

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2018-002229

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

RECORD ON APPEAL (AMENDED)
Volume I of IV
(Pages 1 – 476)

Charles E. Carpenter, Jr.
Carpenter Appeals & Trial Support, LLC
4825 Portobello Road
Columbia, SC 29206
Telephone: (803) 758-2886
charlie@carpenterappeals.com
S.C. Bar No. 1133

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

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
wjstv@mindspring.com
SC Bar No. 0005225

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
dwilliams@gertzandmoore.com
SC Bar No. 6121

Counsel for Appellant Adele J. Pope

Kenneth B. Wingate
Mark V. Gende
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Telephone: (803) 256-2253
kbw@swblaw.com
mvg@swblaw.com

Counsel for Respondents

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor
General
PO Box 11549
Columbia, SC 29211
Telephone: (803) 734-3680
esmith@scag.gov

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STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

IN RE:

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

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.

FILED

2007-CP-02-122

OCT 11 2007

Deputy Clerk

**ORDER GRANTING MOTION TO INTERVENE ON BEHALF OF
SOUTH CAROLINA ATTORNEY GENERAL HENRY D. McMASTER AND
GEORGIA ATTORNEY GENERAL THURBERT E. BAKER**

This matter came to be heard before the Court on September 24, 2007, pursuant to Rule 24, SCRPC, by way of a Motion for Intervention by the Attorney General of South Carolina to enforce the due application of those funds given or appropriated to any charitable trust created by the Last Will of James Brown dated August 1, 2000, and the Irrevocable Trust Agreement of James Brown dated August 1, 2000, or any other assets of the Estate of James Brown that may be impressed with a charitable trust. The South Carolina Attorney General also made this motion on behalf of Georgia Attorney General Thurbert E. Baker pending that office's submission of the appropriate *pro hac vice* paperwork as required by Rule 404, SCRPC. Appearing on behalf of the Attorney General of South Carolina was C. H. Jones, Jr., Senior Assistant Attorney General, and appearing on behalf of the Attorney General of Georgia was Grace Evans Lewis, Senior Assistant Attorney General. There was no objection from any of the parties as to the granting of this motion.

Therefore, pursuant to its *powers patriae*, statutory (see S.C. Code §1-7-130 and §62-7-405 and Georgia Code §53-12-115), common law and case authority (see *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); and *W. C. Watson v. W. F. Wall, et al.*, 229 S.C.

500, 93 S.E.2d 918 (1956)), the Motion of the South Carolina Attorney General and the Georgia Attorney General to intervene in this matter to represent and protect the interests of the beneficiaries of any charitable trust created by the Last Will of James Brown dated August 1, 2000, and the Irrevocable Trust Agreement of James Brown dated August 1, 2000, or any other assets of the Estate of James Brown that may be impressed with a charitable trust is, therefore, GRANTED.

AND IT IS SO ORDERED this 4th day of October, 2007.


DOYET A. EARLY, III
Resident Judge, Second Judicial Circuit

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-02-6722

ORDER DIRECTING PAYMENT
OF FEES AND COSTS OF SPECIAL
ADMINISTRATORS AND OTHER RELIEF

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CLERK OF COURT
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FILED

This matter comes before me on Motion of Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown; Trustees of the James Brown 2000 Irrevocable Trust; and former Special Administrators of the Estate of James Brown. They seek an order approving payment of fees of \$317,000.00 and costs for their services as Special Administrators for the period from March 7, 2007 through November 20, 2007. They also seek approval of continued payments on a "time plus costs" basis while they serve as Personal Representatives and Trustees. Their unreimbursed costs for the period are \$2,415.38. They ask that the "time plus costs" payments be a deposit towards, and without prejudice to, their right to receive full commissions as Personal Representatives and Trustees.

The motion was supported by affidavits of Robert L. Buchanan, Jr. and Adele J. Pope, with detailed attachments outlining their work as Special Administrators for the period from March 7, 2007 through November 20, 2007, and as Personal Representatives and Trustees since that time. For the 8 1/2 month period they served as Special Administrators, the two attorneys worked more than 950 hours. Their staffs and law clerks worked more than 680 hours.

Since, by limitation in this Court's Rules, the Special Administrators were not fiduciaries during the period before November 20, 2007, the Special Administrators were not bound by the guidelines for original documents which have been filed in this case.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, L. L. 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 this case.

JAN 09 2008

L. L. Godard
CLERK OF COURT, Aiken County, S.C.
00023m
Deputy Clerk

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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).

1/2
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 dictate, 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 8, 2008
[Signature], South Carolina

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

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

) PROBATE COURT #~~2007 ES 02 0056~~

2007.02.02 122

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

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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

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

Based on a showing of urgent need by the PR/Trustees, the Court scheduled the

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

CCC.P. & G.A., Aiken County, S.C.

Deputy Clerk

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")¹; the Attorney General of South Carolina; ~~counsel for the former PR/Trustees~~ ^{DAE}; 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:

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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

¹ 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 Petitt, 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:

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 filed².

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:

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 Forlando 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.

² 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 %)³ 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.

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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:

³ (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 such 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.

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

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

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The February 20th Order, which was not appealed, provided in part:

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.

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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

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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.

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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.

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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

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JEANETTE L. BRIDE
CLERK, C.C.P. & G.A.

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)
(On Removal from Probate Court)
CIVIL ACTION NO. 2007-CP-02-02)
ORDER DENYING MOTION TO)
RECONSIDER APPOINTMENT OF)
SUCCESSOR PERSONAL)
REPRESENTATIVES AND TRUSTEES)
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.¹ Also present or represented by counsel were James Joseph Brown II, Cinnamon Nicole Memickle Paris and LaRhonda Pettit;²

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Lia 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

¹ These are all acknowledged children of James Joseph Brown, Jr. and his wife, as shown by the original documents which have been filed in my office this

² These persons claim to be children of James Brown.

APR 14 2008

Lia Godard
C.C.P. & G.A., Aiken County, S.C.
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.³ 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.⁴ 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.

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

⁴ 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.

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.⁵

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.

⁵ 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.

On January 6, 2008 Buchanan and Pope served a response to all motions opposing the November 20 Order appointing them.⁶ 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

⁶ 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 basis⁷ 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.⁸ 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.

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

⁸ 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.

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.⁹

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.¹⁰

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.¹¹

On December 25, 2006 the 2000 Trust's bank account contained approximately \$288,706. Deposits were made on December 26 and 28, 2006.¹²

⁹ 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.

¹⁰ 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.

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

¹² Motion & Recommendation dtd. 7/27/07.

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

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.

¹³ 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, 2007.¹⁴

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.¹⁵

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.¹⁶

¹⁴ 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.

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

¹⁶ Tr. Hearing 2/7/08 p.252, Exhibit 5. Affid. Pope did 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.¹⁷

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

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.¹⁹

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.²⁰ As

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ Rodney A. Peebles, 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.²¹

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.²²

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

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

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

²³ 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]

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.²⁴

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.²⁵

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.

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

²⁵ 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".²⁶ 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 2008.²⁷

On March 7, 2007 this Court appointed Buchanan and Pope as SAs. The March 7 Order reaffirmed the February 19th 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.²⁸

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. Peebles, Esquire.

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

²⁷ 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.)

²⁸ 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.²⁹

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.³⁰ 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.³¹

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.

²⁹ 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 .}

³⁰ 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]

³¹ 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.]

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' 1st 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 GT 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.")³² in certain litigation in New York (the "NY Litigation"). They filed a motion to engage new counsel.³³

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.³⁴

³² 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.

³³ 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.

³⁴ Matthew Ballenger, Esquire, of Hogan & Hartson (H&H) was engaged.

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 4th 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.³⁵

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 Bank³⁶ had been deposited

³⁵ 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.

³⁶ 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.³⁷

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, 2007.³⁸

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

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

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

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

³⁹ 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 5th Amendment rights.

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

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

- c. A document by which Hammond was appointed Trustee.⁴²

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

On August 2, 2007, Hammond wrote M & T Bank.⁴³ 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].⁴⁴

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].

⁴³ 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.

⁴⁴ 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.

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.⁴⁵

On August 9, 2007, Cannon signed and filed another Affidavit.⁴⁶

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.⁴⁷ 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 Agreement⁴⁸ 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.

⁴⁵ The motion was later abandoned.

⁴⁶ 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]

⁴⁷ With the exception of Seventh Decade Productions, Inc.

⁴⁸ 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.⁴⁹

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.⁵⁰

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.⁵¹

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

⁵⁰ Certain attorneys, including L& B, were excepted from the termination.

⁵¹ 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.³²

³² 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.⁵³

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.⁵⁴ The PR/Trustees, the SAs, and other counsel⁵⁵ were given free access to the boxes, which were designated as the "Brown Historical Documents."

⁵³ The August 10th 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.]

⁵⁴ 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.

⁵⁵ With certain exceptions related to purported privileged documents.

On August 22, 2007 L&B as "[c]ounsel for Remaining [PR s] and Trustees"⁵⁶ 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.⁵⁷

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.

⁵⁶ Bradley and Dallas

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

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 26/28.⁵⁸

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.⁵⁹

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.⁶⁰

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

⁵⁹ 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]

⁶⁰ 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.⁶¹

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.

⁶¹ 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 asset 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.

Buchanan and Pope, as SAs, refused to join in the stipulation.⁶²

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

At the September 24th, 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.⁶³ 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.

⁶² 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.

⁶³ 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.⁶⁴

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.⁶⁵

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.⁶⁶

⁶⁴ 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]

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

⁴⁶ 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 5th 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 1999.⁶⁷

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.

⁶⁷ 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.⁶⁸

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.⁶⁹ The Court appointed Buchanan and Pope as PRs and Trustees.⁷⁰ 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.⁷¹ The Motion was supported by Affidavits of Bradley, Dallas and Hammond.⁷² The affidavits asserted that an Advisory Board was appointed

⁶⁸ 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]

⁶⁹ With the exception of Geronimo, LLC.

⁷⁰ 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.

⁷¹ 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]

⁷² 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.⁷³ 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.

⁷³ 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.⁷⁴

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.

⁷⁴ 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.]

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.⁷⁵

On January 9, 2008 Bradley and Dallas participated in hearings before this Court related to the Will and Trust.⁷⁶ 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, 1999.⁷⁷

⁷⁵ 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.

⁷⁶ 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.

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

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.

On March 9, 2008, Cannon⁷⁸ 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.⁷⁹ 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.

⁷⁸ Represented by Angela M. Kirby, Esquire and Thomas E. Lydon, Esquire

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

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.

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.⁸⁰

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.

⁸⁰ 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

to the appointment of Buchanan and Pope as PRs. the minor differences are not discussed herein.³¹

³¹ 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.⁸²

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.

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

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, 2007.⁸³

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 appointment⁸⁴ was ever made.⁸⁵

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

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

⁸⁵ 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.

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."⁸⁶

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

⁸⁶ 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.⁸⁷

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.⁸⁸

⁸⁷ 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.

⁸⁸ 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)⁸⁹ 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.⁹⁰

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

⁸⁹ 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.].

⁹⁰ The Court takes judicial notice that the claim and accompanying documents give no indication of Hammond's purported appointment as Trustee.

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 23⁹¹ 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:

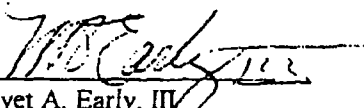
1. All motions to reconsider, revoke and/or modify the appointment of Robert L. Buchanan, Jr. and Adele J. Pope as Person Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust and its subtrusts, deceased, are hereby DENIED.
2. This matter is remanded to the 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,

⁹¹ 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
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
(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/k/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 Robert 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 auction 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.

Jasper D. Curston, A.J.

Columbia, South Carolina

July 14, 2008

FILED
AK

cc: R. Wayne Byrd, Esquire
Audre M. Byrd, Esquire
R. Hawthorne Barrett, Esq.
Curtis Ott, Esq.
James Daniel Bailey, Esquire
Tressa T.H. Hayes, Esquire
Senior Assistant Attorney General C. Havird Jones, Jr.
James B. Richardson, Jr., Esquire

STATE OF SOUTH CAROLINA

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 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.

) IN THE COURT OF COMMON PLEAS
) CASE NUMBER: 2008-CP-02-872

FILED 8-1-2008

Liz Godard
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

ORDER APPROVING
AND SETTING CONDITIONS OF
INTERIM PAYMENTS OF
EDUCATIONAL BENEFITS

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

AUG 01 2008

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

MRE

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, 2007¹. 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.]

¹ 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 35th 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.]
Balance since August 8, 2007		- 0 -	

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

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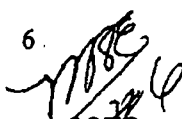
to defend the Estate Plan and contest claims of creditors (provided the Christie's proceeds are at least the expected amount).

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.

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AND IT IS SO ORDERED.

July 25, 2008
Aiken, South Carolina
[Signature]

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO. 2007-CP-02-122
The Pullman Group, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FINAL ORDER DISMISSING PETITION
	)	AND REMANDING TO PROBATE COURT
Robert L. Buchanan, Jr. and	)	
Adele J. Pope, Personal	)	
Representatives of the Estate of	)	
James Brown,	)	
	)	
Defendant.	)	

This matter came before me at a hearing held on October 23, 2008 on cross-motions of the Parties. Plaintiff seeks to stay the proceeding on its petition for allowance of claim. Defendants seek to dismiss the action pursuant to Rule 12 (b)(3), (6) and (8). Present were: James Drennan, III, Esquire, attorney for Plaintiff; James D. Bailey, Esquire, attorney for Defendants; and Defendants Robert L. Buchanan, Jr. and Adele J. Pope, Personal Representatives.

Plaintiff supported his motion for stay with an Affidavit. The Court has also taken judicial notice of the Probate file of the Estate of James Brown, Aiken County Case No. 2007-ES-02-0056 and portions of the file of the proceeding pending in New York.

The parties' recitation of the nature of the claim, as well as the procedural status of this case and the New York litigation discussed below is essentially the same.

Petitioner admits by Affidavit that his claim against the James Brown Estate is based solely upon his rights, if any, under Paragraph 7 of a February 24, 1999 "Engagement Letter" between Pullman and James Brown, which was attached first to Statement of Claim filed in the Probate Court for Aiken County, and later the Plaintiff's Petition for allowance of claim. On its

YAE
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face, the "Engagement Letter" provides that any enforcement must be in the courts of the State of New York.

In 2006, prior to the death of James Brown, Mr. Brown, James Brown Enterprises, Inc. And James Brown, LLC filed an action against Plaintiff in the Supreme Court of New York. Pullman counterclaimed seeking certain relief under Paragraph 7 of the "Engagement Letter".

After the death of Mr. Brown, his Estate was substituted as a party, and the action proceeded. It was first under the auspices of David G. Cannon, Albert H. Dallas and Alfred A. Bradley, the original Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust ("PR/Trustees"). Since the resignation of the last of the three original PR/Trustees on November 20, 2007, the litigation has proceeded under their successors.

Defendants assert, and the Court agrees, that this Court lacks subject matter jurisdiction and personal jurisdiction based upon paragraph 12 of the "Engagement Letter", which provides that New York law is to govern the Agreement, and that any litigation must be commenced in the courts of New York.

Defendants also assert, and Plaintiff and the Court agree, that all claims against the Estate of James Brown not encompassed in the New York proceeding pending at Mr. Brown's death, in which his Estate is a party, are forever barred by applicable statutes of limitation.

Whether considered under Rule 12 or Rule 56, based on Plaintiff's affidavit, this Court concludes that this matter must be dismissed for lack of subject matter jurisdiction. Since the Estate of James Brown, among others, is a party to the litigation pending in New York, the Estate of James Brown cannot be closed.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. The Petition for allowance of claim filed by the Pullman Group against the Estate of James Brown is dismissed.

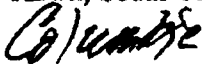
2. A certified copy of this Order shall be filed in the Probate Court as evidence that such claim is void.

3. This Order cannot, and does not, affect the outcome of the claim pending against James Brown in the New York case on December 25, 2006, the date of his death, in which the Estate of James Brown, James Brown Enterprises, Inc. and James Brown, LLC are defending the Pullman claims.

AND IT IS SO ORDERED,


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

November 13, 2008
Aiken, South Carolina



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

Case No. 2008-CP-02-01647 - *original*
Case No. 2009-CP-02-01810 - *cert/copy*

In Re: The Estate of James Brown and
The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Ex Parte: 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

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 B.
and Janise Vanisha B.; Deanna J. Brown Thomas,
on behalf of her minor children, Jason Brown
L.; Yamma N. Brown, on behalf of her minor children,
Sydney L., Carrington L., and Tonya B.;
Vanisha Brown; and Larry Brown; Tommie Rae Hynie
Brown, ... Respondents

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon,
Individually and as (purported) Trustees of the James
Brown 2000 Irrevocable Trust; 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 Pettitt; and Jeannette Mitchell, also Respondents.

ORDER FOR RELEASE OF INFORMATION RELATED TO
ATTORNEYS' FEES AND OTHER COMPENSATION

FILED 3-15 2010

Liz England
D.C.P. & G.S. 9:30 Am
Barbara Ruggie
Deputy Clerk

MAC
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This matter comes before me on motion of defendants/appellants Robert L. Buchanan, Jr. and Adele J. Pope asking the Circuit Court to deliver and/or direct the Clerk of Circuit Court to deliver all documents related to attorneys' fees, costs and/or compensation presented to the Circuit Court in this matter, including but not limited to, the contingency fee contract of Louis Levenson, Robert Rosen and the fees of the Guardian ad Litem for minor James B:

This Court has made no findings for necessity for confidentiality.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this Court is filing with the Clerk of Circuit Court, and the Clerk is hereby directed, to deliver to Robert L. Buchanan, Jr., Adele J. Pope and/or their counsel, any and all documents related to attorneys' fees and/or compensation, and/or costs, and/or fees of guardians ad Litem and their counsel presented to this Court in the above cases.

AND IT IS SO ORDERED.



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

March / 7, 2010
Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Russell L. Bauknight, as Personal,
Representative of the Estate of James
Brown, Deceased, and as Trustee of
the James Brown 2000 Irrevocable
Trust,

and
James Brown Enterprises, Inc.
Plaintiffs,

v.

David G. Cannon, Albert H. Dallas,
Judge Alford A. Bradley, Joel Katz,
Greenburg Traurig, LLP and
Enterprise Bank of South Carolina,
Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO. 2008-CP-02-0322

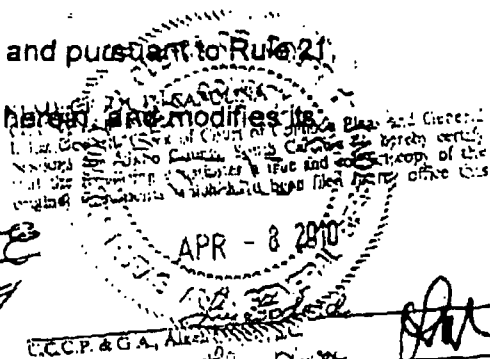
ORDER SUBSTITUTING PARTIES
AND AMENDING ORDER GRANTING
MOTION TO SEVER AND
PROCEED SEPARATELY

4.8 100 1:30 PM
[Signature]
C.C.P. & G.A.
[Signature]
Deputy Clerk

This matter came before me on March 29, 2010 at 1:30 p.m. in Bamberg, South Carolina. Plaintiff named above moved to be substituted for Robert L. Buchanan, Jr. and Adele J. Pope herein, and to have all matters related to Albert H. Dallas severed.

This Court orally granted the severance on March 29 *sua sponte* without ruling on the substitution. The severance was confirmed by Order of this Court dated March 30, 2010.

Upon review of the record, this Court finds that confusion and potential prejudice to the parties may result from the severance of the Dallas claims and counterclaim - made on motion of Russell Bauknight - without first substituting Mr. Bauknight as the fiduciary herein. Based on the Court of Appeals Order dated November 6, 2009 in Case 2007-CP-02-0122 ("Case 122") this Court *sua sponte*, and pursuant to Rule 21, grants the substitution of Bauknight for Buchanan and Pope herein, and modifies its severance order dated March 30, 2010 as set out below.



Background

Buchanan, Pope, Bauknight and Dallas all participated in the appeal of David G. Cannon in Case 122, and are bound by the holding of the South Carolina Court of Appeals therein dated November 6, 2009.

On November 6, 2009, prior to its final decision in the Cannon appeal, the Court of Appeals mandated that pending the appeal of Bauknight's appointment:

[A]t the same time the circuit court relieved P&B of their duties, it also placed upon Bauknight the fiduciary duty to manage and control the Estate and Trust. Thus, Bauknight should be substituted because the liability for mismanagement of the Estate or the Trust now falls on him, not P&B.

Buchanan and Pope have expressed in the record their consent to the substitution pending the appeal under the above Order.

The Counterclaim of Albert H. Dallas against Plaintiffs filed prior to the replacement of Buchanan and Pope, states:

3. Albert H. Dallas served as a Trustee to said Trust from the time of its creation to his wrongful removal as a Trustee in November 2007
4. Shortly after the death of James Brown on December 25, 2006 Plaintiffs conspired to engage in an intentional, tortious campaign to interfere with Dallas' existing and future relationship with the Trust without justification.
5. Plaintiffs tortious interference with Dallas' existing and prospective relationship with the Trust has continued to the present, resulting in damages to him, including attorney's fees.

Pursuant to this Court's order dated January 9, 2008 and their contract of engagement, Messrs. Few and Gilreath replied to Mr. Dallas' counterclaim against Plaintiffs and seek to dismiss it.

Irreparable harm could result to Plaintiff named above, as well as Buchanan and Pope, if Bauknight is not substituted so that Bauknight may properly prosecute all

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claims and defend the counterclaim of Albert H. Dallas, which is against the Estate, the 2000 Trust, and JBE, Inc., and not Buchanan and Pope, individually.

Based on the foregoing, by *sua sponte* action of this Court, it is ORDERED,
ADJUDGED AND DECREED:

1. Russell L. Bauknight is hereby substituted for Robert L. Buchanan, Jr. and Adele J. Pope herein, pursuant to the terms and conditions of the Order of the South Carolina Court of Appeals dated November 6, 2009.

2. As shown above, the name of Russell L. Bauknight shall replace that of Buchanan and Pope in this and all subsequent pleadings.

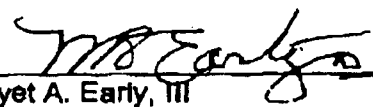
3. The Order of the Court dated March 30, 2010 in this case is amended to reflect the correct caption and as otherwise stated herein.

4. All claims against Albert H. Dallas as well as his counterclaims against Plaintiff, shall continue to be defended by Messrs. Few and Gilreath pursuant to this Court's Order dated January 9, 2008.

5. Except as modified herein, the Conclusion and Order dated March 30, 2010 shall remain in full force and effect.

5. Any party aggrieved by this Order shall have ten (10) days to object to same.

AND IT IS SO ORDERED.


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

April 5, 2010
Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE PROBATE COURT
)

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

and

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

Plaintiffs,

vs.

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

Defendants.

Estate Number: 2010-GC-40-00073

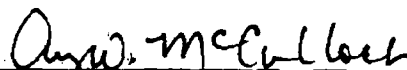
2010 JUL 19 PM 3:38
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

ORDER FOR REMOVAL

This matter is before the Court on the Motion of the Defendants pursuant to S.C. Code Ann. § 62-1-302(d) for an Order removing this matter to the Circuit Court. After review of the Complaint in this action, this Court finds and holds that the Motion is timely and that the Removal of this action is proper and required under S.C. Code Ann. § 62-1-302(d) because there is a right to jury trial, which has been demanded, the amount in controversy is at least \$5,000 and because this is a matter related to Trusts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this be, and hereby is, removed from this Court to the Richland County Court of Common Pleas


Amy W. McCulloch
Richland County Probate Judge

July 19, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4004900

Russell Bauknight

vs.

Henry Dargan McMaster

Plaintiff

Defendant

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), SCRCP; ☐ Rule 41, SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

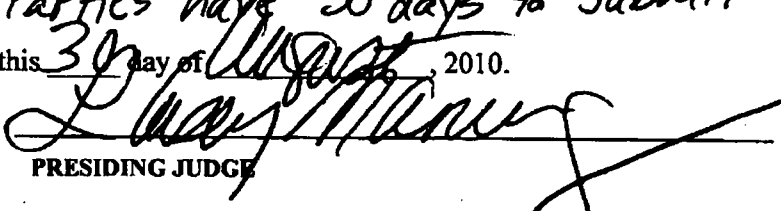
☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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;☐ Statement of Judgment by the Court:

Matter under advisement. Parties have 30 days to submit proposed orders
 Dated at Columbia, South Carolina, this 30 day of August, 2010.


 PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this _____ day of _____, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth B. Wingate

ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRCP APP-24/FORM 4

Daryl L. Williams
Joseph Watson

ATTORNEY(S) FOR THE DEFENDANT(S)


 Clerk of Court

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
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JANETTE W. LADD
CLERK, C.R. 2008

**ORDER DENYING MOTION TO
DISMISS**

This matter is before the Court upon Defendant's Motion to Dismiss, filed in lieu of an Answer on June 22, 2010. A hearing was held on August 30, 2010 at which counsel for all parties were present. After hearing from both sides, reviewing the Memoranda and Affidavits submitted by both sides, and considering the matter thoroughly, I find that the Motion should be DENIED.

In this lawsuit, Plaintiffs seek redress for the alleged injury done to the Estate and certain trusts created by the late James Brown. This injury is alleged to be the result of acts and omissions of Defendants Adele Pope and Robert J. Buchanan, Jr., the former Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

Defendants assert ten bases for dismissal in their Motion to Dismiss. While not explicitly stated, most of these defenses arise under Rule 12(b)(6), (7) or (8) of the South Carolina Rules of Civil Procedure. Defendants also include certain affirmative defenses

Rule 12(b)(6) Motions

Bases 1 and 9 of the Motion to Dismiss are essentially grounded in Rule 12(b)(6), failure to state a claim. "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999).

In basis 1, Defendants contend that Plaintiffs' suit should be dismissed because it is not accompanied by an expert witness affidavit required under S.C. Code Ann. § 15-36-100 (1976, as amended). This code section is inapplicable because Plaintiffs have not alleged professional

malpractice by Defendants. The Complaint alleges “Defendants provided services to the Estate and Trust apart from, and in addition to the requirements for the administration of the Estate and Trust. In doing so, Defendants were obligated to provide such services in a reasonable manner, consistent with the applicable standard of care.” (Complaint at Para. 26.)

While Plaintiffs do make reference to the fact that both Defendants are attorneys, these allegations are under the heading of “Venue and Jurisdiction” and are appropriate in that context. (See Complaint at Paras. 7-8). Nowhere in the Complaint do Plaintiffs allege that the Defendants were engaged to provide or committed malpractice in providing legal services. Construing the allegations in the light most favorable to the Plaintiffs, I find that the pleadings are sufficient to support the causes of action alleged and therefore deny the Motion to Dismiss.

In basis 9, Defendants contend that they are not liable for injuries to the Plaintiffs because they have never served in a fiduciary capacity to the “Legacy Trust.” A review of the Complaint shows that this fact was neither alleged nor necessary. Defendants have been sued as a result of their fiduciary relationships to the James Brown Estate and the James Brown 2000 Irrevocable Trust. Plaintiffs allege that they have interests derived from the Estate and Trust and that they have been injured as a result of the acts or omissions of the Defendants. Thus, construing the allegations in the light most favorable to the Plaintiffs, I find that the pleadings are sufficient to support the causes of action alleged and therefore deny the Motion to Dismiss.

Rule 12(b)(7) Motions

Basis 6 asserts a failure to join indispensable parties. Though not stated, this is presumably based on SCRCP 12(b)(7). Defendants contend that the failure to join Forlando and Romunzo Brown and the failure to secure the appointment of *guardians ad litem* (GALs) for the minor parties is fatal to this matter. I disagree.

Rule 12(b)(7) incorporates Rule 19, which defines an indispensable party as:

(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action . . . if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Defendants' position reflects a mischaracterization of the nature of this action. According to the Complaint, the parties-plaintiff in this matter are the participants in a settlement entity created as a result of a private settlement among them and approved by Judge Early. The claims being pursued arise out of alleged injury to the assets each member of the settlement group is contributing to the settlement entity. None of the claims affect the rights or claims of those who did not participate in the settlement. I find that all members of the settlement entity are parties to this action.

Whether others should be members of the settlement entity, or whether GALs are required is an issue that has already been litigated and decided by Judge Early in his Order of May 26, 2009. (This Order has been placed in the record and is referred to herein as the "Settlement Order.") This Court is without authority to entertain a collateral attack on that decision.

Rule 12(b)(8) Motions

In bases 2 and 3, Defendants contend that this suit should be dismissed because "the matters alleged in this action are substantially the same as matters alleged in other cases pending in the State Court or the South Carolina Court of Appeals." (Mot. Dismiss, p. 3) Defendants do

not cite Rule 12(b)(8), SCRCP in their Motion to Dismiss, but the Court assumes it to be the basis for their motion.¹

Defendants are unable to satisfy the requirements of Rule 12(b)(8) as interpreted by our Supreme Court.

In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. . . . [W]e interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).

Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 105-106, 674 S.E.2d 524, 531-32 (Ct.App.2009) (internal citations omitted). Very recently, the Court of Appeals, applying this precedent, overturned the trial court's ruling on a 12(b)(8) motion. See Cricket Cove Ventures, LLC v. Gilland, ___ S.E.2d ___, 2010 WL 3396829 (Ct. App. Aug. 25, 2010). In doing so, the court clarified that suits where a person is sued in his individual capacity and in another in his representative capacity are not suits against the same party.

Comparing the allegations of the Complaint to the other proceedings relied on by the Defendants, I find that precise or substantial similarities to the present parties or claims are absent. In their Motion, Defendants contend that four cases are substantially similar to this case:

McMaster v. Dallas, et al, 2009-CP-02-1647 ("Case 1647");
McMaster v. Brown, et al, 2009-CP-02-1810 ("Case 1810");
Thomas, et al v. Bradley, et al, 2007-CP-02-0122 ("Case 122"); and
Brown, et al v. Pope, et al, 2008-CP-02-0872 ("Case 872").

First, it should be noted that none of these cases are currently pending. These cases were resolved by way of the Settlement Order. In their Supplemental Memorandum in Support, Defendants make reference to decisions reached by other courts that allegedly dispose of the

¹ To the extent that basis 3 actually relies on doctrines of collateral estoppel and *res judicata*, these are affirmative defenses and are incorporated in the analysis below.

issues raised in this suit. Again, because these other lawsuits are not currently pending, they are not relevant to a 12(b)(8) motion.² But even if they were, the “dispositive” orders have not been provided to this Court for comparison.

Second, although scores of captioned documents have been provided to the Court,³ Defendants have not provided the Complaint/Petition relating to any of these matters from which the Court can determine the parties or the claims. However, the Settlement Order refers to these other pending matters and some inferences can be drawn therefrom. A review of this Order indicates that these cases are not similar in any significant respect to the case at bar. Not one of the lawsuits brought in relation to this Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate.

Third, to the extent other claims were made, they were brought against Defendants in their representative capacity as P.R. or Trustee, while the claims in this case were brought against the Defendants individually.

Although other actions were pending that may have involved some of the same parties and appear to involve some of the same facts, there is nothing that indicates that either the parties or the claims are precisely or substantially the same.

Defendants submit that a series of Circuit Court and Appellate Court orders ratify the acts of Defendants in their service as administrators. I find that they do not. As referenced above, Defendants have not provided sufficient documentation to this Court to determine the precise nature of the claims brought in each of the lawsuits. In this closely related argument, Defendants have not provided information about the motions at issue giving rise to the various orders. In

² The doctrines of collateral estoppel and *res judicata* have not been raised by the Defendants.

³ None of the documents have been properly certified or authenticated.

some instances, the context of the order bears no apparent relationship to the claims made in this suit.

Affirmative Defenses

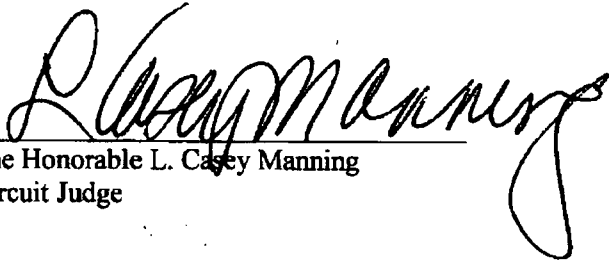
In addition to 12(b) Motions, Defendants have included the following affirmative defenses in their Motion: standing of the parties (bases 4, 5, and 8); statute of limitations (basis 7); and charitable immunity (basis 10).

