

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 28 2020

SC 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.

**RETURN AND MEMORANDUM OF APPELLANT IN OPPOSITION TO
MOTION OF RECONDENTS TO STRIKE APPELLANT’S REPLY BRIEF**

On April 7, 2020 Respondents filed a motion to strike Appellant’s reply brief. Alternatively, Respondents seek leave to file a surreply to Appellant’s reply brief. This is Respondents’ third motion to strike in this appeal.

Respondents, acting through Russell Bauknight, have worked since 2009 to make it difficult and expensive for Appellant to be paid a court-ordered \$47,972 2007 SA fee and \$1,473,550 earned by Appellant for her work and that of her large staff through May 26, 2009 under a court-approved “time + costs” contract with Respondents. They have done so even though the order approving her SA fee and the contract terms provided for interest which has been accruing for 11 years. They have done so even though the joint protective 2009 claim of Robert Buchanan, Jr. and Appellant for these amounts was fully documented, including with more than

100 pages of daily time records. In short, Respondents have prolonged for a decade a probate code contract claim that should have been resolved by 2010.

Respondents' assertions in the motion to strike are not supported by the briefs or the record. Appellant's brief properly responds to, and refutes, the incorrect factual allegations and arguments made in Respondents' brief. Matters which Respondents assert are new, irrelevant, or improperly cited were properly addressed in both of Appellant's briefs.

All of the relief requested by Respondents in the motion to strike should be denied.

This return is supported by Appellant's briefs, the record on appeal (ROA), and Appellant's responses to Respondents' earlier motions to strike, which are incorporated herein. It is also supported by the memorandum which follows.

MEMORANDUM OPPOSING MOTION TO STRIKE REPLY BRIEF

Respondents' Stated Concern for Loss of James Brown Scholarships is Misdirected

On page 1 of the motion to strike Respondents note that the estate plan of entertainer James Brown, executed nearly 20 years ago, is not being implemented. Respondents assert, correctly, that this is deeply regrettable. Any effort to place blame for this damage to the estate plan of James Brown at the feet of Appellant and Robert Buchanan, Jr., however, is misdirected.

This appeal relates to multiple orders, rulings and directives issued by the Aiken Circuit Court which provided support to the May 29, 2013 announced plan of counsel for Tommie Rae Hynie Brown (Tommie Rae) and Louis Levenson, Esq., to disregard the Supreme Court's May 8, 2013 decision in *Wilson v. Dallas* and reinstate a 2008 settlement deal brokered by the Attorney General of South Carolina (AG). The announcement came just 3 weeks after the Supreme Court had found that the AG's 2008 settlement dismembered Brown's estate plan and had voided the PR/Trustee appointment of Bauknight under Brown's estate plan.

Buchanan and Appellant have had no role either in the implementation of the announced plan or the tens of millions of dollars in litigation costs Respondents admit have been spent since James Brown's death from funds Brown gave his "I Feel Good" Charity to educate needy students.¹ [R., pp. 1360, 1395, 1853]

Respondents' Motion Continues the Effort to Make this Case Expensive for Appellant

Since at least September 2016 Respondents have worked to make this case, and now this appeal, more expensive for Appellant. Appellant's September 26, 2016 motion to disqualify Bauknight and his counsel in this case, attached as Exhibit B, addressed the problem more than three years ago. In the motion Appellant sought an order granting the following relief:

1. Disqualifying Bauknight and his counsel, Nexsen Pruet (NP) in this case only.
2. Appointing a Limited Special Fiduciary for this case only to represent Defendants [Respondents] under Brown's Will/2000 Trust in this matter.
3. Reopening Plaintiff's Motion for Partial Summary Judgment and other orders in this case only in which Bauknight and his counsel had been involved.

Appellant described the efforts of Bauknight and his counsel to make this case more costly for Appellant:

Bauknight/NP have gone to extraordinary lengths to make Aiken 1337 more costly for Plaintiff [Appellant]. While Defendants [Respondents] have no obligation to reach stipulations or cooperate, refusal to do so in this instance appears to have but one purpose: to advance the position of Tommie Rae and the Richland 4900 Plaintiffs. It is causing Plaintiff to have to call – or consider calling – experts whose opinions are publicly known and could be inexpensively documented...They include:

R.B. Alexander - ...issued an Affidavit/opinion related to \$84 million value in the Forlando Suit...

Charles Carpenter, Esq.- Prepared *pro bono publico* a Petition for

¹ See Exhibit A, Accounting coversheets filed by Russell Bauknight in the Estate of James Brown by letter dated March 9, 2020, showing for 2016 expenditures of \$3,125,297.71 and for 2017 expenditures of \$3,552,535.86. Bauknight has not filed an accounting for 2018 or 2019.

Certiorari to the U.S. Supreme Court related to James Brown heirs determination...

-
Mary Jo Cole, CPA -lengthy opinion in Forlando Suit...

James C. Hardin III, Esq. ...lengthy opinion...that the service of Buchanan and Plaintiff was proper and in stark contrast to the Cannon trustees.

W. Steven Johnson, Esq. - ...opinion in 2009 that the work of Buchanan and Pope met or exceeded the standard for fiduciaries. Deposed 2016.

Thomas H. Pope III, Esq. – With Jay Bender, Esq., represented journalist in FOIA suit and 2012 efforts of Bauknight to obtain sources of journalist reporting on contents of Hynie “diary,” which reveals Tommie Rae was married and living with her husband in Texas before she met Brown; begged Brown to marry her after he discovered her marriage...

James B. Richardson, Esq. – Appellate counsel who worked *pro bono publico* as lead appellate counsel in *Wilson v. Dallas*. Deposed 2016.

William Sellars, CPA - Former Partner of Bauknight. ...properly valued Brown’s assets on federal estate tax return; and whose file was never sought by Defendants.

Wm. Jeffrey Smith - Co-Author with Plaintiff on *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown “I Feel Good” Trust doesn’t* (Draft 2011)

And:

This 3-year old case² involves the fair pay for Plaintiff’s six-year service to Defendants. Half of the claim was under a contract with Defendants which was allowed by Defendants; approved by Judge Early; and due, with legal interest until paid.

The motion demonstrates how Respondents, when convenient, used Richland 4900, a 2010 lawsuit filed during Bauknight’s void PR/Trustee appointment for the benefit of the James Brown Legacy Trust (Legacy Trust) beneficiaries, in this case:

In 2014, however, Bauknight did use Richland 4900 for a particular purpose. He asked Judge Early to deny Plaintiff’s motion for partial summary judgment, asserting that claims against Plaintiff in Richland

² Aiken County Case 2013-CP-02-1337 (Aiken 1337)

4900 prevented even her unpaid 2007 SA fee from being paid.

The Aiken Court's 3-line order denying Appellant's motion to disqualify Bauknight and his counsel – one of the orders on appeal in this case – emboldened Respondents to continue their efforts to make this case more expensive for Appellant. Order, Jg. Early, dtd. 12/16/16, filed 1/3/17 [R., p. 261]

In 2009 Appellant's part of the 2009 joint claim of Buchanan and Appellant claim could have been resolved for \$1.4 million with no lawsuit. [Ex. 5, R, p. 445] In 2013 it could have been decided with a *Wilson v. Dallas* remand hearing and no new case. But Respondents, through Bauknight, served a Notice of Disallowance with Notice of Impending Bar (Disallowance) which forced Appellant to file Aiken 1337. Seven years later Respondents' third motion to strike continues to make this case, and this appeal, unnecessarily expensive.

Respondents' Request to be Allowed to Submit a Surreply Should be Denied

On page 2 of the motion to strike Respondents refer to Appellant's alleged "flouting" of Appellate Court Rules. Respondents assert that Appellant makes new arguments not raised in her opening brief; makes factual allegations without citing any support in the record; and raises irrelevant matters from other cases. The briefs and record show that these allegations are without basis. The reply brief contains correct citations. The reply brief does what it is supposed to do – it responds to, and refutes, the claims of Respondents in their brief. There is nothing inappropriate or irrelevant in the reply brief.

Respondents' motion states that they had "little choice" but to file the motion to strike because "there is no other means by which they can effectively respond to Appellant's improper briefing." Respondents are seeking a second chance to say things they failed to say in their brief.

This Court has already ruled that Appellant's initial brief was proper. Respondents' chance to effectively respond to Appellant's brief was with their initial brief. They should not now be granted leave to revisit by surreply matters they elected to omit from their brief.

