand strategy. [Emphasis supplied.][Ltr. Cox to Jone, Lewis, 2/08]

<sup>50</sup> Terry Cox referred to the combined "royalties", without trying to segregate the publicity revenues. This correctly shows how branding enhances the value of both the Publicity Rights and the Royalties because of their close relationship and interrelated nature. Others have recommended that careful attention to and participation in the clearance requests are necessary to preserve asset value.

68. We deny Mr. Cox's statements about us. We have always sought the protection and enhancement of the Royalties and Publicity Rights, but Mr. Cox prefers that it be done by him for Cannon, Dallas and Forlando and Terry Brown. We believe that the royalties will increase if the CORBIS/GreenLight settlement is approved.

69. A critical component of the CORBIS/GreenLight settlement is that their contract is unencumbered by the claims of Cannon, Dallas, Forlando Brown and others, and the litigation ends on favorable terms.

**VII. ENGAGING ENTERTAINMENT AND EXEMPT ORGANIZATION COUNSEL AND OTHER COUNSEL**

70. We wanted high quality entertainment counsel who could work with a high-quality exempt organization counsel to help us address the important issues we would be facing, namely:

- a. Is it in the best interest of the Estate/Trust to sell the James Brown assets, possibly maintaining a "Legacy royalty" as had been suggested by Dallas and others, or maintain and manage them long term?
- b. Which assets are appropriate to retain perpetually within a private foundation, and which assets, if retained, would violate tax and other rules and regulations applicable to Mr. Brown's private charitable foundation?
- c. Which assets that are legally prohibited for the "I Feel Good" Trust could be placed in the Grandchildren's Trust?
- d. For those assets which are desirable to hold but must be divested, how to delay divestment?
- e. How to involve the family both with a permanent Brown Family seat on the board and possible family ownership of Beech Island and Household effects without running afoul of prohibited transaction rules?
- f. Other succession issues.

71. Adele knew well-regarded Charitable Organizations counsel Alan

Rothschild, who agreed to work with us.

72. To obtain entertainment counsel we contacted Bertis Downs who is both a professor and works with R.E.M. He suggested Nashville attorney and former Warner Music Group executive Ray Gonzalez. We interviewed both a very competent attorney in New York and Ray Gonzalez, and selected Ray.

73. Unfortunately, by the time we had excellent entertainment counsel in place, challenges to the Will and Trust and other challenges temporarily dampened our ability to exploit Mr. Brown's Publicity Rights<sup>51</sup> and make long-range plans for the Trust. We hoped to deal with these issues throughout 2008 and to transition in 2009 to conducting the due diligence necessary to address the issues discussed in paragraph 70 above.

74. We engaged James D. Bailey to help us with the more than 15 cases pending in Circuit Court. He has represented the Estate and Trust faithfully and over 1 ½ years; and has charged about \$196,000, approximately \$80,000 of which has not been paid.

75. Attached as **Exhibit 11** is a brief summary of Jim Bailey's charges, which are a liquidated debt of the Estate and Trust, and which should be paid promptly, with interest.

76. After interference by Dallas, Bradley, Powell Goldstein<sup>52</sup> and Forlando

---

<sup>51</sup> After consultation with entertainment (and other) counsel, we decided by early January, 2008 that we would delay any consideration of a sale of the primary assets - Royalties and Publicity Rights, while we stabilized the Royalties and Publicity Rights, and dealt with claims and challenges.

<sup>52</sup> PG attorneys Bill Shearer and others represented Cannon, Dallas and Bradley while they were PR/Trustees. They billed the Estate in excess of \$48,000 for, among other things, Shearer's advice and drafting with respect to Cannon, Dallas and Bradley's effort to move the Trust out of South Carolina. Powell Goldstein is now advising Terry Brown regarding the settlement. PG attorneys Bill Custer, Bill Shearer and others represent Forlando Brown, an adult grandchild, in the federal court action pending against us. Augusta attorney David Bell is working with PG in both the state and federal cases. They are advocating conflicting positions with respect to the proposed settlement: for Forlando, they oppose the settlement (objecting on his behalf in state court and seeking to maximize his benefits under the educational

Brown [and others] in the Christie's sale, we engaged Tressa T.H. Hayes to work with us on Appellate and Appellate-related matters. She has vigorously and faithfully served the Estate and Trust and should be paid as set out in **Exhibit 12**.

77. In approving our commissions and the fees of all counsel we have used, we ask the Court to consider how valuable our own legal training and experience has been in reducing legal costs, and how carefully we have controlled (and will control) Estate and Trust legal fees without sacrificing quality or damaging the Estate/Trust.<sup>53</sup>

78. Part of our objection to the settlement was our grave concern for the payment of a 2% ( about \$2 Million) "Finder's Fee" to someone who "found" something already belonging to the Estate/Trust; and the estimated \$12 - \$14 Million of attorneys' fees; and unknown fees of Mr. Bauknight, and now apparently his ten attorneys. We verily believe we have been more than reasonable in obtaining high quality legal representation for the Estate/Trust on very reasonable terms.

79. **Exhibit 8** is Adele's daily records of her service to the Estate/Trust. **Exhibit 9** is Bob's, which is less detailed. Working with our competent attorneys, we have jointly authorized and carried out every action taken by or on behalf of the Estate and Trust during our service. Our attorneys have provided valuable services to the Estate.<sup>54</sup>

---

trust in federal court); for Terry, Forlando's father, they advocate in favor of the settlement in state court, the effect of which is a drastic reduction of Forlando's interest under the educational trust.

<sup>53</sup> For example, Cannon/Dallas and Bradley sought \$15 Million in commissions and incurred almost \$1 Million in Aiken County Attorney fees in one year. Mr. Bauknight informed us that he has engaged ten attorneys, and we have received communications from five. We are informed and believe the "settling" parties expect to pay between \$12 and \$14 million in contingency legal fees and costs, which they intend to take from James Brown's assets.

<sup>54</sup> Within 45 days after our appointment we needed to have James Bailey and our other counsel to deal with the following, and other matters:

### VIII. OWNERSHIP OF JAMES BROWN ENTERPRISES, INC. (JBE, INC.)

80. On September 24, 2007 all of Mr. Brown's acknowledged family, Dallas and Bradley stipulated that the only assets in the 2000 Trust at Mr. Brown's death were Mr. Brown's home Estate ("Beech Island") and possibly \$50. Those parties stipulated that JBE, Inc was owned by the Estate. [See Exhibit 3, Hearing 9/24/07].<sup>55</sup>

81. By November 2007 we knew that Cannon and Phil Farr, the former Brown CPA who was terminated by Court Order dated 8/10/07, had filed unauthorized tax returns as to the true owner of JBE, Inc. In September and October of 2007 these unauthorized returns for JBE, Inc. for 2003 - 2006 changed the ownership to show the 2000 Trust instead of Brown as the owner of JBE, Inc. (Farr had prepared JBE, Inc., returns for 2003-2005 showing James Brown, not the trust, as owner of JBE, Inc.; he had also submitted an affidavit to the Court in September of 2007, stating Mr. Brown was the owner.) By November we also knew that both Cannon and Dallas had changed their stories about JBE, Inc's ownership both to the Court and to us.<sup>56</sup>

- 
- a. Request by Dallas and Bradley that Judge Early recuse himself. [This was followed by assertions that all Orders related to the Trust and the Dallas/Bradley resignations were invalid.]
  - b. December 20, 2007 contest by Tommie Rae Hynie Brown of validity of Will and Trust.
  - c. December 26, 2007 contest by Daryl, Venisha, Yamma, Deanna and Larry Brown of validity of Will and Trust.
  - d. January 2, 2008 frivolous Federal Court suit filed by Forlando Brown to paralyze 2000 Trust; challenge all Orders of Judge Early related to the Trust; and return Cannon, Dallas and Bradley as Trustees.
  - e. The South Carolina Attorney General was vigorously asserting that the same person(s) could not serve as both PR of Mr. Brown's Estate and Trustee of the 2000 Trust.

<sup>55</sup> Dallas later said the statement was false as, presumably, was his motion filed 3 weeks earlier to declare JBE, Inc. an asset of the Estate - and not of the 2000 Trust.

<sup>56</sup> Dallas and Bradley filed a Motion on August 31, 2007 to Declare JBE, Inc. an asset of the Estate. Dallas told us that he prepared papers in 2002 to transfer JBE, Inc. to the Trust, but that he wanted James Brown to sign them, even though he had the authority to do so. He said Cannon never delivered the transfer papers to James Brown.

82. Being unable to know the truth on the ownership of JBE, Inc, on December 18, 2007, we withdrew the Dallas/Bradley Motion to Declare JBE, Inc. an asset of the Estate. The withdrawal was served on all parties to Case 122.<sup>57</sup>

83. As discussed above, we have advised the IRS and the SC Dept. Of Revenue (SCDOR) of this and other ownership issues.

#### **IX. DEFENSE OF CLAIMS AGAINST THE ESTATE/TRUST**

84. When we became PR/Trustees, approximately \$45 Million of claims were filed against the Estate and/or Trust. An important goal of ours over the 1 1/2 years between November 20, 2007 and May 26, 2009 was the management and reduction of those claims. We have carefully and efficiently done this with the help of James D. Bailey, Jr., Esquire, Tressa T. H. Hayes, Esquire and Matthew Ballenger, Esquire of Hogan and Hartson in New York<sup>58</sup> Pullman Litigation. For a more detailed understanding of our services related to the claims litigation, and that of our counsel, we incorporate the pleadings, filings, orders and our affidavit in the following matters:

- a. Claim of David G. Cannon; Aiken County Case No. 2008-CP-02-1425.
- b. Claim of Albert H. Dallas; Aiken County Case No. 2008-CP-02-1426.
- c. Claim of Alfred A. Bradley; Aiken County Case No. 2008-CP-02-1427
- d. Claims of the Pullman Group; Aiken County Case No. 2007-CP-02-122
- e. Claim of Roosevelt Johnson;
- f. Claim of Lewis & Babcock, LLP;
- g. Claim of Rodney A. Peebles, Esquire;
- h. Claim of Smith, Massey, Brodie, Thurmond & Guynn, P.A. ; Aiken County Case No. 2008-CP-02-1551

---

<sup>57</sup> Since James Brown had a unified Estate Plan, all of his assets other than his Personal and Household Effects (PHE), including JBE, Inc., were devised to the 2000 Trust even if they were not transferred before his death.

<sup>58</sup> A portion of the Hogan and Hartson fees remains unpaid. Pursuant to two Court Orders approving both the engagement and the contract (8/08) these fees are a priority expenses of administration and should be paid.

- i. Claim of Murrell; [Judgment]
- j. Claim of Stanley Jackson, Esquire; Aiken County Case No. 2008-CP-02-1549
- k. Other Claims

## X. THE FORLANDO BROWN FEDERAL SUIT

85. The Forlando Brown Federal Suit is a good example of the most troublesome aspect of the Brown litigation – the false and misleading statements by both parties and their counsel, officers of the Court.<sup>59</sup> It is doubly troublesome that Terry and Forlando

---

<sup>59</sup>Forlando, while in the same document [Complaint, Federal Suit] making numerous false and misleading statements, accuses Levenson and/or his associate D. Yount. He says: “...counsel for the heirs of James Brown submitted a false affidavit...[t]here is absolutely no dispute that this affidavit is false and counsel for the heirs have subsequently conceded that the affidavit is false.”

Some of Forlando’s other false and misleading statements include:

“Adele... is a long-time friend of Judge Early. When counsel for the heirs heard that Pope had been appointed they celebrated and told Forlando..that Pope was a ‘bulldog’ who ‘would get the existing Trustees of the Irrevocable Trust removed and have more compliant trustees appointed in their stead that would be more likely to follow the wishes of the heirs.’”[Para 38].

Forlando refers at least 6 times to Judge Early issuing orders “at the request of Pope and Buchanan. [Paras 55,56,57,58,59]. Forlando stated: “Adele... is a longtime friend of Judge Early.”[Para 38]. Forlando asserted that we had “allied [ourselves] with the heirs ...who had been cut out of the bulk of the Brown Estate through the Will” and “wished to destroy his Estate Plan” [Para. 41]. Forlando falsely asserted that we had a plan to “strip the [2000] Trust of assets” and “interfere with the Irrevocable Trust”, which was consistent with the heirs who had recommended us. [Para. 40].

With knowledge that his statements were false, misleading, or both, Forlando on December 31, 2007 misstated our position about ownership of JBE, Inc., and conversations we had with Cannon and Dallas. These reflected what Cannon and Dallas were saying in their various motions filed on and after November and some of the false statements Dallas would make to the Court in January - March, 2008. [Para. 41, 42, 43,44,45,47,65]. Forlando asserted incorrectly that there was no motion to remove Dallas and Bradley, and no evidence in the form of affidavits or otherwise to support the removal of Dallas. [Para 71]. He stated that on November 20, 2007: “At last Adele ...and Robert.. had achieved what they had so long desired – complete control over the Estate of James Brown and the Irrevocable Trust.” [Para. 76] The Order was entered without jurisdiction [77]. The Probate Court has exclusive jurisdiction over trust matters [Para. 78] No proceeding “of any kind was filed anywhere... to remove Dallas and Bradley...” [ Para 79].

Combined with false statements about us, Forlando did describe with some accuracy the early relationship of Attorney General Jones with Cannon and Dallas. He said: “ In September of 2007....Given their precarious position as Trustees, and the ever present threats of removal, Dallas and Bradley filed a motion to determine that [JBE, Inc.] was an asset of the Estate of James Brown. At the same time Dallas and Bradley also purposefully notified the Attorneys General of the States of South Carolina and Georgia, whom they knew would take action to defend the charitable beneficiaries of the Irrevocable Trust in the proceeding.. The Attorneys General were allowed to intervene.... [Para 63,64.]... On November 9, 2007, Dallas and Bradley, having now been joined by the Attorneys General of Georgia and South Carolina in their fight against Pope and Buchanan, filed...[a false statement follows about a filing by Dallas and Bradley in the Circuit court].”[Para 67]. [Emphasis supplied.]

Brown, along with Deanna and Yamma, have wasted the Court's time and the Estate and 2000 Trust's funds to come full circle, i.e., reunite with Cannon and Dallas to destroy James Brown's Estate Plan.

86. Atlanta Law Firm Powell Goldstein (PG) represented the Cannon/Dallas Group, as Trustees, in the summer of 2007 just before we discovered the \$900,000.00 taking. Cannon and Dallas were working to remove the 2000 Trust from South Carolina and the inevitable discoveries which Judge Early's access Order allowed. [Affidavit. S. Jackson]

87. PG secretly worked with Hammond, Cannon and Dallas in June when the \$100 Million joint venture/Sale/IPO with Forlando was being proposed and Cannon and

---

Forlando also stated: "The Attorneys General of the State of Georgia and for the State of South Carolina, on behalf of the charitable beneficiaries of the irrevocable Trust, have moved to set aside or amend the November 20, 2007 Order appointing Pope and Buchanan...as trustees on the grounds, among others, that Pope and Buchanan are in a conflict of interest. . . The Attorneys General have similarly objected to the commingling of Estate and Trust funds by Pope." [Emphasis supplied.] [Para. 88.] Forlando referred to Cannon's \$900,000.00 taking as "disclosures about certain financial transactions involving David Cannon prior to James Brown's death" [Para 49].

The 42-page, 112-paragraph Forlando complaint falsely summarized its general position in Paragraph 100. After 13 bullet-point false and misleading accusations, Forlando, on December 31, 2007, asserted in this verified pleading:

Pope and Buchanan have acted in concert with counsel for the six named children under the Will and counsel for Tommi Rae Hynie, and as advocates of the positions of the heirs and Hynie, and to the detriment of the Brown grandchildren and the charitable beneficiaries, all contrary to the primary educational and charitable purposes of the Irrevocable Trust. [Para 100]

Nothing, of course, could have been further from the truth on December 31, 2007, or today.

Shortly thereafter, on the same grounds, in addition to seeking the injunction and our removal by the Federal Court, Forlando sought damages against us individually.[Am. Compl.] We have counterclaimed. Forlando's attorneys in the frivolous Federal suit are: Powell Goldstein attorney William Shearer, former Trust counsel who billed the Estate \$48,225 in 2007 and, cooperating with Cannon and Dallas in their violation of the August 10 Order, will not release the Estate/Trust file as directed by Judge Early. PG and Bell also both now represent, in addition to Forlando [controlling owner of TJBL], his father, Terry Brown, in Terry's claim to about \$4 Million of Mr. Brown's Estate/Trust; PLUS a Right of First Refusal which will destroy the Trust's 501(c) (3) status and devalue the James Brown assets; and which has already delayed the CORBIS/GreenLight agreement, at a loss estimated to be at least \$1 Million per year.

Dallas were demanding a kickback or option. [Cox Proposal 6/01]

88. In September 2007 PG sent the Estate a \$48,225 bill for its work.

89. In November the Cannon/Dallas attempts to move the 2000 Trust out of the state, to Georgia, and other secret wrongdoing, came to light. Following Cannon's resignation on August 10, 2007, Dallas and Bradley resigned on November 20, 2007.

90. On November 20, 2007 after the resignation of Dallas and Bradley, Dallas and Terry Cox, under oath spoke of Cox's "very significant offer"<sup>60</sup> [Trans., 11/20/07, p. 426], but concealed Cannon, Dallas and Forlando's financial involvement.<sup>61</sup>

91. Cox, under oath, said that including a kickback or option for Dallas and Cannon was a "mistake." [Transc. 11/20/07, pp. 448]

92. On December 5, 2007 Forlando and Cox became joint venturers in TJBL.

93. On December 10, Forlando called Adele to talk about his tuition education payments under the Grandchildren's Trust. Adele told him they hoped to have funds as soon as the TPP sale was approved, and Adele offered to speak to the financial aid person at his college.

94. On December 10 or 11, 2007 David Bell called Adele and directed her not to talk to Forlando. Adele requested that Bell advise Forlando of his mandate so that Forlando, who had called her various times, would know the non-communication was not her idea.

95. By about December 18, David Bell was mailed notice that we withdrew the

---

<sup>60</sup> The \$100 Million offer of October 23, 2007

<sup>61</sup> Cox denied Dallas had a participation interest even though an email from Cox to GT Attorney Sidman said Buddy wanted "a piece of the IPO." [Trans., 11/20/07, p. 445]

Dallas/Bradley motion to declare JBE, Inc., an asset of the Estate; he had also received our request in the Declaratory Judgment action that the court declare there was no probable cause to contest the Will or 2000 Trust.

96. As knowledge is defined in the Trust Code,<sup>62</sup> David Bell, Forlando and Terry Brown clearly had knowledge before December 31, 2007 that:

- a. We were not pawns of Deanna and Yamma Brown.
- b. Dallas and Bradley, not we, filed the motion to declare JBE, Inc., an asset of the Estate – and we had withdrawn it.
- c. We fully supported the Trust and the Will.
- d. Cannon had misappropriated \$900,000.00 from the Trust; had resigned; and was unfit to serve.

97. Despite this, on December 31, 2007 Forlando, with knowledge of the falsity, verified a Complaint (and later verified others) falsely accusing us of things he knew to be false, including having, for personal gain, wrested the 2000 Trust from Cannon, Dallas and Bradley. He accused Judge Early of impropriety, and sought to enjoin the 2000 Trust from taking any action.

98. Concealing his financial relationship with Cox, Cannon and Dallas, Forlando represented himself to be an impoverished student who only wanted to enforce the 2000 Trust.

99. Although wholly frivolous, the lawsuit had to be taken seriously, including the conduct of a 2-day hearing on the injunction, which has not been granted. The expense of defending the frivolous lawsuit has caused us to lose our professional

---

<sup>62</sup> See SC Trust Code § 62-7-104.

malpractice insurance coverage.

100. Among the many troublesome aspects of the Forlando Federal Suit was a false affidavit prepared, signed and filed by David Bell in which Bell falsely told the Federal Court that he had relied on representations by us in advising Forlando to sign a Stipulation, presented to the state court on September 24, 2007, that JBE, Inc., was an asset of the Estate. He had not talked to us, and could not possibly have relied on us, as our affidavits – and the facts – confirmed.