Affirmative defenses are generally not appropriate for consideration in pre-answer Motions. Spence v. Spence, 368 S.C. 106, 123 628 S.E.2d 869, 878 (2006). "This rule arises out of the notion that consideration of an affirmative defense usually requires reference to factual allegations and matters which are beyond the scope of allegations set forth in the complaint. Therefore, because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as summary judgment or directed verdict or at trial." Id., citing 5 Wright and Miller, Federal Practice and Procedure Civil 3d, § 1277 (2004). This has been found to apply specifically to statute of limitations and lack of standing defenses. See Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 138 fn2 (1999). This same analysis applies to the defense of charitable immunity.

Because the allegations of the Complaint do not on their face compel the application of these defenses, the Motion to Dismiss on these bases must be denied.

CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss is DENIED.



The Honorable L. Casey Manning
Circuit Judge

Columbia, South Carolina
October 2010

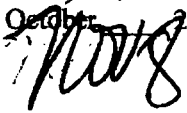


Exhibit Y

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

Defendants

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

ORDER DENYING DEFENDANTS' MOTION TO CHANGE VENUE

2010 NOV -9 AM 9:21

RICHLAND COUNTY
CLERK OF COURT

RECEIVED
CLERK OF COURT

This matter came before the Court on August 30, 2010 for hearing on Defendants' Motion to Change Venue from Richland County to Aiken County. Counsel for all parties were

present. Other motions in this case were also heard on August 30 and separate Orders will issue with regard to those motions.

PROCEDURAL POSTURE

This is a judicial proceeding involving an irrevocable trust of James Brown dated August 1, 2000, as modified by a court-approved settlement agreement, whose sole, professional trustee administers the trust in Richland County, South Carolina. This irrevocable trust is distinguishable from the Estate of James Brown, the administration of which is in the Aiken County Probate Court.

The complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRCP, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County.

FACTS

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 known as the James Brown Irrevocable Trust that was created and funded on August 1, 2000. The James Brown Irrevocable Trust, by its terms, was to be divided into the Brown Family Educational Trust and the James Brown "I feel Good" Trust after his death.

After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is

attached to the complaint as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached to the complaint as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was revised to create a "Settlement Entity" in which are vested all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "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 order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

Plaintiffs are all of the beneficiaries of the settlement trust, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. This office is located in Richland County, South Carolina.

ANALYSIS

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and

determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. See Order for Removal of July 19, 2010. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the **trust's principal place of administration** is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is **the trustee's usual place of business where the records pertaining to the trust are kept**, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). The statute designates the trustee's place of business, that is, the place where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is necessary for the courts in the place where the trust records are kept and the trust assets are held to deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if this Court were to determine that venue might be proper in either Richland or Aiken Counties, which it does not, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). This Court notes that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County, as the August 10, 2007, order of Judge Early directed the trust records to be delivered to 1218 Taylor Street in Columbia, which was Pope's office.

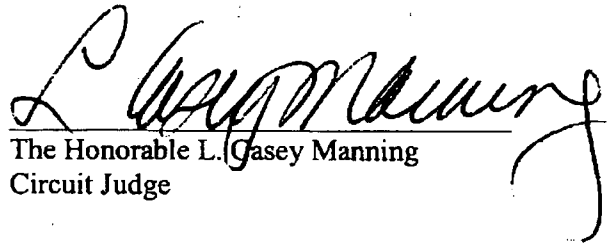
Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code

provides that "[a] proceeding under this section does not result in continuing supervisory proceedings." This trust litigation against the former trustees is unrelated to the prior litigation involving James Brown's estate or trust.

CONCLUSION

Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken County, the initial commencement of this action in Richland County requires that venue remain in Richland County.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Change Venue is DENIED.


The Honorable L. Casey Manning
Circuit Judge

Signed this 8 day of Nov, 2010
at Columbia, South Carolina.

Exhibit X

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

JEANETTE W. McBRIDE
C.C.P. & G.S.

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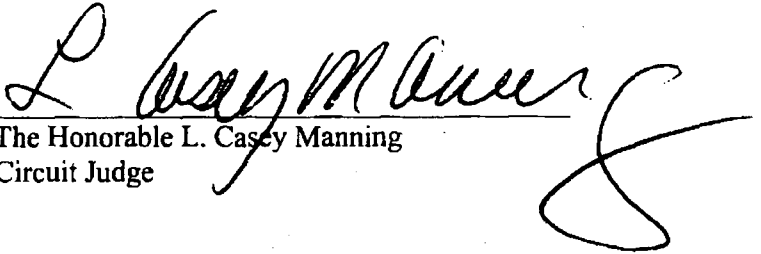
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ORDER

This matter is before the Court upon the Defendants' Motions to Amend the Court's Orders of November 9, 2010. The two Motions filed pursuant to Rule 59(e) address the Court's

Order denying the Defendants' Motion to Dismiss and the Defendants' Motion to Change Venue.

Having considered the matters carefully, the Court finds no reason to alter or amend its previous Orders. **THEREFORE, DEFENDANTS' MOTIONS ARE DENIED.**


The Honorable L. Casey Manning
Circuit Judge

Signed this 7 day of Jan - 2011
at Columbia, South Carolina.

The South Carolina Court of Appeals

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

and

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

Respondents,

v.

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

Defendants,

Of whom Adele J. Pope is the

Appellant.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2010-CP-40-04900

ORDER

Appellant Adele Pope appeals from the orders of the circuit court (1) denying her motion to dismiss, (2) denying her motion to change venue, and (3) denying her Rule 59(e), SCRCP, motion. Appellant also petitions this court for a writ of prohibition to stop the circuit court and Attorney General from proceeding with the underlying law suit. Respondents move to dismiss the appeal arguing the orders are not immediately appealable.

After review, we find the orders challenged on appeal are not immediately appealable. See Breland v. Love Chevrolet, 339 S.C. 89, 529 S.E.2d 11 (2000) (order denying motion to change venue not immediately appealable); Huntley v. Young, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) ("The denial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case. Since the order denying the Rule 12(b)(6) motion does not finally decide any issue, it is not directly appealable."). Accordingly, the appeal must be dismissed.

Because no appealable orders are before us, we do not have the authority to issue a writ of prohibition. Pursuant to section 14-8-220 of the South Carolina Code (Supp. 2010), this Court has the power "to issue such remedial writs as are necessary to give effect to its jurisdiction." Without an appealable order, the issuance of the writ requested is not necessary to give effect to our jurisdiction.

AND IT IS SO ORDERED.

Jaime M. Curston A. J.

Columbia, South Carolina

cc: Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire

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2010CP4004900

The South Carolina Court of Appeals

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

and

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

Respondents,

v.

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

Defendants,

Of whom Adele J. Pope is the

Appellant.

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0110

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2010-CP-40-04900

ORDER

Appellant petitions our Court to rehear the dismissal of the above-captioned appeal. After a careful consideration, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating the appeal.

AND IT IS SO ORDERED.

H. Brown Wells

U. Ke

Jasper M. Curston A.J.

Columbia, South Carolina

cc: Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire

FILED
5/31/11

071

0111

The South Carolina Court of Appeals

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

and

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

Respondents,

v.

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

Defendants,

Of whom Adele J. Pope is the

Appellant

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2010-CP-40-04900

REMITTITUR

No Petition for Certiorari having been filed in the above matter since issuance of this Court's
Order dated May 31, 2011,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for
Richland County.

V. Claire Allen, Deputy Clerk
For the Court

Columbia, South Carolina

Original to: The Honorable Jeanette W. McBride

cc: Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire

7/26/11 **FILED**

 COPY

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

C.A. No.
11-CP-36-379

-v-

ORDER

ALAN WILSON, *in his*
capacity as Attorney
General,
defendant.

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SC Court of Appeals

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County¹. See *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

¹ The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

¹ 

Honorable Casey L. Manning.² At the time of the stay, the parties to the fiduciary litigation (hereinafter "McMaster parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

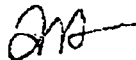
Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

² At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]

The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

² 

II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWill v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938)), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRCP. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*³ and *Richardson, Plowden, Grier & Howser v. Pyle*.⁴ These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,⁵ the

³ 264 S.C. 172, 213 S.E.2d 588 (1975).

⁴ 322 S.C. 371, 472 S.E.2d 232 (1996).

⁵ This Rule states, in pertinent part, that

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; or (2) disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

[t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. See *McDonald*, 276 S.C. at 575 ("Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction."). This judicial principle a great resemblance to the Rule 12(b)(8) standard announced by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that "[i]n South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim." *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant's *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2d 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of *mandamus* cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

[h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. See *Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

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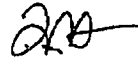
(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to "any person." S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. See Rule 26(a), SCRCPP ("Parties may obtain discovery by one or more of the following methods. . ."). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only be appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.⁶

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.⁷ Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCPP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. See Rule 42(a), SCRCPP ("When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action."); *Creighton v. Coligny Plaza Limited*

⁶ Given this analysis, Defendant's motion to dismiss pursuant to Rule 12(b)(8) is also denied.

⁷ In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

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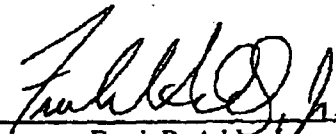
Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.").

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

Exhibit W

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN II**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA J. BROWN THOMAS**; **JASON BROWN-LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LUMAR** and **CARRINGTON LUMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**.,

Plaintiff

v.

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

Defendants

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2010-CP-40-04900

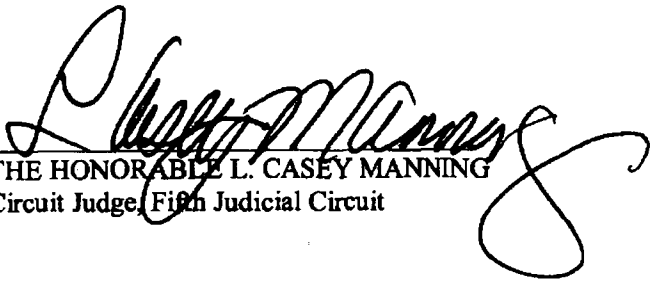
and

Civil Action No.: 2012-CP-40-00350

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR CONTINUANCE**

RICHLAND COUNTY
FILED
2012 JUL -5 AM 10:58
JEANETTE W. McBRIDE
C.C.P. & G.S.

Order re: Plaintiffs' Motion for Continuance
Page 3 of 3


THE HONORABLE L. CASEY MANNING
Circuit Judge, Fifth Judicial Circuit

Dated this 5 day of July, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN II**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA J. BROWN THOMAS**; **JASON BROWN-LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LUMAR** and **CARRINGTON LUMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**,

Plaintiff

v.

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

Defendants

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2010-CP-40-04900

**ORDER CONCERNING DEFENDANT
ALELE POPE'S MOTION TO
DISQUALIFY SWEENEY, WINGATE
AND BARROW, P.A. FROM
REPRESENTING THE OFFICE OF
THE ATTORNEY GENERAL OF
SOUTH CAROLINA, ENJOINED
RUSSELL BAUKNIGHT FROM
PROPORTIONING TO SPEAK FOR THE
OFFICE OF THE ATTORNEY
GENERAL, AND OTHER RELIEF**

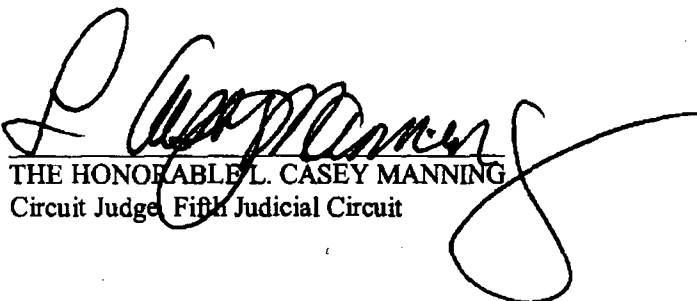
2012 JUL 5 AM 10:56
J. S. MCBRIDE

RICHLAND COUNTY
FILED

At a Hearing before The Honorable L. Casey Manning on April 12, 2012, the Court heard Defendant Pope's Motion to Disqualify Sweeny Wingate and Barrow, PA from representing the Office of the Attorney General of South Carolina, enjoining Russell Bauknight from purporting to speak on behalf of the Office of the Attorney General of South Carolina, and for other miscellaneous relief.

Having considered the Memoranda of Law from Defendant Pope and Plaintiffs, hearing oral argument from both parties, and carefully considering the merits of the arguments of each party, this Court denies the relief sought by Defendant Pope in her Motion.

IT IS SO ORDERED.


THE HONORABLE L. CASEY MANNING
Circuit Judge Fifth Judicial Circuit

Dated this 5 day of July, 2012
Columbia, South Carolina

Exhibit V

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-04900

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY L. and CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiff

v.

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

Defendants

RICHLAND COUNTY
FILED
2012 JUL 13 AM 11:19
JEANETTE W. McBRIDE
C.C.P. & G.S.

ORDER OF DISMISSAL

0057

31

0125

ORDER of DISMISSAL

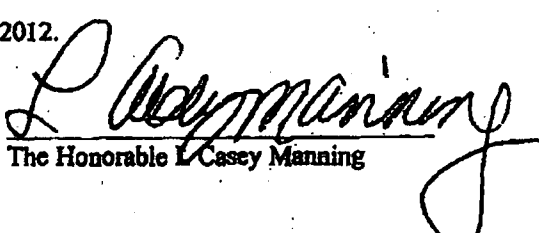
1. This Court is informed that Plaintiffs and Defendant Robert L. Buchanan, Jr., have reached a final settlement in this matter that resolves all claims between them;

2. The above-styled causes of action as well as any claim, cross claim, or counterclaim between the Plaintiffs and Defendant Buchanan are hereby dismissed with prejudice, waiving all rights of appeal;

3. Each party shall pay its own court costs and expenses associated with the above-referenced litigation.

NOW, THEREFORE, in consideration of the above and with the consent of Plaintiffs and Defendant Buchanan, this matter is dismissed with prejudice.

SO ORDERED, this, 13 day of July, 2012.


The Honorable L. Casey Manning

0058

2

0126

32

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-04900

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN II**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA J. BROWN THOMAS**; **JASON BROWN-LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LUMAR** and **CARRINGTON LUMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**,

Plaintiff

v.

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

Defendants

ORDER TO CONDUCT MEDIATION

**RICHLAND COUNTY
FILED
2012 JUL 15 PM 3:12
JEANETTE M. McBRIDE
C.C.P. G.S.**

Pursuant to this Court's request, the parties to the above-captioned matter attended a Status Conference in Chambers on July 5, 2012. Present at the conference were Kenneth B. Wingate, Esq., Mark V. Gende, Esq., and Aaron J. Hayes, Esq., as attorneys for Plaintiffs. Representing the Defendant Robert L. Buchanan were J. Calhoun Watson, Esq. and Robin A. Braithwaite, Esq. Representing the Defendant Adele J. Pope was Adam T. Silvermail, Esq. Finally, J. Emory Smith, Jr., Esq. was present on behalf of the Attorney General with respect to certain Freedom of Information Act cases that have been brought before this Court and are consolidated with (or related to) this action. The Court conducted this conference in order to ascertain the status of this action since the parties were last before the Court at the motion hearing of April 12, 2012.

Summary of Status Conference

Mr. Gende reported that the Plaintiffs have conducted mediation with Defendant Buchanan on all outstanding issues between Plaintiffs and Defendant Buchanan, and have achieved a mediation agreement resolving all such issues. Messrs. Watson and Braithwaite confirmed Mr. Gende's assertion that the Plaintiffs and Defendant Buchanan were in the process of finalizing the settlement documents that will end all litigation between Plaintiffs and Defendant Buchanan. Mr. Gende noted that Defendant Pope refused to participate in this mediation, and continues to refuse to participate in this mediation as set forth in greater detail, below. Mr. Gende requested that the Court order Plaintiffs and Defendant Pope to participate in mediation before the case progresses any further.

Mr. Silvermail steadfastly objected to Mr. Gende's request for court-ordered mediation, and set forth Defendant Pope's position that further discovery should be conducted in this case before Plaintiffs and Defendant Pope attend a mediation. Specifically, Mr. Silvermail stated that Defendant Pope would like to take the depositions of Plaintiffs Tommie Rae Hynie Brown and Terry Brown

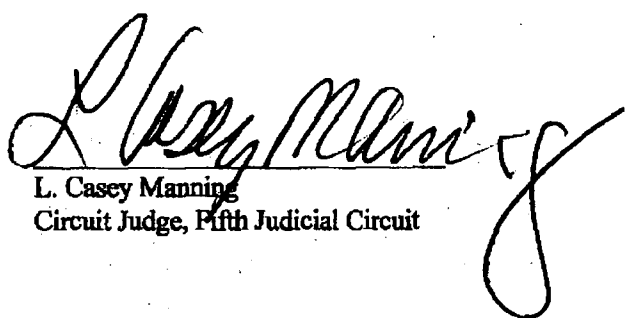
(among others) before mediation. Further, Defendant Pope would like additional discovery concerning the copious documentary evidence that exists in this case.

Findings and Order

The Court notes that this case is subject to mandatory mediation, since it is filed in Richland County. See Order of the South Carolina Supreme Court (Sept. 16, 2009). After carefully considering the arguments of Plaintiffs and Defendant Pope, the Court finds that it is appropriate that mediation occur in this matter as soon as possible. Therefore, it is hereby ORDERED that Plaintiffs and Defendant Pope attend mediation in this matter within ninety (90) days of the date of this Order. The Court will hold in abeyance all pending motions until after the parties apprise the Court of the outcome of the mediation.

AND IT IS SO ORDERED.

Date: July 19, 2012
Columbia, South Carolina


L. Casey Manning
Circuit Judge, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR EXCEPTION TO THE
PHYSICAL PRESENCE RULE AT
MEDIATION**

RICHLAND COUNTY
FILED
2012 OCT -5 AM 10:51
JEANE H. McBRIDE
C.C.P. & C.S.

693
Pope

TO: COUNSEL FOR THE PLAINTIFFS AND THE DEFENDANT:

This matter comes before the Court on Plaintiffs' Motion For An Exception To The Physical Presence Rule At Mediation.

The Court held a hearing on this Motion on October 4, 2012, with Plaintiffs being represented by Mark Gende, Esquire and Aaron Hayes, Esquire, and Defendant Pope being represented by Adam Silvernail, Esquire.

After hearing oral argument for the motion from Plaintiffs' counsel and oral argument in opposition to the motion from Defendant's counsel and after carefully reading and considering Plaintiffs' Motion and all objections and requests raised in Defendant's Objection to Motion of Plaintiffs/Counterclaim Defendants to Avoid Physical Presence at Mediation and Memorandum in Support of Sanction; Guardian ad litem for Incarcerated Plaintiff/Counterclaim Defendant and Related Relief (Defendant's Memorandum), the Court hereby finds and orders as follows:

1. The Court directs the parties to proceed with and participate in good faith in the mediation scheduled for October 12, 2012.

2. Plaintiffs' motion is GRANTED to the extent it seeks an exception to the physical presence rule at mediation for represented James Brown family members, provided any absent family member is represented by counsel that is physically present.

3. Plaintiffs' motion is GRANTED to the extent it seeks an exception to the physical presence rule at mediation for all of the minor children and for a jailed adult family member. The court FINDS, under these facts and circumstances, that for this mediation there is no necessity to appoint any guardians *ad litem*.

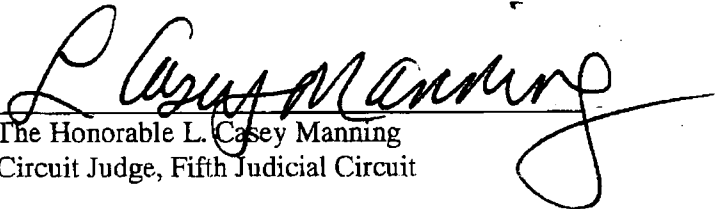


4. The issue concerning Mr. Daryl Williams' attendance is MOOT, because Mr. Silvernail represented to the Court that Mr. Williams would be present at mediation. HOWEVER, the parties are directed to reach an agreement concerning how Mr. William's adjuster is to participate in the mediation. Should the parties be unable to agree, the mediator shall determine how the carrier's representative is to participate.

5. The Court has considered Plaintiffs' request concerning the division of costs for mediation and HOLDS IN ABEYANCE any ruling upon allocation of costs until after mediation.

6. To the extent inconsistent with this Order, all other relief requested by the Defendant's Memorandum is DENIED.

AND IT IS SO ORDERED.


The Honorable L. Casey Manning
Circuit Judge, Fifth Judicial Circuit

Dated this 5 day of Oct., 2012

Columbia, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900 - *copy*

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

and

ALAN WILSON, in his capacity as
Attorney General of the State of South
Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor
child, JAMES B., DARYL J. BROWN,
individually and on behalf of his minor
child JANISE VANISHA BROWN;
LINDSEY DELOREST BROWN;
DEANNA J. BROWN THOMAS; JASON
BROWN-LEWIS; YAMMA N. BROWN,
individually and on behalf of her minor
children, SYDNEY L., CARRINGTON L.,
and TONYA BROWN; VENISHA
BROWN; LARRY BROWN; and TERRY
BROWN,

Plaintiffs.

v.

Adele Pope,

Defendant.

ORDER

1.20
Liz Godard
C.C.P. & G.S.
Anita Knoepfle *10*
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 Gadsden
CC.P.&G.S.
Anita Knoepple 10/10
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.

[Signature]
[Signature]

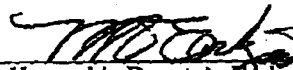
5. The Estate shall advance the cost and expenses of the mediation but will be allowed to deduct said advancements once a distribution is made.

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.

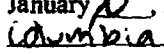
8. The parties shall provide the mediator with a memorandum setting forth their respective positions regarding the issues that need to be resolved within twenty-five (25) days of the date of this order.

AND IT IS SO ORDERED.


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

January 17, 2015
, South Carolina


The Honorable L. Casey Manning
Resident Judge
Fifth Judicial Circuit

January 6, 2015
, South Carolina

The Supreme Court of South Carolina

Ex parte: Adele J. Pope, Appellant,

In re: Estate of James Brown, a/k/a James Joseph
Brown, Respondent.

Appellate Case No. 2013-001649

and

Adele J. Pope, Appellant,

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, Respondents,

and

Robert L. Buchanan, Jr., Interested Party.

Appellate Case No. 2014-000250

and

Alan Wilson, in his Capacity as Attorney General of South Carolina;
and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants,

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000.

Appellate Case No: 2014-001279

and

Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B., Deanna J. Brown Thomas, on behalf of her minor child, Jason L., Yamma N. Brown, on behalf of her minor children, Sydney L. Carrington L., and Tonya B., Vanisha Brown, Larry Brown, Tommie Rae Hynie Brown, James B., through his Guardian ad Litem, Respondents,

v.

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., 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, Jeanette Mitchell and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, Defendants, of whom 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 are, Appellants, and Albert H. Dallas,

Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of The James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N. M. Paris, LaRhonda Petitt, Jeanette Mitchell and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000.

Appellate Case No. 2009-142286

ORDER

By order dated February 19, 2015, this Court stayed all proceedings in the Aiken County Circuit Court involving the Estate and Trusts of James Brown and the marital status of Tommie Rae Hynie a/k/a Tommie Rae Brown. We hereby lift that stay.

This Court greatly appreciates the attention the Honorable Doyet A. Early, III, has paid to the management of these complicated and contentious matters and expects the actions in the circuit court to continue as expeditiously as possible as set forth in the status report and in accordance with this Court's opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Judge Early shall order payment of any personal representative and trustee distributions that have been finally determined.

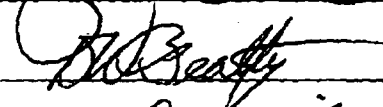
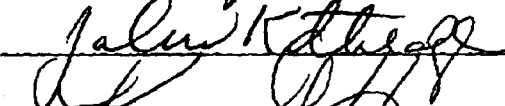
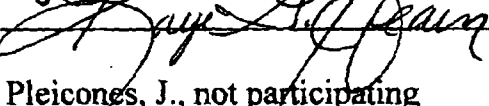
Adele J. Pope has filed a motion seeking confirmation that the stay does not affect Richland County cases in which she is involved. Because we lift the stay, we deny Pope's motion as moot.

In addition, Pope has filed a motion to reopen another case involved in the Estate and Trust. In that case, the Court of Appeals dismissed Pope's appeal because she was not an aggrieved party. This Court denied Pope's petition for a writ of certiorari, and the remittitur was sent on October 28, 2014. We deny Pope's motion to reopen the case because this Court no longer has jurisdiction over the matter. *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893) (the appellate court has no

jurisdiction in a matter when the remittitur was properly sent).

By opinions filed simultaneously with this order, we affirmed Pope's appeals in Appellate Case Nos. 2013-001649 and 2014-000250. David C. Sojourner, Jr. has filed a motion to intervene in those appeals. Based on the affirmance of the circuit court's orders, we deny the motion to intervene as moot.

Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, such as the above actions, 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.

 C.J.
 J.
 J.
 J.
Pleicones, J., not participating

Columbia, South Carolina

June 10, 2015

cc:

Adele J. Pope, Esquire
Eugene C. Covington, Jr., Esquire
Robert N. Rosen, Esquire
Albert P. Shahid, Jr., Esquire
William W. Wilkins, Esquire
J. David Black, Esquire
Fred Lewis Kingsmore, Jr., Esquire
Burl F. Williams, Esquire
John Andrew Donsbach, Sr., Esquire

Corey Ty Landon Smith, Esquire
David G. Cannon
James B. Richardson, Jr., Esquire
David Lawrence Michel, Esquire
Tressa T.H. Hayes, Esquire
Louis Levenson, Esquire
Robert D. Cook, Esquire
S. Alan Medlin, Esquire
Alan McCrory Wilson, Esquire
T. Heyward Carter, Jr., Esquire

Exhibit S

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2015 OCT 13 PM 3:13
ORDER CONCERNING PLAINTIFFS'
MOTION FOR EXCEPTION TO THE
PHYSICAL PRESENCE RULE,
MEDIATION

TO: COUNSEL FOR THE PLAINTIFFS AND THE DEFENDANT:

This matter comes before the Court on Plaintiffs' Motion for an Exception to the Physical Presence Rule at Mediation.

The Court notes that it previously held a hearing on this same issue on October 4, 2012. As a result of that hearing, the Court issued an Order granting the Plaintiff's request for an exception to the physical presence rule at mediation for represented James Brown family members and minor children.

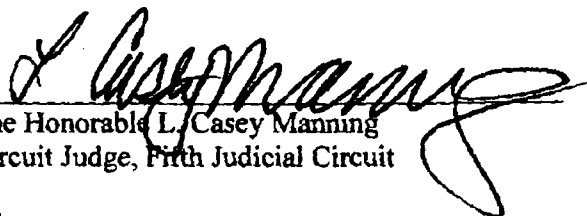
After considering the parties' arguments as to the instant motion as well as its prior ruling after extensive briefing and oral argument by the parties, the Court hereby finds and orders as follows:

1. The Court directs the parties to proceed with and participate in good faith in the mediation scheduled for October 22, 23, or 26, 2015.

2. Plaintiffs' motion is GRANTED to the extent it seeks an exception to the physical presence rule at mediation for represented James Brown family members, provided any absent family member is represented by counsel that is physically present.

3. Plaintiffs' motion is GRANTED to the extent it seeks an exception to the physical presence rule at mediation for all of the minor children and for a jailed adult family member. The court FINDS, under these facts and circumstances, that for this mediation there is no necessity to appoint any guardians *ad litem*.

AND IT IS SO ORDERED.


The Honorable L. Casey Manning
Circuit Judge, Fifth Judicial Circuit

Dated this 13 day of Oct, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2010 OCT 13 PM 1:02

**ORDER GRANTING PLAINTIFFS'
MOTION TO SET ASIDE ENTRY OF
DEFAULT**

THIS MATTER COMES BEFORE THE COURT on Plaintiffs' Motion to Set Aside the Entry of Default in the above-referenced action. Having considered the Plaintiffs' Motion and Affidavit and after having heard and carefully considered the arguments set forth by both parties during a hearing on this matter on December 17, 2012, the Court hereby finds and orders as follows:

1. Defendants filed an Affidavit of Default on November 10, 2010 claiming that Plaintiffs had failed to serve a timely answer to their counterclaims.
2. Plaintiffs promptly filed a Motion to Set Aside Entry of Default and served an Answer to the Counterclaims upon receipt of the Affidavit of Default. Both the Motion and Answer to Counterclaims were filed and served on November 16, 2010.
3. Plaintiffs have presented evidence of a meritorious defense to the Counterclaims.
4. Defendants are not prejudiced by this Court setting aside the default.
5. Plaintiffs have demonstrated good cause for setting aside the entry of default, and the Court has considered each of the factors set forth in Wham v. Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989).
6. Therefore, the record in this case demonstrates that the Plaintiffs have shown good cause for failing to serve an answer on or before November 1, 2010 and the interests of justice will be served by vacating any entry of default.
7. As further evidence showing good cause for the Plaintiffs' failure to timely answer, and as a separate and independent grounds for setting aside any default, pursuant to Rule 55(a), SCRCP, the Plaintiffs were "otherwise defend[ing]" in this matter by actively contesting Defendants' Rule 12, SCRCP motions to dismiss and change venue in response to the Plaintiffs' Complaint.

Civil Action No. 2010-CP-40-4900
Order Granting Plaintiffs' Motion to Set Aside Default

8. Pursuant to Rule 55(e), SCRPC, the Attorney General was never in default. In any event, the foregoing analysis would apply to the Attorney General as well.

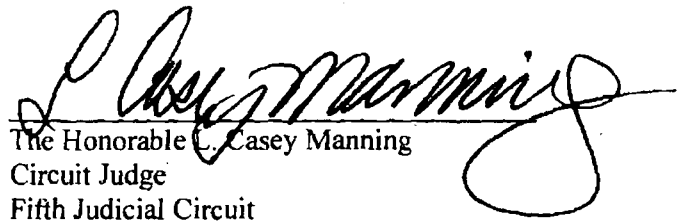
ACCORDINGLY, IT IS HEREBY ORDERED that:

(a) the Entry of Default is set aside as to all Plaintiffs for good cause shown pursuant to

Rule 55, SCRPC; and

(b) the Attorney General was never in default.

AND IT IS SO ORDERED.


The Honorable C. Casey Manning
Circuit Judge
Fifth Judicial Circuit

Columbia, South Carolina

Oct 13, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4004900

Russell Bauknight

Adele J Pope

James Brown 200 Irrevocable Trust

Tommie Rae Brown

PLAINTIFF(S)

DEFENDANT(S)

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 : _____

Continued Under advisement

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

Judge Code

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:

Kenneth B. Wingate
Mark V. Gende

Everett Augustus Kendall II
John Andrew Donsbach Sr.

Daryl L. Williams
Adam Tremaine Silvernail
Walter Henry Bundy Jr.

J. Calhoun Watson
J. Emory Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN II**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA J. BROWN THOMAS**; **JASON BROWN-LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LUMAR** and **CARRINGTON LUMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

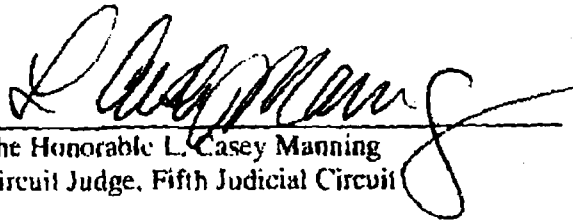
Civil Action No. 2010-CP-40-490

2016 MAR -2 PM 2:49
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

**ORDER GRANTING
PLAINTIFFS' MOTION TO STAY**

This case is stayed pending further notification of the Court.

IT IS SO ORDERED.


The Honorable L. Casey Manning
Circuit Judge, Fifth Judicial Circuit

Dated this 2 day of March 2016
Columbia, South Carolina

The Supreme Court of South Carolina

Adele Pope,

Plaintiff,

v.

Estate of James Brown, et al.,

Defendants

Aiken County
2013-CP-02-01337

ORDER

IT IS ORDERED that the Honorable Doyet A. Early, III be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Early shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.


Donald W. Beatty
Acting Chief Justice

March 24, 2016
Columbia, South Carolina

The Supreme Court of South Carolina

Russell Bauknight, et al.

Plaintiffs,

v.

Adele J. Pope, et al.,

Defendants.

Richland County
2010-CP-40-04900

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, et al.,

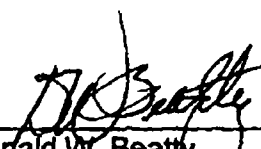
Defendants.

Richland County
2012-CP-40-00350

ORDER

IT IS ORDERED that the Honorable Doyet A. Early, III be vested with exclusive jurisdiction to hear and dispose of the above cases. Judge Early shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the Fifth Judicial Circuit while presiding over these cases.


Donald W. Beatty
Acting Chief Justice

March 24, 2016
Columbia, South Carolina

Exhibit T

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL BAUKNIGHT, et al.
Plaintiff,

vs.

ADELE POPE, et al.,
Defendant.