Respondents' Motion Overlooks the Multiple Orders and Issues in this Appeal

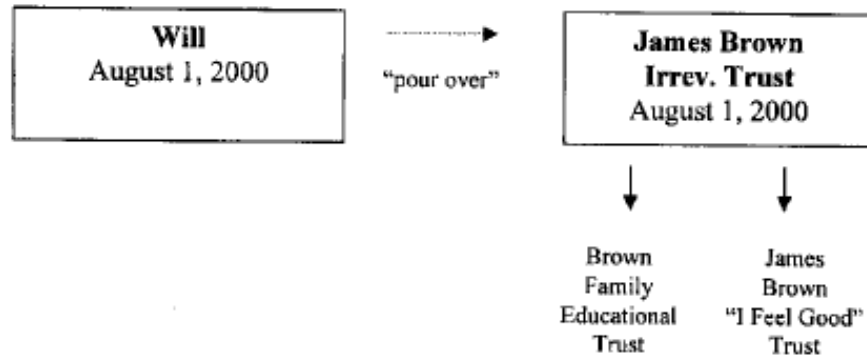
Respondents' motion to strike Appellant's initial reply brief, like earlier motions to strike, characterizes this case as a one-issue appeal of a single order. It is not. It is an appeal of multiple orders and has multiple issues. The record shows that Respondents' actions over a decade have expanded a simple SA fee, contract claim, and discretionary fee claim to involve two FOIA suits and a tort suit with 17 Plaintiffs.

In July 2009 Buchanan's and Appellant's joint claim involved a single question:

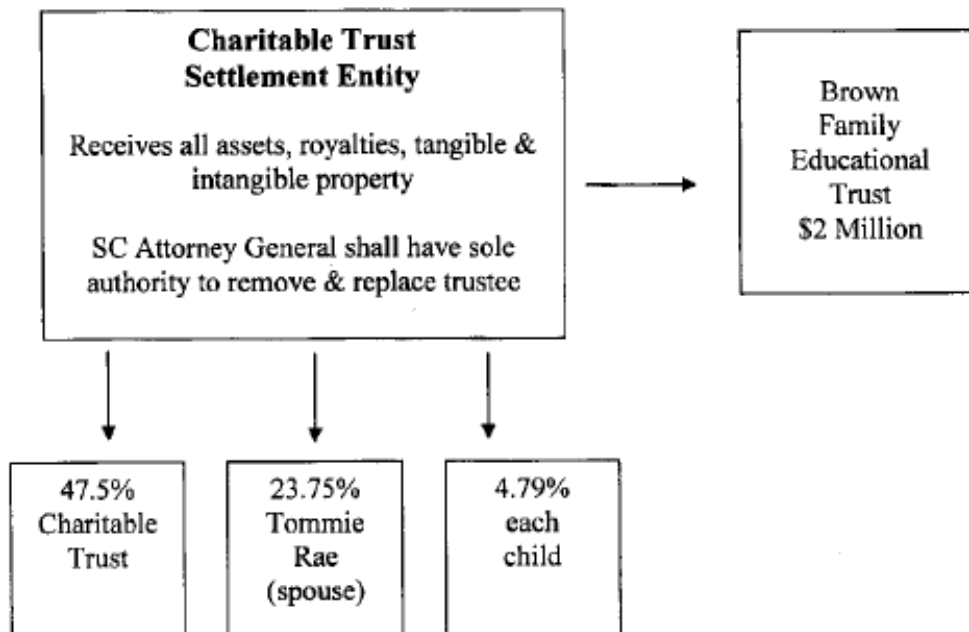
When should Respondents pay Buchanan's and Pope's allowed, court-approved, first-priority administrative claim which, by order of the Honorable Doyet A. Early, III, is earning interest at the legal rate?

In 2010, however, the Legacy Trust, through Bauknight, sued Buchanan and Appellant for tens of millions of dollars and said those funds would go to the Legacy Trust, as shown:

The original estate plan of James Brown included a Last Will and Testament which “poured over” the bulk of his estate to a separate, irrevocable trust that was created and funded on August 1, 2000. The relationship between the estate and the Irrevocable Trust are shown as follows:



The Charitable Trust is diagramed as follows:



In 2011 the AG amended the Legacy Trust and Terry Brown transferred his interest to Forlando Brown. Forlando planted the false Grammy© claim that would be noted by the Supreme Court in *Wilson v. Dallas*. That year Respondents revealed the 2010 Peter Afterman claimed \$4.7 million at-death valuation of Brown’s music empire to the Supreme Court, and the AG began using

it to support its 2010 accusation that Appellant and Buchanan committed a Federal felony. When Appellant made FOIA requests to see the Legacy Trust amendment and documents to support the AG's false felony claim, Respondents and the AG began a 9-year effort to suppress them which continues today.

In 2013 the Supreme Court voided Bauknight's PR/Trustee appointments under Brown's estate plan. Appellant's 2009 claim was ready to be resolved, like Buchanan's, with a simple *Wilson v. Dallas* remand hearing. It would have been relatively easy for the circuit court to see in 2013 that Buchanan and Appellant, with their own funds, and despite extraordinary pressure from the AG and Respondents, had prevented the loss from Brown's Estate/2000 Trust of \$2 million a year and half of Brown's "I Feel Good" charity.

Respondents chose, instead, to require Appellant to file Aiken 1337. By 2016 they were trying to entangle this case with Richland 4900 and two FOIA cases.

By 2017 Respondents had secured multiple orders in this case to suppress documents and testimony that showed Buchanan and Appellant had provided substantial benefits to Brown's estate plan and properly valued Brown's worldwide music empire at \$99 million less the \$15 million TIAA debt.

By 2019, when this appeal was filed, *ex parte* filings, sealed documents, FOIA disruption, Richland 4900, the Forlando Suit and other issues had become issues in Aiken 1337. *See* Chart, Standard of Care of PR/Trustees, James Brown 2000 Trust/Estate [R. pp. 2909-10]

The Service of Buchanan and Pope During Bauknight's Void PR/Trustee Appointment

Respondents, over objection of Appellant's counsel, turned the Aiken 1337 trial into a challenge to see who had benefitted -- and damaged -- Brown's Estate/2000 Trust between the

AG's August 10, 2008 settlement and the *Wilson v. Dallas* decision of May 8, 2013. Chart, Standard of Care, PR/Trustee [R., pp. 2909- 2910]

Bauknight testified that he and Peter Afterman, with whom he speaks almost daily, had done a good job, and that Buchanan and Pope had done a bad job since 2007 and were entitled to no pay.

Appellant disagreed with Bauknight's claims about his service and that of Afterman, and provided testimony and documents from the Governor, the AG, the Solicitor General, expert Wallace Lightsey, Esq., expert James Hardin III, Esq., expert Steven Johnson, Esq., "adverse experts" David Sojourner, Esq., and Rita Caughman, Esq.; Sr. Asst. AG Havird "Sonny" Jones; Judge (Retired) Walter Williams; and others. Appellant also proffered experts Smith and Alexander, whom the circuit court declined to qualify.

Both Appellant and Respondents presented Dr. Terry Cox, who had valued Brown's right of publicity at \$40 - \$50 million in 2007, based on information from the outside investors he was working with at the time.

Chief among the issues was whether Bauknight and Afterman had properly valued Brown's worldwide music empire at \$4.7 million when it had earned \$7.83 million in the 18 months Buchanan and Appellant served as PR/Trustees. Also important was whether Buchanan and Pope, under a formula almost identical to the non-professional valuation formula accepted by the IRS after the 2002 death of songwriter Harlan Howard, had properly valued Brown's music empire at \$99 million less the \$15 million TIAA debt.

The circuit court discounted or ignored the largely-undisputed evidence and documents of Appellant's important witnesses, and Respondents chose a similar path in their brief.

Respondents Failed to Preserve Objections to Testimony of the Governor and Others

The circuit court did not rule on efforts by Respondents to exclude the documents and testimony of the Governor, the Solicitor General, the AG, Lightsey, Hardin, Williams and others. To preserve their objection to this failure to rule, Respondents were required to raise their objection in a post-trial motion. *Ex parte McMillan*, 319 S.C. 331, 461 D.R.2d 43 (1995); *Shealy v. Aiken Cty.*, 341 S.C. 448, 535 S.C.2d 438 (2000); *Great Games, Inc. v. South Carolina Dep't of Revenue*, 339 S.C. 79, 529 S.C. 2d 6 (2000); *McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 498, 504 N. 3, 719 S.E. 2d 600, p. 662, N. 3. They did not do so.