101. After the purported “settlement” Bell and Levenson directly and indirectly threatened us if we did not resign.

102. In addition, Bell and PG attached what was represented to be a copy of the 2000 Trust to the federal complaint. The copy contained the Post-death, Second Schedule B which Dallas had created in January 2007 to make it appear that James Brown had himself transferred assets to the 2000 Trust during his lifetime.

103. As a result of the false and scurrilous accusations of the Forlando Suit, the first time either of us had had to call on our legal negligence carrier to defend us, in our combined 60 years of practice, both of our professional liability policies were cancelled – Adele’s at the end of 2007 and Bob’s effective August 16, 2008.

104. David Bell also assisted his clients in filing grievances against Louis Levenson, both in South Carolina and Georgia. While we have been troubled by some of

Mr. Levenson's actions,<sup>63</sup> we felt that the Levenson grievances filed by Bell, like the later Forlando Suit brought against us, were not merited and were brought for an improper purpose.

105. Approximately \$400,000 has been spent on the defense of the Forlando Suit. The premium for Adele's insurance for 2008, obtained after the cancellation, was more than 4 times that of 2007. Bob has thus far been unsuccessful in securing other coverage, so his new rates have not yet become an issue.

106. We believe that the costs of the frivolous Forlando suit should be paid by the Estate/Trust, and recovered by the Estate/Trust from the Bell/PG clients.

107. The unchecked false and misleading statements and filings of Dallas, Bell and others have made our task of preserving and protecting the Estate and 2000 Trust and defending the Estate Plan of James Brown more difficult.

108. While we did not seek revocation of Mr. Bell's pro hac vice status in Case 122, his false affidavit and other false representations he has made to the Court compelled us to support it. The Court did not revoke his pro hac vice status despite earlier warnings.

109. In McMaster v. Dallas, Case No. 2008-CP-02-1647, Bell actively participated for months without seeking pro hac vice status. [We have not seen evidence of his admission.]

---

<sup>63</sup> Mr. Levenson called Bob to advise that if we didn't resign there were those who were intent upon ruining us. He made a similar call to our attorney, James Gilreath, the night before Adele was to testify.

## **XI. THE EFFECT OF OUR SERVICE AS PR/TRUSTEES ON OUR CAREERS**

110. In February 2007, when asked by Alan Medlin (Adele) and counsel for the then-PRs (Bob) to consider appointment as SAs, both of us had very active careers.

111. At our first meeting with the Cannon/Dallas Group on March 26, 2007 Cannon was red-faced, literally banging his fist on the table and accusing us of being spies for the enemy.<sup>64</sup> We told him we understood his concern, but were just doing our job.

112. On November 20, 2007 that job changed dramatically, and without warning.

113. In 2007 we both reduced our practices to meet the ever-increasing demands. As before, we had a job to do.

114. From November 2007 Adele was spending more than 80% of her working time on James Brown matters and had to turn away many requests for her service. In November 2008, well into a year in which she would spend at least 2,300 hours on being a Brown PR/Trustee, Adele decided to close active practice.<sup>65</sup> Bob, having turned away numerous matters over 2½ years, must now rebuild his practice. We have both borrowed money<sup>66</sup>, and are continuing to borrow money, to pay our staffs and keep our offices functioning.

115. We are both sole practitioners. Bob's staff of 1½ and Adele's larger staff have devoted much of their time for 2½ years to Brown matters.

---

<sup>64</sup> Dallas and Bradley, as always, were cordial.

<sup>65</sup> Adele has retained a small number of client matters other than her Brown Service since January 2009.

<sup>66</sup> Adele made a taxable early withdrawal from her retirement funds rather than borrowing from traditional sources.

116. If we return to active service as PR/Trustees,<sup>67</sup> we will have the same goals we had – and fulfilled – through May 26:

- a. Protect and enhance the assets, especially the Royalties and Publicity Rights.
- b. Defend the Estate Plan of James Brown.
- c. Develop a Succession Plan which will prevent loss of millions to persons James Brown did not intend to have his assets.

**XII. THE REUNION OF CANNON/DALLAS WITH THE DEANNA/YAMMA GROUP AND THE TERRY/FORLANDO GROUP, AND OUR DUTY TO APPEAL**

117. Cannon's violations of the criminal law and the Cannon/Dallas/Bradly breach of their fiduciary duty to James Brown were apparently undiscovered until shortly before or after Brown's death. They include Cannon's unreported \$4.9 Million from the TIAA Funds in 1999; the \$900,000 taking from the 2000 Trust in 2006; and the after death filing in Aiken County of a \$700,000 judgment in favor of Cannon against Brown which he secretly obtained by paying \$41,000 in 2002.

118. The Cannon/Dallas relationship with Brown's family/beneficiaries has been mixed. Deanna held a power of attorney with Cannon and Dallas until Brown's death. Deanna and Yamma became, after Brown's death, Trustee and Executive Assistant to the Trust board, respectively.

119. In early 2007 the Deanna/Yamma group (then all 6 acknowledged children) split from Cannon and Dallas because, as Forlando has asserted, Cannon and Dallas

---

<sup>67</sup> We have repeatedly advised the court and parties that we have no desire to serve longer than necessary to stabilize the Estate/Trust (and have actually filed an action seeking the development of a succession plan).

would not give them enough control. Then Forlando and Terry Brown split from the Deanna/Yamma group.

120. Forlando and Terry have asserted that we were appointed SAs in March 2007 to get rid of Cannon and Dallas so the Deanna/Yamma Group could take the James Brown assets for themselves.

121. The Deanna/Yamma Group engaged us – and this Court – for 8 months with hundreds of hours of complaints about the unconscionable 16% (approximately) commissions from the Estate/Trust the Cannon/Dallas Group wanted. Then they filed suit in state court to get it all for themselves.

122. Terry Brown has now re-joined the Deanna/Yamma Group. Both he and his son Forlando are now represented by Powell Goldstein (PG).

123. PG still refuses to release<sup>68</sup> its file for the period when the Cannon/Dallas Group was seeking a kickback or options in the IPO.

124. Having reunited, Cannon/Dallas and Mr. Brown's family are happy to take Brown's funds for themselves and accuse us of impropriety for defending Mr. Brown's wishes.

125. We have been since early 2008, and remain, the only persons protecting the interest of James Brown's Estate Plan, including:

- a. Brown's In Terrorem clauses of the Will and Trust.
- b. Brown's Spendthrift Clause of the Trust.
- c. Brown's desire to dedicate most of his estate to the private education trusts.

---

<sup>68</sup> And Cannon and Dallas in violation of the August 10, 2007 Order have refused to deliver the file.

126. We have made it clear to the AG and others since November 20, 2007 that we only intend to complete our duty and provide for proper succession.

127. We believe that we must appeal the McMaster Orders.

128. We respectfully submit that the appeal increases the chance of retaining the \$50+ Million for the Estate/Trust; will have no adverse effect on the Estate/Trust; and our requested commissions should be the same in either case.

### **XIII. OUR RELATIONSHIP WITH THE ATTORNEY GENERAL'S OFFICE**

129. The Office of the AG did not assist in any way with the Cannon Appeal.

130. We believe that the motion by the AG to remove us for cause as PR/Trustees was baseless and ask the Court to review our counterclaim and affidavits for our full position.

131. We believe that we have made every reasonable effort to cooperate with and inform the Office of the AG from the outset. The AG has opposed us consistently to some extent on every issue, beginning with our appointment. This alone has complicated our ability to meet our objectives. Just some of our many communications in which we urge the AG to abandon their neutrality towards Cannon and Dallas; help us protect the Estate/Trust; and help us try to find out the actual amount of the secret \$12 - \$14 Million the "settling parties" intend to pay their attorneys and Bauknight from Mr. Brown's Estate and the 2000 Trust are attached as **Exhibit 13**.

#### XIV. PURSUING THE CANNON APPEAL

132. By November 15, 2007, the criminal investigation in relation to Cannon's income – which came from Brown – was known.<sup>69</sup> And his \$900,000 2006 taking from the Trust had been known for months.

133. When Cannon was held in contempt by the Court, and appealed, we were not concerned with the sentence. We were concerned with the destabilizing effect his challenges to the Court's (Judge Early's) authority to act were having, and whether the year spent uncovering the Cannon/Dallas actions which led to their resignations would have to be repeated.

134. We asked the Assistant AG Jones to work with us on the Cannon Appeal to prevent the return of Cannon and Dallas. The AG failed to do so.

135. The AG did not actively oppose Cannon's appeal position that Judge Early had no jurisdiction over the year-long Trust hearings.<sup>70</sup> Only M&T Bank and we did.

136. The AG did not file a brief or attend the Cannon oral arguments.

137. During the period of his appeal, Cannon repeatedly violated Judge Early's Orders in connection with Geronimo Music Management, LLC (Geronimo), a company owned at least 51% by the 2000 Trust which is the publisher for some of Mr. Brown's songs. Dallas also violated the Orders.

138. Cannon and Dallas continue to be in direct violation of the August 10, 2007 Order by refusing, as ordered, to turn over either the PG or the Greenberg Traurig (GT)

---

<sup>69</sup> See Transcript 11/15/07 pp. 291-294.

<sup>70</sup> They also acquiesced – and we agree – that James Brown's Will and Trust were established in 2000. [We believe all are bound by this finding.]

Estate/Trust Files.<sup>71</sup>

139. The AG's failure to support us as PR/Trustees in efforts to prevent the return of Cannon and Dallas made our work difficult – but not impossible.

**XV. OUR DEFENSE OF THE ESTATE PLAN AND OTHER "FAMILY" CLAIMS**

140. We ask the Court to take judicial notice of our vigorous defense of the Estate Plan.

141. We believe the James II matter could have been decided with a DNA test, long ago ordered by the court but never conducted; and/or by motions to dismiss and for summary judgment. However, some motions remain pending and discovery has been stayed.

142. We believe the facts demonstrate Hynie Brown is neither an heir nor devisee of James Brown; we believe much of her claim should have been decided on motion to dismiss; and the remainder on Summary Judgment after discovery, which was stayed.

143. We believe the facts show all adult grandchildren who endorse the settlement have violated the In Terrorem and Spendthrift clauses of the Trust. We have pending motions to that effect.

144. We believe the AG's irrevocable commitment on August 10, 2008 to work with certain persons claiming to be some of the heirs of James Brown against the Estate,

---

<sup>71</sup> Dallas, through innocent attorney Wayne Byrd, asserted that there was no Powell Goldstein file. [Byrd Ltr Jg. Early dtd 2/27/08]. He withdrew the statement when PG's previously-concealed \$48,225 bill from September 2007 was discovered. This was not the first time Dallas or Cannon (and others) lied to the Court through attorneys. [See Bell Affidavit, Forlando Suit; Stan Jackson Affidavit; Keith Babcock testimony on 2/20/08, pp. 37-45]

the Trust and the trust beneficiaries was wrong. [See August 10 signed document]

#### **XVI. SALE OF THE JOSEPH BROWN HOUSE.**

145. According to Louis Levenson, attorney for various family members, the home of Joseph Brown, James Brown's father, held more significance for his acknowledged children than Beech Island. The house, valued at \$60,000.00 was an albatross for the Estate. It was unoccupied; the Cannon Group had allowed the insurance to expire; and it came to Mr. Brown through the Estate of Joseph Brown, which had not been probated.

146. The location in Georgia made oversight of the Joseph Brown house and solving the probate issues more problematic and costly. Further, it came through an intestate Estate, and we learned of the possibility of a brother of James Brown who might claim an interest in the house—even though James Brown had provided all of the funds for it.

147. We sought, and obtained, court approval to sell the Joe Brown house to the Levenson clients with only a quitclaim deed; 10% down and a note and security deed for the remainder' purchaser's counsel to prepare documents.

148. Mr. Levenson assured us that payment by his clients would never be a problem. After we spent months assisting the purchasers (Levenson clients) in getting the sale documents correct, the sale finally closed. The purchasers made only 2 payments. Beginning in August of 2008 they refused to make any further payments based on the "settlement."

**XVII. THE OFFER OF COMPROMISE AS AN ATTEMPT TO FORGE A SETTLEMENT THAT WOULD NOT DISQUALIFY THE TRUST AND CREATE A \$40 MILLION ESTATE TAX AND INTEREST PROBLEM**

149. By January 30, 2009 the AG was making good on his promise of August 10, 2007 to join the Deanna/Yamma/Hynie Brown Group in attempting to defeat the Estate Plan of James Brown<sup>72</sup> by attacking the Estate, the Trust – and now, without cause, us, for defending the Estate Plan.[See Am.Compl., McMaster v. Dallas] On January 30 AG Jones offered millions of dollars more, to be taken from James Brown’s assets, to encourage Terry Brown to abandon his firm, and sworn, assertions that both the 2000 Trust and 2000 Will were valid, carried out the wishes of James Brown, and had been affirmed by James Brown.[See Ltrs. of S. Jones, D. Bell, dtd. 1/30/09.] Also extremely troublesome was that on January 30 the “settling parties” – of which the Attorney General was a part – began to assert, with no basis whatsoever, that at death Mr. Brown’s Gross Estate for Federal Tax purposes might have been less than \$100 Million. There was no basis for this position or their refusal to discuss these matters with us.<sup>73</sup>

---

<sup>72</sup>Just after AG Jones arranged and conducted the August 10 mediation, AG McMaster signed a “private binding agreement” to “settle all differences among the parties whose signatures appear below.” The agreement was signed, in addition to the AG, by Louis Levenson, T.R. Brown, Robert Rosen, Daryl L. Brown, Deanna B. Thomas, Deanna for Venisha, Deanna for Yamma and Larry Brown. The parties agreed, among other things:

...5.

a) [to file] a joint motion seeking removal of Pope and Buchanan

... k) “The parties agree to use their best effort to extinguish any other outstanding interest or claims by any potential heir, devisee, or successor...”

7. The Agreement is a private binding agreement among the parties hereto.

<sup>73</sup> In February, 2009 the “settling parties” , including the AG, has disclosed nothing about the estimated \$12 - \$14 Million to be paid to counsel for the “settling” parties. The, Court, to date, has not required disclosure. We believe confidential reports have been filed with the Court that we have not been allowed to see. We believe this secrecy is inappropriate under the circumstances. [Counsel for the Deanna/Yamma Group and Hynie Brown are working on a contingency basis.] On February 2, 2009 we wrote one of the 5

150. From November 2007 to January 2009 threats to the Estate and Trust, had gone from the \$16+ Million claims of the Cannon Group, and claims of those working with them, to the \$50+ Million threat of the proposed settlement, including the devastating Terry Brown Right of First Refusal and probable loss of status of the "I Feel Good" Trust as a private foundation. The "settling parties" purportedly speaking for the Attorney General of South Carolina were openly referring to James Brown's Estate and private trusts as "the Attorney General's money" [ See Transcripts throughout, including 3/4/09, pp. 575] AG Jones repeatedly asserted, and the Court was paying attention, that all AG McMaster had to do was enter the James Brown proceeding and that gave him a right to completely take over the James Brown Trusts and Estate and put both under his direct personal control. This included the assertion that we should be required to sign a document containing factual findings we knew to be false; pledging not to tell about internal matters of the Estate and Trust; and generally violating both out constitutional rights and those of the Estate/Trust beneficiaries.

151. As a last-minute effort to salvage at least some of the Estate Plan as Mr. Brown had intended, we proposed an Offer of Compromise in a form which would have avoided much of the Estate Taxes [correct form] and, although a greater compromise

---

tax attorneys for the "settling parties" to get information about their new suggestion that the Estate/Trust was worth less than \$100 Million at death, and to obtain additional tax information. [Ltr. Buchanan/Pope to Carter/Medlin 2/2/09] When they refused to confer with us about these issues [Carter ltr. 2/2/09], we wrote the AG on February 6, 2009. The AG did not help us get the necessary information. Likewise, the AG has acquiesced in keeping R. Bauknight's management fee a secret, and the fees of the 10 attorneys he has now hired a secret. [ We have asked Bauknight, but not received an answer, as to how Bauknight intends to allocate attorneys' fees and his commissions between his position as Trustee for certain Brown Family members under the Legacy Trust - which is adverse to the Estate/Trust - and for administration of the Estate/Trust. He had not answered. [These secret fees and commissions interfered with our obligation to keep the IRS informed of tissues related to estate administration, including matters related to he proposed settlement. We believe that secret fees and commissions are inappropriate under the circumstances.]

than we would have proposed, would have paid the settling parties in the settlement less than the AG was proposing to take away from Mr. Brown's Estate and Trust. The major provisions of our April 1, 2009 Offer of Compromise, which would have properly ended the Will/Trust contest, were:

2. The Last Will and Testament of James Brown dated August 1, 2000 shall be formally admitted to probate, but subject to the modifications set out below:

a. The Personal and Household Effects (PHE) to which the 6 children are entitled under Item I of the Will shall consist of the current contents of Beech Island and the assets on loan to museums. Deanna Thomas shall take possession of the Beech Island contents for safekeeping on behalf of the 6 children on or before May 1, and shall immediately deliver a receipt for same.

b. The first sentence of Item II of the Will is amended to so that after amendment it shall read:

Subject to subparagraph (3), below, I give and devise the rest, residue and remainder of my property as follows:

(1) Fourteen (14%) percent to be divided equally among Daryl, Terry, Larry, Venisha and James II Brown, Deanna Brown Thomas and Yamma Brown Lumar, all of whom are declared to be acknowledged children of James Brown.

[An additional One (1%) percent to James II upon receipt of official DNA confirmation by May 1, 2009. Provided, however, failure to elect this provision shall not be deemed to create any presumption or inference affecting his status as an acknowledged child for all purposes.]

(2) The Remainder [either 85% or 86% percent] to the James Brown 2000 Irrevocable Trust created on August 1, 2000 prior to the execution of this Will . . .

(3) All amounts otherwise payable to James Brown II shall be paid to a conservator or Trustee nominated by his mother and acceptable to the Court.

3. GAL and attorneys' fees and costs for James II shall be charged to his share as a priority expense of administration, in a reasonable amount to be set by the Court upon presentation of Affidavits and/or other documentation.

4. The permanent resignations of Messrs Cannon, Dallas and Bradley as set out in the August 10, 2007 Order in Case 122 shall remain in full force and effect.

5. Robert L. Buchanan, Jr. and Adele J. Pope shall continue to serve as PRs and Trustees, and their actions to date are ratified and confirmed.

6. Effective upon entry of this Order, Louis Levenson, if his clients consent in writing to such service, shall serve as Special Administrator, to cooperate and assist the PR/Trustees with marshaling and managing assets and litigation, including but not limited to, implementation of the CORBIS settlement; selecting a recipient of the Right of First Offer; due diligence regarding a potential asset sale; and related TIAA and Pullman matters.

7. Except as set out herein, and subject to payment of the claims set out below, the Last Will and Testament of James Brown dated August 1, 2000 shall remain in full force and effect, including its tax apportionment provisions.

8. The Court specifically finds that all challenges to the validity of the James Brown 2000 Irrevocable Trust and its subtrusts, the Brown Family Education Trust and the James Brown "I Feel Good" Trust are barred by applicable statutes of limitation and should be dismissed. All challenges thereto should be dismissed.

9. Upon receipt of the Estate Tax Closing letter, after disclosure to the IRS of the final Order approving this settlement; payment or provision for all debts, taxes and expenses of administration; final resolution of the Forlando Brown Federal Suit, including the counterclaim; and final resolution of the Cannon and Dallas/Bradley appeals, Robert L. Buchanan, Jr. and Adele J. Pope shall resign as Trustees (and PRs if appropriate) and appoint as Successors:

a. Deanna J. Brown Thomas (to fill a seat to be held by, or permanently reserved for, a member of the Brown family);

b. A competent, independent South Carolinian appointed by the Attorney General of South Carolina; and

c. A competent, independent South Carolinian appointed by a majority of the then-existing Advisory Board, which currently consists of Dr. Leonard McIntyre; Dr. Ann Carmichael; Ms. Inez Tenenbaum; Judge Walter Williams; and Coach Larry Campbell.