IN THE FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

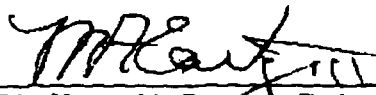
2010-CP-40-04900

ORDER LIFTING THE STAY

This Court has been assigned exclusive jurisdiction in the above-captioned civil matter by order of the South Carolina Supreme Court, dated March 24, 2016. A status conference was held in Aiken, South Carolina on April 5, 2016 with Plaintiffs' attorneys Mark Gende, Esq., Ken Wingate, Esq., and Mary Frances Jowers, Esq. attending. Also present were Defendant Adele Pope's attorneys William Bundy, Esq., Adam Silvernail, Esq., Daryl Williams, Esq., and Brent McDonald, Esq.

At the conclusion of the status conference, this Court concluded the pending stay in this case, established by the Order dated March 2, 2016 signed by the Honorable L. Casey Manning, shall be lifted and discovery in the case shall begin anew. This Court intends this case to move forward expeditiously.

Dated this 8 day of April, 2016


The Honorable Doyet A. Early, III
Circuit Judge, Second Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

ORDER

RECEIVED

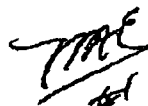
AUG 19 2016

SC Court of Appeals

This matter has come before this Court pursuant to various motions of the parties including motions to dismiss and for judgment on the pleadings of the Defendant Attorney General and a motion for summary judgment of the Plaintiff. After carefully reviewing the filings of the parties and considering the arguments of counsel concerning the motions in Aiken on May 17, 2016, this Court grants the Attorney General's Motion to Dismiss.

The Plaintiff has brought this action under the Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. seeking the following:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.



These documents are potentially discoverable documents under pending litigation in Richland /Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. FOIA is not a tool that may be used to bypass civil discovery in a pending case. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." (copy on file in this case). Although the FOIA at issue in Judge Westbrook's case related to a post conviction case, the reasoning applies to civil cases such as the pending litigation in Richland and Aiken.

Our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). The Supreme Court has also recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)¹; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 409 S.E.2d at 409. Although *Robinson* involved criminal proceedings, our Supreme Court's recitation of the federal

¹ "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40(4) for "[m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnison v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)²; *United States v. Hvass*, 355 U.S. 570, 575 (1958)³; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).⁴

Because the above documents may be sought through discovery in the pending litigation and for the reasons set forth above, IT IS ORDERED that this case be dismissed.

AND IT IS SO ORDERED.

June 14, 2016
[Signature] South Carolina

[Signature]
DOYET A. EARLY, III
PRESIDING JUDGE

2 "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights . . .," *Id.*

3 "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base" *Id.*

4 "[E]xception [under Ohio discovery statute] for other 'state law' may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id.*

RECEIVED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

AUG 19 2016
SC Court of Appeals

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as Attorney
General of South Carolina, and James
Brown Legacy Trust, by Russell L.
Bauknight, its Trustee,

Defendants.

Case No. 12-CP-40-350

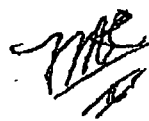
ORDER GRANTING JAMES
BROWN LEGACY TRUST'S
MOTION TO DISMISS

RICHLAND COUNTY
FILED
2016 JUN 20 PM 2:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes before the Court on the motion of Defendant James Brown Legacy Trust ("the Legacy Trust") for an order dismissing Plaintiff's complaint. The Plaintiff's complaint sought a declaratory judgment that Legacy Trust was a public body that was required to disclose certain documents under the Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. Having carefully considered all of the parties' arguments, the Court hereby GRANTS the Legacy Trust's Motion to Dismiss.

The Legacy Trust moves for an order dismissing this case pursuant to South Carolina Rule of Civil Procedure 12(b)(6) for failure to state facts sufficient to constitute a cause of action. The Legacy Trust asserts three grounds in support of its motion to dismiss: (1) the Legacy Trust is not subject to the Freedom of Information Act ("FOIA"); (2) the Legacy Trust no longer exists following *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and (3) the controversy is moot because Plaintiff is in possession of the documents requested by FOIA from the Legacy Trust.

As to its first ground, the Legacy Trust argues that it is not subject to the FOIA because it was created as a private trust and it is not a public body within the meaning of the act. In order



for an entity to be subject to the FOIA, it must fall within the definition of "public body." *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 163 (1991). The FOIA's definition of "public body" does not explicitly cover a private trust. The definition does, however, extend to "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." S.C. Code Ann. § 30-4-20(a) (2007). The Plaintiff argues that the Legacy Trust is subject to FOIA under this exception. *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991).

However, our Supreme Court has ruled that "the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds." *Disabato v. S.C. Ass'n of School Adm'rs*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013) (citing *Weston*, 303 S.C. at 403, 401 S.E.2d at 164). As the Supreme Court has held, a private entity is only subject to the FOIA where it "receive[s] government funds *en masse*" or it is "generally supported by public funds." *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341 (emphasis added).

Here, Plaintiff claims that some level of public funding has gone toward the creation of the Legacy Trust because of the Attorney General's involvement in the settlement agreement creating the Legacy Trust. Plaintiff has failed to alleged facts necessary to quantify this alleged support and has failed to allege any facts showing how the Legacy Trust was generally supported by public funds, created to expend public funds, or has received government funds *en masse*. Absent these factual allegations, Plaintiff's complaint is insufficient to hold the Legacy Trust subject to FOIA, and dismissal on this first ground is warranted.

Second, the Legacy Trust argues that it no longer exists following the South Carolina Supreme Court's holding in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and, as such,

2
MOE
#2

it cannot be subject to the FOIA. The Court agrees. The operation of the Legacy Trust and the entire compromise agreement creating the Legacy Trust were stayed pending the Supreme Court's review of the compromise agreement. In *Wilson v. Dallas*, the Supreme Court invalidated the compromise agreement that created the Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-78. This Court finds that the Supreme Court's ruling that the compromise agreement could not replace James Brown's existing trusts by creating new trusts explicitly invalidated the existence of the Legacy Trust. *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765. As such, the Legacy Trust does not exist and cannot be subject to FOIA.

Finally, the Legacy Trust argues that the controversy is moot because Plaintiff is in possession of the documents requested from the Legacy Trust. When the documents subject to FOIA are produced, no justiciable controversy remains. *Sloan v. Friends of the Humley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Attorney General has stated in documents submitted to this Court that he has provided the only two documents that would be responsive to Plaintiff's FOIA request. Plaintiff does not contend otherwise. As such, the Court finds that no justiciable controversy remains and, accordingly, this case should be dismissed as moot.

The Court's dismissal of this action rests independently on each of Legacy Trust's three grounds for dismissal. Each ground is sufficient standing alone to grant Legacy Trust's motion to dismiss.

IT IS SO ORDERED.


DOYET A. EARLY, III
Circuit Judge, Second Judicial Circuit

Aiken, South Carolina
June ~~18~~ 2016

Exhibit D

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND/AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-40-4900/2013-CP-02-1337

Adele J. Pope

v.

Alan Wilson, in his capacity as Attorney General of
South Carolina.
2010-CP-40-4900

Adele J. Pope

v.

Estate of James Brown, Deceased, and the James
Brown 2000 Irrevocable Trust.
2013-CP-02-01337

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), SCRCP; ☐ Rule 41(b), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other .
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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: Based on the facts and arguments presented, the Motion to Consolidate 2010-CP-40-4900 with Adele Pope v. Est. of James Brown, et al., case number 2013-CP-02-1337 is hereby 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:

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

Tommy
Circuit Court Judge

D136
Judge Code

July 15, 2016
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 21 day of July, 2016 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)

Court Reporter:

CLERK OF COURT
Jeanette W. McBride

Exhibit Q

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 AUG -5 PM 12:24
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**PROPOSED
SCHEDULING ORDER**

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure and the authority vested in this Court by March 24, 2016 Order of the Supreme Court of South Carolina, the Court enters the following Scheduling Order is entered in this case:

1. Plaintiffs must identify all experts by November 30, 2016
2. Defendant must identify all experts by January 15, 2017.
3. The Court will closely monitor the progress of this case and at an appropriate time will convene a status conference at which a date-certain trial will be set for the trial of Case 4900 either prior to or jointly with Case 1337.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III

July 25, 2016

Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-40-0350

Adele J. Pope

Alan Wilson, as Attorney General for South
Carolina, and James Brown Legacy Trust

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: .

Attorney for : ☐ Plaintiff 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: Based on the written motion by the Plaintiff, the Motion to Alter, Amend and/or Vacate the June 14, 2016 Order granting the James Brown Legacy Trusts' Motion to Dismiss is hereby DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

RECEIVED
AUG 19 2016
SC Court of Appeals

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 may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

MP Early
Circuit Court Judge

0136
Judge Code

7-26-16
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 Aug, 2016 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)

Jeanette W. Brude
CLERK OF COURT

Court Reporter:

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-40-4900

Adele J. Pope

Alan Wilson, in his capacity as Attorney
General of South Carolina

RECEIVED

AUG 18 2016.

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ 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: Based on the written motion by the Plaintiff, the Motion to Alter, Amend and/or Vacate the June 14, 2016 Order granting the Attorney General's Motion to Dismiss is hereby 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:		

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.

WBE 0136 7-27-16
Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of August, 2016 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)

Janette W. Grider

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

SCANNED

Exhibit 0

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 SEP 27 PM 2:52
JEANETTE W. MCBRIDE
C.C.P. & G.S.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PROTECTIVE ORDER
AS TO DARYL J. BROWN AND TONYA
BROWN**

[Handwritten signature]

Order Granting Plaintiffs' Motion
for Protective Order as to
Daryl J. Brown and Tonya Brown
2010-CP-40-4900

This matter came before the Court on Monday, August 29, 2016 on Plaintiffs' Motion for Protective Order to prevent the retaking of Mr. Daryl Brown and Mrs. Tonya Brown's depositions. The Court heard oral arguments from Mark V. Gende on behalf of the Plaintiffs and M. Brent McDonald on behalf of Mrs. Pope. For the following reasons, the Court GRANTS Plaintiffs' Motion for Protective Order.

It is undisputed that Daryl and Tonya Brown were deposed in this matter by counsel for Mrs. Pope on December 21, 2012 and February 8, 2013, respectively. Rule 30(a)(2) of the South Carolina Rules of Civil Procedure provides, in part, that the "deposition of any party or witness may only be taken one time in any case except by agreement of the parties through their counsel or by order of the court for good cause shown." Counsel for Mrs. Pope asserts that good cause exists because Daryl and Tonya Brown have allegedly changed their positions in respect to some of the issues raised in the case. However, counsel for Mrs. Pope made only conclusory allegations of these allegedly changed positions, did not provide any evidence that the alleged changes related to any material issues in the case, and cited no authority to support the contention that such alleged changes amounted to good cause. Conclusory allegations of changed positions is not good cause to permit a second deposition of a party under Rule 30(a)(2). The opposing party will have full opportunity at trial to impeach any party or witness concerning any allegedly changed positions that are inconsistent with prior deposition testimony.

Furthermore, to the extent Mrs. Pope is relying on this Court's April 8, 2016 order stating that "discovery in the case shall begin anew" as grounds to retake Daryl and Tonya Brown's depositions, the Court clarifies that order. The discovery to which the Court is referring in its April 8, 2016 Order is the prior interrogatories and requests to produce between the parties,

Handwritten signature and initials, possibly "DJK" and "82", in black ink.

Order Granting Plaintiffs' Motion
for Protective Order as to
Daryl J. Brown and Tonya Brown
2010-CP-40-4900

which had become encumbered by a multitude of motions to compel and cross motions for protection. The Court intended only for written discovery to begin anew as a way to clear the docket of all the pending motions concerning written discovery. The Court did not intend that depositions that have been taken be re-taken.

Therefore, it is ORDERED that the Plaintiffs' Motion for Protective Order as to Mr. Daryl Brown and Mrs. Tonya Brown is hereby GRANTED.

IT IS SO ORDERED.

Sept 21, 2016

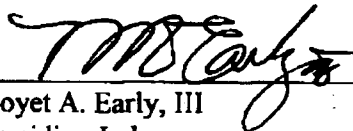

Doyet A. Early, III
Presiding Judge

Exhibit K

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

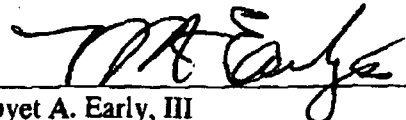
Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2017 FEB -1 AM 10:01
JEANETTE L. BROWN
C.C.P. & G.S.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PROTECTIVE ORDER
CONCERNING DEPOSITION OF
LARRY BROWN**

Consistent with the Court's prior Order of September 21, 2016 concerning discovery, specifically that depositions previously taken are not to be retaken unless good cause is shown and leave is granted by the Court, plaintiffs' motion for protective order as to the deposition of Larry Brown is granted.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

1-23 ²⁰¹⁷
Barnwell, 2016
South Carolina.

Exhibit J

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

RICHLAND COUNTY
FILED
2017 FEB 13 AM 8:56
JEANNETTE W. MCBRIDE
C.C.P. & J.

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.



IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

Feb 6, 2017
Bankers, South Carolina.

Exhibit H

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

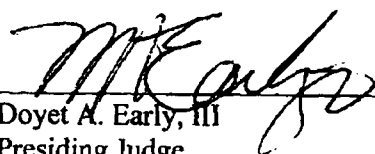
FILED
MAR 13 PM 12:05

ORDER COMPELLING DEFENDANT'S
PRODUCTION OF DOCUMENTS

[Handwritten signature]

Plaintiffs in Richland Case 4900 moved this Court for an Order compelling the Defendant to produce certain documents identified in her discovery, including approximately 139 bankers boxes of documents and an undetermined number of compact disks containing electronically stored documents. A hearing was held on the motion on February 6, 2017, at which time all parties were heard. After having considered the arguments, the Court rules as follows: (1) Defendant shall produce the compact disks to plaintiff's counsel within ten (10) days, and plaintiff's counsel will have ten (10) days to duplicate the compact disks and return them; (2) The week of May 1, 2017 Defendant will make available at her office the approximately 139 bankers boxes of documents identified in her discovery. Counsel for both parties will review each document to determine whether the document is relevant or contains privileged information; and Defendant will prepare a privilege log concerning any documents over which she claims any privilege. The documents will then be made available for copying at Armfields School Supply in Whitmire, South Carolina. Should one week not be sufficient for the review contemplated in this Order, the plaintiffs will notify the Court early in the review process and seek guidance as to the enlargement of time for the review.

IT IS SO ORDERED.


Doyet A. Early, III
Presiding Judge

3-7, 2017
Bamberg, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

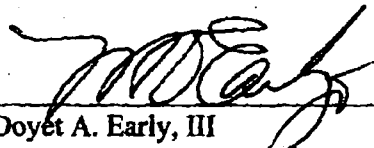
RICHLAND COUNTY
FILED
2017 MAR 15 AM 9:03
JEANETTE
C.C.P.

ORDER CONCERNING PLAINTIFFS'
MOTION TO STRIKE A JANUARY 17,
2017 AFFIDAVIT OF DEFENDANT

DAVE

Plaintiffs in Richland Case 4900 moved this Court for an Order striking the Affidavit of the Defendant that was filed by her on January 17, 2017. A hearing was held on the motion on February 6, 2017, at which time all parties were heard. After having considered the arguments, the Court orders as follows: (1) The subject Affidavit will be placed under seal; (2) All further Affidavits filed by the Defendant will be filed under seal; (3) A determination will be made at the time of trial which Affidavits will be used in the trial of this matter. This Order specifically makes no finding about the content of the January 17, 2017 Affidavit. Motions, which have previously been filed in this matter to strike other affidavits, will be heard by this Court, only after at least ten days notice.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

March 9, 2017
Bamberg, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
RUSSELL L. BAUKNIGHT, et. al.,)
))
and)
))
ALAN WILSON, et. al.)
))
Plaintiffs,)
))
v.)
))
ADELE J. POPE,)
))
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

CASE NO.: 2010-CP-40-4900

**ORDER REGARDING:
MOTION FOR PROTECTIVE
ORDER AS TO TOMMIE RAE
BROWN'S DEPOSITION**

2017 MAR 21 AM 8:49
FILED
JEANETTE B. BROWN
C. CLERK OF COURT

This matter is before the Court on a motion filed by Tommie Rae Brown for a protective order regarding her deposition taken on June 16 and 17, 2016 in the above referenced matter. A hearing was held on Monday, November 21, 2016. After reviewing Tommie Rae Brown's Deposition Transcript ("Tr."),¹ it is

ORDERED that all of Tommie Rae Brown's counsel's objections noted on pages 22 through 58, as well as page 81, lines 19-20 and page 82, lines 13-14, 18-19, and 21-22, regarding Tommie Rae Brown's marriages to Javed Ahmed and/or James Brown are sustained until the motion for protective order is heard.

IT IS ORDERED that the following objections are overruled: Tr. 63:10-11, 18-19; Tr. 83:8-12; and Tr. 86:19-20.

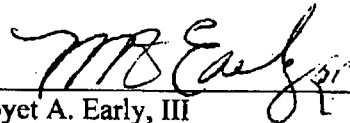
IT IS FURTHER ORDERED that the following objections are sustained: Tr. 59:17-19; Tr. 103:14-15; Tr. 103:25-104:1; Tr. 104:11; Tr. 112:23-24; Tr. 113:11-12; Tr. 147:11-17; Tr. 159:16-21; Tr. 213:6-7, 13-19; Tr. 265:4-6, 10, and 13; Tr. 271:20-22; Tr. 285:7-9, 13; Tr.

¹ The Court did not issue an order regarding counsel's objection at Tr. 366:1-4.

[Handwritten signature]

287:12-19; Tr. 288:4-7; Tr. 362:4-21; Tr. 364:19-21; Tr. 365:20-22; Tr. 370:22-24; and Tr. 378:
9-16.

AND IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge
Fifth Judicial Circuit



Bamberg, South Carolina
March 9, 2017

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

)

COUNTY OF RICHLAND

) FIFTH JUDICIAL CIRCUIT

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

) Civil Action No.: 2010-CP-40-4900

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and

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

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Plaintiffs,

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vs.

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)

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

Defendants.

FILED
2011 JUN 12 PM 3:11
JUL 12 2011

ME
#1

THIS MATTER COMES before me on the Motion of Attorney General Alan Wilson to be Dropped as a Party to this action, filed on March 25, 2013. The Court held a hearing and heard arguments from counsel on August 29, 2016. Senior Assistant Deputy Attorney General C.H. Jones, Jr. appeared for the Attorney General,¹ and Walter H. Bundy, Jr., Esquire, and M. Brent McDonald, Esquire, appeared for Defendant Adele J. Pope. Based on the pleadings, documents, and arguments of counsel presented to the Court, the Court finds that the Motion to be Dropped should be granted. Accordingly, the Attorney General's Motion to be Dropped as a Party is granted, and the Court Orders as follows.

The Attorney General moved to be dropped as a party pursuant to Rule 21, SCRPC, which states that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." The Attorney General's Motion to be Dropped is consistent with Rule 21 and the language in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Following the South Carolina Supreme Court's decision in *Wilson v. Dallas*, 2013 WL 697042 (filed February 27, 2013),² the Attorney General filed a Petition for Rehearing wherein he advised the Supreme Court that he would shortly be moving to have himself removed as a party to the 4900 case and that any further action in the case to protect the charitable beneficiaries could be pursued by the new Trustee. See Petition for Rehearing, page 26-27. The Supreme Court acknowledged the Attorney General's desire to withdraw in its opinion of May 2013, stating as follows in footnote 30: "[T]he AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now

1 In an abundance of caution, the Attorney General filed a Notice of Special Appearance to avoid any dispute regarding who would be able to argue and handle the Motion to be Dropped.

2 The initial opinion was issued on February 27, 2013. The Court later withdrew and superseded this opinion with *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).



withdrawing as a party in that lawsuit and his office will maintain a monitoring role.” The Attorney General’s role in this matter is to protect the charitable beneficiaries, and with the appointment of Russell Bauknight (Bauknight), as the trustee, that is being handled to the satisfaction of the Attorney General. Accordingly, there is no need for the Attorney General to remain in this action. He is also immune from suit by the counterclaims as set forth later in this order.

Regarding the Attorney General’s role, the Complaint itself states that Henry Dargan McMaster³ is in the action as a beneficiary plaintiff and “in his capacity as the Attorney General for the State of South Carolina[.]” See Complaint, paragraph 3(a). As noted by the general law, the Attorney General, in his *parens patriae* capacity, has the duty to protect the public interest and the authority to do so as granted to him by the state constitution, statutory law, and common law. Further concerning charitable trusts, the Attorney General has the duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. *Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) (“[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the AG has the duty to represent the unspecified charitable beneficiaries.”); *see also* S.C. Code Ann. § 1-7-130 (2005) (“The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State.”); S.C. Code Ann. § 62-7-405(c) (2009) (“The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.”); *Epworth Children’s Home v. Beasley*, 365 S.C. 157, 164 n.3, 616 S.E.2d 710, 714 n.3 (2005) (“The Attorney General is the proper party to protect the interests of the public at

3 Henry Dargan McMaster was Attorney General at the time the action was filed. Pursuant to Rule 25(d), SCRPC, Alan Wilson was substituted for Henry Dargan McMaster when he became Attorney General in January 2010.

large in the matter of administering or enforcing charitable trusts.” (citing *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961)); see generally 15 *Am. Jur. 2d* Charities § 132 (2015) (“Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it generally is recognized that the state Attorney General, in his or her capacity as a representative of the state and of the public, is the, or at least a, proper party to institute and maintain proceedings for the enforcement of such gift or trust.”).

As the Supreme Court explained in *Wilson v. Dallas*, “[I]t is axiomatic that a trustee is always under the direction and guidance of the court. . . .” (*Id.* (citing *Kingdom v. Saxbe*, 161 N.E.2d 461, 466 (Ohio, Ashtabula County Prob. Ct. 1958))). In addition to the Attorney General, it is also appropriate for an individual Trustee to protect the charitable trust, as explained in S.C. Code Ann. § 62-7-405. Because of the actions of Bauknight, who is under the direction and guidance of the Court, there is no need for the Attorney General to be involved. In *Wilson v. Dallas*, the Court explained that “[a]lthough the AG certainly has duties in regards to charitable trusts, if he believed Appellants, as trustees, were not good stewards, the remedy would be to seek their removal and replacement.” The Attorney General has no concerns with the appointment of Bauknight and believes that the charitable beneficiaries will be protected while he is trustee.

Shortly after the Supreme Court’s ruling, in addition to filing this Motion and consistent with what he informed the Court, the Attorney General sought to withdraw from several other Brown matters. This Court then issued an Order Withdrawing Attorney General dated October 30, 2013. In that Order, the Court explained that allowing the Attorney General to withdraw is appropriate, in light of *Wilson v. Dallas*; the appointment of Bauknight as Special Trustee by

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Order dated June 13, 2013; the appointment of Bauknight as Special Administrator dated June 13, 2013; and the Attorney General's desire, pursuant to his statutory and common law authority, to have a monitoring role of the cases. Pursuant to this Order, the Attorney General withdrew from the following James Brown cases: 2007-CP-02-122, 2008-CP-02-1647, 2008-CP-02-872, 2009-CP-02-597, 2009-CP-02-1140, and 2009-CP-02-1810. I find the same reasoning applies in the present case and the Attorney General should be allowed to be dropped as a party.

This is a civil case, with causes of action including breach of fiduciary duty, breach of trust, and negligence. The Attorney General is a Plaintiff in the action to protect the interests of the charitable beneficiaries. Because Bauknight, as Trustee, is protecting these same interests, there is no need for the Attorney General to be a party and allowing him to be dropped will not prejudice any other Plaintiff.

The Attorney General's being a counterclaim defendant does not preclude his being dropped as a party because he is immune from suit as to those counterclaims for reasons set forth in his Supplemental Memorandum submitted herein.⁴ See, *Williams v. Condon*, 553 S.E.2d 496, 509, 347 S.C. 227, 250 (S.C.App.,2001); *Butz v. Economou*, 438 U.S. 478, 516 (1978); *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4, 1989); *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (C.A.4, 1999); *Mathis v. McDonough*, 2014 WL 3894133, at *11 (D.Md.,2014); *Metro Charities, Inc. v. Moore*, 748 F.Supp. 1156, 1163-64 (S.D.Miss.,1990); *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div.

⁴ Immunity is an affirmative defense under South Carolina case law, but as discussed in the Attorney's General's Reply to Plaintiff's Memorandum, cases indicate that it may be covered by the affirmative defense of failure to state a claim or cause of action or raised in a later pleading after the answer. See, *Plyler v. Burns*, 647 S.E.2d 188, 195, 373 S.C. 637, 649 (2007); *Ramsey v. City of Forest Park*, 418 S.E.2d 432, 433, 204 Ga.App. 98, 99 (Ga.App.,1992); *Baker v. Sudo*, 240 Cal.Rptr. 38, 42, 194 Cal.App.3d 936, 942 (Cal.App. 4 Dist.,1987).

1,1996); *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997). Further, to allow the counterclaims to proceed against the Attorney General would not only be contrary to his immunity, they would override his discretion in the protection of charitable beneficiaries by bringing this suit and now trying to end his involvement since Bauknight continues to protect the charitable beneficiaries.

WHEREFORE, for the reasons set forth herein, the Court grants the Attorney General's Motion to be Dropped as a Party.

IT IS SO ORDERED.

B. K. R., South Carolina

5-31, 2017


The Honorable Doyet A. Early, III
Presiding Judge

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Adele J. Pope,)

Plaintiff)

v.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2010-CP-40-4900

ORDER

RICHLAND COUNTY
FILED
2011 JUN -8 AM 8:47
JEANETTE E. MOBRIDE
C.C.P. & G.S.

In Re:

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
CIVIL ACTION NO.: 2013-CP-02-1337

This matter came before me pursuant to a Motion of Protective Order sought by Kenneth B. Wingate, Esquire ("Wingate") and Everett A. Kendall, II, Esquire (Kendall) arising out of questions put to them at their depositions.

The record reveals that Wingate and Kendall were subpoenaed to give deposition testimony in the above matters. Prior to the time that Wingate and Kendall were to appear for their

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depositions pursuant to their subpoenas, through counsel each of them moved in the Court of Common Pleas for Richland County for Orders quashing the subpoenas. On March 1, 2017, each of their motions was heard by the Honorable Jean H. Toal, acting Circuit Court Judge. Judge Toal denied the motions to quash but in so doing ruled that the "Plaintiff will be permitted to question each of these attorneys on their authorization to file and continue the lawsuit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 19, 2010 and continuing today."

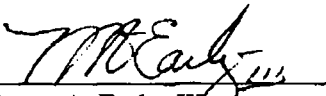
Wingate and Kendall have now sought a protective order to prohibit them from having to answer questions objected to at their depositions conducted on March 6, 2017, since the questions which they refused to answer at their depositions went beyond the limitations on the subject matter(s) upon which Plaintiff Adele Pope, Esquire was allowed to question them under the Order of Judge Toal.

The Court has carefully considered the arguments and submittals of Plaintiff Adele Pope and Wingate and Kendall. The Court has read the entire deposition transcripts and reviewed the Order of Judge Toal. The Court has considered the applicable cases dealing with one Circuit Judge modifying the Orders of another Circuit Judge.

After considering this matter, I find and conclude the questions objected to are all beyond the permitted scope of the parameters of the Order allowing the depositions and that the Protective Order should be granted. Accordingly, Wingate and Kendall shall not be required to answer those questions set forth in their Privilege Logs.

AND IT IS SO ORDERED.

Bamberg, South Carolina
June 14, 2017


Doyet A. Early, III
Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40,490

2010 JUL - 8 PM 5:20
FILED
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FIFTH CIRCUIT
SOUTH CAROLINA

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT'S
COUNTERCLAIMS**

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This matter came before the Court on Monday, August 29, 2016 on the Plaintiffs' Motion for Summary Judgment as to Defendant Pope's Counterclaims in the above-captioned action. Both parties submitted detailed memoranda on this Motion, and the Court heard oral arguments from Mark V. Gende on behalf of the Plaintiffs, and M. Brent McDonald on behalf of Mrs. Pope.

I. LEGAL STANDARD

Pursuant to Rule 56(c), SCRCP, a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).

II. FACTS/BACKGROUND

Plaintiffs brought this action against Defendant Adele Pope by way of a Complaint filed May 19, 2010. Mrs. Pope, a former Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust, had previously been removed from her role as a fiduciary of the Estate and Trust by Order of this Court dated May 26, 2009. Plaintiffs' Complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence. On September 10, 2010, Defendant Pope answered and asserted five counterclaims: Abuse of Process, Civil Conspiracy, Intentional Interference with Contract, Violation of S.C. Code § 62-1-106, and Attorney's Fees pursuant to S.C. Code § 62-7-1004. Plaintiffs filed this Motion for Summary Judgment as to Pope's counterclaims on April 19, 2016 on the grounds that the counterclaims are barred by the doctrine of collateral estoppel based on the Supreme Court's

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opinion in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013), which, *inter alia*, affirmed the May 26, 2009 order removing Pope from her role as a fiduciary of the Estate and Trust.

III. WILSON V. DALLAS

As part of its holding in Wilson v. Dallas, the South Carolina Supreme Court affirmed this Court's removal of Pope from her role as a fiduciary of the Estate and Trust. In particular, the Supreme Court found that "the circuit court did not violate the statutory provisions regarding the removal of personal representatives. *Notice and a hearing were provided, and the court had cause to remove [Pope] as it was in the best interests of the estate.*" Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766 (emphasis added). In support of its determination, the Supreme Court cited the following specific examples as grounds for upholding Pope's removal:

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, [Defendant 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 Appellants' own attorneys' fees. [Defendant Pope] 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.*

Id. at 448-49, 743 S.E.2d at 766-67 (emphasis added).

By virtue of this holding, Plaintiffs assert that Mrs. Pope is collaterally estopped from contesting the validity of her removal for cause, and that, as a result, her counterclaims fail as a matter of law. Therefore, the Court must first determine whether the elements of collateral estoppel are satisfied such that the issue of Mrs. Pope's removal for cause may not be relitigated in this action thereby mandating that the legal conclusions of the South Carolina Supreme Court

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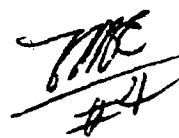
in Wilson v. Dallas be applied in this matter to determining the viability of Mrs. Pope's counterclaims.

IV. COLLATERAL ESTOPPEL

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S. Carolina Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Id. "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." Id. (citing Snaveley v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008)).

In dispensing with the mutuality requirement, our courts have applied collateral estoppel only when the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue. Carolina Renewal, 385 S.C. at 555, 684 S.E.2d at 782. Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim. Laughon v. O'Braitis, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004).

One of the issues on appeal in Wilson v. Dallas was whether the circuit court erred in removing Mrs. Pope from her fiduciary position. The Supreme Court's detailed discussion of the

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grounds for Mrs. Pope's removal demonstrates that the issue was (1) actually litigated in Wilson v. Dallas and (2) directly determined by the Court in that action. Moreover, adjudication of the validity of Mrs. Pope's removal was (3) necessary to support the judgment in Wilson v. Dallas, which affirmed her removal for cause and established a protocol for the future appointment of fiduciaries. Additionally, our Supreme Court expressly determined that statutory requirements were met in conjunction with Mrs. Pope's removal, and that Mrs. Pope had notice and a hearing on the issue, which demonstrated that Mrs. Pope was afforded a full and fair opportunity to litigate the question of her removal for cause.

Given the foregoing, this Court finds that issues regarding Mrs. Pope's removal for cause were actually litigated, finally determined, and were necessary to support the Court's adjudication of the Wilson v. Dallas appeal. The Court further finds that Mrs. Pope was afforded a full and fair opportunity to litigate the issue of her removal for cause. Accordingly, it is conclusively established in this action that Mrs. Pope was validly removed from her fiduciary roles for cause, and that she is precluded by the doctrine of collateral estoppel from relitigating that issue in the instant case. See Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766.

This Court is not persuaded by Mrs. Pope's argument that the doctrine of judicial estoppel precludes Plaintiffs' collateral estoppel arguments. Mrs. Pope bases her judicial estoppel argument primarily on various statements made by the Plaintiffs in conjunction with various filings in this Court some of which was filed years before the Supreme Court's decision in Wilson v. Dallas. One of the essential elements of judicial estoppel is that the inconsistent statements are made as part of an intentional effort to mislead the court. See Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004). The Court finds that Plaintiff's assertions were not made in an intentional effort to mislead the Court, but rather are consistent with the positions taken by

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the Plaintiffs in this extremely complex matter. Mrs. Pope's judicial estoppel argument confuses Plaintiffs' positions as to its *claims* and Plaintiffs' position as to her *counterclaims*. For example, Plaintiffs argued in conjunction with their April 8, 2011 Motion to Stay that the outcome of Wilson v. Dallas had no bearing on the Plaintiffs' intention to pursue their *claims*. In this Motion for summary judgment, Plaintiffs assert that Wilson v. Dallas is dispositive of Pope's *counterclaims*. Thus, there is no inconsistency in Plaintiffs' positions.