Appellant, by contrast, sought reconsideration of the circuit court's failure to consider these witnesses, including experts, and their documents. In an extensive motion, Appellant cited this oversight and even noted some of the critical testimony. Mot.Alter, Amend, dtd. 1/22/19 [R., pp. 1286 – 1418] When the circuit court responded with a form 4 order, failing to consider the testimony and documents of more than a dozen witnesses, this testimony and evidence was preserved for this Court's review. Order., 1/16/19 [R., p. 344]

***Ex Parte* Filings, Protective Orders, Gag Orders and Confidentiality Orders**

The issues in this case were necessarily expanded by a significant *ex parte* filing and the circuit court's discarding of that filing [R. pp. 1242, 1360, 1365]; a number of confidentiality and protective orders sought, and granted, which relate to testimony and documents of Respondents, the AG staff, Kenneth Wingate, Esq., and others. For example, Ords.6/16/17 (Miller), R., pp. 273-277, 267-272 (Confidentiality). The appealed orders related to these issues were properly addressed in Appellant's briefs. Respondents made the sweeping claim in their brief that there was no evidence of prejudice by the circuit court. Appellant properly responded to this and other incorrect arguments in Respondents' brief.

The Matters Outlined by Respondents on Pages 4 and 5 Were Properly Addressed in Reply

Respondents state on pages 4 and 5 of the motion that Appellant's Initial Reply Brief "asserts numerous additional issues for the first time." Even a quick review of the tables of contents of Appellant's two briefs shows that this is incorrect. Appellant's reply brief properly responds to the incorrect factual assertions and claims of Respondents' brief.

The Facts in Appellant's Reply Brief are Correct and Supported by the Record

On pages 5 – 7 of the motion to strike, Respondents assert that Appellant's reply brief is "rife with unsupported (and unsupportable) claims." This is not correct.

Respondents designate 11 matters which they assert should not be in the reply brief. Some are addressed below.

Testimony of the Governor, Solicitor General and the AG, along with others, supports Appellants position that the \$4.7 million was fabricated without basis to damage Buchanan and Pope..."

This sentence is supported by reference to the testimony of Solicitor General Cook, pages 2097 – 2098, 2107 2110, 2115, ROA; Governor McMaster, pages 2214 – 2116, 2118, 2223, 2237, ROA; AG Wilson, pages 1297, 1300, 1301, 2276, ROA; the August 30, 2009 email of counsel for Tommie Rae which proposes to value of Brown's 900 copyrights at \$24 million or less to discredit "Bobadele." Ex. Q, Email, 8/30/09 [R., p. 2727]; motion 1/17/17, p. 8 [R., p. 636] question to Hardin [R., p. 1324] Wingate testimony [R., p. 1341], Williams [R., p. 1347] and other testimony and evidence in the record.

Respondents' own experts, Roger Miller and Laura Woolley also support this statement.

The record shows that before they became PR/Trustees Buchanan and Pope had read, understood, and negotiated an agreement with TIAA over an event of default related to TIAA funds Cannon took in 2006.

This fact is found in the ROA at page 1248 and in the motion for directed verdict. It has been well known and undisputed, for 10 years, since Judge Early issued an order related to the 2007 deal Buchanan and Pope, as SAs, reached with TIAA and M&T Bank.

Judge Early's July 2007 order was part of the thousands of documents of which the Aiken Court took judicial notice before deciding the first summary judgment motion. The TIAA deal is mentioned scores of times in the ROA.

On pages 454 – 456, the December 12 and 13, 2007 contemporaneous timesheets of Pope, she discusses “work on TIAA and M&T, for 4 next Tues.” The following Tuesday, December 18, 2007, with Asst. AG Mary Frances Jowers present, p. 455 and 456 shows that Buchanan and Pope had a:

t/c w/ Chas Mattison of TIAA, MW or M&T Bank, and counsel: re: issues related to non-compliance by former PR/Trustees, recovery by M&T of \$373,000. [\$100,000 loan from TIAA-M&T Funds to Estate in August 2007 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] [ROA, p. 456]

The timesheets correctly reflect the deal negotiated by Buchanan and Pope as SAs, which required the Estate/2000 Trust to commence litigation against Cannon promptly for the recovery of the TIAA funds he had taken in 2006. In addition, the deal which Buchanan and Pope negotiated with TIAA was discussed in detail in Pope's undisputed testimony at pages 2028 and 2029 of the ROA, where Pope, after discussing the TIAA settlement reached in 2007, stated, in part:

So we had been dealing with them and I had, of course, read the – all of the TIAA documents, which were delivered to Mr. Bauknight, I'll show you later when we talk about the transition, They were delivered to Mr. Bauknight and we'd all had them. ... we had some communication with them about the escrows and so we were looking at the TIAA.

We did get a loan to go after Mr. Cannon, but we didn't need an income tax loan because we didn't have that kind of income taxes that were going to be

paid after the settlement. So income tax and – and there was going to be --- and this is important – no estate tax, no income tax payable with respect to that fund. And that fund only allowed loans for taxes related to that fund. [ROA, p. 2020].

These facts have been virtually undisputed since 2007 and 2008, when the original estate tax return was filed. The Aiken Court took judicial notice of them before the first summary judgment hearing in Aiken 1337 in 2014.

The TIAA Debt was \$15 million after a \$2 million escrow.

The fact that James Brown's debts was approximately \$15 million at his death, after the application of an approximately \$2 million escrow, had been a matter of public record, and well known since the original Inventory and Appraisalment (I&A) prepared by tax attorney William Hammond, Esq., was filed in November 2007. [ROA, p. 2806] See, for example, ROA, pp. 641, 683, 798, 1696, 1936,1961.

The \$15 million debt was discussed in the expert opinion/affidavit of Richard B. Alexander, filed in the January 2008 Forlando Brown federal suit, U.S. Dist. Ct., (S.C.) 3:08-cv-00014-WOB, on September 27, 2013, Entry No. 299-2. [ROA, pp. 2791, 2792]

The record shows that when Buchanan and Pope delivered the James Brown assets to Bauknight on May 26, 2009, the TIAA debt has been reduced to about \$11.3 million, and Bauknight himself confirmed the existence of the escrows. The approximately \$2 million escrow was available to be applied to the last payment. [ROA, pp. 1389, 1407, 1696,]

The Testimony of Respondents' experts Roger Miller and Laura Woolley... Fully support Buchanan's and Pope's \$99 million value of Brown's music empire.

Interrogatories answered in 2014 show that Respondents, through Bauknight, objected to questions about the claimed \$4.7 million value of the music empire (Schedule F of the Estate Tax Return), including to Interrogatory No. 5, which asked:

Please describe to the best of your ability how the \$4.7 million value you claimed

to the Internal Revenue Service as the value of James Brown's music empire is allocated among:

1. The Royalties related to more than 800 songs.
2. The Right to exploit James Brown's image and personal (the "Publicity Rights")
3. The right of recover against David G. Cannon; and
4. Other assets (please describe). [ROA 931]

The interrogatory responses referenced "proprietary information" and the PBW valuation report, which relied on "expert" Peter Afterman, and stated that "[u]pon the issuance of an appropriate order protecting the confidentiality of the requested information, Defendants will fully respond to Interrogatory No. 5."

The Interrogatory answers, located at ROA pp. 928 – 936 are the only answers. At trial Bauknight admitted he had no ability to value the music empire. Neither Peter Afterman, nor anyone who could support the \$4.7 million claimed value, testified. Miller and Woolley testified that the copyrights and tangible personal property alone could have been worth as much as \$80 million at Brown's death. [R., pp. 1259] Cox's documentation valuing the publicity rights (image and likeness) at \$40 million - \$50 million, based on information from his proposed investors, was also in the record. [R., p. 2542, 2544] Also see Bob's and Adele's Correct \$84 Million Value for James Brown Assets, Hardin Exhibit #8 [R., pp. 1179 -1181]

Mr. Bauknight and Peter Afterman shift[ed]...31% of the assets from the charity to family.