10. 430 Douglas Drive, Beech Island shall be sold, absolutely as is, to DEANNA BROWN THOMAS for \$925,307, or other(s) if not closed by May 1, 2009, as set out the PR/Trustees' Memorandum dated March 27, 2009.

11. In complete settlement of all claims and rights each may have in and to the Estate and Trust, and paid prior to the final residuary distributions set out above, the following shall be Offered, and paid if timely accepted as part of this Offer:

a. Seven (7%) percent of the residue to Tommie Rae Hynie in exchange for relinquishment of all claims she may have in, to and/or against the Estate, the Trust and any Brown Entities.

b. Ten Thousand (\$10,000.00) Dollars and recognition that she is child of James Brown as contemplated under current Federal Copyright Law, to each of Cinnamon N. Parris, Jeanette Mitchell and LaRhonda Pettit, in full settlement of all claims and/or demands each shall have against Estate/Trust.

12. The *In Terrorem* clauses of the 2000 Will and Trust shall not be enforced against persons who immediately ratify in writing the 2000 Will and 2000 Trust, as modified by this Order.

9. All assets other than Beech Island and Geronimo, LLC shall, for accounting purposes, be treated as Estate assets unless objected to by the Attorney General of South Carolina, or if a different ownership is clearly established.

10. A 6-months' Right of First Offer with exclusive due diligence period for a potential sale of the bulk of the Estate/Trust Assets shall be granted as soon as reasonable, but within 30 days, with any one or more person(s) procuring a buyer who actually closes entitled to a finder's fee, up to a total of 2%, as agreed by the PR/Trustees or approved by Probate Court.

11. All parties shall execute such additional documents as are reasonably requested to carry out the terms of this Order.

152. While the Offer of Compromise would normally not have been discussed, the "settling parties" themselves referred to it in Court on the last day of the hearings when Harley Ruff<sup>74</sup> confirmed Adele's opinions regarding the disastrous tax consequences of the proposed "settlement". This attempt to salvage the Estate and Trust was rejected.

153. By admitting the 2000 Will to probate, the Offer of Compromise also dealt

---

<sup>74</sup> Both Harley Ruff and Adele were acknowledged by Judge Early as experts in Estate Planning in the proceeding. Both testified that the form of the proposed "settlement", including the "Legacy Trust" and the "Right of First Refusal" would not only disqualify the Estate Tax Deduction (with loss of about \$40 Million in taxes and interest) for the "I Feel Good" Trust, but would also disqualify the Trust as a private foundation. [Tr. Hearings] This directly violated the terms, purposes and provisions of the 2000 Trust; its spendthrift clauses; and its *In Terrorem* clauses.

appropriately with the problem of the settling parties' having failed to join proper parties, including Salkehatchie, U. S. C. Aiken and others.

**XVII. OUR ASSISTANCE WITH THE TRANSITION OF  
MANAGEMENT OF THE ESTATE/TRUST PENDING APPEAL  
(WITHOUT PREJUDICE)**

154. On August 12, 2008, one of the "settling" parties' counsel notified us to "stand down" and quit managing the Estate because a "settlement" had been reached. [Ltr. Rosen and email to Judge Early dtd 8/12/08, **Exhibit 14**]. This was followed by a letter of the AG announcing a "settlement" reached on August 10 after a secret mediation to which we were not invited and of which we were not informed. [Ltr Jones dtd 8/12/08, **Exhibit 15**]

155. The "stand down" directions and notice of the secret mediation came just 12 days after we had received a letter from AG McMaster about plans to proceed with the appointment of a 3<sup>rd</sup> Trustee, and were a complete surprise. [Ltr McMaster dtd 7/30/08, **Exhibit 16**]

156. Counsel's suggestion that we stop administering the Estate/Trust demonstrated a total misunderstanding of the James Brown musical empire and the more than 20 pending cases in which we were involved as PR/Trustees and on behalf of JBE, Inc.

157. We did not know the then-secret contents of the proposed August 10 mediation document.<sup>75</sup>

---

<sup>75</sup> The August 10, 2008 document asserts that it is irrevocable, but it was changed repeatedly until submitted to the court on March 26, 2009.

158. We had an Estate Tax Return for an approximately \$100 Million Estate due – with no further extensions permissible – on September 25, 2008, and depositions scheduled in the Forlando Federal Suit in September, with a 2-day hearing scheduled for November 18.

159. We needed to know what was proposed in the secret agreement in order to assess its impact on the Estate Tax Return.

160. Prior to the AG's filing of *McMaster v. Dallas* we asked the Court to require that the settlement terms be disclosed<sup>76</sup>.

161. The AG commenced *McMaster v. Dallas* September 2008 without making us a party. By then we had contacted the “settling” parties, urging them to become involved in the Estate Tax Return preparation, and asking that their accountant participate in our preparation of the return or prepare it for our review. We also asked them to appoint someone to work with us on litigation and on Royalty/Publicity matters. They refused.

162. Alan Medlin, counsel for one of the “settling” parties, advised Adele that the “settling” parties had no accountant and that they wanted Sellars to prepare it. Tax attorney Carter later refused to participate in the tax process.

163. Russell Bauknight had been known to us since June 2008 when AG Jones filed an Emergency Petition to Appoint a Special Trustee, asserting we had no authority

---

<sup>76</sup> At the August 19, 2008 hearing, an in-chambers meeting (attended by counsel for various parties, including those adverse to the Estate/Trust) which evidently dealt with a rough outline of the August 10 settlement was held. We strongly believed that public disclosure was appropriate. We did not go in chambers. We were also facing depositions in the Forlando Federal suit, and knew that the Federal Court might compel our disclosure. The Public disclosure was made at the November 25 hearing, after the Federal Court depositions.

to act. [See Em. Pet. Dtd 6/26/08 and Ltr of Jones dtd 7/7/08, **Exhibit 17**].<sup>77</sup>

164. Between July, 2008 and May 26, 2009, we invited Bauknight to visit Beech Island. [He did not return our calls.] We invited him to attend (by phone or in person) the CORBIS/GreenLight Settlement conference in New York on January 19, 2009. [He declined.] We requested his input, since he is an accountant, on tax issues proposed by the August 10 document. [He did not respond.]

165. Bauknight met with us once after he was appointed "independent" SA/ST. He knew virtually nothing about the more than 20 pending cases.

166. Despite this, he testified under oath that no transition was necessary if he was appointed Successor PR/Trustee.<sup>78</sup>

167. We were appointed PR/Trustees on November 20, 2007 without any transition. We did not want that to happen to anyone else and wanted a smooth transition of [temporary] management, without prejudice to our position that Bauknight improperly recommended the Settlement and has an irreconcilable conflict which renders him unable to serve as PR/Trustee while working for the "family."<sup>79</sup>

---

<sup>77</sup> Dallas, at approximately the same time, was also interfering in the Circuit Court and Ct. Of Appeals, trying to derail the Christie's sale on July 17. Powell Goldstein, Deanna and Forlando also interfered.

<sup>78</sup> At first (January 30, 2009) Bauknight was speaking as an "independent" Special Administrator/Special Trustee for the sole purpose of evaluating the Settlement. He was later revealed as the Trustee of the Legacy Trust and as the proposed Personal Representative and Trustee. Despite his assertion, even a temporary transition for management pending reconsideration and appeal demand time and effort. After rejecting our offer to meet weekly for a reasonable time, on July 10, 2009 Bauknight accepted it. We will meet with him at our next meeting.

<sup>79</sup> See Statement of Henry McMaster to WIS-TV, 2/12/08: "One of the issues, according to McMaster, is that the . . . trustees [Buchanan and Pope] are currently representing both the poor kids trust and the families' interests, which . . . 'goes far past the stop sign of conflict of interest.'"

**XVIII. DEALING WITH THE UNRESOLVED \$40 MILLION TAX PROBLEM  
CAUSED BY THE AUGUST 10 DOCUMENT AND GREATER  
PROBLEMS OF THE MARCH 26 AGREEMENT**

168. While our objection to the settlement is well documented, the “settling” parties refusal to disclose information and cooperate presented problems which began on August 12 and have continued until today.

169. When we received our first notice of the settlement(August 12) PG attorneys were in Adele’s office gathering documents for the November injunction hearing in the Forlando Suit. We had confidential depositions in the Forlando Suit in September and the Estate Tax Return due September 25. The “stand down” letter arrived on the 13<sup>th</sup>. From counsel for Hynie Brown on August 13.

170. Starting on August 13 the lawyers for Trust and Will Contestants began to make demands of us and speak as one, and for, the AG of South Carolina<sup>80</sup>. This cause numerous administration and practical problems for the Estate and Trust, which continue today.

171. We knew the secret “settlement”, if finally implemented, would take assets from James Brown. We knew this would create about 50 cents on the dollar in Estate

---

<sup>80</sup> In an extraordinary number of letters during the 9 months between August 13, 2008 and May 26, 2009, attorneys for Hynie Brown (Rosen), the Deanna/Yamma Group (Levenson) and others began to speak to us and the Court as purported attorneys for and representatives of the AG and the State of South Carolina. They did so by asserting that they were speaking as attorneys for the “settling parties”, which included the AG. For 9 months – and now– these counsel who represented themselves to us and the Court to speak for the AG, were withholding information about the “settlement” he had purportedly reached on our behalf for the benefit of the Estate and James Brown 2000 Trust. [The “settling parties” delay (and possible loss) of the CORBIS/GreenLight settlement and contract is another example.] This joint action of the Will and Trust Contestants, who either are not beneficiaries or were subject to both the *In Terrorem* and Spendthrift clauses of the Trust, and the State of South Carolina through its AG was unlike anything either of us had experienced. It was just the behavior (falsely attributed to us) which Attorney General McMaster had denounced in his February, 2008 WIS television appearance in support of Forlando.

Taxes<sup>81</sup>, and, in addition, might affect the post-death income (2006 and future) taxes we had been working on with the IRS since December 2007.

172. The record of our attempt to find out what the “secret” settlement was is clear. What is important is that the AG and Settling Parties knew we needed this information for September 25, 2008 and refused to cooperate in the preparation of Tax Returns. By the time we filed the Return on September 25, we had heard the outlines of the “settlement” and knew it would generate at least \$10 Million in Estate Taxes.<sup>82</sup>

173. After refusing to work on the Estate Tax Return, another troublesome action of the “Settling” parties was to file an action for our removal and suggest, speaking on behalf of the AG, that we had over valued the assets of the Estate of James Brown on the Estate Tax Return by using some of the information provided by Cannon, Dallas and Bradley. The assertion was false.

---

<sup>81</sup> Hynie Brown’s attorneys were asserting, and later attempted to stipulate, that Hynie Brown was the Wife of James Brown. We had worked with assistant AG Jowers on that issue, even before the Lukich decision and were confident, based on Hynie Brown’s settlement and promise never to claim to be James Brown’s common law spouse (See Brown’s Reply to counterclaim and Order, Aiken County Family Court and counsel letters). If she were the wife, which was not likely, Estate Taxes would be less.

<sup>82</sup> When we were able to review the documents presented on January 1, 2009 and March 26, 2009, it appeared that the “settlement” as drafted disqualified the Estate Tax Deduction, creating a \$40 Million Estate Tax and interest liability and the Right of First Refusal to Terry Brown (and other impermissible family control) not only secured the loss of the Estate Tax Deduction but disqualified the “I Feel Good” Trust as a private foundation.

**XIX. OUR DUTY TO DEFEND JAMES BROWN'S RIGHT TO CONTROL SUCCESSION IN HIS ESTATE, GRANDCHILDREN'S TRUST AND THE "I FEEL GOOD" TRUST"**

174. Our joint affidavit dated August 19, 2008, with all Exhibits, in Cases 872 and 122, which we incorporate by reference, outlines the Cannon/Dallas/Cox proposed sale of assets. GT lawyer Jacobs confirms in an email that the sale was authorized on May 17, 2007. Cox was looking for investors by June 15. Cannon, Dallas and PG were involved in the attempts to transfer the 2000 Trust to Georgia as the \$900,000.00 misappropriation was about to be discovered. Hammond was designated a successor Trustee, and Hammond, Dallas and Cannon were in contact with Sr. Assistant AG Jones in S.C. and Assistant AG Grace Lewis in Georgia to falsely discredit us and keep alive the deal which would pay about \$10 Million to Cannon and Dallas.

175. We believe that it is our duty to defend James Brown's Succession Plan for the fiduciaries of his Estate, the Grandchildren's Trust and the "I Feel Good" Trust. We do not believe, as has been asserted in Court, that the "I Feel Good" Trust is, or will be, "the Attorney General's money". We do not believe, as has been asserted in Court, that the Attorney General has the right to take a private estate, a private trust and a private charitable foundation; change their terms and succession plan; and place them under his personal control.

176. On November 26, 2007, less than a week after our appointment, Terry Cox wrote Marion Heflin, to say

I had a conversation with the Senior Assistant Attorney General of South Carolina. He is preparing a petition to have them [Buchanan and

Pope] removed and told me that he would select a trustee for me to work with...  
[Cox email to Heflin, 11/26/07, Exhibit 18.]

He reported that he was meeting with Jones and Lewis the following week.

177. Seven years before his death James Brown established a Succession Plan in his Will and the 2000 Trust. As this affidavit and the referenced documents and transcripts show, we believe James Brown had a right to determine his own succession plan, and that it is our duty to uphold it as part of the defense of his Estate Plan.

178. Because Cannon, Dallas and Bradley resigned without naming successors we were appropriately appointed by the Court. As is outlined in the letters to the AG, our attempts to add a third PR/Trustee were always contravened by AG Jones.

179. During our service we have worked hard to establish a Succession Plan that will avoid some of the problems of the Dallas/Cannon era. While we have faithfully performed our duties as PRs and Trustees, we do not believe there is any basis for ignoring James Brown's succession plan for his Will and 2000 Trust and placing James Brown's assets under the direct personal control of Attorney General McMaster.

## **XX. INCORPORATION BY REFERENCE**

180. In support of our commissions, payments and reimbursements for us and our counsel we incorporate by reference all other affidavits we have filed in each above-referenced case, the Pullman Litigation, and the Corbis cases, together with the pleadings and Court Orders in those cases.

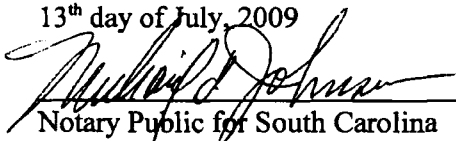
181. We also incorporate by reference our Time records which are made a part of this affidavit as additional explanations of many other acts we performed for the benefit of

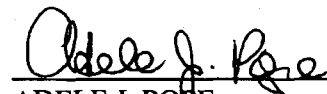
the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

FURTHER DEONENTS SAYETH NOT.

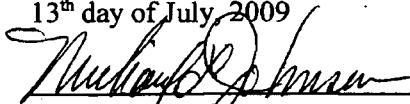
  
ROBERT L. BUCHANAN, JR.

SWORN TO before me this  
13<sup>th</sup> day of July, 2009

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires: 24 FEB 14

  
\_\_\_\_\_  
ADELE J. POVE

SWORN TO before me this  
13<sup>th</sup> day of July, 2009

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires: 24 FEB 14

**Exhibits to  
Joint Affidavit of AJP and RLB dtd. July 13, 2009**

- Exhibit 1 Complaint in the Declaratory Judgment (part of Case 122)
- Exhibit 2 ~~January~~ January 8, 2008 Order
- Exhibit 3 February 20, 2008 Order
- Exhibit 4 April 1, 2008 Order
- Exhibit 5 Commission Calculations
- Exhibit 6 Resumé, Robert L. Buchanan, Jr.
- Exhibit 7 Resumé, Adele J. Pope
- Exhibit 8 Time Records, Adele J. Pope
- Exhibit 9 Time Records, Robert L. Buchanan, Jr.
- Exhibit 10 Copy, Letter to Mr. Jones from Mrs. Pope, dtd. 11/21/07
- Exhibit 11 Summary of Charges, James D. Bailey, Esquire
- Exhibit 12 Summary of Charges, Tressa T. H. Hayes, Esquire
- Exhibit 13 Copies, correspondence between PR/Trustees Buchanan and Pope and Office of Attorney General
- Exhibit 14 Letter of Mr. Rosen to Judge Early dtd 8/12/08
- Exhibit 15 Letter of Mr. Jones dtd 8/12/08
- Exhibit 16 Letter of the Honorable Henry D. McMaster dtd 7/30/08
- Exhibit 17 Emergency Petition dtd 6/26/08 and Letter of Mr. Jones dtd 7/7/08
- Exhibit 18 Email of Terry Cox to Marion Heflin dtd. 11/26/07

## EXHIBIT 5

### ESTATE/TRUST OF JAMES BROWN

#### 1. MINIMUM PR/TRUSTEE COMMISSIONS CALCULATIONS AS PER ORDER DATED 1/8/08 (November 21, 2007 - May 26, 2009)

[Note: Does not include Post-May 26, 2009 Fees and Costs due under the January 8, 2008 Order.]

DESCRIPTION	TOTAL HOURS	RATE	TOTAL
RLB, JR.	1475	\$ 325.00	\$ 479,375.00
AJP	3610	\$ 325.00	\$ 1,173,250.00
RLB, JR. LEGAL ASSISTANTS	279	\$ 75.00	\$ 20,925.00
AJP LEGAL ASSISTANTS/CLERKS	3790	\$ 75.00	\$ 284,250.00
AJP ADMIN	535	\$ 30.00	\$ 16,050.00
<b>TOTAL</b>	<b>9,689.00</b>		<b>\$ 1,973,850.00</b>

#### SA and PR/TRUSTEES DEPOSIT TOWARDS COMMISSIONS as per Court Order:

RLB, JR.: \$ 500,300\*  
AJP: \$ 1,473,550  
\$ 1,973,850 Plus interest at legal rate as per Order

\* rounded to whole dollars

PR/Trustee Commission through May 26, 2009:	\$ 1,973,850
Unpaid interest on above amount <sup>1</sup> to Sept. 1, 2009:	\$ 109,251
SA Commissions unpaid:	\$ 47,972
Interest on above to Sept. 1, 2009:	<u>\$ 22,910</u>
<b>SA and PR/Trustee Commission Deposit ordered and payable as of Sept. 1, 2009:</b>	<b>\$ 2,153,983</b>

Plus: interest on above amount after Sept. 1, 2009<sup>2</sup>

---

<sup>1</sup> Calculated from 12/31/07; 6/30/08; 12/31/08 and 5/26/09

<sup>2</sup> Through January 14, 2010 at legal rate. Interest at legal rate to be compounded annually (10/09).

**II. FULL PR/TRUSTEE COMMISSION: BASED 1/3 ON TIME AND 2/3 EQUALLY:**  
**TOTAL COMMISSION: (\$ 99,863,015 [Total Value] x 5%)** **\$ 4,993,151**

**1/3 based on time:**

RLB, JR.	29.01 %:	1,664,383.66	x .2901=	\$ 482,837.70
AJP	70.99 %:	1,664,383.66	x .7099 =	<u>\$ 1,181,545.96</u>
TOTAL				\$ 1,664,383.66

**2/3 Commission Equally**

4,993,151 x (2/3) = 3,328,767.34

RLB	\$1,664,383.67
AJP	<u>\$1,664,383.67</u>
TOTAL	\$3,328,767.34

**TOTAL COMMISSIONS REQUESTED:**

RLB :	482,837.70	+	1,664,383.67	=	\$ 2,147,221.37
AJP :	1,181,545.96	+	1,664,383.67	=	<u>\$ 2,845,929.63</u>
					\$ 4,993,151.00 <sup>3</sup>

---

<sup>3</sup> Plus interest at the legal rate from May 26, 2009.