Having determined that the elements required for the application of collateral estoppel are met, the Court now examines the effect of Wilson v. Dallas on Mrs. Pope's counterclaims in this action.¹

V. COUNTERCLAIMS

A. Abuse of Process

Mrs. Pope's first counterclaim is for abuse of process. The essential elements of abuse of process are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the conduct of the proceeding. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions

¹ The Court is aware of an order granting summary judgment to Forlando Brown, a grandson of the entertainer, James Brown, in the federal matter styled Forlando J. Brown v. Adele J. Pope, Case No. 3:08cv00014-WOB (D.S.C. 2014). While Forlando Brown is not a litigant in this instant action, the federal court's Order granting summary judgment to Mr. Brown is instructive to this Court. See Court's Memorandum Opinion and Order, Id. As in the instant case, the Forlando Brown Order arises out of a claim for breach of fiduciary duty, *inter alia*, against Mrs. Pope regarding her activities while a personal representative and trustee of the Estate of James Brown. The Order also deals with the exact same counterclaims that Mrs. Pope has made in the instant case. The Order also discusses the ruling of the South Carolina state trial court removing Mrs. Pope as personal representative and trustee of the Estate of James Brown. The Order also discusses the South Carolina Supreme Court's holding in Wilson v. Dallas, affirming the state trial court's removal of Mrs. Pope. The Order ultimately grants summary judgment to Forlando Brown on all of Mrs. Pope's counterclaims. While the federal court's specific analysis of each cause of action necessarily differs from the instant action, in part because the plaintiffs are different, there are significant and relevant similarities. This Court finds the federal judge's statements of South Carolina law in the Order to be correct and his assessments of each cause of action to be persuasive.

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388 S.C. 394, 403, 697 S.E.2d 551, 555–56 (2010). “An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process. However, there is no liability when the process has been carried to its authorized conclusion, even though with bad intentions.” First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 74–75, 451 S.E.2d 907, 914 (Ct. App. 1994). “The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself.” Id. “Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required.” Hainer v. Am. Med. Int’l, Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997).

Furthermore, “[a]n abuse of process action may lie if a party prosecutes an ‘entire lawsuit’ for collateral purposes.” Food Lion, Inc. v. United Food & Commercial Workers Int’l Union, 351 S.C. 65, 74, 567 S.E.2d 251, 255 (Ct. App. 2002) (emphasis added). Further, “liability exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its *sole or paramount reason for acting*.” Id. at 75, 567 S.E.2d at 256 (emphasis added).

Pope’s Counterclaim alleges that she is “informed and believe[s] that Plaintiffs have maliciously commenced this legal action for an ulterior purpose of forcing Defendants to abandon or dismiss the appeal of the May 26, 2009 order of the Circuit Court of Aiken County approving a settlement desired by Plaintiffs.” Counterclaim ¶ 78. However, Wilson v. Dallas confirms that the Plaintiffs had legitimate grounds for bringing suit against Pope. Specifically, the Supreme Court held that “the court had cause to remove [Pope] as it was in the best interests of the estate.” Id. at 448, 743 S.E.2d at 766. The Supreme Court also cited multiple specific examples in support of Mrs. Pope’s removal which are quoted above, all of which demonstrate a legitimate legal basis for the Plaintiffs’ commencement of this action. Notably, the findings by

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the Supreme Court coincide with allegations in Plaintiffs' Complaint. See, e.g., Compl. ¶¶ 18.e., 18.h., 18.p.i-iii. Therefore, Wilson v. Dallas establishes as a matter of law that the Plaintiffs had ample legitimate grounds upon which to bring suit alleging breach of fiduciary duty against Mrs. Pope

Critical to the "willful act" element of Pope's claim for abuse of process is a "malicious misuse or perversion of the process for an end not lawfully warranted". Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967) (use of a warrant of arrest to extort money constitutes malicious use of process); see also Pallares v. Seinar, 407 S.C. 359, 373, 756 S.E.2d 128, 134 (2014) (filing a petition to seek the commitment of a neighbor to a mental institution without statutory authority constitutes malicious use of process). By contrast, "[t]he mere commencement of a civil action by the service of a summons, as required by the Code, cannot amount to the tort known as abuse of process." Russell v. Risher, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978).

While Mrs. Pope claims that the Plaintiffs threatened this suit during negotiations prior to its filing in the hopes of obtaining Pope's abandonment of her appeal of the Court's May 26, 2009 Order, the South Carolina Supreme Court has found that it is not unusual for parties to demand more than they are entitled to receive during negotiations, or to try to resolve all outstanding claims at one time. See Russell v. Risher, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978). Therefore, even if Mrs. Pope did prove Plaintiffs' sought though pre-suit negotiations to have her abandon her appeal, such a tactic, as matter of law, would not amount to the sort of willful act required to support an abuse of process claim. Moreover, as discussed above, the grounds enumerated by the Supreme Court for Mrs. Pope's removal for cause demonstrate that the Plaintiffs' pursuit of this action is not a willful act through which process has been

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misapplied or abused, but a legitimate action based on allegations that have been, in part, determined in the holding of Wilson v. Dallas.

Moreover, since it is a legal requirement that the collateral objective or ulterior purpose must be the *sole, paramount* or *primary* reason for bringing the action, as a matter of law Mrs. Pope is not able, under any factual scenarios, to meet this burden. See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002). Wilson v. Dallas provides ample legal justification for Plaintiffs' claims. Therefore, even if Plaintiffs had the motive of seeking to dissuade her from the appeal, that alleged ulterior purpose would not be the *sole, paramount, or primary* reason for Plaintiffs' claims because the South Carolina Supreme Court has confirmed that Plaintiffs have various legitimate concerns as to Mrs. Pope's administration of the Estate and Trust. It is these legitimate concerns, *inter alia*, that form the basis of Plaintiffs' claims.

Accordingly, the Court finds that summary judgment is appropriate as to Mrs. Pope's counterclaim for abuse of process.

B. Civil Conspiracy

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2011). The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005). It is essential that the moving party prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil

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conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

Initially, the Plaintiffs' prosecution of this suit for breach of fiduciary duty is not an "unlawful enterprise." In fact, as set forth above, Wilson v. Dallas establishes that the Plaintiffs have numerous good faith grounds for bringing this lawsuit.

Next, even if no unlawful enterprise exists, our Supreme Court has held that the tort of civil conspiracy can arise where one party to the alleged conspiracy has justifiable grounds for an action, but others join in the act who do not have the same justification. See Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719, 724 (1942) (noting that "where an act done by an individual, though harmful to another, is not actionable because justified by his rights, yet the same act becomes actionable when committed in pursuance of a combination of persons actuated by malicious motives and not having the same justification as the individual"). This Court finds that all of the Plaintiffs have the same justification for participating in this suit because, at the time this action was commenced, all of the Plaintiffs were parties to the same settlement agreement. Each named plaintiff is either included in the Settlement Agreement that was the subject of this Court's May 26, 2009 Order, or is an entity that was to be created by the agreement. Because the Plaintiffs were bound together by this agreement they necessarily had the same justification for bringing this suit against Defendant Pope. While Wilson v. Dallas ultimately abrogated the settlement agreement, that is irrelevant to this analysis because, at the time of the filing of this suit, all of the Plaintiffs had the same justification for suing Mrs. Pope, which was based on their participation in the agreement.

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While a lawful act can become a civil conspiracy when pursued primarily to injure a third party, Wilson v. Dallas confirms that there are were justifiable grounds for each of the Plaintiffs to seek damages for Pope's alleged breaches of fiduciary duty. See Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986) ("[T]he essential consideration is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the *primary purpose* or object of the combination is to injure the plaintiff.") (emphasis added). Thus, Wilson v. Dallas makes evident that the Plaintiffs' suit was not brought for the *primary purpose* of injuring or causing special damages to Mrs. Pope, but rather for the pursuit of the Plaintiffs' stated claims. Accordingly, summary judgment is appropriate as to Mrs. Pope's claim for civil conspiracy.

C. Intentional Interference with Contract

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: 1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury. Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). Pope's claim fails because her appointment as Personal Representative and Trustee was made pursuant to statute, and thus does not sound in contract. See S.C. Code § 62-3-701; -613; § 62-7-701; 812). Similarly, the Court's January 8, 2009 Order awarding her fees was grounded in South Carolina law, specifically citing Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989). Thus, both Pope's tenure as a fiduciary of the Estate and

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Trust and the Court's Order awarding her attorney's fees are unquestionably not contractual in nature, but are rather orders of the court grounded in the Court's authority pursuant to statute and case law.

Our Supreme Court, and other courts, has consistently held that "[c]ourts cannot create contracts for the parties". Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 472, 377 S.E.2d 343, 347 (Ct. App. 1988); see also Terminix Int'l, Inc. v. Rice, 904 So. 2d 1051, 1057 (Miss. 2004) ("A scheduling order is not a contract between the parties, but rather an order of the court."); Boston Prop. Exch. Transfer Co. v. Iantosca, 720 F.3d 1, 12 (1st Cir. 2013) (holding that an order assigning one party's legal claims to another "was not a contract" where the compelled assignor "did not bargain for, offer, or accept the assignment order, which was imposed on it over its strong objection."); Lueck's Home Imp., Inc. v. Seal Tite Nat., Inc., 142 Wis. 2d 843, 848, 419 N.W.2d 340, 342 (Ct. App. 1987) ("[A] restitution consent order is not a contract"); Goldberg v. Trakas, 206 F. Supp. 867, 869 (E.D.S.C. 1962) ([A]n order of the Court issued by consent of the parties is not to be deemed a contract"); Ketab Corp. v. Mesriani Law Grp., No. CV1407241RSWLMRWX, 2016 WL 911816, at 2 (C.D. Cal. Mar. 7, 2016) (dismissal of contract claims including intentional interference with contractual relations was appropriate where the claims were based on a settlement order because a "Settlement Order is a court order, and not a contract.").

Further, Pope's appointment by the court did not create a "contract" based on an attorney-client relationship. Ordinarily, the relationship between the attorney and client is one of contract, either express or implied. However, courts have differentiated between a traditional contractual attorney-client relationship and one based upon court appointment. See e.g., American Mut. Liab. Ins. Co. v. Superior Court, 113 Cal.Rptr. 561, 570 (1974) ("Save where

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appointed by court, the relationship of attorney and client is created by contract.”) (emphasis added). In Moore v. McComsey, 459 A.2d 841, 844 (1983), the Superior Court of Pennsylvania held that an inmate could not bring a breach of contract claim against his court-appointed public defender because “there was no contract of employment between [inmate] and trial counsel, for counsel had been court appointed.” Similarly, in Grand Blanc Landfill, Inc. v. Swanson Environmental, Inc., 505 N.W.2d 46, 48-9 (1993), the court held that the court’s act of appointing an expert did not give rise to a contract because the required contractual elements were not met.

In the present case, Mrs. Pope cannot prevail on an intentional or tortious interference with contract claim because no contract was created between Mrs. Pope and the Estate and Trust. Analogous to the Moore case, Mrs. Pope was appointed by the court; therefore, the relationship between Mrs. Pope and the Estate and Trust was not a contractual one. See 459 A.2d 841. Additionally, like the expert in Grand Blanc Landfill, Mrs. Pope’s court-appointed status and the court order concerning fees do not adequately satisfy the elements required to form a valid contract. See 505 N.W.2d 46. As a result, Mrs. Pope did not have a contractual relationship with the Estate and Trust, and certainly not with the court, and, thus, her counterclaims for intentional and tortious interference with contract fail as a matter of law.

Given the foregoing, summary judgment is appropriate as to Mrs. Pope’s claim for Intentional Interference with Contract.

D. Violation of 62-1-106 (Fraud and Evasion)

Section 62-1-106 of the South Carolina Code (2009) provides:

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any

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person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Mrs. Pope's counterclaim under § 62-1-106 alleges that "all Plaintiff's had knowledge that the heirs of James Brown should be properly determined" and that "an improper determination of heirs would damage the Estate/2000 Trust under the Federal Copyright Act." Counterclaim ¶ 99-100. Pope's counterclaim alleges that the Attorney General failed to address the heirs issues, "leaving to Defendants the protection of the Estate/2000 Trust under the Federal Copyright Act." Counterclaim ¶ 101. It is further alleged that "the Attorney General and some of the Plaintiffs stipulated to what is, upon information and belief, an incorrect determination of heirs." Counterclaim ¶ 102. The counterclaim concludes that "Plaintiffs intended for this known incorrect determination to be relied on and acted on by the Court and the Court and others have relied on such representations, *proximately causing injury to the Estate, 2000 Trust, and Defendants.*" Counterclaim ¶ 104. While the counterclaims make a cursory mention of injury to the Defendants, it appears to the Court from the preponderance of the contentions of Mrs. Pope's Counterclaims cited above that her claims under § 62-1-106 are actually claims for damages to the estate and not to her as an individual.

Mrs. Pope unquestionably lacks standing to assert claims on behalf of the Estate and Trust following the South Carolina Supreme Court's decision in Wilson v. Dallas since she ceased to be a fiduciary of the Estate and Trust on May 26, 2009. Accordingly, her counterclaim under § 62-1-106 fails as a matter of law.

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Additionally, Pope claims the Attorney General failed to address certain issues regarding the correct heirs to the Estate in Aiken County case 2008-CP-02-0872. According to Pope, the Attorney General entered into an agreement on August 10, 2008 regarding the identity of heirs. Pope claims this stipulation of heirs was incorrect. However, Pope's Counterclaim was filed on September 10, 2010, and therefore this cause of action, even if she was able to assert it, fails due to the operation of the two-year statute of limitations set forth in § 62-1-106.

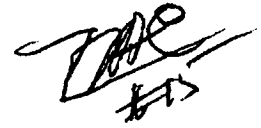
Accordingly, summary judgment is also appropriate as to Pope's § 62-1-106 claim.

E. Attorney's Fees pursuant to S.C. Code § 62-7-1004

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct. App. 2005). S.C. Code Ann. § 62-7-1004 provides that "[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy."

This Court is not persuaded that this breach of fiduciary duty action is "a judicial proceeding involving the administration of a trust". While the Plaintiffs will seek to prove their allegations of breach of fiduciary duty in the alleged actions or inactions of Mrs. Pope during her period of administration, the action has nothing to do with the actual administration of a trust. No decision in this action will effect, change, or guide the administration of the Brown Trust and Estate. Therefore, as a matter of law, Mrs. Pope's 62-7-1004 claim is barred.

However, even assuming that this case could be construed broadly as one "involving the administration of a trust," Pope cannot show that an award of attorney's fees would be required by "justice and equity." Pope was removed from her fiduciary role by the court for cause and

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such removal was upheld by the Supreme Court in Wilson v. Dallas. Therefore, justice and equity could not require Pope's attorney's fees to be paid in this matter pursuant to § 62-7-1004. Moreover, there are no considerations of justice or equity that outweigh the well-established American rule requiring Mrs. Pope to bear her own legal fees in her defense, just as the Plaintiffs must bear their own legal fees in the prosecution of their claims. See Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007) ("It is well known that equity follows the law.").

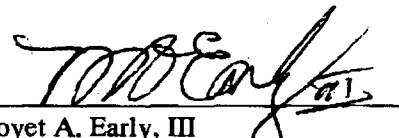
Moreover, Mrs. Pope has claims pending in Aiken Case 1337, which seek the same relief in whole or in part and she cannot maintain actions for the same relief in two separate courts. See Rule 12(b)(8), SCRPC.

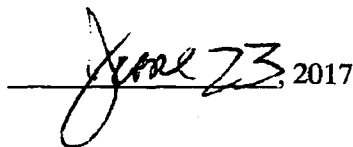
VI. CONCLUSION

Based on the foregoing, Mrs. Pope's counterclaims are barred by collateral estoppel based on the Supreme Court's holding in Wilson v. Dallas.

Therefore, it is ORDERED that the Plaintiffs' Motion for Summary Judgment as to Defendant Pope's counterclaims is hereby GRANTED.

IT IS SO ORDERED.


Doyet A. Early, III
Presiding Judge

 June 23, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

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

and

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 2010-CP-40-4900

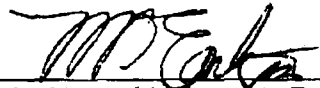
RICHLAND COUNTY
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JEANETTE W. MCBRIDE
C.C.P. & C.S.

**ORDER DENYING DEFENDANT
POPE'S MOTION TO ALTER OR
AMEND ORDER DROPPING
ATTORNEY GENERAL AS A PARTY**

MAE

THIS MATTER COMES before this Court upon the Motion of Defendant Pope for an order vacating, altering or amending the Order of this Court dated May 31, 2017, granting the Attorney General's Motion to be Dropped as a Party. This Court has reviewed that Motion and the letter return of the Attorney General and has determined that the Motion should be denied.

IT IS ORDERED THAT THE MOTION IS DENIED.



The Honorable Doyet A. Early, III
Presiding Judge

Bamberg, South Carolina

May 2, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

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FILED
CLERK OF COURT
RICHLAND COUNTY

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



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

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

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

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

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Stay and took no position regarding it because he had been dropped as a party by Order of this
9
Court currently under appeal. The Attorney General was not represented by counsel at the hearing.

STATEMENT OF LAW

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

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CONCLUSIONS OF LAW

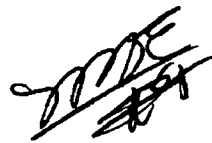
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In her Motion and all supporting documents, Defendant presents no facts and makes no argument based on Rule 241 of the South Carolina Rules of Civil Procedure. The Motion makes no reference to the effect of the particular orders from which the appeal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

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

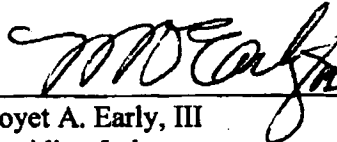
Rule 241(c)(2) sets forth considerations under which the automatic stay may be lifted: where it is necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. Defendant has not presented any facts or issues that address these considerations and the Court is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

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

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

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

Dec 6, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**ORDER DENYING
DEFENDANT/COUNTER-CLAIM
PLAINTIFF'S MOTION TO ALTER,
AMEND, RECONSIDER AND/OR
VACATE ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

The Court has thoroughly considered Defendant/Counter-claim Plaintiff's Motion to Alter, Amend, Reconsider, and/or Vacate this court's June 23, 2017 order (filed on July 8, 2017) granting Plaintiffs' motion for summary judgment as to all of Defendant's counter-claims, including considering the Defendant's memorandum with the attached affidavit of William Jeffrey Smith. Having carefully considered all of the arguments, the court finds no basis for altering, reconsidering, and/or vacating the subject order. Therefore, defendant's motion is hereby denied.

IT IS SO ORDERED.

Doyet A. Early, III
Presiding Judge

_____, 2018



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al
Case Number: 2010CP4004900
Type: Order/Other

So Ordered

s/D.A. Early III 2136

Electronically signed on 2018-11-25 11:33:08 page 3 of 3

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Nykki Croft

From: Early, Doyet A. <dearlyj@sccourts.org>
Sent: Tuesday, November 20, 2018 5:20 AM
To: Black, David
Cc: Knoepfle, Anita; Early, Doyet A. Law Clerk (); Early, Doyet A. Secretary (Karin Coker); Adele Pope (adele@popelawfirm.com); walter@bundymcdonald.com; Mark V. Gendegovington@covpatlaw.com; Williams, Burl F.
Subject: Re: James Brown Estate: Outstanding Motions
Attachments: image001.png

Mr. Black, please efile the proposed orders in 4900 and 1426 denying the motions to reconsider. DAE

Sent from my iPad

On Nov 13, 2018, at 2:10 PM, Black, David <DBlack@nexsenpruet.com<mailto:DBlack@nexsenpruet.com>> wrote:

Dear Judge Early,

I am writing you on behalf of Russell Bauknight, Personal Representative of the James Brown Estate and Trustee of the James Brown Trust to provide a status on outstanding motions concerning the Estate and Trust.

Case 1426: 2008-CP-02-1426: Dallas claim against Estate.

The court granted partial summary judgment against Dallas on September 7, 2016. Both parties moved for reconsideration and the matter was fully briefed. The Estate and Trust previously requested that the motions for rehearing be denied. Proposed order is attached.

Case 4900: 2010-CP-40-4900: Bauknight action against Pope.

The court previously dismissed Mrs. Pope's counterclaims on July 8, 2017. Mrs. Pope moved for reconsideration and the matter was fully briefed. The Estate and Trust previously requested that the motion for rehearing be denied. Prior proposed order is attached.

Case 1337: 2013-CP-020-1337: Pope claim against Estate.

Trial has concluded and the Court has requested proposed orders. The court reporter, Mrs. Sigwald, has completed all the trial transcripts. The Estate and Trust requests that proposed orders be submitted to the Court on or before November 19.

Thank you for your consideration.

David Black

Counsel to Mr. Russell Bauknight as Personal Representative of the James Brown Estate and Trustee of the James Brown Trust

J. David Black

Member: Admitted In SC, DC
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
PO Drawer 2426 (29202)

201 CCP 4004900

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE PROBATE COURT

Civil Action No. 2006C4000073

SUMMONS

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PROBATE COURT
RICHLAND COUNTY, S.C.

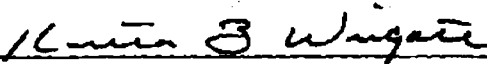
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JEANNE E. W. McDRIDE
C.C.P. & G.S.

TO: THE DEFENDANTS, ADELE J. POPE AND ROBERT L. BUCHANAN, JR.:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE PROBATE COURT

Civil Action No.

**COMPLAINT
(Jury Trial Demanded)**

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CLERK OF COURT
RICHLAND COUNTY, S.C.
C.C.P. & G.S.

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COME NOW THE PLAINTIFFS who, for their claim for relief against the Defendants, allege and will show as follows:

PARTIES

1. Russell L. Bauknight is the court-appointed Trustee of the James Brown 2000 Irrevocable Trust and the Trustee of the James Brown Legacy Trust. Bauknight is also the court-appointed Successor Personal Representative of the Estate of James Brown, the celebrated entertainer, who died on December 25, 2006, a resident of Aiken County, South Carolina. Bauknight serves in each of these capacities pursuant to a Settlement Agreement approved by Order of the Aiken County Circuit Court dated May 26, 2009.

2. Bauknight brings this action as Trustee of the James Brown 2000 Irrevocable Trust (hereinafter "the Trust") and as Trustee of the James Brown Legacy Trust, and as Personal Representative of the Estate of James Brown (hereinafter "the Estate"), and on behalf of the beneficiaries of the Estate and the Trusts. Bauknight is hereinafter referred to as "Trustee Plaintiff."

3. The following are parties to this action by virtue of their being beneficiaries of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust and/or the James Brown Legacy Trust. These Plaintiffs will hereinafter be referred to as the "Beneficiary Plaintiffs" and include:

- a. Henry Dargan McMaster in his capacity as the Attorney General for the State of South Carolina;
- b. Tommie Rae Brown, individually and on behalf of her minor child, James Brown II;
- c. Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown;

Complaint

- d. Lindsey Delores Brown;
- e. Venisha Brown;
- f. Deanna J. Brown Thomas;
- g. Jason Brown-Lewis;
- h. Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar;
- i. Larry Brown;
- j. Tonya Brown; and
- k. Terry Brown

4. Defendants were formerly Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

JURISDICTION AND VENUE

5. The Estate of James Brown is being probated in Aiken County, South Carolina.

6. The principal place of the administration of the Trust is Richland County, South Carolina. The Trustee maintains his usual place of business in Richland County, South Carolina. The records pertaining to the Trust are kept in Richland County, South Carolina.

7. Defendant Adele J. Pope is, upon information and belief, a resident of Newberry County. At all times pertinent to the matters alleged herein, Pope was a licensed attorney with her law office located in Richland County, South Carolina. During the time she served as a co-trustee of the James Brown 2000 Irrevocable Trust, she maintained her office and kept all documents relating to the Trust and the Estate in Richland County.

8. Defendant Robert L. Buchanan, Jr. is, upon information and belief, a citizen and resident of Aiken County, South Carolina. At all times pertinent to the matters alleged herein, he

Complaint

was a licensed attorney. During the time he served as a co-trustee and co-personal representative of the Estate, Buchanan transacted substantial business in Richland County and derived substantial income from the administration of the Estate and the Trust in Richland County and participated in the maintaining of the Trust and Estate documents in Richland County.

9 The Probate Court has exclusive jurisdiction over the matters raised herein pursuant to S.C. Code Ann. §§ 62-1-302 and -7-201.

10. Venue in this matter is proper in Richland County, South Carolina pursuant to S.C. Code Ann. §§ 62-7-108 and -204.

FACTUAL ALLEGATIONS

11. A document purporting to be Mr. Brown's Last Will and Testament ("Will"), dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. The Will nominated three individuals as Personal Representatives, namely, Albert H. Dallas, David G. Cannon, and Alfred A. Bradley, and they were appointed by the Probate Court by Order dated January 18, 2007. These same individuals were also appointed Trustees under a document purporting to create the James Brown 2000 Irrevocable Trust ("Trust").

12. Thereafter, a number of actions were filed in the Aiken County Probate Court in connection with the Will and Trust, all of which were removed to the Aiken County Circuit Court.

13. On or about September 24, 2007, the South Carolina Attorney General intervened in the Circuit Court actions to represent the interests of the charitable beneficiaries of the Trust.

14. On August 10, 2007, the Aiken County Circuit Court accepted Cannon's resignation as, *inter alia*, Personal Representative and Trustee. On November 20, 2007, the Aiken County Circuit Court accepted the resignations of Dallas and Bradley as Personal

Complaint

Representatives and Trustees and appointed the Defendants Robert L. Buchanan, Jr. and Adele J. Pope as substitute Personal Representatives and Trustees.

15. Following additional litigation in the Aiken County Circuit Court, the Beneficiary Plaintiffs entered a comprehensive settlement resolving all their disputes and ending the litigation between them, which agreement was, after an extensive hearing, approved by the Aiken County Circuit Court by an Order entered on May 26, 2009. That Order also removed the Defendants as the substituted Personal Representatives and Trustees.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

16. All allegations set forth above are incorporated herein.

17. As Personal Representatives and Trustees of the Estate of James Brown and the James Brown 2000 Irrevocable Trust, the Defendants owed fiduciary duties to the Estate, Trust and the beneficiaries of each (collectively "The Affected Parties"), including a duty of care, of impartiality, and of loyalty as well as a duty to prudently administer the probate and trust estates.

18. Upon information and belief, during their appointment as substitute Personal Representative and Trustee, the Defendants repeatedly and chronically breached their fiduciary duty to the Affected Parties in multiple ways, including but not limited to the following particulars:

- a. Failing to properly manage the estate and trust;
- b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief, millions of dollars of lost opportunities for the estate and trust;
- c. Failing to use due diligence in pursuing business opportunities for the estate and trust;

Complaint

- d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;
- e. Mishandling an auction of personal property at great cost to the estate and trust;
- f. Failing to timely settle the debts of the estate;
- g. Failing to keep accurate accounting records for the estate and trust;
- h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
- i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for \$100 million in November 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;
- j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;
- k. Failing to account to the Attorney General as required by law;
- l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;
- m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;

n. Acting in bad faith, as evidenced by such actions as

- i. filing a lengthy motion opposing the settlement even before they were informed of the terms of the settlement ;
- ii. providing to the Internal Revenue Service a road map of the settling parties' plan to deal with tax issues, for no apparent purpose other than to sabotage the settlement agreement;
- iii. Taking inconsistent legal positions for their own personal interests, such as asserting their right to continue as fiduciaries pending their appeals despite having taken the contrary position when their predecessors appealed, insisting that the settling parties give notice to noninterested persons when Defendants refused to do so whenever they sought relief (such as the payment of their fees), and contesting the settling parties' contention that the estate was in an emergency situation when they themselves had asserted that position shortly before;
- iv. Despite being judicially estopped by the South Carolina Court of Appeals, asserting they have a right to prosecute the Trust's and Estate's claims against Dallas, Cannon, and Bradley.

o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:

- i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and

failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;

ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;

iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."

p. Engaging in conflicts of interest, such as

i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;

ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.

iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be \$5 million.

q. By misrepresenting or presenting inaccurate statements under oath to the Court;

r. By failing to file appropriate tax returns;

s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;

- t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and
- u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately \$5 Million in fees.

19. Despite the terms of the Order of May 26, 2009, removing the Defendants as Personal Representatives and Trustees, the Defendants have nevertheless continued to breach their fiduciary duties to the Affected Parties by continuing to take actions harmful to the estate and trust and the interests of the Affected Parties, including but not limited to contesting the settlement by filing multiple appeals and objecting to substitution, all to the detriment of the Affected Parties and in violation of their fiduciary duty to the Affected Parties.

20. As a result of Defendants' breach of their fiduciary duties to the Affected Parties, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A SECOND CAUSE OF ACTION
(Breach of Trust)

- 21. All allegations set forth above are incorporated herein.
- 22. The acts and omissions of the Defendants constitute a breach of trust pursuant to S.C. Code Ann. § 62-7-1001(a).
- 23. As a result of Defendants' breach of trust, Plaintiffs are entitled to an order

- a. compelling Defendants to redress the breach of trust by paying money, restoring property, or by other means as may be required to remedy the breach;
- b. ordering the Defendants to account for all property of the Estate and Trust;
- c. denying compensation to the Defendants for all services provided by them for work on behalf of the Estate or Trust;
- d. such other relief as may be necessary to remedy the breach.

24. As a result of Defendants' breach of trust, Plaintiffs are entitled to judgment against the Defendants for damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A THIRD CAUSE OF ACTION
(Negligence)

25. All allegations set forth above are incorporated herein.

26. Defendants provided services to the Estate and Trust apart from, and in addition to the requirements for the administration of the Estate and Trust. In doing so, Defendants were obligated to provide such services in a reasonable manner, consistent with the applicable standard of care.

27. The acts or omissions of the Defendants in providing these services were careless, negligent, grossly negligent, willful, wanton, reckless, and in conscious disregard of the rights of the Affected Parties.

28. As a result of the Defendants' acts or omissions, the Affected Parties have incurred actual damages in the form of:

- (a) loss, waste, or spoliation of the assets of the Estate and Trust;
- (b) diminution in the present value and income generation of the Estate and Trust;

Complaint

(c) diminution in the future stream of profit and income from the corpus of the Estate and Trust.

29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

WHEREFORE, The Plaintiffs pray for a judgment against the Defendants for, relief as set forth above, actual and punitive damages in such sums as may be proven at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

PLAINTIFFS DEMAND A JURY TRIAL.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

CERTIFICATE OF TRANSMITTAL AS TO REMOVAL

TO: JEANNETTE MCBRIDE, Richland County Clerk of Court

In accordance with Section 62-1-302, Code of Laws of South Carolina, 1976, the attached documents are hereby certified true copies of the originals of documents found in Richland County Probate Court file:

Estate of James Brown

Number: 2010 GC40 00073

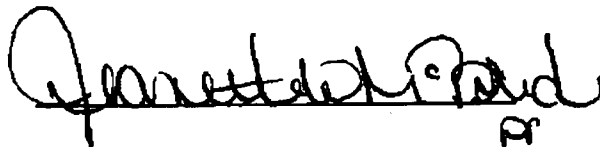
This given under my Hand and Seal of this Court, this 26th day of July, 2010.


JOSIE H. PENDER
Clerk of Probate
Richland County

Columbia, SC

2010 CP4004900

**RECEIVED BY THE RICHLAND COUNTY CLERK OF COURT'S OFFICE
THIS 26th DAY OF JULY, 2010.**


Jeannette McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

IN THE PROBATE COURT

Case No.: 2010-GC-4000073

FILED
10 JUN 11 PM 4:41
CLERK OF COURT
SOUTH CAROLINA

MOTION TO REMOVE

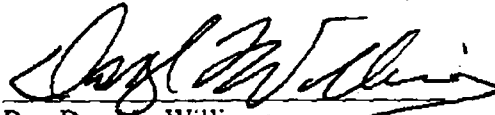
TO: ALL PLAINTIFFS AND THEIR ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof or as soon thereafter as counsel may be heard, and subject to their Motion to Dismiss and other motions filed or to be filed herein, Defendants, through their undersigned counsel, will move before the Honorable Amy McCullough, Probate Judge for Richland County, at her chambers in the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina pursuant to Section 62-1-302(d) of the South Carolina Probate Code for an Order removing this matter to the Circuit Court.

Removal of this action is proper because there is a right to jury trial, which has been demanded, the amount in controversy is at least \$5,000 and this is a matter related to Trusts.

This Motion is based on the pleadings in this matter and on the applicable law.

JETER & WILLIAMS, P.A.



By: Daryl L. Williams.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
Attorneys for Defendant Adele J. Pope,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



By: J. Calhoun Watson
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Telephone: 803-929-1400
Facsimile: 803-231-7889
Attorneys for Defendant Robert L. Buchanan, Jr.