No citation is needed for the fact that this happened in 2011, when Bauknight got away with valuing Brown's estate and 2000 Trust at less than \$6.5 million in James Brown's estate tax proceeding. Trust, Art. V [R, p. 2515]

Under the "fractional share" formula of Article V of Brown's 2000 Trust, the amount going to educate 7 grandchildren to age 35 had been 1/42 of the 2000 Trust. The "I Feel Good" charity got 41/42. In 2010 Bauknight, a CPA, whether intentionally or by error, changed the fraction by the \$79 million devaluation from 1/42 for the family trust to nearly 1/3 (31%). This shifted \$1

million a year and nearly 1/3 of the charity over to family members until the 7 grandchildren reach age 35. [R,p. 1241, 1278, 1357, 1360, 1367, 1403, 1414] This caused the 2000 Trust to have to pay hundreds of thousands of dollars of unnecessary income tax each year for 20 years or more. See testimony of Pope, ROA pp. 1972 – 1977; James Brown 2000 Irrev. Trust, Article V, [R, p. 2515]

The income tax problems and damage to the charity caused by Bauknight's \$79 million devaluation to \$4.7 million were reported to the AG, the Solicitor General and the Chief Deputy AG in March 2013. Appellant and her counsel proposed an easy and quiet way to correct the problem by correcting Bauknight's IRS filings. The AG elected not to require that Bauknight correct them. Instead, by May 10, 2013 the AG had helped Tommie Rae and the Levenson Will/2000 Trust contestants reinstall Bauknight as Brown's fiduciary.

Mr. Bauknight and the accountant for the Estate and Trust “fail[ed]...to file proper Income tax returns after the [Attorney General] gave 50% of the income to private Individuals, not the charity.”

In his 2015 Status Report to the Supreme Court, filed May 8, 2015 the Aiken Court told the Supreme Court that Bauknight had filed “all income tax returns for all periods for Mr. Brown and the Estate and Trust...” [R., 970]. The undisputed evidence in this case, known since the 2016 deposition of Wm. Sellars, CPA in 2016, is that Bauknight and his spouse/CPA, although urged by Buchanan and Appellant to do so, never even picked up Sellars' tax file. It was destroyed after years of being abandoned. [R., pp. 1273, 1384, 1388] The failure of Bauknight and his CPA to pick up the Sellars tax file and file amended income tax returns as soon as he took office as Brown's fiduciary in 2009 is undisputed.

Mr. Bauknight made a “\$5 million overstatement of debts and deductions to the IRS which resulted in the claimed ‘refund.’”

Bauknight's \$2 million overstatement of the charitable deduction has been undisputed since May 2011 when Respondents filed documents with the Supreme Court asking to supplement the ROA in *Wilson v. Dallas* with the \$4.7 million value. [R, pp. 1137, 1138, 1215, 1253, 1289, 1357, 1375, 1400, 1403, 2119 – 2120] Evidence of the remaining \$3 million overstatement came with the petition for rehearing of James Brown II (James) in *Wilson v. Dallas* in March 2013. James, through a GAL, revealed that Afterman had arrived at the \$4.7 million by reducing the value of the copyrights, which he claimed was \$23.7 million, by the TIAA debt, which he claimed was \$19 million. This was an overstatement of the TIAA debt of \$3 million or more. [R., pp. 1120; testimony of Levenson, p. 1212; testimony of Solicitor General Cook, R, pp. 1292, 2115, 2116 and Exhibit 3; Wingate testimony, p. 2358; Deposition, AG Jones, R., p. 2472; R, p. 1400; Pope testimony, p. 1766]

In sworn depositions as early as 2013 Bauknight had virtually no memory of actions taken within the estate.

This statement is correct. Bauknight's memory was weak in his January 31, 2017 deposition in this case, as well as his August 23, 2013 deposition in Case No. 3:08-cv-00014-WOB. [R. p. 767. 814, 1139 -1141, 1220] Bauknight's admitted inability to recall dates and events has been undisputed for more than 5 years.

"Found no evidence" and "did not see" became the hallmarks of Respondents and their experts.

Appellant supported her fee claim, at summary judgment, trial, or both, with expert testimony, including expert testimony and documents of Lightsey, Williams, Lambert, Johnson, Harley Ruff, Esq., Smith, Alexander, Pope, Parker and others. She also submitted the "adverse expert" testimony and documents of Sojourner and Caughman. Many of these experts had some familiarity with the actual facts of the James Brown estate, 2000 Trust and cases. [R., 2584, 2585]

Bauknight testified at trial that he had used numerous experts, including Peter Afterman and William Newsome, trial counsel, his claims expert. [R., pp. 1806, 1363, 1395, 1783, 1784] An unidentified expert helped Bauknight analyze the TIAA contract and may have been the source of the \$3 million TIAA debt overstatement within the Afterman \$4.7 million valuation.

No expert testified that the \$79 million devaluation of the music empire to \$4.7 million was reasonable. No expert came to say which tax returns Bauknight filed, or why he allowed the Sellars file to be abandoned and destroyed. No expert with any knowledge of the assets and income of Brown's estate and 2000 Trust came to say that Bauknight, who had not properly accounted since 2016, complied with the duties of a PR/Trustee in South Carolina.

Instead, in late 2016 Respondents, Tommie Rae, the AG and other Richland 4900 plaintiffs jointly designated 9 experts from as far away as California and New York. Seven of the 9 appeared at the Aiken 1337 trial. In late 2016 none who testified at trial except Ellison Thomas, CPA, had formed any opinions about James Brown estate and trust matters which had been ongoing for a decade. All relied on what Bauknight and his counsel provided them in December 2016 and later. [R., pp 337, 1838, 1260, 2017] While their testimony speaks for itself, it is reasonable to note that none of these eleventh-hour experts had any reasonable familiarity with the heirs of James Brown, the estate plan, the AG's interference in the GreenLight contract and other aspects of the Estate/2000 Trust; or other matters in question between March 2007 and May 2009.

As an example, Brad Sharp, from California, a valuation expert, based his opinion on a single spreadsheet provided to him by Bauknight's counsel in 2018. He did not know about the Harlan Howard IRS valuation or case.

Sharp's analysis, however, showed that except for one \$10 million year in 2010, Bauknight brought in only \$3.5 million - \$4 million in royalties a year. This was less than the \$5 million a

year brought in by Buchanan and Pope, despite interference by the AG and settling parties, by stopping the stealing; giving the clearances daily attention; and consulting with entertainment counsel Ray Gonzalez as needed.

Expert Herbsman, a transactional lawyer, also knew nothing about the Harlan Howard estate tax proceeding; was told that Tommie Rae was Brown's spouse, even though the matter was in dispute at the time of trial; and knew nothing about litigation to determine heirs under State law or the Copyright Act. [R., p. 1348] Expert Provence was unable to do fractions; did not prepare estate tax returns; knew nothing about the James Brown litigation; and knew nothing about taxes or termination rights under the Copyright Act. The two CPA experts, Hobbs and Thomas, were not told that Bauknight and his spouse/CPA had abandoned the James Brown files of CPA Sellars, allowing them to be destroyed after a number of years.

Issues in the Brief Were Relevant in Aiken 1337 and Are Relevant to this Appeal

On pages 7 and 8 Respondents assert that Appellant's reply brief contains numerous issues and arguments which, in addition to being raised for the first time, "are irrelevant to the issues in this appeal." As set out below, that assertion is inaccurate.

The May 29, 2013 Announced Plan to Disregard *Wilson v. Dallas* is Relevant to this Appeal

For the first time in almost 7 years, Respondents suggest that the May 29, 2013 announced plan of Tommie Rae's counsel and Louis Levenson, Esq. to disregard the Supreme Court's decision in *Wilson v. Dallas* and reinstate the AG's 2008 settlement is both irrelevant to this appeal, and "purported." Neither claim is correct.

The Aiken Court referenced the May 29 hearing in its status report to the Supreme Court filed May 8, 2015, but left out the important announced plan. [R., pp. 967 – 973] The status report does show, however, how much progress had been made by May 2015 to put the announced plan

into effect. Bauknight had been reinstated as Brown's fiduciary by Will/2000 Trust contestants as he continued to serve the Legacy Trust. Tommie Rae had been determined to be Brown's spouse in a summary judgment proceeding where Sojourner, SA/ST appointed at the request of Bauknight, did not proffer her handwritten admissions that she was married at the time of her ceremony with Brown. A "consent order" was being circulated for Tommie Rae's son to be declared an heir. [Status Report, R., pp.967-973]

The status report praised Bauknight and repeated Bauknight's incorrect claim that he had paid off more than \$14 million on the TIAA debt (Pullman Bond). [R., p. 970] This was incorrect because only about \$9.3 million was due when the assets were delivered to him in 2009. The status report also denigrated Buchanan and Appellant, asserting that Bauknight had received the James Brown assets from them "on the brink of insolvency." [R., p.970] In fact, when Bauknight took over, the Estate/2000 Trust was just a signature away from the 2-year publicity rights contract with CORBIS/GreenLight which was projected to bring in \$1- \$2 million a year for 2 years. Bauknight rejected the GreenLight contract; hired Afterman; and valued the publicity rights at zero, or near zero as part of the \$4.7 million appraisal.