# EXHIBIT 6

## CURRICULUM VITAE

Robert L. Buchanan, Jr.  
212 Newberry Street, N.W.  
Aiken, South Carolina 29801  
803-649-2586  
[rlbuchananjr@bellsouth.net](mailto:rlbuchananjr@bellsouth.net)

### Educational Background

Erskine College	AB	1973
University of South Carolina School of Law	JD	1976

### Court Admissions

South Carolina	1976
United States District Court South Carolina	1977
United States Court of Appeals Fourth Circuit	1988

### Practice Areas

The approximate 33-year practice has included Criminal Defense, Workers' Compensation, Social Security, Administrative, Real Estate and Business Transactions, Probate, Domestic Relations and Civil Litigation; Emphasis has been in Civil Litigation, especially involving Commercial and Business Torts, Product Liability, Personal Injury, and Real Estate.

### Recognitions

AV Rated Lawyer, Martindale-Hubbell  
Preeminent Lawyers, Martindale-Hubbell  
The Best Lawyers in America

## EXHIBIT 7

### Adele Jeffords Pope<sup>1</sup>

Ms. Pope graduated from Mary Baldwin College in 1965 with a degree in Spanish. She was awarded a Master of Arts in Teaching degree from the University of Virginia and was a Spanish teacher for several years.

From 1971 to 1974, Ms. Pope attended the University of South Carolina School of Law from which she received a J.D. in 1974. She was a member of the South Carolina Law Review and the Order of Wig and Robe. She also was a member of the Client Counseling Competition Team.

Ms. Pope has completed the Harvard Mediation Training Course.

#### **PROFESSIONAL CAREER:**

After serving as a Trust officer for a year, Ms. Pope began the private practice of law. She has practiced law since 1975, except while in attendance at the University of Miami. Ms. Pope received an LL.M. in Estate Planning from the University of Miami.

Ms. Pope practices law in Columbia, South Carolina<sup>2</sup> and for more than 25 years concentrated her practice in trust and estate drafting and administration and fiduciary litigation. Mrs. Pope has recently retired as a member of the American College of Trust and Estate Counsel. She has served as an officer of the Estate Planning, Probate and Trust section of the South Carolina Bar and on other Bar committees.

#### **CHARITABLE BOARDS AND COMMISSIONS:**

Ms. Pope has served on the Board of the South Carolina Commission on Women; the Central Carolina Community Foundation; the United Way of the Midlands; the Newberry Arts Council; and other entities.

#### **REPRESENTATIVE COMPLEX ESTATE AND TRUST MATTERS AND LITIGATION:**

##### **I. Anne T. Boyce Matters:**

Shortly after the passage of the South Carolina Probate Code, Ms. Pope was one of the attorneys in Trust and Estate matters related to the Estate of Anne T. Boyce.

---

<sup>1</sup> Law Office of Adele J. Pope, PC, 1218 Taylor Street, P.O. Drawer 7125, Columbia, South Carolina 29202-7125, Telephone: (803) 779-1870, Facsimile: (803) 779-1673, email: [adele@popelawfirm.com](mailto:adele@popelawfirm.com)

<sup>2</sup> From January 1, 2009 until May 26, 2009, Mrs. Pope's activities were primarily related to her active service as one of two Personal Representatives of the Estate of James Brown and Trustee of the James Brown 2000 Trust (with Robert L. Buchanan, Jr.). They are currently seeking reconsideration of an Order dated May 26, 2009 terminating their services.

These cases were resolved after one trial by a global, Court-approved Settlement and Agreement Among Successors to Decedent (prepared by Elizabeth Van Doren Gray, Kenneth B. Wingate, Terrell L. Glenn, William P. Simpson, Ms. Pope and others). The form of the Agreement and "Related Orders and Document" was widely used over the following 20 years as a model for global settlements. See Estate of Anne T. Boyce, Marion County Probate Court No. 88-ES-33-00139, and related Marion and Horry County cases.

The cases involved, among other issues, a disputed devise to a private foundation whose validity was contested and estate tax issues. The primary asset was an interest in Waites Island and 2000 acres on Little River, Horry County, S.C., part of which, as a result of the settlement and a related gift, became part of the Coastal Carolina biological station.

## II. Wyman Boozer Matters:

Mrs. Pope represented one of the parties in the litigation and global Settlement which resolved (through an Agreement Among Successors to Decedent and related Orders and Documents) a number of cases related to the Estate and Trusts of S. Wyman Boozer and Bessie Inez Boozer.

See: Agnes K. Boozer, Plaintiff; vs. Allen B. Wise, Jr., et al. Defendants, Richland County Circuit Court Case No 97-CP-40-2863 (Formal Appointment); Agnes K. Boozer, Plaintiff; vs. Allen B. Wise, et al. Defendants, Richland County Circuit Court Case No 97CP402907 (Formal Testacy) (Removal of Wise & Tapp); Agnes K. Boozer, Plaintiff; vs. Allen B. Wise and Peggy C. Tapp, Defendants, Richland County Circuit Court Case No 97CP402902; Allen B. Wise, Peggy C. Tapp, and Stanford W. Boozer, Jr., as Personal Representatives, Plaintiffs, vs. Agnes K. Boozer, et al, Defendants; AND Agnes K. Boozer, Individually and on behalf of Shareholders of Wyman Boozer Realty, Inc. similarly situated, Third-Party Plaintiffs, vs. Allen B. Wise and Peggy C. Tapp, Third-Party Defendants. Richland County Circuit Court Case No 97CP402908 (Wise, Tapp, Boozer Matter); Agnes K. Boozer, Plaintiff; vs. Allen B. Wise, Jr., et al., Richland County Circuit Court Case No. 97CP402906 (Special Administrator); Allen B. Wise, Peggy C. Tapp, and Stanford W. Boozer, Jr. as Personal Representatives, Plaintiffs, vs. Agnes K. Boozer, et al., Defendants AND Agnes K. Boozer, Individually and on behalf of Beneficiaries of the Estate of S. Wyman Boozer, Third-Party Plaintiff, vs. Cheryse A. Tapp, Third-Party Defendant. Richland County Circuit Court Case No. 97-CP-40-3297 (Sale of Regatta); In the Matter of S. Wyman Boozer, Deceased, Richland County Case No. 97CP403459 (Review of Compensation).

Other counsel involved included: F. Kingsmore and others, Nexsen Pruet; Kenneth B. Wingate, GAL; B. Michael Brackett; Warren C. Powell, Jr.; Michael H. Quinn; Carole H. Gunter and Peter H. Murphy.

The Agreement Among Successors to Decedent was approved by all interested parties and counsel; the guardian ad litem; and all Courts in which the various cases were pending. It resolved a Formal Testacy Matter; a matter related to enforcement of a Penalty (In Terrorem)

Clause; the replacement of and succession provisions for PR/Trustees; removal, service and payment to resigning PR/Trustees; an Elective Share claim; attorneys' fee matters; and a number of corporate and Trust administrative issues. It also anticipated and resolved additional potential claims and issues.

III. Floyd D. Spence, Sr., Estate Matters:

Mrs. Pope represented the widow of Decedent Floyd D. Spence, Sr. in various matters which were resolved by a global Agreement Among Successors to Decedent in 2004. Negotiations for the global settlement were commenced by the primary parties in February and concluded in May, 2004. Thereafter, the settlement was reviewed and joined in and executed by various "Ratifying Parties," including the non-party parents and natural guardians of certain minors, and the guardian ad litem. The global settlement was presented and approved at a hearing in open Court on May 1, 2004 before the Honorable Marc H. Westbrook. The Settling Parties and Ratifying Parties were placed under oath. All swore that they had reviewed and approved the Agreement and waived their right of appeal.

The global settlement called for the replacement of the PR by Decedent's widow and son, with proper payment, releases and exoneration of the departing PR, who had served properly and well.

By Agreement, waiver and Order incorporating the Agreement Among Successors formerly adverse parties became Co-PRs and managed the Estate under the Agreement and Will as modified by the Agreement. The Settlement, among other issues, created a mechanism for dividing 29 +/- acres in Spence Plantation on Lake Murray. Even though provided for in the Agreement, no further Court intervention related to the settlement was necessary. The Estate was closed in 2008.

See: Estate of Floyd D. Spence, Sr.: Deborah W. Spence, Plaintiff, v. Floyd D. Spence, Jr., Zachariah W. Spence, Benjamin D. Spence, Caldwell D. Spence and Craig H. Metz, Defendants, Lexington County Case No. 02-CP-32-3689. See Order of the Honorable Marc H. Westbrook dtd. 6/1/04.

PRIVATE CHARITABLE FOUNDATIONS AND TRUSTEE/DIRECTORS

- A. Ms. Pope is voluntary counsel to the Pope-Brown Foundation.
- B. Ms. Pope is a Trustee of the Small Change Foundation (a tiny foundation).
- C. Mrs. Pope has advised a number of private family foundations and the Trustees of private family foundations ranging in size from \$100,000 to \$40 Million.

July 1, 2009

## EXHIBIT 8

### ESTATE OF JAMES BROWN & JAMES BROWN 2000 IRREVOCABLE TRUST Summary of Activities of Adele J. Pope, PR/Trustee (working with Robert L. Buchanan, Jr.) November 20, 2007 - May 26, 2009

**November 20, 2007-** Appointed with Robert L. Buchanan, Jr. (RLB, Jr) and Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust dtd. August 1, 2000 upon resignations of Albert H. ("Buddy") Dallas and Alfred A. Bradley in open court.

After resignations, testimony of Dallas, Terry Cox (who made \$100 Million offer in October) and Toby Byron made presentations to Court on record, under oath, in chambers.

Meeting of JBE, Inc. on return to Aiken. RLB, Jr. President; AJP VP.

**Note:** Jg. Early's Order Accepting Resignations and Appointing PR/Trustees issued Today. And Probate Ct. Order of Appointment issued.

Jg. Early issued Order Allowing Combining of Funds allowing Estate/Trust to maintain single Bank Account.

#### **November 21, 2007 (Wednesday)**

Correspondence; conferences with RLB, Jr. and others. Correspondence with S. Jones re: his assertion that that same persons could not serve as both as PRs & Trustees. Corresp. re: same. [Writing numerous persons to advise of appointment, give contact information.]

7.75 hrs.

**November 22, 2007 - November 23, 2007 - Thanksgiving, Friday following.**

#### **November 24, 2007 (Saturday)**

Travel to Aiken/Beech Island. Meet with RLB, Jr.; view Beech Island Home Estate; 2d meeting.  
6.50 hrs.

#### **November 25, 2007 (Sunday)**

Work on Application for Recognition of Exemption of The James Brown "I Feel Good" Trust; charitable trust matters; review issues related to Will/Trust no-contest clause; parties; elective share; gift taxes; estate taxes; Tangible Personal Property (TPP)

4.25 hrs.

**Note:** AJP makes first inquiry re: second "Schedule B"

**November 26, 2007 (Monday)**

meeting with accountant; work on Application for Recognition, etc.; receive/review correspondence; conferences re: issues needing decision; meeting on Tuesday, 6.75 hrs.

**November 27, 2007 (Tuesday)**

Confs w/atty. general; confs w/PR/Trustee, security; confs. w/accountant; rec/rev draft of 1023; revise, finalize and sign Petition relatd to gifts; penalty clause in Will/Trust; TPP; PHE; home and other matters; rec/rev corresp; t/c w/Calvin and Alvin; mtg. w/PR/Trustee AIKEN & Mary Frances Jowers (MFJ), atty with Atty. General's office; inquiry t/c Cox at mtg; finalize S&C; review home procedures. 10.50 hrs.

**Note:** Jg. Early issues Order Sealing Record (DGC Financial information)  
Declaratory Judgment Action filed today. (Buchanan and Pope pro se.)

**November 28, 2007 (Wednesday)**

Rec/rev. docs; confs w/visiting re. Atty General; rec/rev numerous tax docs from counsel for Cannon (left 2:30); t/c w/counsel for all parties re: complaint, request that they acknowledge service; conf w/RLB, Jr., Medlin, Levenson, Bell, Jones, Shukat, Sizemore, others, and review many emails, corresp; serve complaint. 7.25 hrs.

**November 29, 2007 (Thursday)**

Rec/rev. numerous documents, corresp; continued work on making active, as well as historical, files available to interested parties; numerous confs. 8.30 hrs.

**November 30, 2007 (Friday)**

Numerous confs, rec/rev. docs, pleadings; review numerous docs; work on Trust documents; meet w/advisory committee members.[Inez Tenenbaum and Dr. Leonard McIntyre agree to serve on Advisory Committee to The James Brown "I Feel Good" Trust.] 7.10 hrs.

**December 1, 2007 (Saturday)**

Work on possible request for global solution, all tax issues w/IRS and SC Dept. Revenue in light of former PR/Trustees/ Atty-in-Fact filings & failures to file. 3.60 hrs.

**December 2, 2007 (Sunday)**

Rev. docs; work on minutes, conflict policy, By Laws for "I Feel Good" Trust; rev. filings.  
3.70 hrs.

**December 3, 2007 (Monday)**

Prep. docs; review records, documents; prep for mtg.  
3.30 hrs.

**December 4, 2007 (Tuesday)**

Weekly mtg. AIKEN; finalize & prep for filing App. Determination of "I Feel Good" Trust; discussion, action various matters, dealing w/\$18,000 overdue Sizemore bill from former Trustees.  
9.75 hrs.

**December 5, 2007 (Wednesday)**

Prep for mtg. w/accountant, mtg. to send Application for Recognition; cs/w Atty General's rep.; review numerous communications, pleadings; message CORBIS counsel re: status of litigation; rev. docs for case.  
9.20 hrs.

**Note:** Form 1023 Application for Recognition of 501(c)(3) Exemption of the James Brown "I Feel Good" Trust filed..

AJP notifies Court and others of documents in Privilege Box, including Herring file, which should be produced. Requests Court to review.

**December 6, 2007 (Thursday)**

Conf w/jg, parties; confs w/RLB, Jr. and others, including L. Dunbar of Sotheby's ; counsel for various parties; review of privilege box files; rec/rev. numerous pleadings, motions, corresp. w/advisory committee, others; conf w/accountant, next projects brief scan of hearing transcript.  
8.30 hrs.

**December 7, 2007 (Friday)**

Attend phone hearing re: scheduling of Dec., Jan., Feb. matters; prep proposed Order; rec/rev docs; conf w/Sotheby's rep., others re: TPP; numerous t/cs; request of Alan Medlin (AM) to meet Sunday, ok; Global Gaming Contract (GG) confs; corresp.; Notifications to Pullman Group; Haber Corporation; TIAA; BMI; Fitch, Inc.; Universal Attractions; and others re: new status, addresses.  
8.20 hrs.

**Note:** AJP corresponding with Court and Counsel re: copying from Mr. Cannon's computer; Privilege Box

**December 8, 2007 (Saturday)**

Prepare for hearing; review additional documents  
2.00 hrs.

**December 9, 2007 (Sunday)**

Cola.; reviewing documents; work on TPP issues; mtg with Alan Medlin at his request.  
2.50 hrs.

**December 10, 2007 (Monday)**

Confs. w/Mr. Buyck & others of his firm, as per request of Sonny Jones that we consider Mark Buyck's firm to be counsel for recovery of losses from 1999 through 2007 by Cannon and others; confs. w/ RLB, Jr., Alan Rothchild re: possibility of working as exempt organizations counsel; review of claims filed against Estate; corresp. related to claims to gather more information regarding position of claimants Dallas, Bradley, Farr; L&B, Peeples, Suggs/Johnson; disallow Intrigue Claim; ltrs. Shukat, Sprinkle, Sotheby's; conf. w/counsel for Tommie Rae Hynie Brown (TRHB) re: Wells box; call from 2 Brown gr'children, re: Brown Family Education Trust (Grandchildren's Trust) benefits; conf. w/d David Bell re: acknow. of service; rev. claims; inquiries; confs. others.  
8.20 hrs.

**December 11, 2007 (Tuesday)**

Corresp w/IRS, SC Dept. of Revenue; prep report on claims for mtg.; conf. w/Probate Court; reading pleadings, motions, affidavits; corresp. w/counsel for interested parties; work on making documents available to interested parties; mtg. w/RLB, Jr. and MF Jowers SC Attorney General; rev. pleadings filed; other corresp. (Day: 7-7:30)  
10.50 hrs.

**December 12, 2007 (Wednesday)**

Conf. w/RLB, Jr, corresp, William Latham, counsel for Frank Copsidas, Intrigue Music Management; Tom Wells, and others; wk GG contract, corresp; conf w/Sandra Matthews of AG re: 1023 to GA Ag; ok'd. In relation to my inquiry about the source of the second Schedule B, Sonny Jones believes it was post-death, and is checking, as are we; received a long, unsolicited call from Jeff Allen. Mr. Allen had much negative to say about Cannon, Dallas treatment of Mr. Brown; begin prep for TIAA/M&T conf. offer to F.Copsidas for 1 year plan to Sizemore: [Sizemore threatening to remove security personnel because of \$16-\$18k arrearage of Cannon Group. Proposed plan to pay down and continue service until TPP can be removed.]  
6.70 hrs.

**December 13, 2007 (Thursday)**

conf. W/ RLB, Jr; review Wells docs; corresp; work on TIAA and M&T, mtg. For 4 next Tues; rev. status of entities from 1999 - 2007; conf. w/ Darren Julien re: his view of propt. Has seen property. Likes, but concerned there's too much talk by dealers, shopping. Strong feeling about propt. S/d not be removed except by auctioneer. Has spent good amount of time already w/ this project. Says they sometimes work w/ Sotheby's, in comp. w/ Christie's; Says their price tends to be a little higher, but that they don't add costs. Loves house also; rec/rev ltr. Universal.  
6.35 hrs.

**December 14, 2007 (Friday)**

Prepare for hearing; conferences with RLB, Jr., others; review Transcript of hearing; review followup for hearing. Corresp.; Rec/brief review of docs, pleadings in Elective Share.  
8.50 hrs.

**December 15, 2007 (Saturday)**

Review transcript of November 15, 20 hearing.  
1.10 hrs.

**December 16, 2007 (Sunday)**

Contd. study of hearing; work on issues to be addressed in additional orders.  
3.25 hrs.

**December 17, 2007 (Monday)**

Rec/rev. pleadings; work on Elective Share; Cannon issues; corresp. re: computer records to be produced by Phil Farr, D. Cannon; Initial conf. w/ SC Dept. Rev. Auditor; provide info; work w/ SC Employment Sec. Comm. re: overdue returns; conf. w/ accountant re: 2006 and other tax matters, POAs.; work on draft of proposed Orders; review Cannon documents, other docs., in prep. for mtg; initial attempt to contact Betis Downs of R.E.M; T/C Alan Medlin re: upcoming Will/ Trust contest, ack. of service; ltr. Re: claims of Pettit; Murrell; Paris; Royce; Austin; Kirby; Cruise; Bobbitt; GT; Udom; Pullman; Staulcup; McKay; Jackson; Wells; Intrigue; Washington.  
8.80 hrs.

**December 18, 2007 (Tuesday)**

Initial conf. w/ Mr. O'Neil, w/ R.E.M.; work on, w/ RLB, Jr., Return, motion for accounting; work w/ RLB, Jr. on withdrawal of Motion of former PR s Dallas and Bradley to declare James Brown Enterprises, Inc. (JBE, Inc.) an asset of Estate. Withdrawal of their motion. Finalize and serve both; rec/rev. documents and corresp., including notice re: Trust and Will contest; prepare for and attend meeting in AIKEN w/ RLB, Jr.,

Mary Frances Jowers of SC AG; t/c w/ Chas. Mattison of TIAA, MW of M&T Bank, and counsel re: issues related to non-compliance by former PR/Trustees, recovery by M&T of \$373,000. [\$100,000.00 loan from TIAA-M&T Funds to Estate in August, 2007 was based on Dallas/Bradley agreement, with which we concurred, to make best efforts to commence litigation to recover remainder of \$900,000.00 Cannon misappropriation.]

9.70 hr.