June 11, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 2010-GC-40-00073

FILED
2010 JUL 26 AM 11:47
JEANE L. W. MCBRIDE
C.C.P. & G.S.

MOTION TO DISMISS OF DEFENDANTS
ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE

FILED
10 JUN 22 PM 3:55
RECEIVED
CLERK OF COURT
RICHLAND COUNTY, S.C.

TO PLAINTIFFS AND THEIR COUNSEL:

Pursuant to Rules 12(b) and 19 of the South Carolina Rules of Civil Procedure and subject to Defendants' Motion to Remove to Circuit Court, filed June 11, 2010, Defendants Robert L. Buchanan, Jr. and Adele J. Pope move the Court for an Order dismissing this matter on the grounds specified below. This Motion is supported by South Carolina case law and statutory law, the South Carolina and United States Constitutions, and the orders, pleadings, motions, and other exhibits, including those attached to this Motion, and Memorandum of Law to be submitted prior to the hearing.

BACKGROUND

This case is nothing more than a repeat chapter in Plaintiffs' long-standing efforts to acquire the assets of legendary singer, James Brown and to dismantle his estate plan. The issues raised by Plaintiffs in this case are simply a new attempt to circumvent rulings, orders, and inconsistent positions they have taken in multiple – and ongoing – matters pending or resolved in the Aiken County Probate and Common Pleas Courts ("State Court"), the South Carolina Court of Appeals, and the South Carolina Supreme Court. Defendants' Memorandum of Law will detail these duplicative matters, including the State Court rulings that have already addressed the issues raised in this case or the issues pending before the Supreme Court and other courts that duplicate the issues now raised by Plaintiffs. Moreover, and for the many reasons detailed below, the South Carolina Attorney General's participation in this private tort suit as a Plaintiff far exceeds any of his recognized statutory or constitutional authority.

Not surprisingly, for a multitude of legal and jurisdictional reasons, Plaintiffs' tactic of filing this case in the Richland County Probate Court is improper and, as a result,

the case must be dismissed. Therefore, for the following multiple reasons, this case must be dismissed.

GROUND FOR DISMISSAL

1. **This matter must be dismissed on the grounds that Plaintiffs have failed to comply with S.C. Code Ann. § 15-36-100 for claims alleging negligence of an attorney.**

S.C. Code Ann. § 15-36-100 requires a plaintiff to "file as part of the complaint [alleging professional negligence] an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." Because Plaintiffs did not attach "as part of the complaint" the required affidavit of an expert witness, Plaintiffs failed to comply with this essential statutory requirement. Because this requirement is mandatory and not permissive, the Complaint is defective and must be dismissed for failure to comply with the statutory mandate.

2. **In the alternative, this matter must be dismissed because another action is pending between the parties for the same claims.**

As demonstrated by the following Orders, pleadings, motions and other matters on file in State Court, the matters alleged in this action are substantially the same as matters alleged in other cases pending in the State Court or the South Carolina Court of Appeals:

- a. **James Brown Case 2009-CP-02-1647 ("Case 1647") and Case 2009-CP-02-1810 (Case 1810) consolidated for appeal and pending in the Supreme Court of South Carolina:**
 - 1) Return and Opposition to Motion to Dismiss Appeal, with supporting factual affidavit.

- 2) Return of David G. Cannon dated 10/17/08, including prayer seeking damages against Buchanan/Pope for failure to sell assets, other allegations of impropriety.
 - 3) Amended Petition for Removal and Restraint dated 11/7/08, including but not limited to, ¶¶ 15, 16, 17, 18, 19, 20 related to estate tax issues, failure to support August 10 Agreement and other issues.
 - 4) Answer, Counterclaim, Cross-Claim and Return of Buchanan/Pope dated 11/21/08, seeking declaratory judgment as to Estate Tax Return and other issues.
 - 5) Answer of Terry and Romunzo Brown dated 12/22/08 opposing settlement.
 - 6) Motion of Buchanan/Pope for Partial Summary Judgment and other relief dated January 9, 2009
 - 7) Motion of Buchanan/Pope for Partial Summary Judgment dated January 20, 2009.
- b. James Brown Case 2007-CP-02-0122 ("Case 122"), with portions still pending in the Circuit Court for Aiken County, portions resolved in the Cannon Appeal decision set out below; and portions pending in the Dallas/Bradley appeal, transferred to the Supreme Court of South Carolina:
- 1) Order dated January 5, 2008 approving counsel to investigate and bring suit for losses to Estate, Trust, James Brown Enterprises, Inc and other Brown Entities from January 1, 1999 to the present. (Circuit Court)
 - 2) Order dated January 8, 2008 approving fees of Special Administrators Buchanan/Pope and providing for partial payment of commissions, for work as PR/Trustees with costs and interest. (Circuit Court)
 - 3) Order dated February 20, 2008, approving Christie's auction sale and approving emergency plan of action of Buchanan/Pope. (Circuit Court)
 - 4) Order Dated March 7, 2008 denying Dallas/Bradley attempt to withdraw resignations.
 - 5) Order dated April 1, 2008 directing execution of Christie's auction contract and providing continuing jurisdiction over auction sale. (Circuit Court)

- 6) Order dated April 8, 2008 denying all motions to reconsider appointment of Buchanan/Pope as PR/Trustees and approving all actions of Buchanan/Pope to date.
- 7) Respondents' Return to Motion of Attorney General to Intervene dated July 14, 2008. (Dallas/Bradley Appeals, Ct. Appeals)
- 8) Order of the Honorable Jasper C. Cureton dated July 14, 2009 approving Christie's auction sale. (Dallas/Bradley Appeal)
- 9) Motions of PR/Trustees for Costs related to Interference with Christie's auction dated July 22, 2008.
- 10) Decision of S. C. Court of Appeals dated November 6, 2009. (Cannon Appeal)

c. James Brown Case No. 2008-CP-02-0872 ("Case 872")

- 1) Return Related to Motion, Education Trust benefits, dated August 13, 2008.
- 2) Memorandum of Terry, Forlando, and Romunzo Brown Opposing Settlement and asserting *In Terrorem* clause, dated January 20, 2009.

Certain of the documents from the cases referenced above are attached as Exhibits to this Motion.

3. In the alternative, this case should be dismissed because the alleged wrongful acts of Defendants Buchanan and Pope with respect to Estate/2000 Trust management have previously been approved by Orders of the Honorable Doyet Early, III which Plaintiffs did not appeal.

- a. By Order dated January 8, 2008, not appealed by any Plaintiff, Defendants Buchanan and Pope were awarded \$317,000 SA fees, plus costs, plus a deposit towards their full commissions as PR/Trustees, with interest.
- b. By Order dated April 8, 2008 in Case 122, not appealed by any Plaintiff, all acts of Defendants Buchanan/Pope from March 7, 2007 through April 8, 2008 were found to be ethical and appropriate.
- c. By Orders of the Circuit Court dated February 20 and April 1, 2008 and of the Court of Appeals dated July 14, 2008, with the support of the Plaintiff Attorney General, the Christie's auction, was specifically approved by the Court.

- d. By Order of the Court of Appeals dated November 5, 2009, Defendants Buchanan and Pope were relieved of fiduciary responsibility in the administration of the Estate/2000 Trust pending the outcome of the Case 1647 appeal, effective May 26, 2009.

4. **In the alternative, this case must be dismissed because the allegations in this case far exceed the Attorney General's statutory and constitutional authority to act.**

- a. Because the Attorney General is a Plaintiff in this suit, private counsel does not have statutory authority to represent the State of South Carolina pursuant to S.C. Code Ann. § 1-7-40 which requires that the Attorney General shall appear for the State in the trial and argument of civil causes in which the State is a party or interested.
- b. Because the Attorney General is a Plaintiff in this suit, private counsel's attempted representation of the State of South Carolina while simultaneously representing private individuals to obtain funds for themselves is void as violating the constitution of South Carolina, the separation of powers of the State Constitution, the requirements for the engagement of Special Counsel for the State; the public trust; and Ethical Rules for Public Officials; and the Supreme Court requirements for legal representation.
- c. Because the Attorney General is a Plaintiff in this suit, the Complaint violates the Due Process rights of Defendants Buchanan and Pope and others because the Attorney General may not legally participate in or control a private tort action in which the proceeds will go to individual plaintiffs the Attorney General has neither a duty nor right to attempt to protect.
- d. Because the Attorney General is a Plaintiff in this suit, the Attorney General's authority to engage special counsel from the private sector is limited to matters which represent the interests of the State of South Carolina in special situations and complex litigation.
- e. The Complaint neither alleges nor presents any constitutional, statutory or common law basis for the Attorney General to participate, nor any public right to be protected. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 240, 562 S.E.2d 623, 627 (2002). *See also* S.C. Code Ann. § 1-7-10 et seq.
- f. The purported joint engagement of counsel by private citizens and the Attorney General violates S. C. Code Ann. § 1-7-40, as well as the public trust held by the Attorney General.
- g. The South Carolina Supreme Court Rules of Professional Conduct and South Carolina law require that the contract to engage outside counsel be declared

void because counsel cannot serve the public interest and be under the direction of the Attorney General of South Carolina while representing:

- i. Sydney L. and Carrington L. and Janice B., minor beneficiaries without a guardian ad litem who are beneficiaries of the James Brown 2000 Trust.
 - ii. James B. II, a minor, specifically excluded from the Will and 2000 Trust of James Brown, who has a guardian ad litem in other Brown cases.
 - iii. Tommie Rae Hynie Brown, specifically excluded from the Will and 2000 Trust of James Brown.
- h. Because the Attorney General is a Plaintiff in this suit, the Complaint violates the Due Process rights of Buchanan/Pope because it seeks funds from them which, if recovered, would be required by §1-7-150 to be deposited in the general fund of the State of South Carolina which does not own, and is not entitled to any funds of Buchanan, Pope, the Estate of James Brown or the James Brown 2000 Trust.
- i. Plaintiff Bauknight fails to allege any constitutional, statutory or regulatory basis for the assertion in the caption that he is the agent of the Attorney General of South Carolina.
- j. The Attorney General has no beneficial interest in James Brown's private Estate Plan and is prohibited by law from having an interest as a beneficiary of Bauknight's Legacy Trust.
- k. The Complaint violates Art. I, § 8 of the Constitution of South Carolina which states that "the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other," on the grounds that, the Attorney General, by seeking funds on behalf of the State of South Carolina from Defendants Buchanan and Pope to be paid to private individuals, usurps the legislative function by the executive branch.
- l. The Attorney General, by entering into a private contract with Hynie Brown and Terry Brown, has violated Section 8-13-1342 of the South Carolina Ethics, Government Accountability, Campaign Reform Act (the Campaign Reform Act"), which provides that:

No person who has been awarded a contract with the State...other than contracts awarded through competitive bidding practices, may make a contribution after the awarding of the contract or invest in a financial venture in which the public official has an interest if that official was

in a position to act on the contract's award. [Emphasis supplied.]

- m. This matter must be dismissed because South Carolina Code Ann. § 1-7-130 limits the Attorney General's authority as follows:

The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.

- n. Nothing within South Carolina Code Ann. § 1-7-130 allows or permits the Attorney General to interfere with the operation of the Estate, private non-charitable trust or private foundation of James Brown, none of which is a public charity.

5. In the alternative, the Complaint must be dismissed because private counsel's representation of the Attorney General exceeds statutory and constitutional authority.

6. In the alternative, the Complaint must be dismissed because Plaintiffs have failed to join indispensable parties.

- a. This matter must be dismissed because Plaintiffs failed to join necessary parties Forlando and Romunzo Brown, two of the seven designated potential Qualified Beneficiaries of the Brown Family Education Trust. In prior matters pending in State Court between the same parties, Forlando and Romunzo Brown assert, as a result of the In Terrorem clause, that they are the only beneficiaries of the Education Trust.

- b. No GALs have been appointed for the minor parties, whose conflict with their parents is evident in the Complaint and 2000 Trust.

7. In the alternative, this action must be dismissed because the claims asserted against Defendants Pope and Buchanan are barred by applicable statutes of limitations and/or estoppel.

This action is barred by statutes of limitation and the equitable doctrine of estoppel because the Attorney General and any other Plaintiffs with standing at the relevant time to help enforce the 2000 Trust or Will of James Brown had knowledge, as defined in § 62-7-104 of the S. C. Trust Code, of all actions of

Buchanan/Pope and, as demonstrated by the record, either approved the actions or failed to notify the Probate Court and/or the Circuit Court in Case 122 and/or Case 872 of the allegations contained in the Complaint.

8. **In the alternative, the Complaint must be dismissed because certain Plaintiffs lack standing to bring this action.**

- a. This matter must be dismissed because Plaintiffs Deanna, Terry, Larry, Daryl, Yamma and Venisha (the "Deanna Group"), not beneficiaries of the 2000 Trust, asserted the beneficiary status of their children under Brown's Estate Plan to bring Case 122, on January 24, 2007. The Deanna Group later challenged the 2000 Irrevocable Trust, violating Article XXI of the Irrevocable Trust which provides:

ARTICLE XXI

Provision as to any Contest of Grantor's Estate Plan. Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries. [Emphasis supplied.]

- b. Because the Deanna Group lacks standing to pursue this claim, their role as Plaintiffs exposes minors Sydney, Carrington and Venisha to the In Terrorem forfeiture clause and loss of a \$285,000 education benefit each under the Brown Family Education Trust, which creates a conflict requiring the appointment of a guardian ad litem ("GAL")
- c. All adult plaintiffs have voluntarily subjected themselves to Article XXI, forfeiting standing to pursue this action.

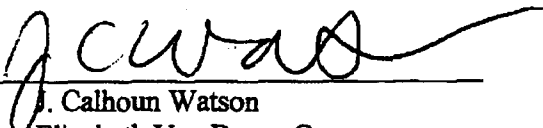
9. In the alternative, to the extent Plaintiff Bauknight is bringing this matter as Trustee of the Legacy Trust, this action must be dismissed because Defendants have never served as Trustees of and do not have, and have never had, any fiduciary duty or obligation to Bauknight's Legacy Trust or its beneficiaries.
10. In the alternative, South Carolina Code Ann. § 33-56-180 bars recovery in this case.

The Complaint must be dismissed because Plaintiffs at all times were acting within the scope of their authority as agents for The James Brown "I Feel Good" Trust, a 501(c)(3) private foundation. The "I Feel Good" Trust and its agents, are accorded protections given to charitable organizations under South Carolina Code Ann. § 33-56-180. The Complaint fails to state any specific willful, reckless or grossly negligent acts which caused specific damage to any Plaintiff, requiring dismissal of the Complaint.

CONCLUSION

For any or all of the bases set forth above, Plaintiffs case must be dismissed. This Motion will be supported by a MEMORANDUM OF LAW which will be submitted to the Court prior to a hearing on this matter.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

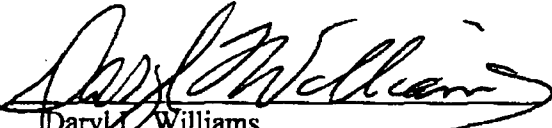
By: 

J. Calhoun Watson
Elizabeth Van Doren Gray
Robert E. Horner
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Robert L. Buchanan,
Jr.

JETER & WILLIAMS, P.A.

By:


Daryl L. Williams

1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
(803) 765-0600

Attorney for Defendant Adele J. Pope

Columbia, South Carolina
June 22, 2010

ATTACHMENTS TO MOTION TO DISMISS DATED JUNE 22, 2010

1. Return and Opposition to Motion to Dismiss dated March 16, 2010, Case 1647 Appeal, with Factual Addendum and Exhibit A, August 10, 2008 Agreement;
2. Order Directing Payment of Fees and Costs of Special Administrators and Other Relief dated January 8, 2008, Case 122;
3. Order Approving Engagement of Counsel dated January 9, 2008, Case 122;
4. Order Denying Motion to Alter, Amend or Vacate Order Approving Resignation and Granting Related Relief dated March 7, 2008, Case 122;
5. Order Denying Motion to Reconsider Appointment of Successor Personal Representatives and Trustees and Granting Related Relief dated April 8, 2008, Case 122;
6. Order of The South Carolina Court of Appeals dated July 14, 2008 (Dallas/Bradley Appeal);
7. Order Approving and Setting Conditions of Interim Payments of Educational Benefits dated July 25, 2008, Case 872;
8. Correspondence of South Carolina Court of Appeals dated November 6, 2009 (Case 1647 Appeal);
9. Final Order Dismissing Petition and Remanding to Probate Court dated November 13, 2008 (Pullman Group, Case 122);
10. Order for Release of Information Related to Attorneys' Fees and Other Compensation dated March 15, 2010 (Case 1647/1810 Appeal);
11. Order Substituting Parties and Amending Order Granting Motion to Sever and Proceed Separately dated April 5, 2010 (Case 322)

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2008-CP-02-01647
Case No. 2009-CP-02-01810

In Re: The Estate of James Brown and
The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Ex Parte: 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

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 B.
and Janise Vanisha B.; Deanna J. Brown Thomas,
on behalf of her minor children, Jason Brown
L.; Yamma N. Brown, on behalf of her minor children,
Sydney L., Carrington L., and Tonya B.;
Vanisha Brown; and Larry Brown; Tommie Rae Hynie
Brown, ... Respondents

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon,
individually and as (purported) Trustees of the James
Brown 2000 Irrevocable Trust; 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 Pettitt; and Jeannette Mitchell,
also Respondents

RETURN AND OPPOSITION TO MOTION TO DISMISS

OVERVIEW

On the order of fifty million dollars of scholarship money has been taken from
future students of South Carolina and Georgia by the doings below. The testator's

carefully crafted estate plan has been shredded. The respondents — the Attorney General, in league for some unknown reason with the disinherited members of the Brown family — are anxious to avoid appellate review of what has been done here. Hence, they have devised an extraordinary motion to dismiss, seeking premature adjudication of the question of standing. The claim that one's adversary lacks standing is a time-honored shield, of course. The thousands of students deprived of these millions of dollars over many years in the future are not parties to this case, and so there is no one to complain, say the respondents.

The place to challenge an appellant's standing is in the respondent's brief, where the flexible concept of standing can be measured in the light of a full record. See, e.g., *Home Medical Systems, Inc. v. South Carolina Dept. of Revenue*, 382 S.C. 556, 558, 677 S.E.2d 582, 584 (2009), where the Supreme Court "deferred ruling on the motion to dismiss until after full briefing on the issue and oral argument." Especially is this traditional procedure needed in the context of this unique litigation. To avoid the light of a full record upon the story of this litigation, the respondents present the question in the abstract, by motion with no Record. The issue deserves resolution in light of a concrete record, not in the abstract.

For this reason, appellants submit that the question of standing should be resolved in the traditional way, after the appeal has been fully briefed and the Record filed, so that the Court can address this issue with full knowledge of all the facts.

FACTS

Because this dispositive motion has been filed before the Record on Appeal has been gathered and filed, the appellants accompany this Return with an affidavit summarizing the machinations which led to the dismantling of the testator's estate plan in the proceedings below.

The respondents, by contrast, have submitted nothing but a copy of the main

order under appeal, the order of May 26, 2009. The respondents quote selected factual findings and dicta of that order as though they were unchallenged. A party cannot prevent appellate review of an order by reciting the findings of the very order which is the subject of the appeal. Many factual findings of that order will be challenged in this appeal. For example, the respondents recite statements in the order characterizing as massive and complex the claims made against the testator's will and his plan. **On the contrary, those claims were routine and in the chief instance frivolous.** The very idea that an estate plan which took four years to evolve under expert guidance, and which left perhaps 99% of the estate to the cause of education, was the product of undue influence is absurd on its face. The courts of this state could try that claim a thousand times, and if the contestant ever survived a directed verdict motion, no jury in South Carolina would uphold such a silly claim. All the lesser claims against this estate were of a kind expected to surface where a wealthy testator has left his estate to educational purposes instead of to his family. These were all claims of a sort routinely tried and resolved in the courts of this state. There was no "flood" of claims or "nightmare" of litigation. The only thing unusual about the administration of this estate was its size. It is of course a complicated estate.

In the absence of a Record, appellants respectfully refer to their affidavit. Pertinent facts will be mentioned in the context of the argument sections below, and a Summary of Facts is appended to this Return as an Addendum and incorporated herein.

ISSUES ON APPEAL

The respondents ask the Court to determine the question of standing in a vacuum, before the issues on appeal have even been framed. Those issues will not be solidified until the appellants' brief is written, but obviously at the heart of this appeal is the question of whether the Attorney General exceeded his authority by entering Case

122 to assist with the enforcement of James Brown's private foundation, but then expanded that role by setting aside the duly acting fiduciaries; contracting to dismantle the private foundation; transferring about half the assets of the Irrevocable Trust to unintended beneficiaries; and placing not only the private foundation but also Mr. Brown's noncharitable trust and his estate under the AG's control. Even if the Attorney General has such authority, the appellants will show that he acted without proper joinder of parties, notice and opportunity for challenge.

The appellants will assert that the Attorney General violated Sections 62-7-410 through 62-7-415 of the Trust Code, the due process clause, and the provisions of the Irrevocable Trust and other estate planning documents when he placed the estate and the Trust under his direct control.

The appellants will further assert that the Attorney General may not contract with nonbeneficiaries to defeat the provisions of the Irrevocable Trust, then approve, over objection and without review, the estimated \$12-\$14 million in contingency fees of the attorneys for the claimants for their work in dismantling the Trust.

Appellants expect to assert that because of his conflict of interest as the nominee of the Attorney General and as the trustee for Hynie Brown and Terry Brown, Mr. Bauknight could not give an independent evaluation of the AG's settlement proposal, so that it was error for the court to accept his recommendation that the settlement be approved.

As well, the appellants may question the Attorney General's authority to take over the estate's functions as he did, such as determining the heirs.

The appellants will assert that the circuit court erred in compelling them, as improperly removed fiduciaries, to sign documents they know to be false and damaging to the estate plan, requiring them not to criticize the actions of the Attorney General and to speak only through their lawyers.

The fundamental question is whether properly managed private foundations — not public charities — are subject to being taken over by the Attorney General's office.

It is simply unthinkable that *no one* has standing to seek appellate review of these important questions.

ARGUMENT

I. Untested legal issues should not be resolved on an insufficient record.

The duly appointed and acting fiduciaries of this trust and estate were dealing in a normal manner with claims of undue influence, pretermitted child, and omitted spouse when the Attorney General of the State stepped in and took over, holding talks from which the fiduciaries were excluded, and giving away roughly half of Brown's assets in settlement of these claims. The Attorney General did this by claiming that the chief beneficiary of the estate was a charitable trust, and the Attorney General has the power to take over a charitable trust in his discretion, set aside the trustees, and speak for the trust. He then agreed with the disinherited members of the Brown family to unseat the duly appointed PRs/trustees without cause, replacing them with a nominee of their mutual choice, and obtaining a court order requiring the ousted PRs/trustees to signify their consent to all this.

There is not a case in the country that we have found — and certainly none has been cited by the respondents — holding that the ousted fiduciaries lack standing to appeal an order approving events such as these. The great mass of cases cited by the respondents in their motion are from foreign jurisdictions. None is in point. The few South Carolina cases cited are not even closely in point.¹ Nothing like this has ever

¹ For example, in *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005) (decided under the former §62-7-503), the Court held that where a testatrix has established a valid testamentary trust, the courts must enforce it. *Epworth* involved facts opposite to those here: the trustees wished to terminate the trust in a manner that would have violated the testatrix/settlor's intent. The AG intervened to protect the charitable trust from being destroyed. In the case at bar, the appellants were

been seen in the caselaw of South Carolina, so far as we know.

It is a familiar principle of South Carolina jurisprudence that novel legal questions should not be decided until the facts have been fully explored. The most frequent application of that rule occurs when a motion to dismiss a complaint is lodged (under the former practice, a demurrer), asserting that South Carolina does not take the plaintiff's view of the law and will not do so in the future. See, e.g., *Evans v. State*, 344 S.C. 60, 67-69, 543 S.E.2d 547, 551 (2001). Here, the facts have indeed been fully developed at trial. When this Court has the benefit of a Record of that trial and the other events which transpired in the court below, the Court will be in a position to give a full and mature consideration of the question of standing under these unprecedented facts.

Time after time in recent years our courts have reiterated that "the rule [of standing] is not an inflexible one." *Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976). Accord: *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Davis v. Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007). Standing is assessed under all the facts and circumstances of the particular case.

The unique and unprecedented facts of the case at bar make it all the more important to await a full Record before assessing this important question. The motion should therefore be denied, and the question of standing addressed in due course, in briefing and oral argument.

Our Supreme Court has identified the sources of standing, as follows:

Standing may be acquired: (1) by statute; (2) through the

appropriately defending the terms of the valid 2000 Trust as the persons expressly authorized to do so when the AG intervened, engineering a radical alteration of the terms of the trust and crippling the testator's estate plan.

rubric of "constitutional standing;" or (3) under the "public importance" exception.

ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).

The appellants have acquired standing in all three ways.

II. The appellants have standing and authority under the 2000 Trust and the default trust code provisions.

The first place to look for an authoritative answer to the question of standing is the Code of Laws. See, e.g., *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) (FOIA confers standing upon citizens).

The applicable code — the South Carolina Trust Code ("SCTC") — is primarily a "default statute." The terms of a trust prevail over any trust code provision, with eleven exceptions. These exceptions do not include the authority to settle or compromise claims against the trust. S.C. Code Ann. § 62-7-105(b). Thus, the Trust Code confers upon a settlor the authority to appoint those who may defend the trust against attack and those who may settle claims against it. The Court must therefore look to the terms of the Irrevocable Trust Agreement of James Brown dated August 1, 2000 ("2000 Trust") before looking to the statute, in order to determine who has authority to defend the trust and to settle claims against it.

A. The Trust Agreement confers upon the trustees the authority to defend the trust.

The private, partially charitable 2000 Trust expressly gives authority and fiduciary discretion to its trustee to "compromise, adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best." [2000 Trust, Art.X(19).] There is no provision or just reason for the Attorney General to substitute his judgment for the fiduciary discretion of a properly serving trustee. There is no provision or just reason for beneficiaries and nonbeneficiaries to attempt to veto or override the fiduciary discretion of a properly serving trustee. There is no provision or just reason for a court to substitute the

preference of the Attorney General for the fiduciary discretion of a properly serving trustee. This is what occurred in this case.

At all pertinent times before and during the seven-day hearing of the motion to approve the partial settlement, the duly appointed and properly serving trustees were Buchanan and Pope. They were also the duly appointed and properly serving personal representatives of Mr. Brown's estate. They were the only persons authorized to settle claims against the 2000 Trust or Mr. Brown's estate prior to the Order of May 26, 2009, approving the settlement agreement and replacing them with Mr. Bauknight.

The circuit court did not hear the settling parties' unfounded petition for removal for cause prior to the settlement proceedings. Rather, on January 7, 2009, while the settling parties' frivolous November 7, 2008 petition for emergency restraint and removal for cause was pending, the circuit court appointed Bauknight as limited SA/ST 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" — over the objection of Buchanan and Pope — while also ordering Buchanan and Pope to "continue to serve in their capacity as previously ordered by this Court and [they] will continue to be responsible for all estate and trust matters, except for the limited duty" of Bauknight. [Order dtd 01/07/09.]

The court deviated from the controlling terms of the 2000 Trust without setting forth any reasons for doing so. There was no evidence that Buchanan and Pope had abused their discretion or breached any duties. There was no reason to override their authorized fiduciary discretion in favor of persons not authorized by the 2000 Trust. After nearly two years of service and experience — during which time the court praised their service and found it to be ethical and appropriate — Buchanan and Pope's fiduciary discretion, supported by expert testimony, was given less weight than the self-serving recommendation of Mr. Bauknight, developed during his 23-day-period of

service. In their capacity as the only persons duly authorized to settle the claims at issue, the trustees have standing to complain when their authority is usurped in this manner.

In addition to being unauthorized to settle or compromise claims against the estate and 2000 Trust, each and every settling party with any possible default statutory standing waived it by attacking and attempting to dismantle the valid 2000 Trust which provides, in similar fashion to the valid Will of same date:

Should any beneficiary . . . contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest ...
[f]urthermore, **any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or otherwise be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate** as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries.

[2000 Trust, Art. XXI.][Emphasis added.] Article XXI confers standing upon appellants to challenge the Attorney General's contract to transfer more than \$40 million from the Trust.² Under the Trust Code's default provisions, S. C. Code Ann. § 62-7-105 (a) and (b), this trust provision has the force of a statute.

Although the settling parties initially challenged the Will and 2000 Trust, they stipulated that the same were valid when the Attorney General offered them 50% of the assets devised to and in the 2000 Trust, in consideration of their agreement to file a joint motion to remove the appellants and to join the AG in creating a new trust giving the AG full authority to appoint, control, and remove trustees at his pleasure. This new entity, ironically dubbed the "James Brown Legacy Trust," was created not by James Brown but by the AG and by Mr. Brown's disinherited family members. But the settling

² The August 10, 2008 contract appeared to take only about \$42 million from the Trust. Subsequent amendments by the Attorney General required the Trust and Estate to pay \$12 - \$14 million of secret attorneys' fees and other taxes and payments, increasing the loss to more than \$50 million.

parties at that time had already forfeited any potential interest by continuing to pursue frivolous undue influence claims beyond the point of any reasonable bona fide inquiry, if cause for one ever existed. See: *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722 (2006) (no contest clause enforceable where contestant proceeded beyond reasonable inquiry); *Russell v. Wachovia Bank*, 353 S.C. 208, 578 S.E.2d 329 (2003) (summary judgment properly granted as to validity of will where contestants failed to meet heightened standard of unmistakable and convincing evidence of undue influence). The settling parties then stipulated to the validity of the documents they had contested. Their stipulation that the above Trust terms are valid is inconsistent with their failure to concede that Buchanan and Pope properly fulfilled their duty to defend the terms of the valid Will and 2000 Trust against all attacks. As the persons with standing to object, Buchanan and Pope are the persons with standing to appeal those matters.

All other fiduciaries forfeited any standing by either resigning and consenting to Buchanan and Pope's successor appointment where no Advisory Board existed, as provided in the 2000 Trust terms (Cannon, Dallas, and Bradley); or were improperly appointed without authority under the controlling 2000 Trust, where Buchanan and Pope did not resign or consent to successor appointment (Bauknight); or were improperly appointed under the default statute where Buchanan and Pope did not resign and were not removed for cause (Bauknight). Nonfiduciaries — the settling parties, including the AG — waived any applicable default statutory standing to settle or compromise any claims by forfeiting any potential interest in said claims before reaching an unauthorized settlement that was erroneously approved by the circuit court.

- B. Even if the Trust Agreement appointed no one to defend the trust, so that the default provisions of the Trust Code came into play, those provisions would confer upon the duly appointed trustees the authority to defend the trust.

There is no reason for this Court to look beyond the terms of the 2000 Trust

because it is valid. The parties stipulated to its validity. However, if the provisions of the default statute did come into play, the result would be the same: the duly appointed and acting trustees have standing to defend the trust. The appellants did not resign or consent to Bauknight's appointment; they did not abuse their authority or breach any duty; they were not removed for cause; and the result of the settlement agreement, approved over their objection, is an unjust evisceration of Mr. Brown's 2000 Trust.

Under the default statute, the Attorney General is only one of several persons who may maintain a proceeding to enforce the 2000 Trust. S.C. Code Ann. §62-7-405©). These include the settlor, the trustee, and others. The AG, as chief law enforcement officer, appropriately intervened when Buchanan and Pope discovered and reported their predecessor Cannon's \$900,000 taking, but he thereafter exceeded his authority by taking control of the administration of the testator's estate and the 2000 Trust.

Because this appeal is in the nature of a proceeding to enforce the trust, the Trust Code would confer standing upon the trustees to bring this appeal, even if the trust itself were silent.

Moreover, two other provisions of the Probate Code lend standing to the appellants. Under § 62-1-308, appellants are Interested Persons injured by their improper removal as fiduciaries. And the appellants have statutory standing to appeal for benefit of the "I Feel Good" Trust and Education Trust as statutory beneficiaries and representatives of the Settlor under §62-7-410 through §62-7-416 of the Trust Code.³

Under Probate Code §62-1-308, as the persons with a duty to defend the

³ Obviously the appellants are not beneficiaries of the "I Feel Good" Trust in the traditional sense. Their statutory inclusion in the category of "Beneficiary" was intended by the General Assembly to confer upon them the right to enforce the trust. Appellants' predecessors, Dallas and Bradley, waived this right by resigning. Appellants preserved their standing to appeal by objecting to Mr. Bauknight's appointment in all fiduciary capacities.

estate plan, appellants are interested persons injured by their improper removal as fiduciaries and actions which diminish their defense of the estate plan.