The status report said that Appellant appeared to claim in excess of \$2 million for SA fees for service through May 26, 2007. [R., p. 972] Appellant's actual unpaid SA claim was for only \$47,972.³

Most importantly, however, in the status report the Aiken Court failed to advise the Supreme Court of the May 29, 2013 public announcement of Tommie Rae's counsel and Levenson of the plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

³ This was the remainder of the approximately \$200,000 awarded her, by Judge Early, on January 8, 2008 for her 7 months of service as SA from March 2007 until November 2007. Buchanan's entire SA claim was paid before May 26, 2009, as was most of Appellant's SA claim.

Appellant’s counsel is correct that there is no copy of the May 29, 2013 hearing, although there was a court reporter present. It is the only James Brown status conference or hearing known to Appellant’s counsel which never had a record.⁴ In addition to Tommie Rae’s counsel and Levenson, Buchanan, Pope, Newsome, David Black, Esq., Bauknight, Sr. Assistant AG Havird “Sonny” Jones, media representatives, Deanna Brown Thomas, Yamma Brown and many others were present at the May 29, 2013 hearing. The court reporter’s failure to make a record has been known for years. But the fact of the announced intention to disregard *Wilson v. Dallas* and reinstate the AG’s 2008 settlement has never been disputed.

The \$79 Million Devaluation and False Felony Claim Related to It Are Relevant

An issue in this appeal and at trial is the difficulty of the service of Buchanan and Appellant to the estate, 2000 Trust and estate plan of James Brown from 2007 until 2013. In 2010 Bauknight and Afterman devalued Brown’s worldwide music empire by \$79 million, to a claimed \$4.7 million. Then in 2011, the AG, without reviewing the valuation, used the \$4.7 million claimed value in Supreme Court filings to accuse Appellant and Buchanan of a federal felony. This false felony claim, which Bauknight has used for 9 years while claiming to act “on behalf of” the AG in Richland 4900 is just one of the ways the \$79 million devaluation became relevant in Aiken 1337, and is relevant to this appeal.

The Complaint in Richland 4900 Confirms That it Was Brought in Retaliation

Had Richland 4900 been dropped by the AG and Respondents immediately after *Wilson v. Dallas*, an argument could have been made that it was not in retaliation. It could have been part of a misguided belief by the AG and Bauknight, who recommended the settlement, that giving \$2 million a year and half of Brown’s charity to Tommie Rae and six now-former Levenson clients

⁴ The record of one hearing was transcribed but later lost by a court reporter.

in exchange for some of the termination rights proceeds to U.S. royalties that would be worth only \$8.8 million by 2017 was a good settlement.

But Richland 4900 did not end in 2013. The AG did not drop out, as he assured the Supreme Court he would. Instead, it has been continued by Bauknight for 7 years for the benefit of the now-entirely-private Legacy Trust. It is serving its original purpose – to retaliate against Buchanan and Pope for their appeal in *Wilson v. Dallas*.

Respondents' Role in FOIA Disturbance and Noncompliance is Relevant to this Appeal

The record is clear that the AG's office has interfered with Appellant's attempts to obtain public documents through FOIA requests since 2011 and is doing so today. The record is also clear that Respondents, through Bauknight, have aided the AG for the entire time, disrupting FOIA compliance in any way possible. The Court is asked to take judicial notice of Respondents' current effort in Richland 4900 to prevent the release under FOIA of the 40% Wingate contingency fee contract to bring Richland 4900, even though it was declared public by a federal judge in District Court Case 3:08-cv-00014-WOB in the fall of 2013.⁵

⁵ The Wingate contract has a 23% (or less) contingency fee provision for the charitable portion of the recovery and 40% for the private clients, none of whom, except Bauknight, signed the Wingate contract. [R. pp. 2728 -2746] In 2016 Judge Early dismissed a FOIA suit against the Legacy Trust based on Bauknight's assertion that it no longer existed, and Bauknight's affidavit that the AG had had no involvement in the Legacy Trust since the *Wilson v. Dallas* decision. A 2020 denial of certiorari in that FOIA case appears to make final the 2016 ruling that there is no longer any charitable purpose for the Legacy Trust, and that it is being managed by Bauknight solely for Tommie Rae, Forlando Brown, and other now-former Levenson clients.

Since Judge Early's ruling that the Legacy Trust does not exist, Bauknight has actively pursued partial summary judgment in Richland 4900 as to the counterclaims of Buchanan and Pope and obtained a grant of summary judgment. That order is now on appeal before this Court.

In short, like every other aspect of Appellant's reply brief about which Respondents complain, the matters contained in Appellant's briefs are relevant and were properly presented to the Court.

CONCLUSION

For the reasons set out herein, Respondents' motion to strike the initial reply brief of Appellant and for leave to file a surreply should be denied. This case is ready for consideration by the Court. The orders which are the subject of this appeal should be reversed.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernailfirm.com
S.C. Bar No. 80219

Counsel for Appellant Adele J. Pope

April 23, 2020

STATE OF SOUTH CAROLINA

Exhibit A

IN THE PROBATE COURT

COUNTY OF: AIKEN

IN THE MATTER OF:
JAMES BROWN
(Decedent)

ACCOUNTING

CASE NUMBER: 2007 ES 02 0056

FINAL
 INTERIM # 11

The undersigned Personal Representative(s) submits this accounting, which covers the period from January 1, 2016 through Dember 31, 2016, and reports the same information as filed with the Aiken County Probate Court on February 16, 2018, but includes this summary cover page signed by the Personal Representative.


The documentation on the following page(s) of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance from Inventory(ies) or prior Interim Accounting, if applicable	<u>282,824.21</u>
Plus: Receipts (Rent, Refunds, Dividends, Interest, etc.)	<u>3,387,549.82</u>
Subtotal	<u>3,670,374.03</u>
Less: Disbursements and Distributions	<u>3,125,297.71</u>
Ending Balance	<u>545,076.32</u>

03-13-2020

The Personal Representative(s) declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s).

SWORN to before me this 9th day of March, 2020
Shawna G Howell
Notary Public for South Carolina
My Commission Expires: 3-29-2028

Signature: 
Print Name: RUSSELL L. BAUKNIGHT
Address: PO BOX 1330
COLUMBIA, SC 29202
Telephone (Work): (803) 771-8943
(Home): (803) 732-1430
(Cell): (803) 309-0124
Email: RBAUKNIGHT@BPSCPAS.COM

Co-Personal Representative Signature: _____
Print Name: _____
Address: _____
SWORN to before me this _____ day of _____, 20_____

Notary Public for South Carolina
My Commission Expires: _____

Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

ELECTRONICALLY FILED - 2020 Mar 17 10:17 AM - AIKEN - COMMONS: CASE#2007CP0200122

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF: AIKEN)

ACCOUNTING

IN THE MATTER OF:)
JAMES BROWN)
(Decedent))

CASE NUMBER: 2007 ES 02 0056

FINAL
 INTERIM # 12

The undersigned Personal Representative(s) submits this accounting, which covers the period from January 1, 2017 through Dember 31, 2017, and reports the same information as filed with the Aiken County Probate Court on March 29, 2019, but includes this summary cover page signed by the Personal Representative.

The documentation on the following page(s) of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance from Inventory(ies) or prior Interim Accounting, if applicable	545,076.32
Plus: Receipts (Rent, Refunds, Dividends, Interest, etc.)	3,613,928.79
Subtotal	4,159,005.11
Less: Disbursements and Distributions	3,552,535.86
Ending Balance	606,469.25

03-3-2020

The Personal Representative(s) declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s).

SWORN to before me this 9th day of March, 2020
Shawlyn G Howell
Notary Public for South Carolina
My Commission Expires: 3-29-2028

Signature: [Signature]
Print Name: RUSSELL L. BAUKNIGHT
Address: PO BOX 1330
COLUMBIA, SC 29202
Telephone (Work): (803) 771-8943
(Home): (803) 732-1430
(Cell): (803) 309-0124
Email: RBAUKNIGHT@BPSCPAS.COM

Co-Personal Representative Signature: _____
Print Name: _____
Address: _____
SWORN to before me this _____ day of _____, 20____

Notary Public for South Carolina
My Commission Expires: _____

Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

ELECTRONICALLY FILED - 2020 Mar 17 10:17 AM - AIKEN - COMMON PLEAS - CASE#2007CP0200122

2007ES02-0056

ELECTRONICALLY FILED - 2020 Mar 17 10:17 AM - AIKEN - COMMON PLEAS - CASE#2007CP0200122

Russell L. Bauknight
Post Office Box 1330
Columbia, SC 29202

March 9, 2020

Aiken County Probate Court
Att: Teddy Lewis
109 Park Avenue SE
Aiken, SC 29801

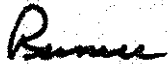
Dear Teddy:

Please find enclosed the summary page for both Interim #11 and #12 for the Accounting for the Estate of James Brown.