**December 19, 2007 (Wednesday)**

Rec/ rev. numerous communications; review minutes of PR/Trustees; corresp. w/ prospective charitable Counsel (Rothschild); prosp. Ent. Counsel (Ray Gonzalez); review memo of Mr. Bradley re: assertion that he did not serve as Trustee until January 2007. Rec/rev. info. re: boxes located at office; corresp. w/ former PRs, others re; Schedule B and other matters; prep. Proposed Orders; Agenda; conf. w/ agent for slack re: voluntary, invol.non-excl. use; conf. w/ RLB, Jr. about and with counsel; conf. Counsel AG; prep. and send ltr. To former PR/Trustees to obtain facts re: transfers to Trust of JBE, Inc. and time and intent of second "Schedule B".

10.20

**December 20, 2007 (Thursday)**

Preparing for hearing; reviewing minutes of Trust and Estate mtgs.; conf/ w off. Atty Gen.; rec/rev. motion to recuse, affidavits; rec/rev. documents and corresp.; prep. Docs for hearing.

8.50 hrs.

**December 21, 2007 (Friday)**

Prep. For & attending hearing in AIKEN; matters raised included Schedule B; Elective Share, engagement of counsel in Cannon, etc; other matters; rec/rev. complaint in action to set aside trust, action to set aside Will; mtg. w/ counsel in Elective Share; mtg. with James D. Bailey regarding representation of Estate/Trust in various matters.

[After meeting, privilege box to Dallas/Bradley and S. Jackson, directed to designate privilege box documents as to which they still claim privilege, remainder to be released. They review box, but fail to create privilege log as directed.]

10.10 hrs.

**December 24, 2007 (Monday)**

Confs/corresp. Re: discovery; rec/rev. docs, corresp.; prep. For hearing; prep. Docs. Distributing copies of 1999 Will and Trust by fax after receiving telephone consent from counsel for Mr. Dallas, Bradley.

5.60 hrs.

**December 26, 2007 (Wednesday)**

Daryl Larry, Yamma, Deanna and Venisha file Petition to Set Aside Trust and Petition to Set aside informal Probate of August 1, 2000 will. .

**December 28, 2007 (Friday)**

Mtg. W/ Ms. Beeber, NYC re: various issues in mgmt. of assets.  
2.00 hrs.

**December 31, 2007 (Monday)**

Reviewing documents; work on Elective Share issues.  
3.30 hrs.

**January 1, 2008 (Tuesday)**

Reviewing pleadings, including 4 suits filed; reviewing mail and other correspondence, motions, responses to pleadings, documents.  
7.20 hrs.

**January 2, 2008 (Wednesday)**

Rec/rev. numerous motions, responses; work on docs and other prep. for mtg, attend PR/Trustee mtg, AIKEN. Mtg. w/ S. Hamm; At mtg, review, discussion, decision re: numerous estate, trust issues.  
9.90 hrs.

**Note:** Forlando Brown files Federal suit to declare Orders of Jg. Early void; enjoin Trustees from taking any action; and to return Cannon/Dallas/Bradley as Trustees.

**January 3, 2008 (Thursday)**

Mtg. w/ Mr. Hamm; Reps. Atty. Gen.; prep. for hearing; rec/rev. Affidavits; real estate tax matters; rec/rev. complaint seeking return of Dallas and Bradley as Trustees. Reading transcripts of hearings; Conf. Re: possible audit of catalog; rec/rev. objections to our elective share position.  
10.30 hrs.

**Note:** Parris and Pettit file Petition to Set Aside Trust and Petition to Set Aside Informal Probate

**January 4, 2008 (Friday)**

Hearing, AIKEN. Recusal Motion. Denied. Mtg. w/ various parties to encourage efficient administration of various pending suits; rev. docs; conf. w/ counsel re: Elec. Share, Will, Trust contests.  
11.00 hrs.

**January 5, 2008 (Saturday)**

Saturday, Rev. Fed. Complaint filed by Forlando Brown; Preparing for hearing, Jan. 9; reviewing bills, financial matters; conf. w Stan Jackson re: request to view docs. on Monday, 4.50

**January 6, 2008 (Sunday)**

Work on docs.; prep. for hearing to be held Jan. 9; conf. w/ Lee Dunbar of Sotheby's re: Mr. Dallas' request that D. Julien speak to press. Corresp. w/Mr. Jackson re: request to rev. docs Monday; work on motions, etc.; confs, corresp., w/ counsel for benefys.  
8.50 hrs.

**January 7, 2008 (Monday)**

Cs/w RLB, Jr. Re: hearing, house, many matters. T/C w/ Ray Gonzalez and others re: removal and protection of masters; Work w/ atty, RLB, Jr.  
7.25 hrs.

**January 8, 2008 (Tuesday)**

Travel to AIKEN, meet'g RLB, Jr; to home Beech Island to meet Lee Dunbar, rep. of Sotheby's; view home; meet on return to airport; PR/Tee/ mtg., bills, etc; telconf. w/ Leon Friedman re: call he received previous day from Wm. Hammond; dealing w/ leak at home; rec/rev motions related to new counsel for Buddy Dallas, Albert Bradley; prep. For hearing; Conf. w/ Vivian Pfeiffer re: possible Christie's sale of TPP.  
9.75 hrs.

**Note:** Jg. Early issues Order Directing Payments to Special Administrators and PR/Trustees (1/8/080  
Jg. Early issues Order Scheduling Hearings

**January 9, 2008 (Wednesday)**

Prepare for changes in hearing resulting frm new counsel for Bradley, Dallas; Prep. For discussion w/ atty., need for counsel to assist w/ recovery of 1999-2007 losses; attend hearing w/ RLB, Jr., JB; Wayne Byrd substituted for Stan Jackson in all capacities for Buddy Dallas, Al Bradley; confs. w/ Mr. Levenson, RLB, Jr., JB re: motions to dismiss, stat. Lim., other defenses to 4 suits; possibility, subject to motions,

announcement that working w/ Christie's to auction tpp; announcement, working w/ counsel in Tenn [Gonzalez] re: preservation of masters, problems since death; went to home. 3<sup>rd</sup> leak of the week. Plumber, Benjamin Franklin Plumbing, drained & turned off water heaters; Good thing. Overhead pipe might have burst and flooded. Address numerous other pending matters.

13.50 hrs.

**Note:** Jg. Early issues Order Approving Engagement of Counsel

**January 10, 2008 (Thursday)**

Num. Confs. and corresp. Re: various est. matters; work on possible consolidation of 4 suits contesting will; work on requests to admit in Elective Share matter; rec/rev. numerous documents; rev. amended complaint in federal suit; rec. call from L. Dunbar, Sotheby's. Upset over depos. Rec'd en route to Conway, 6:10 p.m. Did not speak.

9.50 hrs.

**January 11, 2008 (Friday)**

Confs., corresp., drafting, motions, corresp., re: consolidation of matters related to removal, accounting; Elective Share, etc.,; confs. w/ Robt. Buchanan re: pending litigation; need for counsel, etc.; work on requests to admit, other motions, pleadings, w/ RLB, Jr. and counsel.

3.50 hrs.

**January 12, 2008 (Saturday)**

,Rev. all pleadings related to Elective Share and petitions of 3 persons Saturday claiming to be children; confs. W/ Mr. Buchanan; preparing corresp. to benefys and ct; prep. for travel to AIKEN and visit to home w/ Deanna. Review and consider numerous documents, proposal re: ad; etc.

9.00 hrs.

**January 13, 2008 (Sunday)**

Travel to AIKEN, Beech Island; view home; prepare for termination of agreements w/ Intrigue. Review history of Scholarships; corresp. w/ Court; counsel Re: various of pending 8 proceedings.

11.00 hrs.

**January 14, 2008 (Monday)**

Rec/Rev. Corresp., numerous persons; corresp. W/ RLB, Jr., counsel, others; rec/rev. various assessments from IRS for JBE, Inc. Mtg. w/ accountant re: matters to be addressed within next 60 days. Includes 2006 Individual Income Tax Returns, 2007 employee issues, and other matters; rec/rev. federal suit and related documents; corresp. and confs. re: Home of Joe Brown; Rec. Notice that insurance not reinstated on Joseph Brown home. Confs. to seek occupant; rec/rev. corresp. f/m Robt. Rosen. Addressing concerns raised by

Mr. Rosen's client and by Mr. Rosen; conf. w/ Mr. Green in Switzerland. Talked about money for child. Referred him to P. Shahid.  
8.90 hrs.

**January 15, 2008 (Tuesday)**

T/c, meetings with Christie's and others re: Tangible PP; learned that probably about 500 lots to be selected by Christie's. Means there will have to be alternate plans for the remainder; mtg. W/ Christie's included Yount, Michel, Chrs. Reps; Fletcher; Viv. Pfeiffer; MF Jowers of AG's office. Meet in office w/ RLB, Jr.others re: numerous Trust/Estate matters.work on proposals for TPP. Study issues related to marriage, will contest, effect on TPP disposition. Notes f/m mtg. Tel. CHRISTIES - reps. In home. Attend:D. Michel, D. Yount, AJP, M. F. Jowers w/ S. C. Atty. Gen'l From Christie's Vivian Pfeiffer; Kath - business manager, Simeon and 2 others, on property, w/ Fletcher Rinehart. Gave permission for above persons PLUS, B. Buch., D. Bell & P. Shahid to speak to Christie's rep. about process as we go along so that all will be informed. Also sought help in moving the tapes, masters to Iron Mountain Storage or facility with similar properties. Overview of where we are - next month or two... then questions Simeon, Kate and Condra - Tom Rot will join them tomorrow. Gen'l household contents; jewelry w/in 2 -3 weeks  
Estate Tax Valuation - all currently in house.Selection for sale - Things that will do well for sale...gives idea of how we envision putting together..., Estimates - sale .... 3 - 5 times what selection for sale...Not committed to anything ... Proposal for sale... sale strategy....Timing... single owner... examples... similar others held. Snapshot of others..Brando \$750,000 - \$3,000,000 - Proposal - Media Plan:,Long lead ;Regional, Domestic, Intl. Online pr, mktg. PR campaign exhaustive and focal point of proposal..., Head of Mktg., etc. Comparables, etc.  
6.50 hrs.

**January 16, 2008 (Wednesday)**

Numerous conferences regarding logistics for removal of masters to secure storage; establishing plans for secure packaging and removal; engaging extra security to be present at packing, transfer; working with audio/video specialist re: transfer, reception of tapes, masters, etc. Reviewing documents; correspondence and rec/rev. corresp; rev/rev. numerous pleadings, motions filed in conec. W/ Elective Share, Will/Trust matters.  
8.50 hrs.

**Note:** Jg. Early issues Order Denying Motion to Reconsider finding David Cannon in Contempt

**January 17, 2008 (Thursday)**

Meeting w/ reps. of SC Attorney General visiting office for record inspection; confs. Re: Elective Share discovery; confs. W/ RLB, Jr. Re: numerous est./trust matters, including Geronimo, Intrigue termination; security and TPP issues; numerous confs.w/ Barry, IM, others re: prep. for transfer of masters, etc. schedule security, transfer procedure w/ KFR, Cpt. Pounds, others, to arrange for secured packing, transfer to secure storage; confs. Re: custom critical transfer; final arrangements for transfer; travel w/ WHP to Beech Island

to meet KFR and Cptn. Pounds, secure 66 boxes for transport on 1/18/08 at 7.am. For same-day arrival at secure storage. To Beech Island to check each box as packed, in company of KFR, WHP and Cptn. Pounds; boxes sealed and placed in atrium for return at 7 am. for custom critical pickup. Overnight, AIKEN ; rec/rev and responding to concerns of M. Woj., M&T Bank; confs. W; Carlin rep. Rec/ respond to request by counsel for Buddy Dallas, Mr. Dallas at 4:55 to come tomorrow to rev. docs; ret'd call at 9:30. Can't meet tomorrow

11.10 Hrs.

**January 18, 2008 (Friday)**

Travel AIKEN to Beech Island to meet Cptn. Pounds and Custom Critical pickup at 7; confs. w/ agent for secured storage site re: transport & delivery. Return to Columbia. Daylong mtgs. w/ engaged counsel for Cannon and related recovery; review numerous documents, pleadings, etc. Mtg. w/ counsel for Elective Share/ Will/Trust matters to review documents, pleadings related to ES, including cases brought by TRB and JB, etc.; Review and discussion of alternatives related to both TPP and Real Estate, including sale, partnerships, charitable sale and other possibilities; tel. Mtg. W/ RLB, Jr. re: various matters; rec/rev. numerous items of corresp.; conf. W/ counsel for Mr. Dallas, Bradley, re: review of documents on Monday, re: failure to come on January 17.

11.00 hrs.

**Note:** Jg. Early issues Order Directing that all Hearing Transcripts be Filed with Clerk of Court

**January 19, 2008 (Saturday)**

Work on Declaratory Judgment; review various matters in preparation for discovery, hearing.

2.80 hrs.

**January 20, 2008 (Sunday)**

Begin and work on Pretrial Brief, issues remaining for Court; relationship to newly-filed suits, etc. Review TPP list, issues.

3.70 hrs.

**January 21, 2008 (Monday)**

Confs. w/ counsel for former PR/Trustees re: need for baseline info. of what was in Trust, Est. at death & in Trust from 2000.; work on various matters; work on issues related to Declaratory Judgment, home, finances; prepare for hearing.

4.00 hrs.

**January 22, 2008 (Tuesday)**

Confs., rev., prep. docs. For mtg. And hearing on Feb. 7,8. ; travel to AIKEN for wkly mtg.; confs. Re: electricity; conf. W/ RLB, Jr. On various matters, including work on, finalizing, proposal for sale of TPP;

proposal for sale of real estate; proposal re: house of J. Brown.  
8.70 hrs.

**January 23 - February 2, 2008**

AJP in Salzburg, Austria . Review of materials about catalogue, marital history.  
2.30 hrs.

**January 23, 2008**

**Note:** Jg. Early issues Scheduling Order

**January 24, 2008**

**Note:** Jg. Early issues Order Denying Cannon's Motion to Stay Contempt  
J. Mitchell files Petition to Set Aside Trust and Informal Probate.

**February 1, 2008 (Friday)**

**Note:** Jg. Cureton (COA) issues Order Granting Supersedeas and Stay of Cannon Contempt

**February 3, 2008 (Sunday)**

Return to Columbia; Review pleadings, correspondence, documents and communications during period;  
begin preparation for hearings; confs.  
7.20 hrs.

**February 4, 2008 (Monday)**

Confs. w/ various attys. Reviewing historical documents; meeting and confs. w/ RLB, Jr. and Mr. Gilreath  
and Mr. Few. Detailed review of complaint and related documents; continued review of documents and  
pleadings in prep. For hearing to be held on February 7, 8.  
8.40 hrs.

**February 5, 2008 (Tuesday)**

Preparing documents and review of documents, pleadings and discovery in preparation for meeting w/ RLB,  
Jr. And J. Bailey; travel to AIKEN for mtg.w/ SC Atty. Gen., RLB, Jr., etc. continued review of corresp.,  
pleadings, motions, and documents in prep. for hearing; conf. w/ Barry Cardinale about catalogue, 11.00

**February 6, 2008 (Wednesday)**

Extensive preparation for hearing; confs. W/ RLB, Jr. and others; review of 7<sup>th</sup> decade records, including

Hallmark ad payments, which went to 7<sup>th</sup> Decade; conf. w/ Mr. Israel; conf. w/ Mr. Bobbit. Advised of severing relationship w/ Intrigue.

8.40 hrs.

**Note:** Jg. Cureton (COA) issues Order Clarifying Bond

**February 7, 2008 (Thursday)**

Travel to AIKEN; meet w/ RLB, Jr. and J Bailey prior to hearing; attend hearing; meet over lunch w/ Mr. Few, Mr. Gilreath; attend hearing on various matters including: Prior to Mot. To Reconsider Order Accepting Resignation of Dallas, Bradley, Mr. Byrd requested Jg. Early to produce written order re: Oral direction that he is not going to disqualify himself. Jg. Early agreed to do so, and is delaying the hearing on the Mot. To Reconsider Ord. Re: Resig. of Prs. Proceed w/ other matters. Mot. of Terry, Romunzo and Forlando B to Disqualify Levenson. Testimony taken of Forlando B, Terry B, Rom .B, Yamma B Lumar. Denied from bench. Order to follow; Motion to Vacate, Set Aside Order for Pro Hac Vice admission of AG of Georgia, made by Levenson Clients, but supported by Estate/Trust, AG of South Carolina and others. Granted. Court Inquiry into why the 1999 Will and 1999 Irrevocable Trust were not delivered to PR/Trustees earlier, and released to beneficiaries until Dec. 24, 2007; Leon Friedman Matter; and Darren Julien matter. Testimony from: Dallas. Says he prepared new Sch. B to 2000 Trust after JB's death to show what he believed was in JBE, Inc. (AJP heard this assertion for first time today.); testimony of Bradley. After testimony Mr. Bradley produced a document sent to him in early January, 2007 that contained Will, Trust and both original schedules and Post-Death Schedule B. Hearing on Portions of Declaratory Judgment. Requested various parts of Emergency Plan, TPP and Real property sales. AJP testimony, Gifts affidavit Order.

11.50 hrs.

**February 8, 2008 (Friday)**

Travel to Beech Island w/ counsel; mtg. W/ RLB, Jr. and counsel re: Orders, things to do before Tuesday meeting. Conf. W/ Mr. Israel re: possible proposal; review numerous documents, pleadings.

8.50 hrs.

**February 9, 2008 (Saturday)**

Review of records in Elective Share case; review of matters raised at hearing; conf. W/ accountant; conf. W/ RLB, Jr.; extensive review of facts, documents, related to Will, Elective Share.

8.10 hrs.

**February 10, 2008 (Sunday)**

**February 11, 2008 (Monday)**

rec/rev. documents and motions; preparing for Deposition in Elective Share matter; initial work on

discovery in Elective Share matter; rec/rev. corresp. from various persons. Conf. W/ Cptn. Pounds, Mr. Jones, Mr. Levenson, others. Works on Christie's TPP issues. Review disk of documents from file of Phil Farr, including communications among Hammond, Farr, Dallas, Bradley, Cannon b/wween Nov. 10 -13, 2007.  
10.00 hrs.

**February 12, 2008 (Tuesday)**

T/c Mr. Gilreath and others, re: documents from Farr file; corresp. To/from counsel for Messrs. Dallas and Bradley re: our request for assets in the Trust/Estate. Mtg. w/ RLB, Jr. and J. Bailey, w/ MFJ of AG's office for portion of mtg., re: Elective Share and numerous other pending issues. Corresp. and then conf. w/ counsel for Neal Israel re: possible 75<sup>th</sup> Anniv special.; confs.  
11.00 hrs.

**February 13, 2008 (Wednesday)**

T/c w/Ray Gonzalez. Re: Israel proposal. We want to approve a project for current cash, but preserve rights so we can consider entire plan after the challenge to our authority to act by SC Atty. Gen, Dallas, Bradley, F. & B. Brown, T. Brown, resolved. Consider Dallas, Bradley's assertion that they are still Trustees. Neal wants some exclusivity. But we want to preserve as many rights as possible. Limit the exclusivity. Maybe for television or home video for tribute-type event. Hoped for terms: 1 yr w/d be good, esp. from May 3, 2008. Fewer than 7 years. License for music - not be beyond 7; As much as possible. Points: Contingent comp. 25% is vague. Contingent comp. - w/d like pro-rated share of advances. Image.. Control. .. Use name of likeness. Approval over content .continued confs., work, rev. documents related to claims against Cannon, Dallas & Bradley. Review minutes of T/ee meetings. . Rec/Rev numerous documents; preparing for hearing to be held on 20<sup>th</sup>.  
8.75 hrs.

**February 14, 2008 (Thursday)**

**February 15, 2008 (Friday)**

**February 16, 2008 (Saturday)**

Commence detailed review of records and documents related to Cannon, Dallas, Bradley; review of involvement of Hammond, Farr, Powell Goldstein and others in actions. Work on affidavit related to transaction which confirm that Mr. Dallas & Mr. Bradley not candid with Court; further review of failure of Phil Farr to turn over documents. Work on affidavit and other responses; documents for hearing.  
9.10 hrs.