More importantly, the South Carolina Trust Code is a largely a default code, giving the Trust terms the force of law except under limited circumstances. Thus under §62-7-105 (a) and (b) the terms of the Irrevocable Trust, including the standing and withdrawal of standing provisions of the Irrevocable Trust, govern and grant standing to appellants to take all steps necessary to reverse the \$50 million "affront to [his] wishes." During the pendency of this appeal of their improper replacement as fiduciaries, they have standing as interested "others" to vigorously challenge the attempts of these non-beneficiaries of the Irrevocable Trust to take tens of millions of dollars from the Trust.⁴ S.C. Code Ann. §62-7-405(c).

Under the same provisions, both the Attorney General, by his August 10 contract, and his appointee Bauknight, have forfeited standing to enforce, including standing to appeal, any matter related to the Irrevocable Trust by their proposal to transfer \$50 million from the trust to non-beneficiaries.

Appellants, for themselves and others (including those not properly joined as parties to Case 1647) have statutory standing as representatives of the Settlor James Brown under §62-7-410 through §62-7-416 of the S. C. Trust Code to challenge the Court's amendment to the Trust, including the dismantling of its succession provisions without consent of either its properly serving trustees or the Advisory Board, incorporated by reference into the Trust, by placing this private trust under the direct control of the Attorney General, and allowing him to deviate from its provisions as he chooses.⁵

⁴ The amount to be taken from the irrevocable 2000 Trust is believed to exceed \$50 million.

⁵ No Advisory Board existed when predecessors Dallas and Bradley resigned. An Advisory Board did exist when the appellants were replaced without cause by the circuit

The suggestion that the settlement is "global" or that all the beneficiaries of the Education Trust joined in it is both incorrect and troublesome. Appellants' accompanying affidavit dated March 12 outlines the omitted necessary parties for a global settlement, including those who were neither served nor noticed with the subject orders under appeal.

Appellants have statutory standing, as Trustees, as Personal Representatives, individually, and on behalf of all non-settling parties, non-noticed parties, creditors and taxing authorities, to appeal.

III. The appellants have "constitutional standing".

The appellants have been ousted without cause from their fiduciary positions. The corpus of the estate and of the trust which they have a fiduciary duty to protect has been cut in half. They have been compelled to signify their agreement with the order which ousts them and which decimates the estate and the trust.⁶

These wrongs give the appellants standing under the three-part test of constitutional standing:

First, the plaintiff must have suffered an "injury in fact" — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical'". "Second, there must be a causal connection between the injury and the conduct complained of — the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC South, Inc., supra, quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61.

Each of the injuries suffered by the appellants is concrete and actual. Each is

court, but the Board was not consulted.

⁶ The Court's later oral modification that appellants may annotate the documents with their disagreements as freely as they choose does not diminish the threat.

directly attributable to the order approving the decimation of the testator's estate plan, entrusted to their care, and ousting them without cause from their positions.. See, e.g., *Davis v. Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007) (Recreation Commissioners had standing to challenge the constitutionality of a statute authorizing their removal from office); *Smiley v. South Carolina Dept. of Health & Envir. Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (recreational jogger had standing to challenge permit for removal of sand from beach).

III. This a case of public importance.

The "public importance" exception to traditional rules of standing is firmly seated in the jurisprudence of this state. See, e.g., *Sloan v. School Distr. of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Sloan v. Greenville County*, 356 S.C.531, 590 S.E.2d 338 (Ct. App. 2003); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Sloan v. Stanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007).

The case at bar is of large public significance on two levels.

First is the impact of the order of May 26, 2009 on the private foundation which Mr. Brown created for the education of South Carolina and Georgia students. This order eviscerates the 2000 Trust. This case involves a tremendous sum of money diverted from the purpose intended by the settlor, and handed to those whom he expressly intended to omit. In none of the public importance cases yet seen in this state has such a thing happened. Some of them have involved large sums of public money, but never with a claim of unlawful diversion or loss. This case raises the question of whether literally thousands of college students in the decades ahead will be deprived of the scholarship benefits intended for them by the settlor. Given the importance of education in our pantheon of values, it is scarcely debatable that this is a matter of great

public importance.

On a second level of public importance is the question of whether the Attorney General has the legal authority to take over the administration of an estate and the operation of a private trust, settling claims against the estate as he sees fit, and ousting protesting fiduciaries without cause. This conduct by the Attorney General is unprecedented. The public interest requires an authoritative judicial review of these actions and a determination of the limits of power in this office.

Settlers contemplating creating private foundations, and counsel advising them, should know whether the Attorney General serves as a threat to their vehicle for making a valuable, but personal, tax-favored contribution to society.⁷ Private philanthropy in South Carolina would be chilled if a settlor's funds could be diverted from the settlor's chosen class of recipients to the Attorney General's chosen class. If this is the law of South Carolina, the Bar and many others need to know it.

Private foundations like the "I Feel Good" foundation/trust are not public charities. They are an expression of private philanthropy sanctioned by this State and by the Internal Revenue Code. Under the laws of this state they are allowed to receive certain tax benefits in exchange for dedicating their assets for charitable, educational or scientific purposes which they select.

The State of South Carolina, through its Attorney General, has limited interests in private foundations. The Attorney General has a duty is to enforce the criminal laws

⁷ See, e.g., Jonathan Klick & Robert H. Sitkoff, *Agency Costs, Charitable Trusts and Corporate Control: Evidence from Hershey's Kiss-off*, 108 COLUM. L. REV. 749, 781-2 (2008)(authors evaluate concerns regarding underfunding, overburdening, and conflicting political interests of state attorneys general); Carl J. Schramm, *Law Outside the Market: The Social Utility of the Private Foundation*, 30 HARV. J. L. & PUB. POLICY 355 (2006)(regarding concerns about state action to convert private foundations into public funds); Marion R. Fremont-Smith, *Governing Nonprofit Organizations, Federal and State Law and Regulation* 301 (2004)(attorney general has a duty to enforce in a broad sense but does not have a right to regulate or a right to direct either the day-to-day affairs of the charity or the action of the court).

— at play here because of the confirmed taking by Cannon. If the Attorney General's authority over private foundations is as draconian as is claimed here, the Bar and the public should know it.

[Factual Addendum attached hereto with supporting Joint Affidavit of appellants, both incorporated herein.]

Respectfully submitted,

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
Telephone: 803-799-9412
Facsimile: 803-799-9628

Tressa T. H. Hayes
Shipley & Hayes, P.C.
445 Meeting Street
West Columbia, South Carolina 29169
Telephone: 803-794-7588
Facsimile: 803-739-2024

By: James B. Richardson, Jr.
James B. Richardson, Jr.

March 16, 2010

Attorneys for Buchanan and Pope

FACTUAL ADDENDUM

In a carefully considered estate plan envisioned for more than 20 years and crafted with the help of a certified specialist over a four-year period, celebrated entertainer James Brown dedicated his entire entertainment empire to two private trusts created solely for education.⁸ The primary components of the James Brown assets are his image and persona ("publicity right") and royalties to more than 700 published and certain unpublished songs, these two components having approximately equal value. [Cox doc. 6/07]

Mr. Brown's 1999 estate plan consisted of a *revocable* trust, will and power of attorney ("POA"). [1999 Will, POA, Trust dtd. 6/15/99]

The 1999 Trust provided lifetime discretionary support for Brown. At his death it divided into the Brown Family Education Trust (the Grandchildren's Trust) and "I Feel Good" Trust,⁹ to provide scholarships for needy and deserving students at Voorhees, U.S.C. Aiken and U.S.C. Salkehatchie. [Trust dtd. 6/15/99, Art. V.]¹⁰

Trustees of the 1999 *revocable* Trust were David Cannon, Albert Dallas, Alfred Bradley (the "Cannon Group"), Freida Carter, Willie Glenn, Ella Overton and Linda Ware, all of whom except Cannon executed the 1999 Trust. PRs under the Will were the Cannon Group and Deanna. [Trust dtd. 6/15/99, pp. 1, 14-16]

Linda Ware witnessed the Will and Trust and Carter served as Notary. [Will dtd.

⁸ Brown's will devises his personal and household effects ("PHE") to Terry, Larry, Daryl, Deanna, Yamma and Venisha Brown, four of whom are presumed to be heirs. Brown's will and the 2000 Trust exclude all past and future spouses and other claimed heirs. [Will, Intro.; Trust, Art. XVIII.]

⁹ The maximum size of the Education Trust under the 1999 and 2000 Trusts is tied to a federal estate tax formula, the maximum available generation skipping exemption. It provides possible education benefits of approximately \$285,000 to the following seven beneficiaries: Romunzo, Forlando, Lindsey, Janise, Jason, Carrington and Sydney.

¹⁰ Brown's 1999 will gave PHE to certain children. He gave the entire residue to the Trust. [1999 Will, Item I, II.]

6/15/99]

Attorneys in fact under the POA were Deanna and the Cannon Group. [POA, p.

1]

The following year James Brown executed his final estate plan. It contained only minor revisions to the 1999 version. The principal change was that James Brown made the 2000 Trust irrevocable. On August 1, 2000 Brown executed the 2000 Irrevocable Trust, the advisory board document, and his pour-over will. Daughter Venisha and companion Tommie Rae Hynie were witnesses to the Advisory Board document. Brown's POA was not changed.

The 2000 *Irrevocable* Trust, like the 1999 Trust, was dedicated solely to education. The Grandchildren's Trust was the same. The "I Feel Good" Trust, still for scholarships for needy and deserving students, was expanded to include students attending schools at all levels in Georgia and South Carolina.

Like the 1999 Will, the 2000 Will contained a pour-over provision incorporating the Trust by reference. This insured that Brown's entire estate would be dedicated to education, either by transfer before his death or under his will.

The Irrevocable Trust was established and funded on August 1, 2000. Brown deeded his home estate and assigned all of the shares of his wholly-owned company, James Brown Enterprises, Inc. ("JBE, Inc.") to the Irrevocable Trust. Memoranda of Trust were filed in two states; and the Trust bought a bank building.¹¹ Brown's valid will leaves his entire entertainment empire to the Irrevocable Trust.¹²

¹¹ The building was sold.

¹² Under the Will, Terry, Larry, Daryl, Venisha, Deanna and Yamma each get 1/6 of Brown's personal and household effects, less Estate Taxes on what they get. The James Brown assets consist principally of his image and persona rights ("Publicity Rights") and royalties to more than 700 published songs ("Royalties"). At his death on December 25, 2006 the assets, reduced by a debt secured by a pledge on most Royalties (the TIAA debt), were valued at about \$85 million. Royalties paid to TIAA for the first half of 2009 were about \$2.25 million.

The Irrevocable Trust is dedicated solely to education. The noncharitable Education Trust provides about \$285,000 in education benefits for each of seven designated grandchildren. None of Brown's claimed twelve or more children is a beneficiary. All past and future wives are specifically excluded as beneficiaries.

This estate plan was carefully designed over a four-year period, beginning in 1996. Involved in frequent litigation himself, Brown took all reasonable measures to ensure that all his assets were dedicated to education.

In his estate plan executed on June 15, 1999, Brown included *In Terrorem* forfeiture clauses in both the will and trust, and a spendthrift clause in the trust.

A year later, on August 1, 2000, when Brown made small changes in his estate plan, and made his trust irrevocable, the *In Terrorem* forfeiture and spendthrift clauses remained in both the Will and the Trust.

Article XXI of the Irrevocable Trust provides:

ARTICLE XXI¹³

Provision as to any Contest of Grantor's Estate Plan. Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries. [Emphasis supplied.]

On November 20, 2007 Appellants were appointed under the 2000 Estate Plan.

Undisputed lay and expert testimony in the hearing which commenced January

² This Article is taken from the Trust, but the Will has a substantially identical provision.

30, 2009, confirmed that the proposal, now revised, transferred more than \$50 million to non-beneficiaries, their attorneys (estimated \$12-\$14 million) and for their estate taxes; dismantled James Brown's estate plan; violated its purposes and provisions; and disqualified the "I Feel Good" private foundation. The settlement also reduces the share of beneficiaries of the private Education Trust from about \$285,000 per person to an undetermined but substantially smaller amount.

On March 26, after the close of petitioners' case, documents represented to be the final settlement agreement were filed. They consisted of the August 10 Contract; an addendum; the unsigned Legacy Trust and a Contribution Agreement.

With no showing or existence of cause for their removal, the circuit court replaced appellants with Russell Bauknight, already a trustee for Hynie Brown, Terry Brown and others. The 2000 Trust's Advisory Board (nonexistent when Dallas and Bradley resigned) was not consulted.¹⁴ The Trust provisions were not followed; and James Brown's private trust and estate were placed under the control of the Attorney General.

In August the Attorney General obtained two more emergency *ex parte* orders, with no showing of emergency. These violated an "heirs" stipulation the Attorney General had made with Mitchell, Parris, and Pettit on January 30th which caused them to withdraw from participation in Case 1647. The *ex parte* orders found incorrectly that petitioners were the only Interested Persons in the estate and trust.

The circuit court declined to vacate the *ex parte* orders.

¹⁴ Even Ella Overton, longtime companion of James Brown and James Brown's deceased wife, Adrienne Rodriguez, an original designated a member of James Brown's Advisory Board who had never acted before, came forward, seeking to become an active member and to defend the estate plan of James Brown. The Attorney General's office, which had previously asserted appellants' appointment was defective because the Advisory Board was not consulted, now asserted that the Board was unnecessary. The Court's stay of the James Brown cases from August 2008 until now prevented Overton's deposition prior to her untimely death.

No Probable Cause to Contest Will

A year and a day after their father's death, and with knowledge¹⁵ of the validity of his 2000 estate plan (Irrevocable Trust and Will) and his 1999 backup plan, five of James Brown's children challenged his Trust which had been functioning for more than seven years.¹⁶ ("Case 872".) Four months later they served an amended complaint on some of the parties.

Four months later, on August 10, 2008, with motions to dismiss pending, the Attorney General and some of the children, with Hynie Brown, signed the August 10 Contract. The Attorney General asserts his right to contract for the Irrevocable Trust without knowledge or consent of proper trustees, to give about more than \$40 Million to these nonbeneficiaries of the 2000 Trust. Their lawyers, who contested the valid estate plan on their behalf, would be paid contingency fees estimated to be \$12 Million, from James Brown's assets.¹⁷

The Irrevocable Trust specifically omits Brown's children and any past or future spouse. No part of the Irrevocable Trust, including the "I Feel God" private foundation, is dedicated for any public purpose

The Irrevocable Trust embodies James Brown's lifelong philosophy that needy

¹⁵ "Knowledge" is defined in Section 62-7-104 of the SC Trust Code

¹⁶ The challenge came after they had spent a year of the Court's time affirming Brown's estate plan and seeking to enforce the Irrevocable Trust in Case 122 on behalf of its minor beneficiaries. Appellants assert that their representation to enforce the Irrevocable Trust on behalf of minors was permissible, while an action to defeat it was not.

¹⁷ Original Trustee Cannon has always asserted that JBE, Inc. was transferred to the Trust in 2000. In August 2007 Trustee Dallas knowingly filed false documents with the Court asserting that JBE, Inc. was never transferred to the Trust. Dallas has since admitted these filings were false, and were intended to prevent his removal as Trustee. Thus all original Trustees now confirm that they promptly implemented James Brown's August 1, 2000 assignment, JBE, Inc. resolution and stock power by transferring and accepting JBE, Inc. as part of the Trust, where it has remained since 2000, JBE, Inc. holds about 2/3 of Brown's royalties. These, with Beech Island, had a value at Brown's death of as much as \$35 million.

and deserving people need a "way out not a handout". That way out is education. It also provides education benefits of approximately \$285,000 each to certain grandchildren.¹⁸ The "I Feel Good" private foundation, authorized under IRC § 501(c)(3), is dedicated solely to providing education scholarships to needy and deserving students attending school in South Carolina and Georgia.¹⁹

Between 2000 and 2007 the Irrevocable Trust provided education benefits to adult grandchildren Forlando and Romunzo Brown and minor grandchildren Sydney and Carrington L.²⁰

By order dated October 11, 2007 the Attorney General of South Carolina entered James Brown Case 122 to help enforce the "I Feel Good" private foundation, part of the Irrevocable Trust. Case 122 was brought to remove the Cannon Group as fiduciaries. By November 20, 2007 all had resigned.²¹

¹⁸ See Article VI. While generous, the Brown Family Education Trust, sometimes called the Grandchildren's Trust, is a private, non-charitable Trust.

¹⁹ The 1999 Trust provided similar scholarships, but only to those attending Voorhees, U. S. C. Aiken and U. S. C. Salkehatchie. [1999 Trust, Article V]

²⁰ Shortly after appellants discovered Cannon's \$900,000.00 misappropriation in July of 2007, numerous other missing items were uncovered. By the fall of 2007 about \$6 million in direct misappropriations between 1999 and 2007 had been confirmed. In February 2007 appellants filed suit to recover from Cannon, Dallas and others more than \$12 million misappropriated from James Brown, the Irrevocable Trust and JBE, Inc., between 1999 and 2007.

During the same 1999-2007 period Brown's daughter, Deanna, held a filed joint POA for Brown with Cannon, Dallas and Bradley, giving her full access to Brown's financial dealings. In December 2006 Deanna also briefly accepted a position as Trustee of the Irrevocable Trust with Cannon and Dallas. The three asserted she was replacing Bradley. Daughter Yamma accepted a position as executive assistant to the Irrevocable Trust. Son Daryl traveled with Brown and the Cannon Group to a business meeting in Atlanta in the fall of 2006.

There is no evidence that Deanna, Yamma or Daryl knew of the Cannon Group misappropriations until after Brown's death. Terry Brown and his son Forlando became joint venturers with Cannon, Dallas and Bradley after it was known that the Cannon Group sought options or a "kickback" from an asset sale, and after Cannon's cashing of the \$5 million "check to nobody" had been uncovered.

²¹ All later sought to return as Trustees, but not as PRs. Cannon's attempts were unsuccessful. See SC Ct. Appeals Opinion No. 4570, filed June 23, 2009, refilled

Beginning November 21, the Attorney General's office began asserting it had authority to take over all litigation related to the Irrevocable Trust, as well as James Brown's estate.

On November 21, 2007 the Attorney General's office asked Appellants to resign as trustees. Appellants declined, explaining that it would return the Trust and estate to the chaos they had just inherited. The Attorney General's office armed to replace them.²²

The record and orders, including those dated January 8, February 20, March 7, and April 8, are filled with recitations of the accomplishments of the appellants.

On July 30, 2008 the Attorney General acknowledged that appellants were appropriate trustees. They were planning to work together to appoint a third trustee.

Eleven days later, on August 10, 2008, without appellants' knowledge the Attorney General's office met with several nonbeneficiaries of the Irrevocable Trust. The Attorney General executed a contract to seek removal of appellants and replace them, and to give 50% of the Irrevocable Trust's assets and inheritance to nonbeneficiaries. [August 10 Contract, Exhibit A.]

On September 28 the Attorney General brought Case 1647. On November 7,

November 6, 2009. Dallas & Bradley's appeal of the Court's refusal to allow them to withdraw their resignation is pending in this court.

²² The Attorney General's communication was with Bill Hammond, former counsel to the Cannon Group, who described Cannon's \$900,000 taking from the Irrevocable Trust as a "mistake". Hammond also had information which helped to confirm Cannon's improper cashing in 1999 of the \$5 million "check to nobody" — a \$5 million check with no payee that Cannon cashed at a local bank. The Attorney General's office told Hammond on November 27, 2007 that they were "arming to proceed." The Attorney General's office then used affidavits of wrongdoer trustee Dallas and of Hammond in an unsuccessful attempt to have the court reverse the trustee appointment of appellants. The Attorney General never objected to the appointment or service of appellants as PRs, and did not timely appeal the April 8, 2008 order finding all of their service both appropriate and ethical.

2008 the petition was amended to name and seek "emergency" removal of appellants.²³

Appellants, all fiduciaries of James Brown, and others raised appropriate and continuing objections to the lack of due process; improper parties; lack of notice and other procedural and substantive errors in Case 1647, as well as to the terms and form of the proposed partial settlement after its approval was sought on January 27, 2009.²⁴ Appellants and former trustees Cannon, Dallas and Bradley all asserted that the trustees were essential parties to any settlement agreement entered into by the Irrevocable Trust.

Appellants testified at the hearing to consider the Attorney General's contract. They also called Harley Ruff as an expert witness. Both Pope and Ruff, without objection, were qualified as experts. All testimony other than Mr. Bauknight's²⁵ was to the effect that there was no probable cause to contest either the 2000 Trust or the Will; that statutes of limitation prevented a contest of the irrevocable 2000 Trust of which the

²³ The Attorney General incorrectly asserts that appellants were not parties to Case 1647. Appellants were named by the AG as parties in Case 1647 on November 7, 2008, and filed pleadings as parties to Case 1647. On January 27, 2009 the Attorney General filed with the court in Case 1647 a motion to approve settlement, with a signed August 10, 2008 Contract. He admitted he intentionally did not serve appellants. The motion unilaterally altered the caption of Case 1647 by omitting the names of the appellants and James II, although they had not been dismissed. Without motion or order, the AG added to the Case 1647 caption the case numbers of Case 122 and Case 872. The parties to those cases were not served or given notice of the motion or pleadings in Case 1647. Appellants objected to the incorrect caption, improper notice, and lack of service.

²⁴ The "final" version of the "settlement agreement" was filed on March 26, 2009, after the close of the Attorney General's evidence, three months after the AG had filed a motion seeking to approve the settlement. It added to the August 10 Contract and Addendum, a contribution agreement; and the unsigned Legacy Trust (with Bauknight's name omitted).

²⁵ Mr. Bauknight acknowledged that he knew nothing about the litigation or James Brown's desires for his estate plan, and thought the \$83 million estate tax problem and federal Copyright Act issues were beyond the scope of his engagement.

entire family had knowledge,²⁶ and likewise demonstrated, with other facts, that there was no cause to contest the will dated the same day; that Brown, knowledgeable about litigation, had carefully designed two estate plans over four years — both with the express intention to exclude family except for minor and education benefits.²⁷

By January 7, 2009, the Attorney General had requested, and the circuit court had granted, the appointment of Bauknight as the "independent" fiduciary to review the proposed partial settlement. In seven days of hearings, all the evidence except Bauknight's was that the proposal was unreasonable and dismantled Brown's estate

²⁶ See §62-7-104, which provides that a person has "knowledge" of a fact when 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.

²⁷ In addition to testimony regarding the \$40 million of unnecessary estate taxes and interest the settlement generated, Pope testified that it violated the Spendthrift clause, the *In Terrorem* clauses of both the will and the 2000 Trust; that the criteria set out in §§ 62-7-411 through -416 were neither addressed nor met in the settlement, which violated the Settlor's tax objectives; and was wholly inconsistent with the Settlor's intentions, both charitable and noncharitable (Grandchildren's Trust); that the settlement was directly contrary to, and dismantled, the Settlor's purposes, provisions and intention; and that maintaining the Trusts for education, without beneficiary interference, was the overwhelming material purpose.

Pope also testified extensively about Brown's actions around the time of the execution of both the 1999 and 2000 estate plans. She confirmed that most of the children and both original adult grandchildren were already on record as confirming the validity of the estate plan — with Terry, Romunzo and Forlando Brown insisting on enforcement of the *In Terrorem* clauses.

Pope testified that there was abundant evidence that the \$100 million offers made by the Cox Group were an accurate reflection of the date-of-death value of the assets before taking into consideration the TIAA debt. This was true despite the fact that the Cannon Group sought to pay themselves about \$16.5 million and get options or a kickback from a sale.

On March 25 no settlement agreement had been filed. Appellants moved to dismiss after the close of petitioners' evidence — consisting solely of Buchanan and Pope's testimony and that of Bauknight. Not one settling party testified. It was announced that Bauknight had been selected as PR/Trustee in addition to trustee of the Legacy Trust. The settlement documents were filed on March 26, 2009.

plan. The circuit court approved the appointment of Bauknight to serve at the pleasure of the Attorney General, and approved a partial settlement which takes more than \$50 million from the Irrevocable Trust, including an estimated \$12-\$14 of contingency legal fees for the attorneys for those who have dismantled the Irrevocable Trust.

Among the errors which led to the orders under appeal are that the Court ignored the undisputed testimony that there is no probable cause to contest the Irrevocable Trust or the Will and that all children and Hynie Brown have ratified both the Trust and the Will. The evidence shows that a transfer of more than 65% of the Irrevocable Trust to these nonbeneficiaries is unjust and unreasonable. The trustees of the Irrevocable Trust having been enjoined by the January 7 Order appointing Mr. Bauknight as SA/ST, they were prevented from protecting James Brown's estate plan.²⁸

After removing appellants without cause, the circuit court ordered them, as PRs, to sign the settlement documents. Among other things, the settlement documents require parties not to say anything negative about the settlement agreement and to speak only through their lawyers or in court.

On August 1, 2009 the Attorney General's office sought *ex parte* "emergency" orders naming Bauknight as ST and SA. There was no emergency. The unverified *ex parte* applications and orders submitted by the Attorney General incorrectly described the petitioners as the sole Interested Persons in the Irrevocable Trust and estate, and the sole beneficiaries. [See Orders dtd. 8/3/09, 8/6/09.] The circuit court refused to vacate the *ex parte* orders.

Cases 1647 and 1810 were consolidated in this appeal.

²⁸ Appellants and the 2000 Trust were deprived of due process in this matter. The January 7th order made no finding of cause for substituting Bauknight's recommendations in place of the fiduciary discretion of the properly serving trustees and the Advisory Board.

EXHIBIT A

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, 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), Venisha 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), Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child James Brown II.

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below 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 based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that 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, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.
2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.
3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.
4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

further support of the agreements made herein

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

- ARB
- a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law
- b) that 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, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.
- c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.
- d) that the parties hereto 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, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to James Brown II; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.
- LSB
- e) All parties hereto 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 brought in good faith

and with probable cause.

- fb
- h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.
- i) The parties agree that 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.
- j) The parties agree that any and all will and trust contests will be dismissed
- k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares
- Tom
- l) 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 date, 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
- LJB DBT JNUB
DBT JNUB
DBT JNUB
- JB

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and James Brown II shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6 This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7 This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Feb *Wally E. Brown* *Levon M. Levenson*
Attorney General

Tanya Brown
Deanna Brown Thomas
Deanna Brown Thomas for
Veneta Brown
Deanna Brown Thomas for
Yanna Brown

Tom *Tanya Brown*

8/10/08
John Brown *8/10/08*
Tom Brown *8/10/08*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

Defendants.

TO: ALL PLAINTIFFS AND THEIR ATTORNEY:

)
) IN THE COURT OF COMMON PLEAS

)
) Case No.: 2010-CP-40-4900

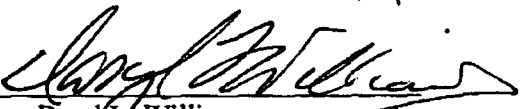
)
) **MOTION TO TRANSFER VENUE**

FILED
2010 AUG -2 PM 12:54
JEANETTE W. PRIBBE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof or as soon thereafter as counsel may be heard, and subject to their Motion to Dismiss and other motions and/or pleadings filed or to be filed herein, Defendants, through their undersigned counsel, will move before the Presiding Judge of the Richland County Court of Common Pleas, at her chambers in the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and Chapter 7 of Title 15 of the South Carolina Code of Laws, for an Order transferring this matter to the Aiken County Court of Common Pleas.

This Motion is based on the pleadings in this matter, the attached Affidavit of Adele J. Pope and on the applicable law.

JETER & WILLIAMS, P.A.



By: Daryl L. Williams.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
Attorneys for Defendant Adele J. Pope,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

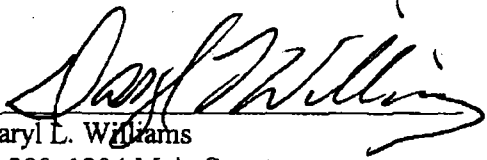


By: J. Calhoun Watson
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Telephone: 803-929-1400
Facsimile: 803-231-7889
Attorneys for Defendant Robert L. Buchanan, Jr.

August 2, 2010

The undersigned hereby affirms that he has attempted to communicate with opposing counsel without success in an effort to resolve this matter.

JETER & WILLIAMS, P.A.

By: 

Daryl L. Williams
Suite 200, 1204 Main Street
P.O. Box 7425
Columbia, SC 29202
Telephone: (803) 765-0600

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

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

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40- 4900

AFFIDAVIT OF ADELE J. POPE

FILED
2010 AUG -2 PM 12:54
JEANETTE H. HEBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly sworn,

deposes and says:

1. I was born August 9, 1943. I am a member of the South Carolina Bar. My office was formerly in Richland County, but was closed in September, 2009, when I changed the address of my practice to Newberry, South Carolina.

2. I am a Defendant in the above-captioned action. This affidavit is made from my own personal knowledge and belief in support of a Motion to Transfer Venue to Aiken County.

3. I believe that Aiken County is the proper venue for this case because no Defendant maintains an office or is resident in Richland County, nor is the Estate of James Brown or the James Brown 2000 Irrevocable Trust located in Richland County. The Estate of James Brown is being administered in Aiken County. By Order Dated August 10, 2007, Aiken County Case No. 2007-CP-02-122 ("Case 122"), a copy of which is attached as Exhibit A, the address of the James Brown 2000 Irrevocable Trust, as well as the Estate, was located in Aiken County. Most contested cases related to the probate of the Estate and the 2000 Irrevocable Trust, at times over twenty (20) cases, are or were, to the best of my knowledge, pending before the Hon. Doyet A. Early, III, who has ruled on or has before him in those cases most of the issues sought to be raised in the Complaint. Some orders entered by Judge Early are on appeal.

4. The reasons why I state that neither the Defendants nor the Estate or 2000 Irrevocable Trust are located or resident in Richland County are:

- a. In February 20, 2007, attorney Alan Medlin requested permission to nominate me as Special Administrator ("SA") of Mr. Brown's estate. I consented
- b. At the time my law office was located at 1218 Taylor Street, Columbia, S. C.

- c. After an interview attended by counsel, Judge Early appointed Robert L. Buchanan, III and me as non-fiduciary SAs of Mr. Brown's estate in an order dated March 7, 2007, entered in Case 122.
- d. We served as SAs from March 7 until November 20, 2007, when we were appointed Personal Representatives of Estate and Trustees of the 2000 Irrevocable Trust by an order entered in Case 122.
- e. On July 17, 2007, while serving as SAs, we discovered \$900,000 taken from the 2000 Trust during 2006. This caused concern about the integrity of the Brown documents held by then-trustees David G. Cannon and Albert H. Dallas. (A now-deceased former trustee Alfred A. Bradley was also serving.)
- f. Addressing these concerns, an order dated August 10, 2007, a copy of which is attached as Exhibit A, directed that the Brown "historical records," a term defined in that order, be placed in a large vacant area in the back of my office, where the parties to Case 122 would have access to them.
- g. By the same order, the mailing and business address of the Estate, the Brown Trusts and all Brown Entities was set in Aiken, South Carolina. See, Order, Ex. A, p. 7.
- h. The official address of the 2000 Trust and Estate remained Aiken, South Carolina until at least May 26, 2009.
- i. In early November 2008 I decided to close my Columbia office, primarily for reasons related to my work with James Brown's estate and the 2000 Trust.
- j. In late 2008, I notified clients and others of the closing of my office as of January 1, 2009, but I did not officially change my address to 1228 Walnut Street, Newberry, South Carolina until September 30, 2009.
- k. I continue to pay rent on 1228 Taylor Street because my landlord, a family member, has not yet found a tenant to fill my space.
- l. Neither Mr. Buchanan nor I have ever been a fiduciary of the "James Brown Legacy Trust" which, on information and belief, was formed by Plaintiffs Attorney General McMaster, Tommie Rae Hynie Brown and the Brown Family, LLC on or before January 16, 2009.
- m. I have not seen a signed copy of the Legacy Trust, but, as I recall, all unsigned copies shown to me indicated that the Trust was located in Aiken County, South Carolina.
- n. I am informed and believe Mr. Buchanan and I owe no fiduciary duty to the

Legacy Trust, which was not created by James Brown; is not a devisee of James Brown's Will; and is not a beneficiary of the 2000 Trust.

- o. At the time of the commencement of this action (and before) I was (and remain) a resident of Newberry County. Mr. Buchanan was and is a resident of Aiken County. Neither of us maintained an office or place of business in Richland County at the time of the commencement of this action, as explained above.

23. I am informed and believe that venue in Aiken County is appropriate because the specific matters raised in the complaint are pending in least three of the cases still pending in Aiken County, or on appeal from Aiken County, related to the 2000 Trust and Estate.

24. For example, the April 8, 2008 Order in Case 122, found that all of our service as both SA s and PR/Trustees up to that date was proper. See, Order, Exhibit B, p. 4. A January 8, 2008 order, also in Case 122, approved both our SA fees and costs and awarded us continuing "time plus costs" payments as a deposit towards our full commissions as PR/Trustees. Neither of these orders was appealed by any Plaintiff, and Case 122 is still pending.