These are the cover pages for the accountings that were previously filed.

Thank you for your assistance.

Best Regards,



Russell L. Bauknight

Enclosures

03-13-2020



Exhibit B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF AIKEN) Case No. 2013-CP-02-1337
)
Adele J. Pope,)
)
Plaintiff,) MOTION OF PLAINTIFF TO DISQUALIFY
) BAUKNIGHT AND COUNSEL IN THIS CASE;
v.) AND FOR RELATED RELIEF
)
Estate of James Brown and The)
James Brown 2000 Irrevocable Trust,)
)
)
Defendants.)
)
)

TO: DEFENDANTS ESTATE OF JAMES BROWN AND JAMES BROWN 2000 IRREVOCABLE TRUST, AND WILLIAM G. NEWSOME, ESQ. THEIR COUNSEL:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as she may be heard, Plaintiff will move before the Honorable Doyet A. Early, III ("Judge Early"), presiding judge, at the Aiken County Courthouse, or such place as Judge Early shall designate, for an Order as follows:

1. Disqualifying Russell L. Bauknight ("Bauknight") and and his counsel Nexsen Pruet ("NP") from representing Defendants in this case only;
2. Appointing a Limited Special Fiduciary for this case only to represent Defendants under Brown's Will/2000 Trust in this matter.
3. Reopening Plaintiff's Motion for Partial Summary Judgment and other orders in this case only in which Bauknight has been involved.

The grounds of this motion are that recent discoveries, including a \$2 Million distribution to Tommie Rae and certain Case 2010-CP-40-4900 ("Richland 4900") Plaintiffs, make it manifestly unjust for Bauknight, who serves as their fiduciary, to represent Defendants in assessing the quality or value of the joint service of Robert L. Buchanan, Jr. ("Buchanan") and Plaintiff in protecting James Brown's estate plan against Tommie Rae and the Will/2000 Trust contestants.

FILED 9/26 2016 830A
Leslie Heman LAT
C.C.P. & G.S.
Deputy Clerk

This motion is based on the record in this case, especially the depositions of David C. Sojourner, Jr and W. Steven Johnson, Esq.; the depositions of Tommie Rae, Lindsey Brown and Janise Brown in Richland 4900; the Affidavit of Plaintiff filed herewith; and such additional documents as Plaintiff shall submit before the hearing.

A summary of the events supporting the requested relief follows.

MEMORANDUM IN SUPPORT OF DISQUALIFICATION OF BAUKNIGHT AND NP

At all times since May 26, 2009, Bauknight has been trustee of the James Brown Legacy Trust and NP its attorneys. Its beneficiaries include Tommie Rae, Venisha Brown and other Will/2000 Trust contestants. The Legacy Trust is a Plaintiff/CC Defendant in Richland 4900.

On May 19, 2010 Bauknight, the Legacy Trust, Tommie Rae and others brought Richland 4900 against Buchanan and Pope. Among the claims was that it was improper to conduct the appeal which would become *Wilson v. Dallas*. Another was that Buchanan and Pope should have accepted a \$100 Million offer for Brown's assets.

Exhibit A, a copy of page 1 of the Richland 4900 Complaint, shows Bauknight's multiple roles in Richland 4900.

Between 2010 and 2013 Bauknight and Tommie Rae told the IRS, the S.C. Supreme Court and the media that Brown's music empire was worth less than \$4.7 Million at his death. They said there were no offers to buy Brown's assets. They said Tommie Rae was Brown's spouse; that her elective share claim was a "slam dunk;" that Tommie Rae and her son James B. controlled the Federal Copyright Act Termination Rights; and that Termination Rights were automatic.

Bauknight/NP and Tommie Rae also said Buchanan and Pope were incompetent; didn't understand the Copyright laws; and intentionally overstated Brown's assets by \$79 million on the sworn estate tax return for the purpose of getting a \$5 Million commission. They said Defendants had no corpus to speak of, and nobody had ever tried to buy Brown's assets. They said Brown's "I Feel Good" Charitable Foundation would automatically lose its royalties to "Please, Please, Please" in 2012. They said if the Supreme Court didn't uphold the McMaster Settlement, there would be nothing in the "I Feel Good" Charitable Foundation in 2023.

Their statements in different places were sometimes in conflict. For example, while suing Buchanan and Pope for not accepting a \$100 Million offer, they told the IRS and S. C. Supreme Court Brown's music empire was worth less than \$4.7 Million.

From 2013 until 2016 Bauknight/NP and Tommie Rae resisted discovery and FOIA requests that might show their statements were incorrect, or that Richland 4900 had other problems. They concealed the already-public notes Tommie Rae's lawyer dubbed the Hynie "diary;" documents supporting the \$4.7 Million value claim; Legacy Trust documents; and the Wingate Contract to bring Richland 4900.¹

They launched vicious attacks on Buchanan and Pope. For example, In a 2012 appeal of Judge Early's declining to rule on his 2008 gag orders related to the "diary" they said:

This appeal is an unabashed attack on Mrs. Tommie Rae Brown, the surviving spouse of James Brown... And while Pope can use her word processor to change the caption, there is nothing she

¹ The Wingate Contract was signed by Bauknight, David Bell, Esq. ("Bell"), Louis Levenson, Esq. ("Levenson") and counsel for Tommie Rae.

can do to change the facts establishing Tommie Rae's marriage to James Brown...

AND

While the past fiduciaries haphazardly claimed the date of death value of James Brown's Estate was worth varying amounts around \$100 Million, not one of them ever provided any substantiation for that figure.

On May 8, 2013 the Supreme Court voided Bauknight's appointments and the the McMaster Settlement which dismembered Brown's estate plan.

On May 29, 2016, Tommie Rae and Levenson told Judge Early they wanted to reinstate the McMaster Settlement. Levenson's clients Deanna and Yamma, for whom Bauknight serves as a fiduciary, told the media they would fight for ten years if necessary to get Brown's assets.

Levenson and Tommie Rae joined Bauknight/NP in asking Judge Early to ban Buchanan and Pope from participating in James Brown cases.

On June 13, 2013, three days after Aiken 1337 was filed, Judge Early granted Bauknight/NP's request to ban Buchanan and Pope from James Brown cases in his court. Each was allowed to participate only in his own claims cases.

Over the next three years Judge Early, without input from Buchanan or Pope, issued multiple orders and a 2015 Status Report to the Supreme Court praising Bauknight/NP; repeating Bauknight's claims about what he had done; and never mentioning his continued fiduciary service to Tommie Rae and other Will/Trust contestants or his FOIA interference.

From 2013 until March 2016 Judge Early steadfastly asserted that he had nothing to do with Richland 4900.

From 2013 until 2016 Buchanan and Plaintiff were deprived of the opportunity in Aiken to refute claims which Bauknight/NP, Tommie Rae, Bell and others continued to make against them, including: (1) that Brown's Estate was worth only \$5 Million and Pope wanted a \$5 Million commission; (2) the false claim that someone had halted an improper attempt to sell a Grammy ©;² (3) the false claim that Buchanan and Pope were the source of hostility;³ and (4) that Buchanan and Pope overstated Brown's assets by \$79 Million in IRS filings to get a \$5 Million commission (a federal felony).

The following example is from July 9, 2013. Bauknight/NP told Judge Early:

They [the Supreme Court] also found that there was cause to remove her [Pope] because she sought five million in fees for a relatively short period. [Emphasis supplied, p.23]⁴

On September 3, 2013, Bauknight, with Plaintiff excluded, said:

MR. BAUKNIGHT:... We still have 10 million dollars in claims from Buddy Dallas and Adele Pope.

From 2013 until 2016 Bauknight sought to stop all action in Richland 4900 and the FOIA cases, and to limit the scope of Aiken 1337.

On December 3, 2013 Mr. Newsome said in Aiken 1337:

For example, she asks the court to appoint a Special Administrator and Special Trustee to appoint guardians ad litem for minor

² The false claim about the Grammy (c) sale was the result of an incorrect post on the Kilpatrick Stockton in January 2011 by someone working with Bell/Forlando. The lawyer attributed with halting the Grammy© sale, Robert Potter, Esq., did not even know of the post. See Affid. E. Alexander.