**February 17, 2008 (Sunday)**

Continued review of above, including review of minutes of Trustees in early part of 2007 during which

former Trustees dealing with Schedules B; issues of 1700 photographs from collection of Jimmy Carter; issues of Geronimo, where ownership is not determined. Review of numerous documents, records; preparing affidavit and other documents for hearing on 20<sup>th</sup>.  
8.25 hrs.

**February 18, 2008 (Monday)**

Pres. Day, Meet w/ RLB, Jr. to complete affidavits, documentation of matters related to Dallas and Bradley, resignation, and rev docs and corresp. Related to Farr, Cannon, Dallas; serve same; prep. for hearing.  
11.00 hrs.

**February 19, 2008 (Tuesday)**

Work on matters related to hearing and sale of TPP; attend by telephone Christie's meeting and update for all parties. Travel to Aiken mtg. W/ J. Bailey, RLB, Jr.; prep. For hearing; conf. w/ R. Gonzalez re: 75<sup>th</sup> B'day proposal; rev/ numerous docs related to matters to be determined at hearing Write Powell Goldstein re: conflict in their representing Forlando Brown w/n Trust records show they were Estate Planning attys.  
11.00 hrs.

**Note:** Jg. Early issues Order Denying Motion for Recusal

**February 20, 2008 (Wednesday)**

Travel to Aiken to meet, attend Hearing on various matters, including:  
Mot. To reconsider Order accepting Resignation of Dallas, Cannon and Bradley; motion of Cannon to try to sell real estate, and claimed 5<sup>th</sup> amend. To discuss, denied; Issues related to false Representations on Cannon financial statement; Delivery of proposed Orders re: Gift Affidavit and Proposed sales of TPP, Home and Joseph Brown house.; Discussion of possible coordination of various pending cases. Return to Newberry to try to outline method of joinder of parties, etc. for orderly determination of Heirs; Will/trust matter; elective share, etc. Meeting w/ counsel (aft. Hearing) for litig. Vs. Cannon, Dallas, etc.; conf. w/ Ray Gonzalez about 75<sup>th</sup> Birthday Tribute. Conf. w/ counsel for Mr. Cannon re: Jimmy Carter photographs. Mr. Bland (after asking Mr. Cannon) says that the 1700 photographs were listed on the piece of paper which talks about Items in possession of David Cannon on Oct. 30, 2007 as disks. I asked him to go back to David Cannon and ask for the original photos. He said Mr. Cannon said there are no originals. I asked him to go back and determined whether the photos were bought form Mr. Carter's estate or from him. (Notation says died 1/07). Mr. Bland said Mr. Cannon said bought from him about 2 wks before death. Spoke to Rep. of Augusta Museum of History, who attended hearing. Spoke to Deanna b. ab. our request that she see what she could do to get Danny R. To return capes. Unable. After gift affidavits received (ab. March 5, 2008) will need to pursue process for return. Cont'd work on Heirs, etc. proposal with Alan Medlin to try to reach consensus.  
11.20 hrs.

**Note:** Jg. Early Issues Order Approving Sale of Tangible Personal Property  
Jg. Early issues Order for Cannon to surrender passport

Jg. Early issues Order for Gift Affidavits

Jg. Early issues Order re: TRHB Motion for Protection (Diary)

In the February 20, 2008 Order, Jg. Early determined that the Estate/Trust needs at least \$1.6 million in 2008 to pay outstanding priority administrative claims, to defend the Estate Plan, to manage and contest claims against the Estate, to provide security for Mr. Brown's house, and to protect and secure other Estate and Trust assets [see February 20, 2008 Order, p. 4, ¶6].

Jg. Early found that "emergency action is necessary to preserve and protect the assets of the Estate/Trust," and that the proposals of Buchanan/Pope were "the appropriate methods of managing the Estate/Trust during these critical times" [see February 20, 2008 Order, p. 5].

Jg. Early's February 20, 2008 Order made provisions for "the disposition of tangible personal property," including the provision that "if possible, the sale or sales by Christie's or any other agent/auctioneer will be conducted on or before August 1, 2008" [see February 20, 2008 Order, pp. 5-6, ¶ 4].

Jg. Early's Order further states that "all parties have received full information and do not dispute the Estate/Trust's financial circumstances," and that "to the extent this Court determines that any party has unreasonably interfered with, or delayed the sales approved herein, such party may be charged with the reasonable costs of such action" [see February 20, 2008 Order, p. 8].

#### **February 21, 2008 (Thursday)**

W/ permission of Alan Medlin, Fletch looks in Wells box for 1700 photos, supposedly on disk. Not in box delivered by Wells. corresp. w/ interested parties re: procedural proposals for simplification of issues and efficient discovery. Confs. Re: Wells box, other issues w/ various counsel; conf. Re: issue raised by Forlando Brown that all orders related to the James Brown "I Feel Good" trust (which is a sub-trust of the James Brown 2000 Trust) which has no funds and cannot now be funded without Court approval. Research issues. Conf. w/ attorney Beeber in NYC. Ltr. to Jay Ross confirming termination of services.  
6.30 hrs.

#### **February 22, 2008 (Friday)**

SI, Ga. Review transcripts and other documents; conf/ w/ attys, RLB, Jr. Re: docs. of Farr, other documents; work on documents and review of transcripts.  
8.15 hrs.

#### **February 23, 2008 (Saturday)**

SI, Ga. Cont'd work on transcripts, documents and resignation issues.  
6.25 hrs.

#### **February 24, 2008 (Sunday)**

Review docs., work on proposals; research.

2.35 hrs.

**February 25, 2008 (Monday)**

Rec. Info. From Mr. Dallas, Bradley through counsel, generated by Mr. Cannon that should have been returned earlier. Rec, 1<sup>st</sup> rev. of Christie's selection. Rev. Docs, records which arrived preceding week, earlier. Continued work on documents re: resignation, other issues; rec/rev Orders and documents w/h arrived Friday, Monday. Review of numerous motions, affidavits, proposed Orders, pleadings, discovery, etc. Corresp. W/ various parties; work w/ counsel to transmit Order.  
10.25 hrs.

**February 26, 2008 (Tuesday)**

Continued work on resignation, appointment issues, including research; mtg.w/ A. Medlin; Travel to AIKEN for mtg.w/ counsel, RLB, Jr. re; numerous issues. Financial reviews; rec/rev numerous documents, pleadings, motions, affidavits and other communications re: issues to be resolved. Conf. w/ Christie's re: Issues related to terms of engagement for Est. Tax Appraisal.  
11.10 hrs.

**Note:** Jg. Early issues Order Denying Motion to Disqualify Levenson

**February 27, 2008 (Wednesday)**

Further work w/ counsel, others on resignation, appointment issues and documents; review of historical facts and issues; corresp., service re:same; rec/rev. numerous documents, filings, affidavits, etc. re: TRHB. Continued work, discussion 75<sup>th</sup> Anniv. Special; rec/contact re: Native lang, Lithuania, Latvia, Estonia ad; Study related to motion of T,R, F Brown, including impact on various matters; consultations re: resolution of various procedural issues; review of pre-2007 transactions; rec/rev numerous pleadings, docs and much correspondence in Elec. Share, Cannon and other matters. Review Orders and confs/ re: problems caused by Orders which restrict ability of all to freely review historical docs; review Geronimo issue, March mtg., etc. review numerous other docs.  
10.00 hrs.

**February 28, 2008 (Thursday)**

mtg. w/ counsel and others; work on issues raised by numerous filings of TRH Brown; confs., corresp. and documents and work w/ counsel re: necessity of modification of Order which paralyzes joint use of Brown historical documents; lengthy conference w/ office of AG re: inability of PR/Trustees to make any long term plans, issue cease and desist orders, etc.; rec/rev. multiple ltrs, documents re:all subjects; rev. w/ atty. Proposal for JB 75<sup>th</sup> Music Special; transmit modifications; study videos and other issue related to TPP prior to March 7, 2007; conf. W/ counsel; conf. w/ security staff after contacts frm D. Bell. Rec/Rev. Order for sale of Tangible Personal Property; confs. W/Christie's.  
11.00 hrs.

**February 29, 2008 (Friday)**

mtg. W/ counsel, confs. W/ counsel, RLB, Jr. Re: numerous issues, including resignation of Cannon; w/ permission from Rosen team, access of Steve Brown to Cannon materials; work w/ counsel, RLB, Jr. on response to motion to be relieved by Cannon, esp. concern of failure to surrender passport; work on possible solution to service and related issues, work w/ counsel on approach to Motion of T., R. & F. Brown to void all orders related to the Trust; conf. W/ David Bell about whether intended motion to be heard in Probate or Circuit Ct. Research and confs. w/counsel on issue. Conf. W/ member of security staff about contacts by investigator for David Bell. Confs. w/ counsel for M&T Bank re: Cannon recovery issues, assets. Mtg. W/ accountant to get out W-2s based on late info sw/h arrived 25<sup>th</sup>. Conf. w/ Christie's re: Cathy Elkies' absence in 2 ½ wks; continued communication w/ members of all groups.  
10.10 hrs.

**March 1, 2008 (Saturday)**

Travel to Beech Island. First consid. Selection for sale.  
3.50 hrs.

**March 2, 2008 (Sunday)**

Prepare for hearing. Work on various matters.  
4.00 hrs.

**March 3, 2008 (Monday)**

Rec/rev numerous documents; prepare for hearing; work on proposal for resolution of motion to dismiss in Heirs/Will/Trust matter; confs. Re: agenda for hearing; confs. RLB, Jr., atty and others.  
8.80 hrs.

**March 4, 2008 (Tuesday)** Confs., prep. For hearing.  
1.30 hrs.

**March 5, 2008 (Wednesday)**

Confs.; rev. docs, orders in prep. For funeral; rec/rev Petitions.  
2.00 hrs.

**March 6, 2008 (Thursday)**

confs. Prepare for hearing (Mrs. Pope's funeral).  
1.80 hrs.

**March 7, 2008 (Friday)**

Travel to AIKEN for hearing on mot. Reconsid. Of resignation of Bradley, Dallas. Attend and Testify at hearing. Other testimony from Dallas, Cannon. Affidavit of R. Cullum presented.. Meet w/ counsel before, during & after hearing. Conf. w/ Ray Gonzalez about proposed contract, impediments to warranties caused by AG challenge; review bills.

11.00 hrs.

**Note:** Jg. Early issues Order Denying Motion to Alter, Amend or Vacate Order Approving Resignation and Granting Related Relief

Jg. Early issues Order Regarding Diaries

**March 8, 2008 (Saturday)**

Work on corresp. Multiple calls to parties, counsel, RLLB, Jr. Re: Sale of TPP; work on proposed Order; work on other administrative matters, 6.10

**Note:** Jg. Early issues Order Allowing Video Deposition of Dewaine Herring, Esq.

Jg. Early issues Order Resolving Motion of PR/Trustees to Dismiss and Requiring Service by Publication

**March 9, 2008 (Sunday)**

Travel from Newberry to Beech Island to meet D. Brown, L. Brown, V. Brown, Ta. Brown & Y. Brown to go through TPP proposed for sale. Remain w/ family at home from 10 a.m. until 9:30 pm.

14.50 hrs.

**March 10, 2008 (Monday)**

Work on issues related to Geronimo. Conf. W/ Frank Copsidas and his counsel; work on issues related to resignation, appointment; rec/rev numerous documents; bills and administrative. Confs. Re: Christie's selection for sale, need for uninterrupted action to complete sale.

8.95 hrs.

**Note:** Jg. Early issues Second Order Re: TRHB's Motion for Protective Order  
Dallas/Bradley Appeal filed in Court of Appeals

**March 11, 2008 (Tuesday)**

Prep. for wkly mtg. of PR/ Trustee, including meeting of members of Geronimo. Confs. W/ RLB, Jr. Geronimo mtg. held p.m. Copsidas & counsel attended by phone. Note: d obj. of Dallas to mtg. Cannon did not attend. Bobbitt attended.. Learned in prep. For mtg. that approx. \$26,000 deducted from pyt to est. Of James Brown's last payment. Prepared, w/ RLB, Jr. Protest on behalf of Estate. RLB, Jr. attended by phone. Elected RLB, Jr. managing member and tax matters ptrn.; changing acct. to Sellars. Copsidas said he did not know Cannon

terminated as officer, director, etc. of entities. Rec'd from Dallas withdrawal of authorization prior to mtg. Prep.  
Other matters.  
10.50 hrs.

**March 12, 2008 (Wednesday)**

Confs/ w/ counsel, RLB, Jr. Re: dire financial condition of Estate, limiting actions to essential. Rec/rev. Levenson objection to sale which is based on Estate Tax appraisal, rather than selection for sale. Corresp. to clear up. Work on issues related to transport of additional "masters" to sound archives.

**March 13, 2008 (Thursday)**

Reviewing all hearings, including bef. Appt. Of RLB, Jr., and AJP as Sas, in conn. w/ contest by Dallas, Bradley, others of authority to act. Work on TPP matters; work on pleadings, motions, various suits; work on proposed Order, deny mot. For reconsid.  
10.10 hrs.

**March 14, 2008 (Friday)**

Review hearings, work on Orders, pleadings, motions.  
3.50 hrs.

**March 15, 2008 (Saturday)**

Conf. W/ RLB, Jr.; cont'd rev. of hearings, work on proposed findings, other litigations matters.  
6.20 hrs.

**March 16, 2008 (Sunday)**

cont'd work on order, pleadings, rev. transcripts.  
5.80 hrs.

**March 17, 2008 (Monday)**

Confs .mtg. W/ RLB, Jr. Rev. Proposed Order, facts, record, work on various pleadings in suits filed by Cannon, Dallas, Bradley, Work on proposed Order re: demands for notice; confs. w/ counsel & others.  
11.10 hrs.

**March 18, 2008 (Tuesday)**

Preparing documents; travel to Aiken for weekly meeting w/ PR/Trustees; mtg. w/ counsel; review various actions taken by Forlando Brown in Federal suit which are intended to return Cannon, Dallas to position of authority; conf. w/ AG to discuss.  
11.50 hrs.

**March 19, 2008 (Wednesday)**

Confs. W/ RLB, Jr., JB and other re: damage to Estate/Trust associated with assertion by Dallas, Bradley that Hammond was appointed Trustee; review and assist counsel w/ finalizing pleading for Declaratory Judgment related to assertion by Hammond that he was appointed Trustee, and assertion by Dallas and Bradley that they appointed an additional Trustee without revealing same to anyone for about 8 months. Review final pleadings, to be filed and served today and tomorrow.  
10.75 hrs.

**March 20, 2008 (Thursday)**

Rec/Rev. Documents from A. Byrd accusing RLB, Jr. and AJP. Confs. w/ counsel; work w/ counsel, RLB, Jr. On matters related to action for Declaratory Judgment. Confs. Re: selection for sale, Christie's consignment proposal; numerous other matters; conf. W/ Bill Staton re: scheduling meeting.  
10.10 hrs.

**March 21, 2008 (Friday)**

Work on numerous matters, including selection for sale and related Christie's consignment matters; several confs. W/ RLB, Jr.; confs. re: Declaratory Jmt., vs. Hammond, etc, service issues; study and work on and finalize response to motion for disclosure of address and information about location of "masters"; conf. w/ Ms. Hurst, who had interest in positive project w/ band. Explained to her that, because of constraints, all proposals must be in writing. Work on consignment issues, TPP issues, and rec/rev. w/ RLB, Jr. contract proposal.  
10.50 hrs.

**March 22, 2008 (Saturday)**

Prep. For Est. Tax extension matters, other emergency financial matters related to Estate/Trust total lack of liquidity. Prep. for hearing on request for injunction related to interference of Hammond, Dallas, Bradley, Cannon with ability of Trust to act  
3.50 hrs.

**March 23, 2008 (Sunday)**

Continued review of hearings in connection w/ Declaratory Jmt. related to interference of Hammond, Dallas, Cannon. Work on financial matters, emergency liquidity issues; work on Request for Hardship Extension, Estate Taxes, other Taxes  
7.50 hrs.

**March 24, 2008 (Monday)**

rec/rev numerous documents, pleadings, motions, corresp.; work w/ RLB, Jr. and Counsel on matters related to claims of Dallas, Bradley and Cannon against Estate. Work on timing and assessment of issues preventing Estate/Trust from being able to function smoothly; work w/ counsel re: possible counter on contract

11.00 hrs.

**March 25, 2008 (Tuesday)**

Travel to Aiken for meeting w/ RLB, Jr. and JB re: numerous Estate & Trust issues, including security, no funds for protection of assets; proposed Order and request for hearing for final approval; contract for consignment; Christie's, etc. Work w/ counsel to finalize, serve answer, CC in Will/Trust/Intestacy matters; work on other matters

8.70 hrs.

**March 26, 2008 (Wednesday)**

rec/rev. draft of contract and discussions w/ RLB, Jr., research & work on issues related to dismissal, stay, transfer of appeals of Cannon, Dallas & Bradley; rec/rev. request for Injunction and how would damage ability of Estate/Trust to function; confs. Re: numerous issues; drafting, corresp.; t/cs re: security issues for lack of funds; preparing security plan, etc. Extended discussions w/ Christie's collections bus. Mgr, Kate & counsel re: all aspects of consignment Agreement, process, insurance, etc. Work on Agreement

10.75 hrs.

**March 27, 2008 (Thursday)**

Confs. w/ counsel in suit vs. Cannon, Dallas, etc.; rev. docs that suit; work w/ counsel on motion for dismissal or stay, Dallas/Bradley appeal; rec/rev. attempt by Cannon to prevent counsel from being dismissed; rec/rev draft of contract and finalizing same for execution; conf. W/ office of ent. Counsel; work w/ staff, RLB, Jr., counsel on various matters; work on possible contract with museums, etc.; conf. w/ Dr. McIntyre re: Beech Island, possible placement of items. telephone conferences, 11.00

**Note:** Jg. Early issues Order of Protection (Jones)

**March 28, 2008 (Friday)**

Rec/rev motions to delay or prevent sale of TPP; confs. w/ Nancy Glaser & others re: visit to property tomorrow; corresp., confs. Re: litigation; work on pleadings, documents, contracts

10.10 hrs.

**March 29, 2008 (Saturday)**

Travel to Cola, Aiken, Beech Island to meet Dr. McIntyre & travel to propt. Re: possibility of SC State Univ. Museum placing items; preparing for hearing

9.50 hrs.

**March 30, 2008 (Sunday)**

Preparing for hearing on sale of TPP; work on responses to documents filed Friday before hearing; review documents and filings

4.75 hrs.

**March 31, 2008 (Monday)**

Preparing for and attending hearing in Aiken, then to Beech Island; confs. w/ RLB, Jr. and counsel; travel to home to begin photog. Of selection for sale. Overnight in Aiken  
13.00 hrs.

**April 1, 2008 (Tuesday)**

To Beech Island to continue w/ photog of selection for sale; review of items; preparing for arrival of Christies; review Order & other documents w/ RLB, Jr.; work w/ RLB, Jr. to send contract to Christie's mtg. Overnight in Aiken  
10.50 hrs.

**Note:** Jg. Early issues Supplemental Order Directing Execution of Christie's Contract and Sale

In addition, Judge Early's Supplemental Order of April 1, 2008 found that "the emergency condition in which the Estate/Trust found itself on February 20, 2008 has worsened," and that the PR/Trustees "have responded to that emergency with a plan which must be immediately implemented to avert financial disaster" [see April 1, 2008 Order, p. 4]. This Order further found that the PR/Trustees "have the right to raise all funds necessary for a reasonable defense of the estate plan of Mr. Brown," and that "they also have the rights to raise funds for the proper administrative expenses of the Estate and Trust" [see April 1, 2008 Order, p. 5].