25. Case 2008-CP-02-1647 ("Case 1647"), is also pending in Aiken County, with portions on appeal to the Supreme Court. Our Brief dated April 23, 2009, attached as Exhibit C, describes the issues pending in the two courts.

26. Case 2008-CP-02-0872 ("Case 872") is also pending. Attached as Exhibit D is an order filed August 1, 2008 in Case 872 which related to benefits for certain of Brown's grandchildren under the 2000 Trust. Reconsideration of that order is pending.

27. I am informed and believe that judicial economy and convenience of witnesses will also be served by having Judge Early, who has heard or has before him all of the Aiken County Brown cases listed below, preside over this case because he is familiar with the

extraordinary twists and turns other James Brown cases have taken and has before him, or has already decided, many of the same (or related) issues which the Complaint in this action seeks to raise.

28. Attached as a single example of those twists and turns with which Judge Early will be familiar is Exhibit E. It is a Return by Georgia (also licensed in South Carolina) attorney Louis Levenson, in what is now Case 872, to attempts by his former clients in Case 122, Terry, Forlando and Romunzo Brown to disqualify him.

29. I also ask the Court to take judicial notice of the February 20, 2010 indictments of David Cannon, including the indictment for uttering a forged document in 2008. I am informed and believe that Mr. Cannon tendered the forged compensation agreement on November 12, 2008 as part of the continuing campaign by Mr. Cannon, Mr. Dallas, Terry, Forlando, and others, to discredit and damage us by making it appear that the \$900,000 taking we discovered was actually valid compensation for Mr. Cannon.

30. Forlando, Mr. Dallas and Mr. Cannon have made false and conflicting statements in both the same and separate courts. I am informed and believe that a Judge who is familiar with the voluminous record of the many and complex James Brown cases will be better able to address this problem, thereby serving the interests of justice.

31. On June 29, 2009 Mr. Buchanan and I wrote Russell Bauknight to provide him with information about the status of the many James Brown cases, with most pending in, or on appeal from, Aiken County. Excerpts from that letter, with the case names underlined, follows:

Here are the cases:

1. Daryl Brown and others, Tommie Rae Brown and others vs. David G. Cannon,

Albert H. Dallas and Alfred H. Bradley, (Removal/Appointment/Accounting).
In Re: Estate of James Brown and the James Brown 2000 Irrevocable Trust.
Civil Action No. 2007-CP-02-0122.

6 initial Pleadings Notebooks. Note: From March 7, 2007 until November 20, 2007 Buchanan and Pope served as Special Administrators; were not represented by counsel; and participated pro se in their capacities as Special Administrators. Books 1-6 containing, among other things, the following:

1. 1/24/07 Emergency Petition for Termination of Appointment and Removal of Personal Representatives and for Emergency Order Restraining All Personal Representatives W/ Verification and cos

....
195.4/08/08 Order Denying Motion to Reconsider Appointment of Successor Personal Representatives and Trustees and Granting Related Relief

2. David G. Cannon, Petitioner, vs. Robert L. Buchanan, Jr. and Adele J. Pope, Personal Representatives of the Estate of James Brown. (Cannon Claim).
Civil Action No. 2008-CP-02-1425.

Pleadings Notebook containing:

1. 3/04/08 Summons and Petition for Allowance of Claim W/ Attachments

....
See Order of Doyet A. Early III, dated August 18, 2008, Consolidating Claims of Cannon, Dallas and Bradley for purposes of Discovery

3. Albert H. Dallas vs. Robert L. Buchanan, Jr. and Adele J. Pope, Personal Representatives of the Estate of James Brown. (Dallas Claim).
Civil Action No. 2008-CP-02-1426.

Pleadings Notebook containing:

1. 3/05/08 Summons and Petition for Allowance of Claim W/cos

4. Alfred A. Bradley, vs. Robert L. Buchanan, Jr. and Adele J. Pope, Personal Representatives of the Estate of James Brown. (Bradley Claim).
Civil Action No. 2008-CP-02-1427.

Pleadings Notebook containing:

1. 3/05/08 Summons and Petition for Allowance of Claim W/cos
5. 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 vs. Deanna J. Brown Thomas, and others (Declaratory Judgment).
Civil Action No. 2007-CP-02-0122.
6. Daryl J. Brown vs. Adele Pope and Others (Will/Trust/ Heirs Matter).
Case No. 2008-CP-02-872.

...

Includes 3 Pleadings Notebooks, including:

10.1/4/08 Summons and Petition to Set Aside the Trust on Behalf of
Jeanette Mitchell W/cos

13.1/15/08 Motion to Dismiss or Consolidate and for Related Relief

7. Robert L. Buchanan, Jr. and Adele J. Pope as Trustees of the James Brown 2000 Irrevocable Trust and its subtrusts, and as Personal Representatives of the Estate of James Brown, Deceased vs. David G. Cannon, Albert H. Dallas and Alfred A. Bradley, as former Trustees of the James Brown 2000 Irrevocable Trust and its subtrusts and former Personal Representatives of the Estate of James Brown, and William F. Hammond (Interference Suit).
Case No. 2008-CP-02-322.

Pleadings Notebook Containing:

1. 3/19/08 Summons and Complaint for Declaratory Judgment, Injunction,
Delivery of Files and Related Equitable Relief Including
Emergency Relief
2. 4/23/08 Answer of William Hammond
8. Buchanan and Pope v. McMaster, Aiken County Case No. 2009-CP-02-0597
9. Lewis and Babcock vs. Trust, and other claims cases
10. Jackson Law Offices vs. RLB, Jr. & AJP, PRs Case No. 2008-CP-02 1549.
Jury trial demanded. Case Pending. [See Box 90]
11. Lewis & Babcock vs. RLB, Jr. & AJP, as PRs and Trustees (Case # 122). Also
see Box 110, Lewis & Babcock Claim... [See Box 90]

12. Intrigue Music Management, Inc. vs. RLB, Jr. & Adele J. Pope, PRs & Trustees. Case No. 2007-CP-02-1557 with Pleadings
13. Hull, Towill, Norman, Barrett & Salley vs. RLB, Jr. and AJP, as PRs. Case No. 2008-CP-02-
See Answer. Jury Trial Demanded. [See Box 90]
14. Bobby Bennett a/k/a Famous Flames Claim. Case No. 2008-CP-02-1558.
Claim dismissed after hearing. Order dtd. 10/23/08. [See Box 90]
15. Charles A. Bobbit vs. RLB, Jr. and AJP, as PRs. Case No. 2008-CP-02-1556.
Pending. See Answer dtd. October 9, 2008. [See Box 90]
16. Phillip G. Farr, CPA, P.C. vs. Estate. Case No. 2008-CP-02-1553. with
pleadings. See Motion to Dismiss. Dismissed on Motion of Estate. See Form
Order dtd. 10/23/08. [See Box 90]
17. Gene Staulcup & Associates vs. AJP & RLB, Jr., as PRs. Case No. 2008-CP-
02-1548. See pleadings, Motion to Dismiss. Claim disallowed after hearing.
Order dtd. 10/23/08. [See Box 90]
18. William Murrell, Associates. vs. AJP & RLB, Jr., as PRs. Case No. 2008-CP-
02-1555. See Pleadings Notebook. Answer. After Hearing, allowed in amount
of \$8,170 and denied and disallowed \$1,100. See Order dtd. 10/23/08. No
Appeal. Note: Judgment, but not a priority claim. [See Box 90]
19. Smith, Massey Brodie & Thurmond vs. AJP & RLB, Jr. as PRs. Case No.
2008-CP-02-1551. See Answer. After hearing, claim in amount of \$33,322.20
allowed against Estate for services rendered in early 2007. See Order dtd.
October 23, 2008. [See Box 90]
20. Pullman Group, LLC v. RLB, Jr. & AJP, Prs.
Contains certain documents from the New York portion of the Pullman
Litigation. (See Pullman SC Claim and related Order for relationship between
NY & S.C. Portion of Pullman "\$31 Million" Claim.

Hogan & Hartson, Matthew Ballenger, Esquire, were engaged, and their
engagement contract approved, pursuant to Court Orders dated June 22 and
August 10, 2007.
21. Rodney A. Peoples v. RLB, Jr. and AJP, as PRs & Trustees [See Amended
Petition with bound pleadings notebook and correspondence re: possible trial
by stipulation.
22. The Estate of James Brown A/K/A James Joseph Brown.

Aiken County Case Number: 2007-CP-02-0122
(Dallas and Bradley, Appellants vs. Pope and Buchanan, Respondents)

The following matter is now pending in the South Carolina Court of Appeals and awaiting oral argument.

Contents delivered include:

...
1. Pleadings Notebooks (3):

...
1. 3/10/08 Notice of Appeal of the November 20, 2007 and March 7, 2008 Orders

...
49.11/6/08 Amended Initial Brief of Respondents W/POS

23. Ex Parte: David G. Cannon v. Ex Parte: Georgia Attorney General's Office and others

Aiken County Case Number: 2007-CP-02-0122

... 5 Pleadings Notebooks:

...
5. 01/17/08 Notice of Appeal (Appeals Order Issuing Sanctions Dated Dec. 18, 2007, & Motion to Reconsider Order Issuing Sanctions Dated Jan. 16, 2008)

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this 23rd
Day of July, 2010



Notary Public for South Carolina
My commission expires: 7/12/2018

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 me on August 10, 2007 at Aiken, South Carolina, on motion of Robert L. Buchanan, Jr. and Adele J. Pope, Special Administrators of the Estate of James Brown ("Estate") dated July 27, 2004. The motion seeks an Order of the Court and guidance as follows:

1. Temporarily removing one or more Personal Representatives of the Estate of James Brown and one or more Trustees of the James Brown 2000 Irrevocable Trust, the James Brown "I Feel Good" Trust and the Brown Family Education Trust, and appointing general Special Administrators and Special Trustees to preserve and protect the Estate of James Brown and these Trusts until further Order of the Court.

2. Directing that the Personal Representatives and Trustees immediately deliver to the Special Administrators all original books and records of the Estate, the Trusts and any entity in which James Brown, the Estate of James Brown, and/or any Trust referenced herein owned at least a 50% interest, including, but not limited to, all books, records and files in the possession and/or control of said Personal Representatives and/or all attorneys, accountants and/or other advisors who have served as attorneys and/or accountants for the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust, the James Brown "I Feel Good" Trust and/or the Brown Family Education Trust.

3. Directing that David G. Cannon in addition to immediate delivery of all books and records in his possession and/or under his control, give immediate access to the Special Administrators so that the computer files of David G. Cannon related to James Brown, the Estate of James Brown, the Trusts referenced herein, Seventh Decade Productions, and each entity referenced in this Court's Order dated June 25, 2007 may be copied by such technician as shall be selected by the Special Administrators.

4. Issuing such additional guidance and directives as the Court shall deem appropriate under the circumstances. A hearing was held before me on August 10, 2007. All Interested Person in the Estate, including the Personal Representatives and Trustees were present or represented by counsel.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, _____, Clerk of the Court 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

8-10-07

C.C.P. & G.S.
Deputy Clerk

0285

AUG 10 2007

C.C.P. & G.S. Aiken County, S.C.
Deputy Clerk

Pleas.

- c. Retention of Lewis & Babcock, LLP as litigation counsel for the Remaining PR/Trustees.

4. The Estate, if and when funds are available, should be allowed to advance tuition payments to qualified beneficiaries of the Brown Family Education Trust who ratify the Trust.

VIII. TEMPORARY DELAY IN DISCOVERY

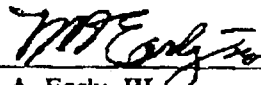
1. Except for previously scheduled depositions to be held in New York, the Deposition of Charles Bobbitt; and the discovery ordered by this Court in a separate Order, discovery in Estate and Trust matters shall be suspended until the September 24, 2007 hearing.

IX. RATIFICATION/ENFORCEMENT

1. Any person violating this Order shall be subject to a contempt proceeding before the Court.

AND IT IS SO ORDERED.

August 10, 2007
Aiken, South Carolina


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

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) (On Removal from Probate Court)

) CIVIL ACTION NO. 2007-CP-02-0122
)
)
)

IN RE:

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

) ORDER DENYING MOTION TO
) RECONSIDER APPOINTMENT OF
) SUCCESSOR PERSONAL
) REPRESENTATIVES AND TRUSTEES
) 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.¹ Also present or represented by counsel were James Joseph Brown II, Cinnamon Nicole Mernickle Paris and LaRhonda Pettit;²

¹ These are all acknowledged children of James Brown; the children of the acknowledged children; and Mr. Brown's claimed spouse.

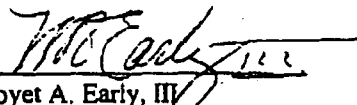
² These persons claim to be children of James Brown.

FILED

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
Bamberg, South Carolina

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.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

HENRY DARGAN McMASTER, and
Others,

Petitioners,

v.

ALBERT H. DALLAS, ALFRED A.
BRADLEY 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
)

) BRIEF OF TRUSTEES AND
) PRs BUCHANAN AND POPE
) SUPPORTING VALIDITY AND
) INCONTESTABILITY OF 2000
) TRUST; LACK OF PROBABLE CAUSE
) TO CHALLENGE WILL OR TRUST;
) LACK OF CAUSE TO REMOVE
) BUCHANAN AND POPE;
) REJECTION BY COURT OF
) MARCH 26 DOCUMENT;
) AND RELATED RELIEF
)

Robert L. Buchanan, Jr. ("Buchanan") and Adele J. Pope ("Pope"), Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and Personal Representatives ("PRs") of the Estate of James Brown, deceased (the "Estate") submit this brief supporting the validity and incontestability of the James Brown 2000 Irrevocable Trust; the lack of probable cause to challenge the 2000 Trust or the Last Will of James Brown dated August 1, 2000; the failure to show any cause for their removal as Trustees and PRs; and that the action for their removal as Trustees and PRs was brought for the improper purpose of attempting to force them to accept a "settlement" which would cause unnecessary and irreparable harm to the 2000 Trust and Estate. Plaintiffs also seek \$44,350 of attorneys' fees and costs, together with all future legal fees and costs in this case.

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I. SUMMARY OF THIS CASE

This case involves the James Brown 2000 Irrevocable Trust,¹ a charitable and non-charitable trust (the "2000 Trust"). The 2000 Trust was created on August 1, 2000 by entertainment icon James Brown, who died more than 6 years later on December 25, 2006.

All plaintiffs have conceded that the 2000 Trust is valid. (See Amended Petition filed 11/7/08) No remaining challenges to the validity of the 2000 Trust exist. The 2000 Will was executed on the same day as the admittedly valid 2000 Trust. The 2000 Will leaves only personal and household effects ("PHE") to certain designated children, and the remainder to the 2000 Trust.

Although the 2000 Trust is irrevocable, the Trustees can amend it for the sole purpose of insuring IRS qualification of one of its subtrusts, The James Brown "I Feel

¹ In addition to the "I Feel Good" charitable private foundation, the 2000 Trust has a noncharitable education subtrust (the "Grandchildren's Trust").

Good" Trust, as a private charitable foundation, under 501(c)(3) the Internal Revenue Code (IRC).²

Plaintiffs, along with Terry, Forlando and Romunzo Brown, seek the following relief:

1. Removal for cause of Buchanan and Pope as Trustees of the 2000 Trust and Personal Representatives of Brown's estate.
2. Removal for cause of former Trustees and PRs David G. Cannon, Albert H. "Buddy" Dallas and Alfred A. Bradley, all of whom resigned in 2007.³
3. Approval by the Court, over the objection of both the current and former Trustees, and without the consent of various necessary parties, of a document submitted on March 26, 2009 (The "March 26 Document") which purports to be a "settlement" among some parties. If approved and implemented, the March 26 Document would:
 - a. Void James Brown's intent and succession plan under Articles VIII and XIII of the 2000 Trust⁴, by giving the Attorney General ("AG") the unfettered individual right to appoint and remove Trustees of both the "I Feel Good" private foundation and the non-charitable Grandchildren's Trust.
 - b. Place the AG in direct conflict with his obligations and privileges under the S.C. Constitution, Section 62-7-405 and other applicable law, to enforce the "I Feel Good" Trust and the criminal law.
 - c. Transfer, without probable cause and over the objection of the Trustees, 65% of the 2000 Trust from the students who are James

2 On December 5, 2007, Buchanan and Pope applied for IRS approval of the "I Feel Good" Trust. Just before and during the IRS approval process they adopted minor amendments to insure IRS qualification. The IRS determination letter was issued in 2008.

3 Dallas and Bradley's appeal to the Court of Appeals of the 11/20/07 Order accepting their resignations is currently pending. On July 14, 2008 the Court of Appeals ruled that it was appropriate for Buchanan and Pope to "continue to act as Trustees while this appeal is pending. We decline to require Respondents to post a bond, despite Appellants' request."

4 The AG previously argued that following Brown's succession plan is critical to the operation of the 2000 Trust. In its November 20, 2007 and April 8, 2008 Orders, this Court approved the appointment of Buchanan and Pope, upon recommendation of all parties other than the AG of S.C. and GA, as consistent with the succession plan of Article VIII of the 2000 Trust. That Order was not timely appealed by any Plaintiff or Defendant other than Dallas and Bradley.

Brown's intended beneficiaries to non-beneficiaries, and for their attorneys and taxes, defeating donative intent and the purpose of the Trust.

- d. Disqualify the "I Feel Good" Trust as a private foundation under 501(c)(3) of the IRC, and cause loss of \$40 Million Estate Tax and interest savings resulting from the \$80+ Million charitable estate tax deduction claimed by the Estate.
- e. Unjustly enrich Forlando and Terry Brown, and the individual Plaintiffs, who have wasted more than \$400,000 of Estate/Trust resources and 2 years in State and Federal Courts for the purpose of acquiring Brown's assets for themselves, rather than as Brown intended.
- f. Allow Plaintiffs and Terry, Romunzo and Forlando Brown, without probable cause, to destroy the Estate Plan of James Brown and escape enforcement of the *In Terrorem* clauses of both the 2000 Trust and Brown's valid 2000 and 1999 Wills.
- g. Violate the Spendthrift provisions of the 2000 Trust which void the proposed transfers to themselves and others.
- h. Establish a finding of "Heirs", which is inconsistent with the facts and applicable law.

Defendants Buchanan and Pope ask the Court to:

- 1. Deny the request for their removal, and reaffirm its February 20, 2008 Order confirming their right and obligation to defend the Estate Plan of James Brown.
- 2. Dismiss, without prejudice, the claims against Cannon, Dallas and Bradley, as not ripe.⁵
- 3. Find that the action to remove Buchanan and Pope as Trustees and PR s was brought for the improper purpose of forcing them to resign and abandon their defense of the Estate Plan.

Buchanan and Pope seek \$44,350,⁶ attorneys' fees and costs, jointly and

⁵ Buchanan and Pope and others would have standing to bring an action to remove Cannon, Dallas and Bradley if any of the 3 were reinstated as Trustee.

⁶ And future attorneys' fees.

2. The 1999 Will, which gave Personal and Household effects ("PHE") to children and named the Cannon Group and Deanna as PRs.
3. The 1999 durable general Power of Attorney ("POA") naming Deanna, Cannon, Dallas and Bradley as attorneys in fact.¹²

In 1999 and 2000 Brown continued his rigorous national and international tour schedule. He had meetings with Jay Ross, his Chicago attorney, and others.

On April 28, 2000 an arsonist burned Brown's Augusta headquarters. Over the following months it was revealed that the arsonist was Brown's security agent, Richard Glenn. Glenn was the son of Brown's cousin, Willie Glenn, a close friend and one of the 1999 Estate Plan Trustees.

In a May 3 birthday interview Brown professed that he had no plans to retire.

In May of 2000, Brown appeared and performed in a 2-week West Coast concert tour.

On May 22 Brown was sued by Lisa Agbalaya, who worked in Brown's West Coast operations, for \$1 Million. She alleged sexual harassment. Brown's LA attorney Debra Opri called the allegations "baseless" and "extortion" Opri said "... Mr. Brown would not succumb to these ridiculous demands."¹³

split between the artist and the publisher in royalty agreements. [Hearing 4/6/09] Even if it were problematic and not overridden by other clauses, the "50%" administrative clause would be disregarded. The "Severability" clause, Article XIX, provides that invalid, illegal or inoperative parts of the trust shall be disregarded, and the remaining parts, so far as possible, effective and fully operative.

12 The 1999 Trust contains substantially the same dispositive provisions as the 2000 Trust, but the scholarship funds for needy and deserving children are required to be paid to Voorhees College, U.S.C. Salkhatchie and U.S.C. Aiken. The 1999 Trust was never officially revoked by Brown, but was also never funded. It will be funded only if Brown's 1999 (alternate) Will is admitted to probate.

13 Opri was correct. Brown appeared at the trial of the Agbalaya case in 2002. The jury award was \$40,000 – rather than the \$1 Million sought. It appears that the \$40,000 resulted from Brown's closing the LA office after the suit was filed.

On June 14, Brown was inducted into the Songwriter's Hall of Fame in New York. He also wrote agent Jeff Allen raising concerns about wanting only 10 concert dates on his upcoming European tour – rather than the 14 Allen had scheduled.

On June 25 Brown performed in Seattle, Washington.

On July 2 Brown was involved in an incident with a power company employee on his property. The employee filed a complaint on July 13 while Brown was in Europe.

On July 19, upon his return from Europe, Brown gave a 2-hour interview to authorities. Lt. Michael Frank reported that Brown was very cooperative and answered all of their questions. There was no arrest, and the charges were dropped on August 1.

On August 1, Brown executed his final Estate Plan and related documents, consisting of:

1. the James Brown 2000 Trust;
2. a Certificate and Agreement of Trust, Irrevocable Trust Agreement James Brown & Trustees August 1, 2000 (the "Certificate of Trust");
3. Advisory Board Document, naming Deanna, Ella Overton and Willie Glenn to the Advisory Board;
4. a Deed of Beech Island to the 2000 Trust; and
5. the August 1, 2000 Will.

The 2000 Will, like the 1999 Will, gives Brown's PHE to his 6 acknowledged children. The residue of Brown's Estate is devised to the 2000 Trust.

The 2000 Trust provides:

1. (By formula) Approximately \$2 Million to the Grandchildren's Trust, to provide education benefits for 7 of Brown's grandchildren;

2. Remainder to the "I Feel Good" private foundation;
3. Trust is irrevocable, with amendment only by Trustees and only to insure IRS qualification;
4. 3 initial Trustees. If any of 3 Trustees fails to act, "remaining Trustee(s) shall continue to serve and shall elect and/or appoint another Trustee so that at all times there are three (3) individual Trustee(s) serving. The notice and election provisions of Article XIII, Powers of Trustee(s) succession shall be followed. [Tr. Article VIII (1), Article XIII.];¹⁴
5. Reasonable Compensation for Trustees [Article VIII (3)];
6. Spendthrift Clause providing no beneficiary may assign or transfer any interest in the 2000 Trust [Article XX]; and
7. *In Terrorem* clause, with forfeiture, for anyone contesting the Trust or the Grantor's Will, or attempting to acquire an interest in its assets. "Any such alleged claim shall be considered an affront the Grantors wishes and shall be vigorously challenged as such by his fiduciaries." [Article XXI]

Schedule B of the 2000 Trust shows that Brown intended to transfer JBE, Inc, to the 2000 Trust. Brown signed both a JBE, Inc. corporate resolution and a POA to Dallas to effect the transfer, which it appears Dallas failed to do. Trustees Buchanan and Pope strongly assert that JBE, Inc. is equitably owned by the 2000 Trust as a result of Brown's clear transfer directions to his agent.

¹⁴ On July 30, 2008 Buchanan and Pope were working with AG McMaster on the appointment of a third Trustee. Buchanan and Pope wanted to appoint as the 3rd Trustee (and 3rd PR) any reasonable person suggested by the AG. On July 30 the AG agreed that Buchanan and Pope were appropriate persons to continue to serve as 2 of the 3 Trustees. [Lt. Henry McMaster dtd. 7/30/08] In July the AG had named 5 potential "Special Trustees", including Russell Bauknight, W. Steven Johnson, Xavier Starkes, Jr. and 2 others. Buchanan and Pope contacted all 5 and invited them to Beech Island and to discuss the challenges facing the Trust and Estate. Bauknight did not return their calls. Johnson and Starkes visited Beech Island. Buchanan and Pope suggested, and continue to suggest, Starkes as the 3rd Trustee, with Johnson, whose Trust and Estate training and experience are similar to Pope's, to be considered when Buchanan and Pope resign. The August 13 "stand down" letter, which came less than 2 weeks after McMaster's July 30 letter, and other interference by the "settling" parties halted this process to name a 3rd Trustee.

Hynie and Brown's daughter Venisha witnessed the Advisory Board document, which appointed Deanna as one of 3 initial members. Various others witnessed the other documents.

B. From creation of the 2000 Trust on August 1, 2000 until James Brown's death.

On August 4, Brown was sued by Lisa Rushton. That suit was later settled.

In 2000 Brown engaged his Chicago attorney Jay Ross to investigate publicity infringement issues.¹⁵ This became the "CORBIS" suit which Buchanan and Pope have successfully settled after 7 years of litigation with a 2-year beneficial publicity exploitation right with Gates company, Greenlight, LLC. The settlement is awaiting S.C. Circuit Court approval. It is undisputed that delay or failure to approve the CORBIS/Greenlight settlement will cause harm and loss to the Trust and Estate by losing 2 years of exploitation of Brown's publicity rights. This cannot be recovered.

In August Brown terminated Allen over Allen's failure to follow Brown's instructions related to the recently concluded European tour.

In September, 2000, the 2000 Trust purchased a bank building in Augusta. SouthTrust Bank later foreclosed on the property, obtaining a Judgment in South Trust

¹⁵ In 2002 Brown and others commenced the Illinois litigation now known as the CORBIS litigation. After 7 years, the PR/Trustees have reached a settlement which includes a 2-year publicity contract with CORBIS subsidiary Greenlight, LLC. At least some of Plaintiffs have suggested that the Court should not approve this important and beneficial contract because it will interfere with the "rights" of Terry Brown. This is just one example of how the settlement, if approved – even if not binding on the Estate, Trust and non-settling parties— is already being used to cause damage to the Trust and Estate for the improper personal benefit of the Trust contestants.

Bank against Brown and the 2000 Trust, Superior Court of Richmond Court, Georgia, Civil Action Number #2001-RCCV-728.¹⁶

The Deed of Brown's Beech Island Home Estate to the 2000 Trust, dated August 1, 2000 was recorded on December 28, 2000. Brown enjoyed the life interest he retained in Beech Island under Article XVII of the Trust.

On February 26, 2001 the POA naming Deanna, Cannon and others was filed in Richmond County, Ga. The POA to Deanna and the Cannon Group was never revoked and remained of record until Brown's death.

On June 11, 2001 Hynie gave birth in Nevada to a son ("James II"). At the time of the birth she was married to Javed Ahmed, whom she had married in 1997.

On August 7, 2001, the Memorandum of Trust, giving detailed information about the 2000 Trust, the Grandchildren's [Family] Education Trust and the "I Feel Good" Trust, was filed in Richmond County, GA. It was filed in Aiken County on August 24, 2001.

On November 27, 2001, Hynie and Brown entered into a detailed prenuptial agreement. The agreement made no mention of Hynie's child. Hynie agreed to accept \$75,000 in case of divorce (by Brown). Both agreed, in case of death, to "in no event

¹⁶ The Bank building was sold during the foreclosure proceeding and the net proceeds were approximately \$41,000 less than necessary to pay off the judgment. Cannon advanced the difference and received assignment of the entire \$900,000 judgment. After Brown's death, on January 3, 2007, Cannon filed the \$900,000 Judgment. It was marked "satisfied" on May 21, 2007 after SAs Buchanan and Pope made inquiries of Cannon.

Shortly before Brown's death, on October 18, GT generated a letter related to the assets pledged to TIAA to be refinanced (the "October 18 GT Letter"). The letter proposed payment of an exorbitant amount of any refinancing to Cannon, Dallas, and others. Brown's signature appears on the October 18 letter on November 22, 2006.

Brown died in Atlanta on Christmas Day, 2006.

C. From Brown's death until the Resignations of the Cannon Group.

On December 26 Brown's attorney Joel Katz¹⁸ formed the James Brown Music Education Foundation ("JBMEF"). 4 of the Trustees were Deanna, Yamma, Charles Bobbit and Frank Copsidas.¹⁹

On December 28, 2006 Deanna became a Trustee of the 2000 Trust.²⁰

On January 1 or 2, 2007 Dallas, consulting with Cannon, created Post-Death Dallas Schedule B to the 2000 Trust.

On January 3, 2007, Yamma became Executive Assistant to the Board of the 2000 Trust.

On January 3, Bradley, who had accepted his Trustee position in 2000²¹ but apparently been inactive, became active. When Cannon and Dallas delivered the purported Trust to Bradley, it contained a fabricated "Dallas Schedule B". Read as a part of the Trust, the fabricated Dallas Schedule B made it appear that Brown had

¹⁸ Of Greenberg Traurig (GT)

¹⁹ The JBMEF promised to release a James Brown 2003 Apollo album and take other action in apparent conflict with the 2000 Trust. Copsidas defended JBMEF as non-profit and helpful to Brown's image. He asserts he dropped out in the summer of 2007 when (unnamed) persons wanted to personally profit from JBMEF. See Congressional Journal, 2/26/09 in which Sen. Rangel attributes JBMEF to family. [Copsidas 12/07; Cong. Journal dtd. 2/26/09]

²⁰ Without written notice Deanna appears to have abandoned her Trustee position when she hired Levenson in

transferred [or attempted to transfer] everything he owned or might own in the future to the 2000 Trust prior to his death.²²

By January 8 Deanna and Yamma, along with brother Terry, nephew Forlando, and others, had engaged attorney Louis Levenson.²³ According to Forlando, this was the beginning of the family's planned takeover of the James Brown assets.

On January 11, 2007, the Cannon Group read the Will and delivered the 2000 Trust, with Dallas Schedule B, to family. (Tr. Hearing 2/9/07, p. 69, 78.)

On January 18, the 2000 Will was informally admitted to probate. The Cannon Group were appointed PRs. By January 24, the Levenson clients had filed suit to seek the appointment of a Special Administrator ("SA") and other relief against the Cannon Group for their service as Trustees and PRs.

Trust minutes for January and March 5 of 2007 confirm that William Shearer of Atlanta Law Firm Powell Goldstein (PG) would be advising the 2000 Trust, with Hammond, as to the "next steps" they would take. [Minutes/Ttees.3/5]

January, 2007. Deanna has never asserted to the Court that she holds the Trustee or the Advisory Board position.

21 See Memorandum of Trust.

22 The Post-death fabrication of Schedule B by Dallas was known by the AG's office in December 2007 after Buchanan/Pope became Trustees and inquired about the 2 "Schedules B".

23 The Levenson clients spent much of 2007 asserting they were trying to "save" and "preserve" the assets of the 2000 Trust and Estate. Levenson has recently advised the Court and parties that he is expecting to be paid on a contingency fee basis, suggesting that Forlando's sworn testimony of the family planned takeover in early 2007 of the Brown assets, with Levenson to be part of the deal, has some basis in fact. Levenson and other "settling" parties have refused to disclose their projected fees and costs. Levenson's secret "contingency fee", like that of Rosen, one of Hynie's 5 lawyers, demonstrates that these attorneys are working for the benefit of their individual clients. The attempt to have the Trust pay a secret estimated \$12 - \$14 Million in fees and costs which have damaged, and in no way benefited, the Trust and Estate, while virtually ignoring the donor's intent, is unprecedented. The Court should not permit, and the AG should not participate in, such inappropriate actions where Charitable (and non-charitable) entities have an expectancy which is proposed to be reduced by the secret contingency legal fees.

On March 7, Buchanan and Pope were appointed SAs, with limited non-fiduciary duties.²⁴

On March 26, at the SA s first meeting with them, the Cannon Group (accompanied by 4 attorneys) urged Buchanan and Pope, without any due diligence, to approve a sale of Brown's royalties pledged to TIAA for \$26 Million.²⁵ Under the October 18 GT Letter, the Trust and Estate would have netted almost nothing. The Cannon Group would have received 15% plus about \$1.5 Million.

By April 9 Georgia Attorney David Bell, a close friend of Dallas, had become the attorney for Forlando, Romunzo, Terry Brown and Darren Lumar, estranged husband of Yamma. Bell and Dallas have been in lockstep since that time.

On April 9, Darren Lumar, father of Sydney and Carrington, went with Buddy Dallas to the children's school where Dallas paid \$5,201.14 from the Grandchildren's Trust for their education benefits.

24 The appointment resulted from a Petition filed by Forlando, Terry, Romunzo, Dearna and Yamma seeking an accounting and other relief against the Cannon Group, as well as a Hynie Petition.