³ An example of the most vitriolic public statements is those made by NP attorney David Black, Esq., to a reported and reported in more than 300 media outlets just before the November 1, 2011 oral arguments in *Wilson*. Tommie Rae filed documents claiming Plaintiff's filings were "works of fiction."

⁴ Bauknight/NP had actual knowledge that Pope never made a claim for \$5 Million, and that the claim was for 2007 until 2013.

beneficiaries in some litigation in Richland County. **That matter has no bearing on her claim.** [Hg. 12/3/13. P.13. Emphasis supplied.]

In 2014, however, Bauknight did use Richland 4900 for a particular purpose. He asked Judge Early to deny Plaintiff's motion for partial summary judgment, asserting that claims against Plaintiff in Richland 4900 prevented even her unpaid 2007 SA fee from being paid.

As a result, Judge Early denied partial summary judgment as to about \$1.4 Million owed Plaintiff as SA and under her contract with Defendants, which – under Judge Early's own Order – has been earning interest at the legal rate since 2009. The work for which summary judgment was denied was the very work Judge Early had approved for Buchanan on October 8, 2013.⁵

As late as March 2, 2016 Bauknight/NP were trying to stay Richland 4900 and distinguish and limit Aiken 1337. On March 2, 2016, Bauknight/NP even tried to stop the deposition of James Richardson, Esq., who served *pro bono publico* as lead appellate counsel in *Wilson*. Bauknight claimed it was unrelated to Plaintiff's claim.

A month later, however, Bauknight/NP had changed positions.

On April 11, 2016 Bauknight moved to consolidate discovery in Aiken 1337 and Richland 4900. Bauknight now claimed:

....[C]onsolidation is desirable ... because discovery in both cases will be substantially similar as both cases arise out of the same facts and occurrence, involve overlapping parties, and will result in potentially

⁵ Buchanan's and Plaintiff's work had been joint, except that Buchanan was prevented from filing a Petition for Rehearing in *Wilson*.

offsetting damages verdicts.⁶

In his May 20, 2016 deposition in this case David Sojourner, Jr., testified that the Estate/2000 Trust's position is that Tommie Rae is not Brown's spouse. This is the position taken by Buchanan and Pope. Sojourner is now joined in his position by at least six of Brown's claimed children -- but not by Bauknight, who is her fiduciary.

Sojourner also testified that Defendants, through Sojourner, oppose the \$700,000 ordered to be paid to the Aiken GAL for James B. and the GAL's attorney. Bauknight, however, -- an agent for James B. in Richland 4900 -- has not opposed the payment.

In her June 2016 deposition in Richland 4900 Tommie Rae disclosed that Bauknight has disbursed about \$1 Million to her and another \$1 Million to some children. The \$2 Million was from a sale of "Please, Please, Please" and two others of the 900 songs James Brown gave his "I Feel Good" Charity.

Bauknight also serves as agent for Will/Trust contestant Venisha Brown in Richland 4900, and has refused to allow a GAL to be appointed for her for six years. Most recently Venisha has refused to appear at her scheduled deposition. A motion to dismiss her Richland 4900 complaint is pending. She was apparently not given a 2012 offer from Plaintiff that would have released her in Richland 4900.

In 2016 Bauknight's Legacy Trust secured dismissal of a 2011 FOIA Suit. The Legacy Trust, created to hold the James Brown assets taken in the Mc Master Settlement, demonstrates Bauknight/NP's additional conflicts. Through one attorney he

⁶ Plaintiff incorporates herein her Return and Opposition to the Motion to Consolidate discovery and Affidavit Supporting her Return.

had claimed that the Legacy Trust does not exist after May 8, 2013. Through another, the Legacy Trust is seeking partial summary judgment in Richland 4900. In a FOIA suit, Bauknight has recently claimed the Legacy Trust exists, but is private.

What is known is this: the Legacy Trust is adverse to Defendants. And whatever it is, Bauknight is its fiduciary and NP its lawyers.

On September 19, 2016 Bauknight's agency relationship to certain Richland 4900 Plaintiffs became more problematic. Both Lindsey and Janise Brown testified under oath that they did not know Bauknight; that they had never seen the Richland 4900 Complaint; and that they never met any lawyer until 2012 – two years after Richland 4900 was filed.

Neither Lindsey nor Janise was shown a 2012 offer that would have let them out of Richland 4900 without costs or attorneys' fees. Neither had met or spoken to their Richland 4900 lawyer until the previous week – six years after the suit was filed. Neither knew of any loss Buchanan or Pope has caused them or anyone.

Bauknight/NP have gone to extraordinary lengths to make Aiken 1337 more costly for Plaintiff. While Defendants have no obligation to reach stipulations or cooperate, refusal to do so in this instance appears to have but one purpose: to advance the position of Tommie Rae and the Richland 4900 Plaintiffs. It is causing Plaintiff to have to call – or consider calling – experts whose opinions are publicly known and could be inexpensively documented. Many were part of the James Brown record Judge Early said he knew when he approved Buchanan's payment in 2013. They include:

R.B. Alexander - Reviewed numerous financial and other documents and

issued an Affidavit/opinion related to \$84 Million value in the Forlando Suit in which Defendant 2000 Trust was sued by Forlando.

Charles Carpenter, Esq. - Prepared *pro bono publico* a Petition for Certiorari to the U.S. Supreme Court related to James Brown heirs determination and the Federal Copyright Act Termination Rights provisions.

Mary Jo Cole, CPA - Worked with William Sellars, CPA for Defendants on the application for determination of The James Brown "I Feel Good" Private Foundation; estate tax return; and other tax matters from 2007 until May 2009.

James C Hardin III, Esq. - Issued a lengthy opinion filed in the Forlando Suit that the service of Buchanan and Plaintiff was proper and in stark contrast to the Cannon trustees.

W. Steven Johnson, Esq. - Issued an opinion in 2009 that the work of Buchanan and Pope met or exceeded the standard for fiduciaries. Deposed 2016.

Thomas H. Pope III, Esq. - With Jay Bender, Esq., represented journalist in FOIA suit and 2012 efforts of Bauknight to obtain sources of journalist reporting on contents of Hynie "diary," which reveals Tommie Rae was married and living with her husband in Texas before she met Brown; begged Brown to marry her after he discovered her marriage; and Brown refused to marry her. ["Diary" was considered by McMaster, Buchanan and Pope in their decisions about the McMaster Settlement.] Represented journalist again in 2015 when the "diary" was re-released to the public.

James B. Richardson, Esq. - Appellate counsel who worked *pro bono publico* as lead appellate counsel in *Wilson v. Dallas*. Deposed 2016.

William Sellars, CPA - Former partner of Bauknight. Hired by Defendants under Jg. Early's Order dated August 10, 2007; performed his duties to Defendant Estate/2000 Trust; properly valued Brown's assets on the federal estate tax return; and whose file was never sought by Defendants

Wm. Jeffrey Smith - Co-Author with Plaintiff of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't* (Draft 2011).

Bauknight/NP have also refused to notify Plaintiff of hearings despite repeated requests. For example, Plaintiff was not told of a September 19, 2016, hearing held

before Judge Early involving Joel Katz, Esq. Albert Dallas, Esq. and David Cannon, all of whom were named by Bauknight as witnesses against Plaintiff in Richland 4900.

Katz and Dallas are being sued by Defendants, but they were named in 2010 by Bauknight as witnesses against Buchanan and Plaintiff in Richland 4900. The outcome of their case, and their testimony in open court, is of interest.

Where notice of the hearings cannot be readily obtained from the public record, Bauknight/NP's refusal to notify Plaintiff even though she had a demand for notice on file is manifestly unfair.

Conclusion

This 3-year-old case involves the fair pay for Plaintiff's six-year service to Defendants. Half of the claim was under a contract with Defendants which was allowed by Defendants; approved by Judge Early; and due, with legal interest until paid, on May 26, 2009.

Bauknight serves as fiduciary for Tommie Rae and other Plaintiffs in Richland 4900 who have announced in open court their intention to dismember the "I Feel Good" Charity and take its 900 copyrights for themselves. That is in direct conflict with the role of Defendants in this case. If for no other reason, his fiduciary duty to the Legacy Trust compels Bauknight's disqualification in this case. The same is true of NP, its lawyers.

On April 8, 2008 Judge Early found that the twists and turns of the James Brown litigation may require that one or more Special Administrators need to be appointed. One is needed here.

The Court should disqualify Bauknight and NP; appoint an independent special fiduciary to conduct this case for Defendants; and reopen matters affected by the

conflict.

Respectfully submitted,



Adele J. Pope
Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

Plaintiff *pro se*

September 22, 2016

Rule 11 Certification

I certify that consultation with opposing counsel in this matter would serve no useful purpose.