The PR/Trustees have "fully complied with the provisions of this Court's Order of February 20, 2008 and that this Court should direct the execution of the contract and the sale" [see April 1, 2008 Order, p. 6]. Accordingly, Judge Early then specifically ordered that the PR/Trustees were "directed to execute the consignment agreement with Christie's," that the Christie's sale "shall proceed as ordered on February 20, 2008," and that "any party who delays the implementation of the February 20, 2008 Order or the implementation of this Order shall be charged with all costs and damages" [see April 1, 2008 Order, p. 6, ¶¶ 1-3]. Under Judge Early's Order, the Court retained jurisdiction "to enforce the implementation of this Order and the sale and any other enforcement issues or interference with this Court's February 20, 2008 Order" [see April 1, 2008 Order, p. 6, ¶4].

**April 2, 2008 (Wednesday)**

Aiken, Beech Island meeting w/ S C State Reps re: possible display, storage of TPP of Estate/Trust; rec/ resp. of SC State Museum; Mtg. W/ Christie's reps; RLB, Jr.  
10.10 hrs.

**April 3 & 4, 2008 (Thursday)**

To Beech Island, Aiken, Beech Island working w/ staff, Christie's reps. Re: sale by Christie's. Confs. w/ SC State Rep.  
11.45 hrs.

**April 4, 2008 (Friday)**

To Beech Island, Aiken, Augusta, Beech Island to work with Christie's & S. C. State Reprs., including E. Zisholtz, others, to continue to set aside assets for Christie's sale, develop plan for protection, possible exhibition of other TPP, and lack of security, protection for home; work on identifying assets to be transferred to SC ST. In accordance w/ 2/20, 2008 Order  
12.00 hrs.

**April 5, 2009 (Saturday)**

Work at home & then travel to Beech Island, Aiken, Beech Island to complete work w/ Christie's for Selection for Sale; work w/ S. C. State Reprs. For transfer & protection of assets to Museum; work w/ Mr. Washington, FB re: security issues; work w/ RLB, Jr. on contract, other issues  
12.75 hrs.

**April 6, 2008 (Sunday)**

Review TPP documents; confs. Re: final removal by Christie's; procedure for removal by SC State; terms of Loan Agreement, etc; review docs and schedules. Rev. Memo by counsel  
2.85 hrs.

**April 7, 2008 (Monday)**

Numerous confs. Re: TPP issues, security issues at home Estate, proposed injunction in Fed Court proceeding by F. Brown & damage it would do to Estate/Trust. Issues related to Powell Goldstein bill and failure to turn over file.  
4.50 hrs.

**April 8, 2008 (Tuesday)**

Confs. w/ counsel, others re: numerous Brown matters, including security, TPP issues; proposal for Injunction against Trust and attempt to return Cannon, Dallas, Bradley to position of Trustee; review, revise docs; prep. for hearing.  
4.85 hrs.

**Note:** Jg. Early issues Order Denying Motion to Reconsider Appointment of Successor Personal Representatives and Trustees and Granting Related Relief.

Jg. Early issues Order of Protection (Bell)

**April 9, 2008 (Wednesday)**

Confs. w/ various person re: TPP issues, loan Agreements; prep., revise, review docs. In connection w/ several pending cases; confs. W/ counsel re: injunction, summary judgment; Schedule B issues.  
4.55 hrs.

**April 10, 2008 (Thursday)**

Confs. w/ RLB, Jr., others, re: TPP placement at SC St. Confs. Re: Aug. Mus.of History; Rev/rev. documents, Order; confs. re; response to attempt of F. Brown to enjoin Trustees from acting; discussion of T. Byron.; conf. Re: Powell Goldstein bill, failure to turn over file; rev. documents; prep. Docs.; prep. for 4/25 hearing. 7.35 hrs.

**April 11, 2008 (Friday)**

Confs. w/ counsel re: Powell Goldstein refusal to disqualify self in proceeding to return Cannon, Dallas, Bradley to T/eeship; numerous confs. w/ counsel, RLB, Jr. Re: attempted injunction by F. Brown, how it would paralyze Trust. Rev/finalize affid. Re: same. Discussion re: proceeding of Est/Tr to recover losses from Cannon, Dallas, Bradley & others; rev. docs. related to same.; rec/rev/rev numerous docs. Rec/rev. Orders; conf. w/ NY counsel re: Order of J. Solomon; rev. proposed complaint vs. Morg St. Conf. Re: same. 6.75 hrs.

**April 12, 2008 (Saturday)**

prep. for mtg. of Trustees on April 13. Review documents; work on, review motions. 5.50 hrs.

**April 13, 2008 (Sunday)**

Return to office; work w/ RLB, Jr. on motions, affidavits, numerous matters; conf. w/ Mr. Few; review records related to Cannon, Hammond, Bradley, Dallas after resignations. 8.20 hrs.

**April 14, 2008 (Monday)**

t. meetings w/ SC St. Univ. and SC State Museum Reps, and security, re: transfer, protection of property; work w/ RLB, Jr. & counsel on return to pro hac vice motion; motion for SJ in Buchanan vs. Bradley & Hammond, w/ supporting affidavit; motion, various issues & affid., Will/Trust/Testacy matter; confs./corresp. W/ RLB, Jr; conf. w/ R. Gonzalez re: 75<sup>th</sup> anniv. Contract, scheduling hour to discuss various issues, including Boston, pay-per-view, etc. Work w/ counsel on reply to attempt of Dallas, Bradley to characterize appeal as their removal, rather than resignation; review documents related to transactions of former PR/Trustees and others after their termination. 11.00 hrs.

**April 15, 2008 (Tuesday)**

Confs. W/ RLB, Jr., others. Weekly mtg. of PR/ Trustees, attended by SC Atty. Gen. Prep., rev. documents; numerous confs. Re: museum placement issues, contracts; rec/rev. corresp., documents re: MS matter; confs w/ our counsel; Discussion of how to begin to try to forge a settlement. 11.00 hrs.

**April 16, 2008 (Wednesday)**

Travel to Aiken, Beech Island. Review corresp. and documents at office of RLB, Jr; work w/ reps of SC State Univ. Re: Placement of TPP, set aside items for Augusta Museum of History; confs. w/ SC State Museum about placement of Bed, other items.

10.00 hrs.

**April 17, 2008 (Thursday)**

confs. w/ Few, others, re: FINRA claim, Morgan Stanley issues; read docs related to MS, other matters; conf. W/ J. Rainey re: service on Advisory Board; confs. W/ museum reps. Re: arrangements for pickup of TPP from home. Confs. w/ Fletch re: same; review Note:s related to response to Cox proposal; work on valuation issues; review history of Cox relationship to former counsel for Est/Trust. Prepare corresp. w/ Morris Agency re: purported contract dated 2/15/08, apparently procured by T. Byron w/out authorization. Begin work on valuation issues for placed properties. Confs. w/ counsel for beneficiaries.

7.85 hrs.

**April 18, 2008 (Friday)**

Conferences w/ RLB, Jr. & others re: various things; joint t/c w/ Jacque Hollander who asked for bracelet she said was her mother's, mention that she started the "I Feel good Trust". Listened. She said her lawyer was writing. Joint T/C w/ Suzanne Weaving of Morris Agency re: her recent call, fax. Stated that (w/o our knowledge as SAs or PR/Trustees) Buddy Dallas represented to her, along w/ Byron, in the fall that Toby Byron had authority to speak for Estate. Based on these representations, certain steps begun. She was very bothered that the purported relationship had progressed so far w/o notice f/m Byron that no authority. Numerous convs. w/ Fletch, others about SC St. University, SC State Museum and Aug. Museum of History picking up items for preservation, education. Conf. W/ Tiffany re: SC St. Contract. Confs/ w/ Kendall Few, RLB, Jr. ab. FINRA claim AG. Morgan Stanley, other issues; rec call f/m Deanna Brown, inquiry re: Creditor's claims. Advised of newspeople on premises. Review complaint in Fed. Ct., Morgan Stanley; confs. W/ counsel reviewing docs in Chicago litigation, and w/ A. Gold.

11.00 hrs.

**April 19, 2008 (Saturday)**

Travel to Columbia, then to Spartanburg to meet with KF and RLB, Jr. on pending cases vs. Cannon, Dallas, etc. Review documents and records related to Estate/Trust debt, claims, proposals of Cox group, and many other matters. Rec/rev.

6.50 hrs.

**April 20, 2008 (Sunday)**

Reviewing documents, pleadings and motions.

3.20 hrs.

**April 21, 2008 (Monday)**

Reviewing documents and corresp. of Cannon. Rec/rev. documents, corresp. and other communications in

connection w/ hearing to be held on Friday, April 25; meeting w/ atty. for benefys. to promote possibility of abandoning contest to Will and Trust.  
10.25 hrs.

**April 22, 2008 (Tuesday)**

rec/rev. numerous docs., corresp. Re various matters, including motions, responses. Review of same in prep. For hearing.  
9.25 hrs.

**April 23, 2008 (Wednesday)**

Rec/rev. numerous emails, motions, corresp., et; conf. Re; upo\coming mtg.; , etc. Work on summary of Advisory Board/Committee positions to try to encourage Attorney General not to challenge the authority of the PR/Trustees to be same during period of administration because of unified Estate Plan and defense of \$46Million +claims, defense of Estate Plan in Will and Trust contests, Elective Share, etc. Rec/rev. corresp. re: possible Neal Israel contract.  
10.10 hrs.

**April 24, 2008 (Thursday)**

Preparation for scheduled hearing on various matters, including the interference of Hammond, Bradley, Cannon and Dallas in the PR/Trustees' ability to manage Trust/Estate; rec/rev. numerous responses, motion, documents, affidavits, responses in connection w/ April 25 hearing; Reviewing numerous items of corresp., pleadings. Receive and first review of motion of SC Attorney General to set aside apptmt. of Buchanan and AJP as Trustees.  
9.00 hrs.

**April 25, 2008 (Friday)**

Prep. For & travel to Aiken to prepare for and attend hearing on various matters; dealing w/ ruling by Court that furs and items to be w/drawn from sale; rec/rev. motion of SC Atty. Gen'l to contest Court appt. of Trustees. After hearing, corresp. W/ Christie's to deal w/ withdrawal of items and problems associated w/ interference w/ contract. Travel to home at Beech Island to allow members of family to view after removal of items for Christie's sale and items placed for safekeeping in museums. Corrsp w/Gonzalez re: need response or to drop Israel in proposal.  
11.00 hrs.

**April 26, 2008 (Saturday)**

Rev. Transcript of hearing, docs produced by Cannon; conf. w/ counsel for benefys. to promote settlement and  
2.30 hrs.

**April 27, 2008 (Sunday)**

Reviewing docs. produced by Cannon, emails, etc.; prep. for mtg. w/ PR/Trustee.; rec/rev numerous docs filed.  
6.50 hrs.

**April 28, 2008 (Monday)**

Working w/ counsel in CORBIS litigation, for review of docs. by Winst. Strawn atty.; rec/rev numerous docs, corresp., etc. in various cases. Preparing for wkly mtg. of Trustees; confs., corresp. re: Neal Israel special; reviewing transcript of March hearing; corresp. Re: TRHB's w/drawal of items from Christie's sale; prep. for mtg.  
8.50 hrs.

**April 29, 2008 (Tuesday)**

Travel to Aiken for mtg. w/RLB, Jr. Re: various matters; t/ mtg. w/ counsel in CORBIS litigation in prep. of Req to Admit & Interrog. (.80 hour); work on interruption of Christie's sale by TRHB; work on various Estate/Trust Administrative matters, including response to numerous calls from Cox; Ltr. To Intrigue re: contract w/ Neal Israel & position that Est./Trust owes no money to Intrigue or F. Copisidas; Request that Intrigue send backup info for \$26,000 w/held from Est. Pyt. From Geronimo; confs. w/ counsel for TRHB and others; Repeated attempts to have conf. w/ Christie's re; consequence of w/drawing assets. Confs/, corresp. w/ museums who have assets of Est. Corresp. Atty. For Frank Copisidas re: Agreement, Geronimo \$26,000 w/held from Est.  
9.00 hrs.

**April 30, 2008 (Wednesday)**

Mtg. by phone w/RLB, Jr., Christie's representatives, others. Conf. and corresp. w/office of counsel for GAL of James II re: DNA testing; conf. w/ N. Glaser re: location of \$1510 in envelope in clothing of Mr. Brown; in safe; to be picked up. Conf. w/ Director of Augusta African American History Museum; rec/rev. corresp. re: Farr's communication w/ IRS. Conf. w/ JG re: Farr; confs. Re: claims of Dallas and Bradley dated July 25, 2008; confs., corresp. w/ Lab Corp. and transmit cash for payment for DNA testing of James II; Conferences w/ Ms DeHart and Mr. Kuhlke re: ownership of furs and procedure; correspondence re: same. Responding to request of L. Levenson for clients to visit home, and invitation to all family, AG to view remaining items in home. Confs. w/ office of accountants re: IRS rejection. Begin work on procedure for protection of final items remaining in home, garages. Conference w/ Christie's reps. Re: Hollander and TRHB objections to sale, forfeit the w/drawal fee; Begin work on response to IRS re: matters which need to be resolved.  
8.20 hrs.

**May 1, 2008 (Thursday)**

Rec/Rev/ denial by Powell Goldstein to deliver file. Affid. AJP re: same. Rec/rev ltr. W. Byrd revising 2/27, 2008 ltr saying no Powell Goldstein file. Asserts Dal. & Brad didn't know engaged by Cannon. Transmit prop. Order re: paternity; confs. w/ IRS and Alan Rothschild. Review Cannon records; review interrogos. and other

pleadings served. Work on issues related to qualification of James Brown "I Feel Good" Trust. Rec/Rev. Affidavits of Ms. DeHart & Mr. Kuhlke re: JB ownership of furs. Rec/rev ltr. Of Christie's re: problems/cost of removal of furs, watch from selection for sale. Work on chronology in relation to numerous matters.  
9.50 hrs.

**May 2, 2008 (Friday)**

Conferences w/ Dr., Laney Museum. Work on motion Prep. Docs. Travel w/ KFR to Aiken, Beech Island to check out loan items to Director of Laney Museum representatives; mtg. Aiken w/ RLB, Jr., JB to review motions, other pending matters. (Time does not include travel to Augusta to see Exhibit, Augusta Museum of History, pm). Conf. w/ IRS Agent re: Application for Recognition of James Brown "I Feel Good" Trust, date of first payment.  
8.20 hrs.

**May 3, 2008 (Saturday)**

No time.

**May 4, 2008 (Sunday)**

Work on proposal for TPP.  
1.85 hrs.

**May 5, 2008 (Monday)**

Conf. w/ RLB, Jr. and counsel, CORBIS Litigation re: depositions to be taken tomorrow in CORBIS Litigation. Review of Original and Amended Complaints and motion (2.0); rec/rev. counterclaim of Albert Dallas accusing RLB, Jr. and AJP of tortious interference with his relationship with the Trust of James Brown, and counterclaims for money from the Estate/Trust.' conf. w/accountant; preparing, revising & finalizing response to IRS inquiry re: Application for Recognition of Exemption. Work on TRH Brown Motion re: ownership; conf. w/ Mr. Gilreath re: various matters related to actions pending against former PR/Trustees; Conf. w/ Daryl Williams re: Powell Goldstein serving as attorney for Forlando Brown, member of investment group attempting to buy assets of Trust when firm formerly represented both the Estate and the Trust; Rec/Rev/ proposed Amended Complaint in Forlando Brown suit. Conf. w/ office of potential member of Advisory Board; conf. w/ office of counsel regarding meeting to discuss procedure for working on royalty, image & Persona issues in light of dire financial circumstances and challenges to our ability to contract on behalf of Estate/Trust.; rec/rev. information re: paternity of James Brown II.  
9.70 hrs.

**May 6, 2008 (Tuesday)**

Preparing for and attending deposition in CORBIS litigation (5.7). Conference with Messrs. Gonzalez and Zumwalt re: possibilities for exploitation of image and persona through Musical or Movie and related projects. Rec/rev. information, prep. Docs related to Motions for interference with sale; rec/rev pleadings in various cases.

Corresp. and confs. Re: pending matters.  
9.20 hrs.

**May 7, 2008 (Wednesday)**

Work on proposal for distribution/sale of remainder of TPP located at Home Estate; Confs. w/ RLB, Jr., reps. of Christie's re: sale issues, inclusion in final selection for sale; lengthy conference w/ RLB, Jr. and JB re: various matters, including hearing scheduled for May 8, telephone, re: TRH Brown attempts to w/draw items from sale, desire to visit home. Arrangements to all TRH Brown to visit home tomorrow. Rec/rev documents and pleadings; review of pleadings and consideration of reorganization of pleadings, files in light of new developments; rec/rev. docs, corresp., from D. Williams, others, re: various pending matters. Corresp. w/ Beneficiaries. First outline of thoughts for 6-month report to beneficiaries. Review Orders to determine when accountings due by former PR/Trustees Dallas and Bradley.  
10.20 hrs.

**May 8, 2008 (Thursday)**

Conferences w/ RLB, Jr. and others regarding various pending matters; Arrangements for staff to accompany TRH Brown to home. Rec/rev phone call Deanna Brown re: visit of TRH Brown to home, concerns about taking photos. Referred to own counsel & sent message to all. Confs. & corresp. w/ accountant and IRS Re: Qualification of "I Feel Good" Trust. Corresp. W/RLB, Jr. Related to various matters including representations of Phil Farr to IRS. Issues related to misrepresentations to Federal Court regarding Schedule B, and other matters. Work on proposed division of TPP and Receipt & Dist./sale issues. Conf. w/ accountant.  
8.90 hrs.

**May 9, 2008 (Friday)**

Read documents related to, and attend, federal court motion hearing. Work on TPP issues; corresp. Corresp. w/ former PRs re contract entered into in May of 2006. Work on Return and Opposition to second motion for reconsideration of AG.  
9.50 hrs.

**May 11, 2008 (Sunday)**

Review of documents and records related to TPP and Tuition payments in order to prepare for proposed Ct. Approval of payments for tuition after Christie's proceeds received, if adequate. Review matters related to Morgan Stanley proposed Order, to be distributed tomorrow. Review proposal to distribute property to children, TRHB. No responses to date. Work on proposed Order, underlying facts.  
[Time not entered]

**May 12, 2008 (Monday)**

Preparation of various documents; conf. w/ RLB, Jr. to complete same; confs. E/ JB, who was injured and not in office, to read, review various documents for transmission; transmit proposed Morgan Stanley Order to Court,

counsel; corresp. W. Former PR/Trustees re: need to receive the accountings by end of May so we can review them at June 6 hearing, if necessary, and be ready to file Estate Tax Return under last extension on or before September 25, 2008. Request that former PR/Trustees respond immediately if not able to provide accountings by end of month. Notice to all parties and all known creditors and potential creditors to provide proposed Order and invite comment and agreement re: distribution of tuition when funds available. Receipt and brief review of haber Corporation audit. Conf. w/ Leon Friedman, on distribution list, who sent to us. According to Friedman, Pullman continues to assert he has authority to select auditor. Brief review of Closing documents as they relate to duties of structuring agent, others in connection with audits; conf. w/ M. Ballenger to set meeting for later in month to discuss NY litigation, and confirm ok to discuss audit issues w/ local counsel for Pullman. Confirm that audit issue did not come up in NY litigation discussions.  
9.50 hrs.

**May 13, 2008 (Tuesday)**

Brief further review of Haber Corporation Audit, Warner-Chappell S.30, 2002 - June 30, 2004. Conf. w/ auditor re: procedure. He hired by Pullman. w/d not normally send a copy of audit to us. W/d work w/ Pullman & Publisher. He does Trustee reports and also works on audits for Carlin, Warner-Chappell and BMI. Another person works on Universal. Explained that the Universal audit of the prior year was highly unusual in its conduct. Consultation w/ RLB, Jr., re: same, since he was held up, did not arrive in time for telephone mtg. T/C with J. Drennan, counsel for Pullman. Despite differences, we appear to have common goal to see that audits properly conducted, concluded and funds remitted to M&T Bank. Discussed whether we should speak directly to Pullman or to him w/ Mr. D present. Rec/ rev. email of W. Hammond Aug 13, later, in which he wholly misstates position of SA s both in March, 2007 and August 2007. (Also conflict w/ his testimony). Rec/rev. corresp. from various persons. Work on documents, review related to William (Forlando) Brown discovery requests; discovery requests of Cannon. Confs. W/ RLB, Jr.; work on method of organizing files so that Beneficiaries will have adequate information regarding financial matters, but trade secrets of Estate/trust Brown Entities will not be disclosed to others. Review proposals in May, June 2007 of Brown, Cox and group to manage, purchase assets of Estate, provide succession plan, benefits for Trustees.  
10.10 hrs.

**May 14, 2008 (Wednesday)**

Mtg. w/D. Williams, counsel for RLB, Jr. In Forlando suit to determine best way to make docs. fully available to counsel w/o relinquishing trade secret information belonging to Estate/Trust. Discuss w/ RLB, Jr. that this will be same issue in CORBIS and other litigation against Estate/Trust/entities, and also in internal litigation by family members. Prepare outline of File Reorganization policy and review same w/ staff in attempt to get as much of post-death information into area to be viewed by counsel for Interested Parties and litigants, where appropriate, and subject to appropriate confidentiality agreements to be worked out by counsel in each matter. Confs. and correspondence w/ J. Bailey (injured back) and clerk's office re: correcting placement of Will/Trust/Heirs matter in same Civil Action No. as Removal/Appointment/Accounting matter. Further discussion about which matters need to be segregated from Removal/Appointment/Accounting matters, and parties designated in captions, to avoid further confusion upon what appear to be inevitable appeals to be taken. Conf. By phone w/ RLB, Jr. w/ Dr. Udom. Advised that w/d be at least Sept. bef. consid. to general claims will be taken up. Lack of funds to pay at this time, even if allowed. Confs. w/ J. Bailey, RLB, Jr. Re: only Children's

Will/Trust/Heirs matter ripe for scheduling Order bec. parties not properly joined in any TRHB case (exc. Removal/Appt./Accounting). Conf. w/ RLB, Jr. and JD McAlpine of Haber Corp. after he consulted w/ D. Pullman and M. Woj. at M&T Bank. Reviewed customary procedure for audits, and briefly issues of 2006 Universal Audit; payment procedures; and appropriate time for our intervention by counsel in process. Will obtain more information about audit history. Review of Hammond file in prep. for F. Brown discovery responses.

9.50 hrs.

**May 15, 2008 (Thursday)**

Work on Discovery in case by Forlando Brown who is attempting to return Cannon, Dallas & Bradley as Trustees; producing records and correspondence. Mtg. w/ JR ab. need for cooperation of AG in defending Estate Plan.; confs. w/ counsel, our suit, MS, Dallas, Cannon, Bradley; mtg. W/ RLB, Jr. Rec/rev/ corresp./ confs. w/ counsel for benefys re: TPP Plan; confs.w/ staff re: SC State visit to home, pickup of additional items. TPP issues.; conf. MB re: segregation of case, discovery.

10.00 hrs.

**May 16, 2008 (Friday)**

conf. w/ counsel in suit by Forlando Brown to return Dallas, Cannon & Bradley as Trustees. Confs: a.m. and p.m. w/ RLB, Jr. re: service of affidavit, accompanying docs.; requests to meet w/ SC AG to obtain help in defense of Estate Plan; defense of Elective Share; support of Morgan Stanley Litigation and litigation against Dallas & Bradley; work on preparing docs. For discovery in Forlando Brown and other suits. Review of all 2007 matters to try to place as much of file as possible into area for inspection by all counsel, w/o damaging trade secrets of Estate/Trust such as contracts, royalty payments, etc. Review recent pleadings, discovery, all cases. Corresp. With all counsel re: discovery of document purporting to transfer some stock to Irrevocable Trust on August 1, 2000, and signed by Cannon/Mr. Brown. Work on possible scheduling Order and related issues. Corresp. w/ RG re: issues for mtg. on Tuesday. Conf. w/ RLB, Jr. Re: attendance at his depos. In CORBIS matter, Monday.

10.20 hrs.

**May 18, 2008 (Sunday)**

Review assets, documents, pleadings, claims, corresp. to prepare Semi-Annual Report of PR/Trustees; work on discovery issues; suit by Forlando. Begin Draft of Report.

5.70 hrs.

**May 19, 2008 (Monday)**

Rec/rev appeal filed by Dallas and Bradley to Appointment of PR/Trustees. (Cites mailed on May 9, but not rec'd until today.) Research/confs. Re: appeal, Rule 59. Conf. w/ RLB, Jr. and JB re: various matters, including need for Scheduling Order in Will/Trust/Heirs matter, response to W. Hammond's counsel's inquiry; and other matters; corresp. w/ benefy's, AG re: Disposition of remainder of TPP; work on 1<sup>st</sup> Semi- Annual Report and scheduling matters; Attend by telephone Deposition of RLB, Jr. In CORBIS litigation. Conf. W/ Kendall Few

re: Counterclaim by Dallas and other matters, Est/Trust vs. Cannon, Dallas, Bradley. Further work on discovery issues, to make docs available for all while protecting trade secrets of Estate/Trust. Work w/staff to set up procedure for control of assets on loan to S.C. State and other museums. 11.00 hrs.

**May 20, 2008 (Sunday)**

Rev. ltr. J.Bailey to Jim Nance, re: Hammond's interference. Work w/ RLB, Jr. on finalizing, distributing First Semi-Annual report to Beneficiaries, Devisees and AG. Rec/rev. Scheduling Order, corresp. Re: same; Attempts to call counsel for devisees re: appeal in which Dallas, Bradley assert themselves Trustees, possible attempts to keep from filing accountings as PR/Trustees; conf. w/RLB, Jr., Gonzalez & Zumwalt; Work on Ret/Op 59 Motion of AG. Conf. w/ Museum director, others, to work on schedules for loan Agreements. Confs. w/ various persons and attempts to phone re: distribution of TPP remaining in house, 10.45 hrs.

**May 21, 2008 (Wednesday)**

Work w/ JB on numerous documents to be signed and served; Travel to Aiken for mtg. w/ RLB, Jr. and JB, finalize and serve various docs. Meeting to review numerous matters. Work on details of proposal to Sell/Distribute certain remaining items at Home Estate to family and others close to Mr. Brown, while protecting interest of creditors.  
11.00 hrs.

**Note:** Buchanan and Pope move to dismiss Dallas/Bradley Appeal.

**May 22, 2008 (Thursday)**

Confs. and work on TPP matter with staff and others. Work on responses to various motions filed, including mot. of AG.  
3.20 hrs.

**May 23, 2008 (Friday)**

Confs. w/ RLB, Jr. re: numerous Est/Trust matters, including TPP issues. Continued review of documents, transcripts, and correspondence for discovery matters. Rev. Memorandum of counsel.  
7.25 hrs

**May 24, 2008 (Saturday)**

Review transcripts of hearings and documents in connection w/numerous motions and objections; work on documents to effect Sale/Distribution of TPP.  
4.10 hrs.

**May 25, 2008 (Sunday)**

Rev. Docs. re: compliance w/ discovery requested by Dallas, F. Brown.  
1.00 hrs.

**May 26, 2008 (Monday)**

Review corresp. and records in connection w/ discovery requests in various proceedings. Reviewing records, transcripts and documents in connection with response to Motion of Atty. Gen'l of SC for Reconsid. of Appointment Order. (Memorial Day)

3.45 hrs.

**May 27, 2008 (Tuesday)**

Rec/rev motions to quash subpoena/testimony of D. Bell, F. Brown; Rec/Rev objection of T., F. & R. Brown to Sale/Distribution to Terry Brown and other Family members; work w/ counsel, RLB, Jr. on responses to various outstanding motions, including attempts of F. Brown to quash our Affidavit related to his business relationship w/ Cox and Dallas, Mot. Alt., Amend of SC Atty. Gen., Meeting w/ RLB., Jr. Re: various Estate/Trust matters, including t/conf. W/ Mr. Pullman, w/ consent of his counsel, re: audit procedures for royalty-backed security issue. Requested written approval (although may not be technically required) of 2 x \$5,000 for engagement of 2 components of audits by Haber. Also may need to work on some authoriz'n related to Haber Corp's being paid upon receipt/credit for audit findings. Finally, auditors will notify us if we need to have counsel prepare tolling agrmt., if audit running past SL. Scheduled conf. w/ counsel in NY Litigation. Pullman has filed notice of intent to appeal. He must take certain action by July 7, in order to be heard at September term. Discussed w/ counsel that Estate/Trust, if we are Trustees, does not find it prudent to have either sale or large financing related to assets because claims, taxes would either exhaust or threaten a large part of the proceeds, even at \$100 MM. May notify Pullman of this, work toward possible settlement prior to disallowance of claim. Plan to disallow claim after Christie's proceeds secure so that we can be ready to defend. Rec/rev and brief discussion w/ RLB, Jr. Re: Nelson Mullins bills of F. Copsidas and Intrigue paid from fund of Mr. Brown. Need further investigation, and waiting for financial information. Add'l confs. and doc. review in relation to F. Brown and D. Bell's failing to disclose to the Federal Court the Dallas-created Schedule B was not a part of the Trust, as represented to Federal Ct. in verified complaint of F. Brown. Attend telephone hearing in which Dallas and Bradley claimed atty-client privilege as to file of Powell Goldstein, in direct violation of Agreement reached on August 9, 2007 and made part of August 10, 2007 Order. Review of docs. In relation to this. Conf. w/ RLB, Jr, Jeanette at Christie's re: issues related to sale, signing of final selection.

11.00 hrs.

**May 28, 2008 (Wednesday)**

Reviewing motions and documents; confs. W/ RLB, Jr., Christie's and others about various Estate/Trust matters. Encourage LL to encourage clients to be supportive of sale at Christie's to help all. Discussion w/ Christie's re: not agreeing to sale of items after auction at reserve prices. Continued work w/ museum issues, inventory, etc.

6.75 hrs.

**Note:** Jg. Cureton (COA) issues Order re: Stay during Dallas and Bradley appeal.

**May 29, 2008 (Thursday)**

Prep. for and attend mtg. w/ AG of SC w/ JR, RLB, Jr., SJ, MFJ, JM, to encourage office of AG to support Estate Plan of Mr. Brown, and not to rely on affidavits of Dallas, Bradley, Hammond and others. Discussed encouragement office of AG was giving to Dallas/Bradley proposed sale of Brown asset in accordance w/ Oct 18/20 ltr. and attempted return of Cannon, Dallas and Bradley as Trustees. Delivered copies of 6-Month Report of PR-Trustees showing more than \$900,000 of prof. Fees of Dallas, Cannon, Bradley; claims for \$16+ million of Bradley, etc. Requested that AG fully support PR/Trustees in following goals:

1. Defend Estate Plan against all attempts to Set Aside Will/Trust;
2. Defend against Spousal Claims;
3. Defend against return of Cannon, Dallas & Bradley to any fiduciary position;
4. Stabilize assets and prevent fire sale while defending \$46+ MM of claims.

Discussed possibility of 3rd Trustee to be suggested by AG, and reviewed by PR/Trustees and JR to make sure no conflict, positive image for Estate/Trust; ability and willingness to vigorously support Estate Plan for duration; independent; etc. No consensus re: how to achieve appointment, either temporary or permanent, in this atmosphere. Our position: find acceptable person and then consider how he/she may contribute. Rec/Rev. Continued work on alternatives for preservation of TPP until after Christie's sale in case attempt to delay hearing on Declaratory Jmt. followup sale/distribution for protection of property under Order of Feb. 20, 2008 directing sale of TPP; Research, rec/rev. documents, numerous matters. Numerous conferences.

11.00 hrs.

#### **May 30, 2008 (Friday)**

Rec/rev corresp., documents. Research related to stay, actions of PR/Trustees pending appeal. Confs. w/ various parties.

4.75 hrs.

#### **May 31, 2008 (Saturday)**

Continued review of corresp. File in light of Discovery Requests in case attempting to enjoin the Trustees from any action, so that numerous files for full review by litigants as appropriate to Court Order or discovery in 10+ pending cases. Research, analysis of waiver of attorney-client privilege as provided in the August, 2007 Agreement and August 10, 2007 Order. How it relates to ongoing litigation among the Interested Persons in the Estate, and others.

9.25 hrs.

#### **June 1, 2008 (Sunday)**

Review of all pending and completed matters important to implementation of Estate Plan of James Brown which might, or might arguably, be affected by Dallas, Bradley appeal, to extent not already hindered and affected by challenges to Will/Trust by 5 children and TRHB, and attempt by others to enjoin all actions of Trust. Research. Initial conclusion that not in best interest of Estate Plan to seek Court intervention at this time. With financial resources of less than \$20K in bank, and JB defending multiple lawsuits, the Estate/Trust during this emergency period, extreme hardship to initiate action. Must have resources to respond to attacks by others on ability of

Estate/Trust to function while Cannon, Dallas, Bradley seek reinstatement, sale. Rev. Portion CORBIS depositions. 8.25 hrs.

**June 2, 2008 (Monday)**

Rec/Rev. Numerous communications, corresp. re: stay issues. Consultation w/ JB, RLB, Jr., re: same. Attending telephone hearing requested by D. Bell re: possible impact of stay. Decision by Court to cancel hearing scheduled on June 6, 2008. No other decision made except to cancel hearing. 8.75 hrs.

**June 3, 2008 (Tuesday)**

Rec/Rev. Various documents; research and consideration of impact of appeal of Dallas and Bradley of the Court's Order not recusing itself and refusing their return as Trustees. Reviewing case law, confs. w/ various persons, re: impact. 4.25 hrs.

**June 4, 2008 (Wednesday)**

Travel to Aiken and staff to Beech Island to pull down boxes from attic to determine whether they should be classed as Historical documents in accord. w/8/10/07 Order, or remain at home for delivery to museums or as part of TPP; Work w/ counsel to finalize responses in lawsuits against Estate brought by Dallas, Cannon and Bradley; prepare same for service. Conf. w/ Christie's re: sale to take place July 17; conferences re: Estate Tax issues and other matters. Work on various administrative matters. Review of documents from attic box containing early 1990 s image, persona lawsuit of JB which may relate to the CORBIS file. Initial Review of Hammond docs, many of which not previously produced, including emails to SC & GA AGs, Cannon and others. Conf. w/ND re: request for withheld Hammond docs. 11.00 hrs.

**June 5, 2008 (Thursday)**

Rec. Notice of t/c w/ Jg. Early, as requested by LL. Attend telephone hearing. Depositions; confs. w/ our counsel re: PR/Trustee's position that necessary to move with caution regarding all stay issues; request that be heard only on record after appropriate notice. Concerned that failure to analyze implications of stay, if any, on particular acts may further damage Mr. Brown's Estate Plan and impair the ability of the Estate/Trust to market his royalties, image and persona. Conf. re: semi-annual report of TIAA from M& T Bank, to be received; conf. and investigation of proposal for London use, through S. Rogoff; confirmed music only; approved; confs. Re: valuation of TPP for Est. Tax Return, museums. 10.00 hrs.

**June 6, 2008 (Friday)**

Begin Review/organization with staff of boxes of documents, pleadings Notebooks to have ready for inspection of counsel for Forlando (William) Brown in Federal lawsuit, as well as for all counsel to review in the lawsuits ag. Est. by Cannon, Dallas & Bradley, Will contests of 5 children and TRHB, etc. Approximately 13 completed. Purpose as communicated to AG, benefys in earlier memo is to convert oversight file, containing mostly copies of L&B docs., and other docs. sent to us from various sources, into files readily available to benefys, counsel, while protecting interest of EP in CORBIS, NY, and other litigation and trade secrets. Confs. w/ JB, RLB, Jr., and others re: failure of Powell Goldstein to produce file, need for file for Est. Tax Return and other matters. Transmit, serve our request and waiver in that connection.  
9.50 hrs.

**June 7, 2008 (Saturday)**

Review of additional documents obtained from attic of home as they relate to the image, personal and royalty issues; review of position of AG and Dallas, Cannon, Hammond and Bradley, and how to minimize its damage to the Estate and Estate Plan of Mr. Brown. Further review of recently produced Cannon and Farr documents; initial research how to organize, deal with, royalty, image persona issues without funds for counsel, and, later, in light of challenges to Estate Plan as well as challenges of AG, Dallas, Cannon, Bradley.  
8.10 hrs.

**June 8, 2008 (Sunday)**

Research and work on Estate Tax Issues; Review of necessary and appropriate transactions in light of questions raised by Dallas and Bradley regarding transactions of Trust during pendency of appeal. Begin analysis of which of 11 lawsuits affect only Estate, and may, without objection of AG, Dallas and Bradley proceed. Initial analysis of when, where and who should seek Court guidance, if any, regarding stay. Initial analysis of whether it is in best interest of Estate Plan to proceed with spousal/heir determination, with appeal, so that appeals will run in tandem. Prep. for mtg. w/ RLB, Jr. on June 10, including initial work on which of claims to disallow.  
7.20 hrs.

**June 9, 2008 (Monday)**

Review of documents. Work on matters related to Pullman litigation. Rec/rev communication from counsel; work on affidavit; Further conferences re: revelations in emails of Bill Hammond, and negative impact on Estate/Trust. Conf. w/ Christie's rep. Re: catalogue. Continuing work on getting documents in position for continuous review by Interested Parties during pendency of litigation. Work on answers to Interrogatories, F. Brown suit. Corresp., Gergel re: obtain files.  
8.20 hrs.

**June 10, 2008 (Tuesday)**

Organization, w/staff of files to begin to address demand by counsel for F. Brown for review on Friday. Corresp. to L. Friedman re: obtaining files. Confs. w/ JR re: AG issues and emails of Bill H. Prep. Corresp. w/ AG. Wkly. Mtg. W/ RLB, Jr. Daryl Williams. Finalize discovery responses, F. Brown case. Lv. 6:50 - 7:45.  
12.00 hrs.

**Note:** Jg. Early issues Order Regarding Depositions of Shearer, McGaughey and Katz.  
Jg. Early issues Order Regarding Plaintiffs' Motion for Disclosure of TPP placed in Museums  
Jg. Early issues Order Approving and Setting Conditions of Interim Tuition Payments

**June 11, 2008 (Wednesday)**

Work on coordination and review of files in connection with discovery, attorney-client and related issues in light of positions of Dallas, Bradley that they did not waive privilege; Listen to portions of deposition of W. Shearer; meetings and confs. Re: discovery in Federal Suit. Review and discuss how to protect assets of JB Estate/Trust in face of discovery requests, all matters. Confs. Re: approvals; preparing Reading Room for discovery; Telephone meetings w/ RLB, Jr. Re: various pending matters.  
9.30 hrs.

**June 12, 2008 (Thursday)**

Confs. w/ RLB, Jr and others re: numerous discovery and administration matters; Listen to portions, Depos. of Frank McG. Review additional documents; preparing documents; review of financial matters and dire circumstances of Estate and Trust.; extensive documents review and preparation for meeting, F.(Wm.) Brown matter; numerous telephone conferences w/ RLB, Jr.  
9.20 hrs.

**June 13, 2008 (Friday)**

Work on issues related to Discovery in F. Brown case; confs. w/ DW, RLB, Jr. and others. Review Reading Room with counsel for F. (William) Brown; corresp. w/ AG re: damage to Estate Plan of JB resulting from reliance on Hammond, Bradley and Dallas; complete review of deposition in CORBIS litigation and transmit Errata Sheet; corresp. w/ counsel in CORBIS litigation re: confidentiality; atty-client and work product issues. Review and approve, w/ RLB, Jr. Proposals for I Feel Good. Conf. w/ Leonard McIntyre re: Martha Smith at AT&T wanting to honor JB in the Calendar to be in schools, etc.  
8.10 hrs.

**June 14, 2008 (Saturday)**

Reading documents, telephone confs. prepare for hearing; attorney-client privilege issues.  
1.25 hrs.

**June 15, 2008 (Sunday)**

continue work on various discovery issues, CORBIS issues, New York issues, and royalty, image and persona issues. Reviewing documents, correspondence and filings. Preparing for hearing. Meet w/ RLB, Jr. and counsel.  
6.75 hrs.

**June 16, 2008 (Monday)**