September 22, 2016


Adele J. Pope

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	Case No. 2013-CP-02-1337
)	
Adele J. Pope,)	
)	
Plaintiff,)	
)	
v.)	AFFIDAVIT OF
)	ADELE J. POPE SUPPORTING
Estate of James Brown, Deceased)	MOTION TO DISQUALIFY AND
)	FOR RELATED RELIEF
)	
Defendant.)	

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who, being duly sworn, deposes and says:

1. I incorporate by reference the facts stated in my Motion to Disqualify filed herewith; the Complaint in this case; the Answer and Counterclaim Robert Buchanan, Jr. ("Bob") and I filed in Richland 4900; the Request for Judicial Notice filed in this case; the Joint Affidavit Bob and I filed to support our fee claims in July 2009; Bob's statement filed with Judge Early in July 2013; the transcript of the October 8, 2013 hearing Bob had before Judge Early; and my other affidavits on file in this case.
2. In January 2007 Tommie Rae contracted with Robert Rosen, Esq. ("Rosen") and Peter Shahid, Esq., ("Shahid") to pay them more than \$20 Million if they could get her half of what James Brown gave his "I Feel Good" Charitable Foundation.
3. The same month Venisha Brown and others contracted to pay Louis Levenson, Esq. \$30 Million if Levenson could get them Brown's entire estate.
4. In February 2007 Alan Medlin, Esq., one of Tommie Rae's legal team, asked me to consider being appointed SA.

FILED 9/26 2016 830A
Liz Hadard
 C.C.P. & G.S.
Debbie Steman LTH
 Deputy Clerk

5. On November 20, 2007 Rosen and Levenson approved Bob's and my elevation by Judge Early from SAs to PR/Trustees.

6. At a hearing on December 21, 2007 for Judge Early to consider our SA fees and PR/Trustee fee contract with Defendants, Medlin praised Bob and me for asking for court approval when Brown's Will and 2000 Trust allowed us to be paid without asking the Court.

7. On January 8, 2008 Judge Early approved our SA fees and partial PR/Trustee fee contract. His Payment Order provided for interest at the legal rate on all unpaid amounts.

8. Judge Early's Payment Order was issued less than three weeks after Tommie Rae and Levenson had filed suits to set aside Brown's Will, Trust and "I Feel Good" Charity.

9. Nobody appealed or sought reconsideration of the Payment Order.

10. On August 10, 2008 Tommie Rae and Levenson reached a settlement. Tommie Rae got 25% ,and the Levenson clients 25%, of Brown's "I Feel Good" Charity. At \$100 Million, Rosen would get about \$11 Million and Levenson about \$9 Million.

11. In October 2008 Medlin wrote that the Settling Parties would sue if Bob and I did not resign and accept the settlement. We did not. And they sued.

12. In January 2009 Levenson threatened Bob with sanctions if he didn't resign.

13. In March 2009 David Bell, Esq., threatened Bob with a judicial grievance if he didn't resign. Bob sent the threat to Judge Early.

14. In March 2009 Levenson was quoted in the as media saying those who were

in the way of the settlement better get out of the way.

15. On May 26, 2009 Judge Early approved the settlement and replaced us with Russell Bauknight ("Bauknight"). Judge Early's order said he was not ruling on the petition to remove Bob and me.

16. In June 2009 Rosen tried to have hearings on our fees.

17. Bob and I asked Judge Early not to hear the matter until after the McMaster Settlement appeal, but filed a detailed claim showing what our fee for all years of service would be. In addition to attorneys' fees and costs, it was:

For BOTH: The already-earned SA fee

For BOTH The Hourly Rate for ourselves and staff under the Payment Order through May 26, 2009, plus interest.

AT THE END OF OUR SERVICE, FOR ALL YEARS AND RESPONSIBILITY:

BOB - approximately \$1.6 Million

ADELE - approximately \$1.4 Million

18. Unpaid attorneys' fees for the fine work of James Bailey, Esq., and Tressa Hayes, Esq. were about \$200,000.

19. Defendant 2000 Trust was seeking attorneys' fees from Forlando for the approximately \$400,000 related to his frivolous lawsuit to reinstate the Cannon Trustees. [Forlando's Complaint was dismissed in 2012.]

20. By September 2009 Bauknight, Nexsen Pruet ("NP") and Tommie Rae's lawyers had begun the vitriolic and false claims they would continue until today.

21. In March 2010 Medlin told Bob's lawyer that if we did not drop the McMaster Settlement appeal Ken Wingate would sue us. A similar threat was made by NP lawyer Fred Kingsmore, Esq., to Jim Richardson, our *pro bono publico* lead appellate counsel.

22. Bob and I prepared a detailed Agreement that would have given Levenson and Tommie Rae everything they got under the settlement if they just had GALs for the minors whose education trusts were being affected and the Appellate Court approved the substitution of the AG's judgment for ours.

23. Nobody responded to our proposal.

24. On May 18, 2010 Medlin, Levenson, Bauknight and David Bell, Esq. ("Bell") signed the Wingate Contract to bring Richland 4900. Their contract was kept secret until a Federal Judge released it in September 2011.

25. On May 19, 2010 the false claims in the Richland 4900 Complaint were lodged against Bob and me without most of the Richland 4900 Plaintiffs even knowing about the suit.

26. We learned this month that Lindsey and Janise did not know about the suit until 2016, and never agreed for Bauknight to be their agent. They did not know Levenson contracted for them to pay the Wingate 40% contingency fee the Wingate Contract calls for. Nor did they know they would be required under the Wingate Contract to pay a portion of the costs, including the \$500,000 paid to Wingate discussed below.

27. In 2011 Bauknight began trying to intervene in FOIA suits to keep the Wingate Contract, Hynie "diary," the \$4.7 Million value documents and other documents which damaged Tommie Rae's position in Richland 4900 secret.

28. In 2012 Bob became financially desperate because NP had secured an Order that we could not be paid until the conclusion of the appeal.. He called me to say that he was forced to reach an agreement.

29. To pay Bob what he was already owed on May 26, 2009, Tommie Rae's lawyer and NP required him to release Tommie Rae, the Levenson clients and Terry from his counterclaims in Richland 4900 and not file a Petition for Rehearing when the *Wilson* decision was issued. [A motion to void Bob's settlement as against public policy is pending in Richland 4900.]

30. Shortly after Bob's settlement, Bauknight/NP paid Wingate \$500,000.00. It was returned in 2013 without interest.

31. NP lawyers say it was for expert fees.

32. I ask the Court to take judicial notice under Rule 201 SCRE of the false and vitriolic claims Bauknight/NP and Tommie Rae have continued since May 8, 2013.

33. I am informed and believe that it is manifestly unjust for the Court to allow someone who is a fiduciary for Tommie Rae and Will/2000 Trust contestants to serve as fiduciary for Defendants in this case, which, by rulings of Judge Early, has been limited to my claims and gives me no recourse against Bauknight/NP.

34. I am informed that the unfairness is enhanced by my not being allowed to participate in the Aiken James Brown proceedings, or even being able to find out when hearings are being held.

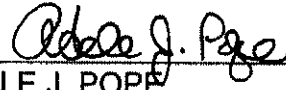
35. I am informed and believe that Bauknight/NP and the Levenson clients are being unfairly allowed to advance their position in Richland 4900 and Tommie Rae's efforts to take James Brown's 900 copyrights for herself by keeping me from being paid for court-approved work I earned in 2007.

36. I believe that it is particularly unjust when Bauknight/NP have paid Tommie Rae \$1 Million even though Defendants are challenging her claim to be Brown's

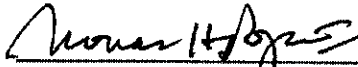
spouse; another \$1 Million to Will/2000 Trust contestants; and \$3.5 Million in legal and SA fees.

37. I am informed and believe that it is manifestly unjust to let a fiduciary for Tommie Rae and the Levenson Will/2000 Trust contestants evaluate the service of a former fiduciary who worked for six years to protect Brown's Estate/2000 Trust and its 900 copyrights from being dismembered by Tommie Rae and the Levenson clients.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this 22nd
day of September, 2016


Notary Public for South Carolina (L.S.)
My Commission expires: 3-28-2022

RECEIVED
May 28 2020
SC Court of Appeals

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.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of the Return to Motion to Strike Reply Brief on all Respondents on the date shown below, by emailing a copy to their counsel, addressed as follows:

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

s/Adam T. Silvernail
Adam T. Silvernail

April 23, 2020