25 Buchanan and Pope did not have an attorney when they served as SA s. During that period the Cannon Group, in their capacity as fiduciaries, incurred more than \$1 Million in attorneys' fees, a substantial portion of which was for the legitimate protection of the Trust and Estate. For example, the DNA testing procedure created by attorney Peebles has been of substantial value, as has the gathering and protection of more than 80 boxes of critical documents, a joint effort of Buchanan, Pope with Lewis & Babcock, representing the Trustees and PR s. In contrast, Bauknight, appointed as a non-fiduciary on January 4 for the sole purpose of reviewing a settlement, arrived at his interview with Buchanan and Pope (who had no attorney with them) accompanied by his personal attorney, whom he asserts accompanies him on everything he does, and whom Bauknight insists he must engage in order to accept any position. Buchanan and Pope submit that Bauknight's personal attorney cannot and should not be engaged or paid for by the Trust or Estate. This failure of Bauknight to address even basic fiduciary and conflict-of-interest principles is the hallmark of the entire March 26 Document and the proposed conflicted "service" of Bauknight.

On August 10 Cannon resigned in all Brown fiduciary capacities.²⁸ He returned \$350,000 of the \$900,000 he had taken in 2006. The August 10 Order, consented to by all parties, confirmed Cannon's resignation; terminated attorneys and accountants who had been close to Cannon; and required Cannon, Dallas and Bradley to deliver the Trust, Estate and Brown Entity files of terminated attorneys to a central location, 1218 Taylor Street.²⁹

On August 16 Cannon wired \$866,000 to Honduras to prepay for a turnkey retirement home where he planned to retire at the end of 2009.

Discovery of the Cannon taking put the TIAA Note, to whom the funds should have paid, in jeopardy of default. Dallas and Bradley, with help from Buchanan and Pope, worked with M&T Bank to avert problems.

On August 19 the Court issued an Order by which the Trust and Estate were allowed by TIAA to retain \$100,000 of the TIAA funds to assist with recovery of the remaining funds from Cannon. Under the August 19 Order, the return of the \$100,000 loan, with interest, is a first priority, with priority over administration expenses.

On August 27 Dallas and Bradley filed a Motion for and Accounting by Cannon, [Mot. dtd. 8/27/07, Case 122]

27 Hammond's firm would not let him accept.

28 Except 7th Decade - See Order dtd. 8/10/07, Case 122

29 Dallas & Bradley maintained access and control over the 80+ boxes of documents at 1218 Taylor until their resignation on November 20. All parties and their counsel were given access to the files. PG's file was not delivered, and they have since refused to deliver it. It should be. It may reveal important information about the relationship between Cannon, Dallas, Forlano and Terry Brown, GT and Bell. Buchanan and Pope submit that Cannon, Dallas and Bradley should be ordered to comply with the unappealed August 10, Order and direct GT to deliver the file. [Counsel Byrd, relying on Dallas, at first denied the existence of such a file. He has since acknowledged that it exists, but has asserted the attorney/client privilege waived by Cannon/Dallas/Bradley on

On October 27, 2007, Cannon wrote to a friend:

The tide seems to be turning I went to the Attorneys General of SC & GA and they have entered the proceedings. The judge and other attorneys have been quite [sic].

On October 31, under oath, Forlando asserted he had never heard of a \$100 Million offer. He concealed his financial stake as a joint venturer with Dallas and Cox. [Depos. F. Brown, 10/31/07, Case 122]

On October 31, under oath, Deanna acknowledged that the 2000 reflected Brown's wishes. [Depos. Thomas 10/31/07, Case 122.]

On November 7, Bell filed a petition for Velma Brown seeking a 1/3 of Brown's Estate. He did not seek *pro hac vice admission* in the Velma Brown proceeding, but appeared before Judge Early on November 15 in that matter.³¹

By about November 13, Buchanan and Pope learned that Dallas and Bradley, who had appeared to be working to uncover and recover what was then known to be at least \$7 Million of funds missing through Cannon's involvement from 1999, were actually secretly working with Cannon the entire time.

non-binding. Except for an email regarding a meeting which the AG's office, Hynie attorney Medlin and Cox had in July of 2008, Buchanan and Pope have no reason to believe that, to date, the amount of the Cox Letter of Intent was not a good faith estimate of fair value from the standpoint of the proposed purchaser. What remains unknown because of PG's refusal to release its file, is the amount of the "options or 'kickback'" to be paid to the Cannon Group as described in the June 15 GWG documents, or the payments to be made to PG, Terry and Forlando Brown. Buchanan and Pope assert that Terry and Forlando Brown, and PG and Bell, should be charged – not rewarded – for what they have done to damage the Trust and Estate, in an attempt to profit personally from the damage and interference.

31 Because documents showing Velma Brown had divorced James Brown were discovered in Bell's [Richmond County] Courthouse the day after Bell filed Velma Brown's verified petition asserting they were never divorced, various parties sought sanctions. These motions have not been resolved.

On November 15 a hearing was held in Bamberg. Cannon refused to repay the remaining \$370,000 of the misappropriated funds. Cannon also repeatedly asserted his 5th Amendment rights. [Tr. Hearing 11/15/07, pp. 200, 201] Cannon denied ever engaging PG, even though the PG July 10 letter and an unsigned copy of the PG documents were presented at trial.

At the November 15 hearing, the AG's office and other parties learned of Cannon's misappropriation; \$866,000 wire to Honduras; and other improper actions. Sr. Assistant AG Jones acknowledged "it is a criminal investigation." [Tr. Hearing, 11/15/07, pp. 293-4.] More than 15 months later, Cannon has not been charged with any crime.

On November 20, Dallas and Bradley resigned as Trustees, PRs and in all other Brown fiduciary capacities.³² That same day, upon recommendation of all parties except the AGs of Georgia and South Carolina, Buchanan and Pope were appointed successor Trustees and PRs "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."³³

32 Dallas did not resign in Geronimo, LLC, a small publishing operation he, the 2000 Trust, Cannon and others own. See Orders dtd. 11/20/07 and 4/8/08, Case 122.

33 Buchanan and Pope have been willing to appoint AG nominee Xavier Starkes as an additional Trustee since he was recommended by the AG in July, 2007. Starkes visited Beech Island with them.

Shortly after November 20, when Bell began to make false accusations against Buchanan and Pope, Ronald Maxwell withdrew as Bell's sponsoring *pro hac vice* counsel.³⁴

D. The First 45 Days of Buchanan and Pope's Service (Nov. 20 – Jan.4).

The November 20 Order found that Buchanan and Pope had been appointed "upon the recommendation of all Interested Persons other than the Attorneys General for South Carolina and Georgia." [Order dtd. 11/20/07]

As Trustees and PRs Buchanan and Pope had the following obligations:

1. To manage, preserve and protect the assets of the 2000 Trust and the Estate; and
2. To defend Brown's Estate Plan, if challenged.³⁵

Within the first 45 days of their service, Buchanan and Pope:

1. Established contact with publishers and their clearance personnel, some of whom had not been contacted since before Brown's death.³⁶

34 Terry, Forlando & Romunzo Brown remain Plaintiffs in Case 122, the Removal/Appointment/Accounting Matter, and have never sought to be realigned. In Federal Court, Bell also appeared on behalf of Darren Lumar.

35 As SAs Buchanan and Pope were charged with non-fiduciary oversight of assets managed by the Cannon Group which were, or might be, assets of the Estate, without regard to the ultimate outcome or disposition. When they were appointed Trustees and PRs, it became their duty to defend the Estate Plan as directed by James Brown in his 2000 and 1999 Estate Planning documents. [2000 Will; 1999 Will; 2000 Trust. Also see Franklin v. Chavis, 640 S.E. 2d 873.] Buchanan and Pope assert that this duty continues.

36 Buchanan and Pope have reviewed and acted on more than 200 clearance requests since their appointment as Trustees and PRs. Many require immediate turn around. Unless a request requires further review by counsel, Buchanan/Pope's policy is to respond within 48 hours. Combined with the settlement/publicity contract with Greenlight, which could be in place in May 2009 if approved by the Circuit Court, and the Beech Island sale the Trust and Estate could be stabilized and ready for the "Due Diligence" period. Due Diligence is a primary goal for 2009. During this time Buchanan/Pope, with expert help and numbers from the Greenlight contract, will look at royalty/image/persona/publicity issues to determine: 1. Should these primary assets be sold, with the retention of a "royalty legacy"? 2. If so, what is the appropriate price? 3. Is it more valuable long term to retain at least some of the royalties? 4. What assets may be held long-term within the charitable regime of the "I Feel Good" Trust? 5. Should certain assets which do not qualify to be held long term in the "I Feel

2. Began to straighten out the problems caused by the Cannon Group's 7-year failure to seek IRS approval of the "I Feel Good" Trust, and failure to file tax or information returns for James Brown, LLC or the 2000 Trust since 2000.
3. Worked to prevent challenges to the 2000 Trust and/or 2000 Will.
4. Established a plan to prevent a fire sale of Brown's valuable royalties, image and publicity rights, Brown's primary assets.
5. Began recovery of losses caused by Cannon and others between 1999 and 2007, then already known to be at least \$7 Million.

On November 21, 2007, Buchanan and Pope were accused by the AG's office of impropriety and possible ethical violations for serving as both Trustees and PRs, even though the 2000 Trust is the sole residuary beneficiary of Brown's estate. [CHJ email 11/21/07] The AG of Georgia made similar allegations. Dallas, Bradley and Hammond later provided affidavits to support these allegations.

Buchanan and Pope found the Trust, the Estate and Beech Island in critical condition.³⁷

Good Trust be placed in the Grandchildren's Trust? If so, which? For those which may not be held long-term in the charitable regime, what is an appropriate plan of divestiture under IRS guidelines?

37 Faulty overhead water pipes jeopardized the valuable TPP located in the house. There was less than \$100,000 in the Estate's bank account. Basic security and maintenance for Beech Island was about \$250,000.00 per year. The alarm system had not been paid for. Security payments were more than \$16,000 in arrears and Sizemore was threatening to quit. Insurance had been cancelled. No funds existed to pay the estimated \$400,000 overdue Estate Taxes. More than \$1 Million was outstanding in legal fee claims for representation of the fiduciaries since Brown's death, portion of which (L&B, Peeples, Thurmond) had benefitted the Trust and Estate. In addition to the need to defend against the \$46 Million of sharply disputed claims, Buchanan and Pope found the entire operation of the Trust and Estate, including estate taxes and income tax issues for the Trust, the Estate and all Brown Entities, in disarray. The clearance process for worldwide use of Brown's songs had been ignored or abandoned by the Cannon Group. The approximately \$100,000 in the bank [which included the remains of the M&T loan] was scheduled to run out by March, even without paying claims.

On November 26, Buchanan and Pope asked distinguished educators Dr. Leonard McIntyre and Ms Inez Tenenbaum to serve on an Advisory Committee of the "I Feel Good" Trust. Both accepted. A family position was suggested for the Committee, but all family members refused.³⁸

On November 26, Cox notified a member of the "JB Project team" that a Sr. Asst. AG of SC was preparing a motion to have Buchanan and Pope removed and "told me he would select a Trustee for me to work with." [Aff. Jt, Buchanan/Pope dtd 2/19/09, Exhibit B] This was consistent with a November 27 email from the AG's office to Hammond saying that since the new Trustees/PRs "refused to resign" he was "arming to proceed" to have them removed.³⁹

On November 27 Buchanan/Pope filed the DJ action, asking the Court to assist with an emergency plan, including:

1. Order an emergency sale of Tangible Personal Property ("TPP");
2. Declare that no probable cause existed to contest the Trust or Will;
3. Establish ownership of certain property as between the Estate and Trust; and

³⁸ Dr. McIntyre and Ms. Tenenbaum were, at first, appointed to be on the Advisory Committee of the "I Feel Good" Trust. With others, on November 15, 2008 they agreed to become members of the Advisory Board. Both are prominent educators. Shortly after his appointment Dr. McIntyre became Interim President of S. C. State University. It was in that capacity that he was instrumental in helping Buchanan and Pope preserve numerous articles from the Beech Island Home. See catalogue from S. C. State University's Exhibit now on display at the I. P. Stanback Museum and Planetarium.

³⁹ The decision to attempt to get rid of Buchanan and Pope, while maintaining a close relationship with Hammond, Dallas, Bradley and counsel for Hynie, is inexplicable. The PR/Trustees asked that certain AG staff members be disqualified as counsel and required to testify as a witness to explain, among other things, why, the AG's office, under his direction, impeded and tried to control the hiring of counsel to seek \$12 Million from Cannon and others missing between 1999-2007; why he asked the AG to approve a secret private mediation, without notice to the Trustee/PRs just prior to the Lukich decision; why he asked the AG to give 65% of the 2000 Trust to non-beneficiaries and unnecessarily losing \$40 Million. The Court proceeded to trial without hearing the motion.

4. Permit a sale of the Beech Island Estate and the Joseph Brown house.

Shortly after November 27, the AG's office sent a team of auditors to review the checkbook kept by Buchanan and Pope, while no known action was taken to review Dallas. [CHJ email dtd. 11/27/07]

On November 30, Dallas and Bradley began attempts to have Judge Early resign and undo their resignations by filing a motion to reconsider the November 20 Order. The Dallas Post-Death Schedule B was attached. They asserted, among other allegations, that on November 20 Judge Early threatened that things "would get ugly" if Dallas and Bradley did not resign. Much of December and January was occupied with the recusal matter.

By December 26, 5 of Brown's 6 acknowledged children had filed lawsuits attacking the 2000 Trust and Will. Shortly thereafter, Bell, PG and Forlando began making false accusations against the Court, Buchanan and Pope in the Federal Court. From January to March, Dallas made numerous obviously false allegations. The AG's office continued to rely on, and work with, Dallas, Bradley and Hammond to try to oust Buchanan and Pope.

By December, Toby Byron, who had assisted Dallas and Bradley with one project, notified Buchanan and Pope that on November 16, Dallas had authorized Byron to go forward with a number of actions on behalf of the Estate, and that Dallas

had promised Byron 5% of any asset sale.⁴⁰ (Byron email to PR/Trustees, AG, dtd. 11/28/07)

On December 5 Buchanan and Pope applied for recognition of the "I Feel Good" private foundation, which was unfunded, as a 501(c)(3) private foundation.⁴¹

About December 13, Forlando called Pope, as he had at times when she was SA, to discuss his need for tuition for the coming semester. Pope offered to call Forlando's student aid office to explain the Trust's situation if it would help. The next morning Bell called and instructed Pope not to speak to his client again.⁴²

On December 14 the AG's office filed an Objection to the Appointment of Buchanan/Pope as both PRs and Trustees, based largely on false and misleading statements of Hammond, Dallas and Bradley. The Court rejected this assertion in its April 8 Order. (No objection was made to the qualifications or service of Buchanan/Pope or their prior service as SAs.)

In December the AG's office delayed the PR/Trustees' engagement of counsel to seek recovery of the Cannon \$900,000 taking and other losses by Cannon and others between 1999 and 2007. Losses attributed to Cannon had been identified at the time

40 Between October 18, 2006 and November 20, 2007, the Cannon Group had proposed that at least the following be paid from any asset sale: Cannon: ab.\$1.4 Million + 5%; Dallas: ab. \$.5 Million + 5%; Bradley, 5%; Byron, 5%; Copsidas, 12 1/4%; GT, 5%. Necessarily the TIAA debt, about \$19 Million in the summer of 2006, would have had to be paid first. Because Cannon, Dallas and Bradley, in violation of the August 10 Order, have not delivered the PG files, it is not known what percentage Cox, Forlando and Terry Brown were promised from any sale. [Byron, with no explanation for what may have been a \$5 Million error, later said Dallas had not promised him the 5%.] Byron's continuing troublesome interference with the operations of the Trust and Estate, including representing to the Wm. Morris Agency in 2008 that he had authority to speak for the Estate continues.

41 Because the challenges to the validity of the 2000 Trust and its subtrusts are still pending, the "I Feel Good" Trust and the Grandchildren's Trust cannot be funded at this time. See S.C. Probate Code Section 62-7-604.

42 Pope requested only that Bell notify Forlando that her inability as Trustee and PR to communicate with Forlando

to be at least \$7 Million. It was advanced that the AG should select and control the Estate and 2000 Trust's counsel for this civil proceeding against Cannon.⁴³

Buchanan/Pope disagreed.

On December 18 Buchanan and Pope withdrew the motion of predecessor Trustee/PRs Dallas/Bradley to declare JBE, Inc., an asset of the Estate, and not the Trust.⁴⁴

On December 20 Hynie filed documents attempting to void the 2000 Trust and Will, triggering the *In terrorem* clauses.⁴⁵

On December 26, Daryl, Larry, Venisha, Deanna, Yamma and others filed 2 lawsuits.⁴⁶ They claimed, without facts to support the claims, that Brown lacked capacity to prepare the 2000 Trust and 2000 Will; was unduly influenced [to set aside the bulk of his estate (and the entire 2000 Trust) for education, including about \$2 Million for their children.]; and that the 2000 Trust and Will were the product of fraud. They sought to manage the estate as "administrators in intestacy."

was imposed by Forlando, through his lawyer, and that Pope was willing to speak with him at any time it suited Bell.
43 Buchanan/Pope assert that the AG's attempts to control civil issues related to Cannon and others create a direct conflict with the AG's role as chief criminal officer of the State to prosecute criminal activity which has damaged the "I Feel Good" private foundation. See N. Y. Ethics Opinion 06-06, attached as Exhibit A, for a discussion of this conflict issue in New York.

44 Buchanan and Pope cited conflicting statements made by the former Trustees and credibility issues. [Wd. Mot. 12/18/07]

45 "Knowledge" is defined in the Trust Code as "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." SC Trust Code 62-7-104. Under this standard, Buchanan and Pope assert that Hynie had access to 80 boxes of files and adequate records and information to know that there was no probable cause to contest the validity of the 2000 Trust or the 2000 Will, and that the contests to the Trust were barred by applicable statutes of limitation.

46 Through Levenson, Pope had encouraged Deanna to be on the "I Feel Good" Advisory Committee and not to contest the Trust, with a view towards developing a succession plan with a permanent James Brown family seat on the Board of both Trusts.

In December, after inquiry by Pope, Dallas confirmed to the AG's office that he had created the post-death Schedule B to the 2000 Trust, which had been filed with the court on November 20 as part of the 2000 Trust. This post-death Dallas Schedule B⁴⁷ had no effect on the validity of the 2000 Trust, but further confused the issue of which assets were actually placed in the Trust before Brown's death.⁴⁸

On December 31 Forlando Brown, represented by Bell, PG and others, verified a petition which was filed on January 2 in the Federal District Court for South Carolina (the "Forlando Suit"). The still-pending Forlando Suit seeks to enjoin the 2000 Trust from taking any action and to return the Cannon Group as Trustees. Among other things, the Forlando/Bell/PG Petition:

1. Contained the Dallas-fabricated post-death Schedule B, represented to be part of the 2000 Trust.
2. Asserted that Forlando was an impoverished student seeking only to carry out his grandfather's wishes to save the 2000 Trust.
3. Made scurrilous accusations against the state court, Buchanan and Pope.⁴⁹

E. The Service of Buchanan and Pope in 2008 and 2009.

From the day they challenged the Will and Trust, the Trust and Will contestants (the "Deanna Group") and those attempting to reinstate the Cannon Group as Trustees (the "Forlando/Terry Group") delayed and interfered with the critical steps needed to

47 The Post-death Schedule B became the topic of discussion in Court on 2/7/08.

48 The "settling" parties apparently assert that if, as here, the Trustees breach their duties, the Trust should be dismantled and given, contrary to the Donor's intent, to individuals who contested the Trust. This defies reason or logic.

49 Buchanan and Pope assert that Forlando, Bell and PG attorneys had knowledge of the falsity of these allegations. See S.C. Trust Code definition of "knowledge". §62-7-104.

protect Brown's most valuable assets – his royalties, image and publicity rights.⁵⁰ To date these actions have gone unchecked.

Despite the attacks, since their appointment Buchanan and Pope have brought stability to the Trust and Estate; reestablished dormant relationships with the publishing companies; engaged high-quality entertainment counsel Ray Gonzalez of Zumwalt, Almon & Hayes, PLLC, and exempt organization counsel; brought the CORBIS matter to a successful proposed conclusion; and overseen a more than \$20 Million debt reduction.

In 2008 Buchanan and Pope committed more than 3300 hours to stabilizing, defending and administering the Trust and Estate, and carefully engaged and worked with advisors, judiciously consuming resources and using those services to protect the Trust, the Estate and the Estate Plan.⁵¹

On January 4 a hearing was held.

By early 2008 the Trust had no cash and the bank account of the Estate contained only about \$30,000. It has less today, although Brown earned more than \$3 Million in royalties during 2008. Those royalties were applied to the TIAA debt.⁵²

50 On November 10, 2008 Deanna Group attorney Levenson, who has given frequent media interviews, advised the Associated Press that a settlement had been reached and that "anyone who stands in the way of that needs to get out of the way."

51 Buchanan and Pope are both capable and willing to continue to manage the Trust and Estate and defend the Estate Plan of James Brown unless and until a reasonable and defensible settlement is reached and approved. They have grave concerns that the proposed settlement before the Court not only will not end the litigation, but expand it geometrically. The limited appointment of Bauknight was so troublesome that Buchanan and Pope have withdrawn any request for the appointment of a SA/St at this time.

52 The debt to TIAA was about \$19 Million in the summer of 2006, before Brown died. It is now just over \$13 Million. It would be closer to \$12.5 Million if Cannon had not taken the \$900,000, which was payable to M&T

... to make sure Dallas and Bradley understood the consequence of defying his will,⁵³ Judge Early told everyone that if the hearing went forward "it would be ugly" [Complaint, ¶ 72. Case #3:08-CO-00014-CMC]

On January 8, this court issued its Order setting the unpaid fees and costs of Buchanan and Pope for their service as SA s. [Order dtd. 1/8/08]. Because of the size and complexity of the task which Buchanan and Pope had inherited, the Court provided for advances towards their commissions as Trustees and PRs.⁵⁴ That Order was not appealed by anyone, nor was reconsideration sought.

On January 9 a hearing was held at which Bradley and Dallas testified.

On January 17 and 18, Pope oversaw the packing and secure shipping of 66 boxes of masters and other audio materials to a secure storage facility so that they would not be in jeopardy in Beech Island. When funds are available they can be analyzed. The items arrived safely the same day, and continue to be in secure storage. The storage of these items is a critical priority of the Trust and Estate.

Throughout January and February Bell simultaneously objected to "all orders of the Court related to the Trust" and demanded that the Trust, which had no funds, pay the tuition expenses of Romunzo and Forlando Brown.

On February 5 Buchanan and Pope as PR/Trustees brought suit against the

53 In connection with the November 20 voluntary resignation of Dallas and Bradley.

54 Buchanan and Pope assert that the extraordinary work involved merits a full commission for themselves, if they serve for the estimated 3 -5 years it will take to close the Estate and fully fund the Trust. They reject the notion that the services of Bauknight, who has troublesome conflicts of interest, would be either appropriate or efficient for the Estate. They strongly urge that at this stage, they are the only persons who understand the day-to-day working of the Trust and Estate; the complex financial difficulties facing the Trust and Estate; the particular assets; and the pending litigation. They assert that, after they have completed their defense of the Estate Plan, a carefully developed succession plan, adopted in accordance with the 2000 Trust and the 2000 Will should be implemented.

Cannon Group and others for recovery of the more than \$12 million in losses since January 1, 1999. That suit and a suit against Morgan Stanley are pending.

On February 7, without objection, a closed merits hearing in the DJ action was held. [Buchanan/Pope requested a closed hearing because of sensitive financial issues.] The following findings and orders were contained in the DJ Order dated February 20, 2008:

- a. Plaintiff PR/Trustees assert that the 2000 Will and 2000 Trust constitute Mr. Brown's valid Estate Plan.
- b. The AG supports the validity of the Will and Trust, but has challenged the appointment of the PR/Trustees.
- c. The Estate/Trust needs at least \$1.6 Million in 2008 to pay outstanding administrative claims; defend the Estate Plan; manage and defend claims, etc.
- d. "[T]he 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." [Order, p. 5]
- e. The Christie's sale should go forward to alleviate the "deplorable" condition in which Buchanan and Pope found the Trust and Estate.
- f. Pieces not sold at Christie's may be sold by Buchanan and Pope as needed, with notice to the family.
- g. A system proposed by Buchanan and Pope to allow Interested Parties to designate items to be held back from the Christie's sale was approved.
- h. Buchanan and Pope "shall immediately begin a search for a purchaser of [Beech Island], to be used, if feasible, as a House Museum in honor of the contributions of James Brown to the State of South Carolina and the World."
- i. Joseph Brown house to be sold to Levenson clients for \$60,000. 10% at closing, Note and Deed of Trust

The Court further found:

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 approved herein, such party shall be charged with the reasonable cost of such action. [emphasis supplied] (Order, 2/20/08)

The February 20 Order was not appealed.

After denying Dallas and Bradleys' recusal motion, Judge Early bifurcated the reconsideration of Dallas and Bradley's proposed return and the Buchanan/Pope appointment. The Dallas/Bradley request to withdraw their resignation was heard on February 7.

In February and March Bell assisted his clients in filing grievances against attorney Levenson in both Georgia and SC. Bell alleged that Levenson violated ethical canons by contesting the Trust and suing his former clients, Forlando and Romunzo and Terry.⁵⁵

At the February 20, 2008 hearing, Cannon was required to surrender his passport.

On February 27 Dallas and Bradley asserted that the PG file could not be delivered because it did not exist. (Ltr. Byrd)

On March 5 Bradley and Dallas filed suit on their claims against the Estate,

⁵⁵ On February 26, Forlando, Terry and Romunzo, through Bell, also sought to Disqualify Levenson in Case 872. Forlando asserted he knew nothing about early plans to contest the Will. This position is in direct conflict with Forlando's sworn testimony that he and other family members attended a meeting in early 2007 at the home of Yamma and Darren Lunar, with Levenson, bankers, Cox and others, where plans for a takeover of the Brown assets

The AG's office, on television in February, attacked Buchanan and Pope.

The AG's office has not taken the side of the 2000 Trust and Estate in either the Cannon or Dallas/Bradley appeals, although requested to do so by Buchanan and Pope. While the AG's office has asserted that it does not enter into suits "uninvited", this "emergency" suit to remove Buchanan and Pope was filed by that office.

As Pope testified, when the AG did meet with the Trustees, he seemed willing to work with, and understood what Buchanan and Pope were facing. The AG's letter of July 30 is an example of the AG's apparent willingness to work for the good of the Brown Estate Plan. Yet 11 days later, with no notice to the Trustees, the AG's office had arranged – and apparently requisitioned the State to pay for – a secret mediation which was conducted without even notifying the Trustees.

It has been repeatedly asserted that the AG has a right to "take over" the litigation and even the management of this private charity. Buchanan, Pope disagree.

This Court has before it a troublesome document which, if implemented, would damage the Trust by more than \$50 Million; foment future and continuing litigation; create a \$40 Million tax problem with the IRS and disqualification of the "I Feel Good" private foundation; and improperly and without jurisdiction or due process, place the AG, individually, in control of the private 2000 Trust and the Estate. This would place the AG in direct and irreconcilable conflict with his duty to the State of South Carolina, to enforce charities and enforce the criminal law. [See, for example, Spitzer, N.Y. Ethics Advisory Opinion 06-06., attached as Exhibit A]

F. The Christie's Sale and interference by Forlano, PG, Deanna, Dallas and others.

From the February 20 Order until the Christie's sale on July 17, PG, Forlano, Dallas, Deanna and others waged a campaign to interfere with virtually every step of the process.⁵⁸ As a result, numerous unnecessary hearings were held; the Court of Appeals became involved, and the sale was chilled. The culmination was Deanna's television news conference held in New York on July 17, the day of the sale, chilling the sale and accusing Buchanan/Pope of selling everything.

On July 24, Buchanan/Pope filed a motion, in accordance with the February 20 DJ Order, for costs related to the interference and losses in the Christie's sale. That motion has not been heard.

G. The Joseph Brown House Sale and refusal to pay debt.

When the February 20 Order was issued, Buchanan and Pope immediately moved to sell the Joseph Brown house to the Levenson clients. After delays on the purchaser's part, the sale finally closed in May.

After making only 2 payments on the \$54,000 note, the purchasers advised Buchanan/Pope on September 28 that they would no longer pay their debt to the Estate because of the "settlement." This refusal, like the Christies' sale, is indicative of the attitude of Plaintiffs that they will damage and destroy the Trust and Estate unless they get it for themselves.

H. Placement of TPP with Museums

On February 7, Buchanan and Pope sought, and on February 20 the Court granted, the right to place Brown's TPP on loan to museums for up to 3 years. This project has been one of the most positive aspects of the Trust and Estate administration since Brown's death.

On March 29, Dr. Leonard McIntyre, then Interim President of S.C. State University, traveled to Aiken and Beech Island and met with Buchanan and Pope to discuss their concerns about the TPP. Dr. McIntyre formed a committee consisting of faculty, student and alumni volunteers who assisted with the packing, transporting and now display at the I. P. Stanback Museum and Planetarium of James Brown items.

Buchanan/Pope also worked with Elaine Nichols and Dr. Fritz Hamer of the S. C. State Museum. The State Museum has on loan James Brown's bed; certain items not sold at the Christie's sale; other items; and hundreds of miscellaneous documents.

Buchanan and Pope also received assistance from and made loans to the Augusta Museum of History, which had a James Brown Exhibit in May of 2008, and the Lucy Craft Laney Museum of Black History, also in Augusta.

In all, with the help of these museums, many items are being preserved even though there is currently no cash in the 2000 Trust, and the Estate currently has only about \$20,000. Brown items are being used for educational purposes, which was of primary importance to James Brown.

56 See entire Circuit Court record and record in Court of Appeals, including action brought by Dallas and Bradley, both Courts; AG's "Emergency" Motion for appt. of Special Trustee; Ltr of PG, etc.

I. Exploitation of Publicity Rights.

Without a major asset sale, the Trust's and Estate's only current primary sources of funds not pledged to TIAA are:

1. Sale of Beech Island;
2. Sales of TPP;
3. Geronimo;⁵⁷ and
4. Exploitation of Brown's publicity ("image/persona") rights.

Buchanan and Pope have proposed proper exploitation of publicity rights since November 2007, but Cannon, Dallas, Byron, Bradley, Copsidas and others all claimed a piece of any "deal". Buchanan and Pope, along with Greenlight, believe that the climate for valuable exploitation of Brown's publicity is strong, and the Trust and Estate should move quickly not to lose that advantage.

From November 20, 2007 until today (April 23, 2009), however, Terry, Forlando and the others have directly interfered with the proper exploitation of Brown's publicity rights.

The CORBIS/Greenlight talks began in January 2009 and provide a chance for a positive resolution to the 7-year old litigation as well as a world-class publicity campaign for Brown.

⁵⁷ Geronimo, LLC is partly owned by the Trust, and partly by Copsidas [Ransom Notes, a Bahamian Corporation] Cannon and Dallas. They currently refuse to acknowledge the Trustee's authority to act, and used Brown's (the Estate's) writer's share, about \$26,000, in 2007 to pay Copsidas' Nelson Mullins attorneys' fees. The Estate has protested.

Counsel for Plaintiffs and Defendants, as well as Bauknight, were invited to the confidential negotiations in New York in January. None participated. After the New York meeting, a favorable settlement consisting of dismissal of the Illinois litigation and a 2-year publicity contract was reached with CORBIS and subsidiary, Greenlight, LLC. The only step necessary for full implementation of the publicity contract is approval by the SC Court, followed by dismissal of the Illinois action. Greenlight is ready and willing to proceed, as are the Trust and Estate.

The CORIBS/Greenlight settlement will enhance Brown's image and persona; and bring a positive end to the CORBIS litigation.⁵⁸ Buchanan and Pope negotiated to limit the contract to 2 years, but it can be extended if mutually beneficial.

The various Orders in place, along with Brown's documents, are such that the CORBIS/Greenlight settlement and contract could have been reached without Court approval. The unprecedented attacks of the "settling" parties, along with the troublesome assertion that rights to exploit Brown's assets somehow now "belong" to Terry Brown, made Court approval in S.C. prudent.

The Court is asked to take judicial notice of Case No. 2009-CP-02-0597 in which Buchanan and Pope have asked the Court to approve the CORBIS/Greenlight settlement/agreement.⁵⁹

58 The Court is asked to take judicial notice of all filings in Buchanan et al vs. Henry D. McMaster, Case No. 2009-CP-02-0597 in which approval of the CORBIS settlement/agreement is sought, including the Affidavit of Buchanan and Pope in support of Summary Judgment. Buchanan and Pope have full authority under the Trust and Will to reach the settlement, but because of interference all parties believed that Court approval was the most appropriate route. If the "settling" parties interfere with this settlement they should be required to post a cash bond for the losses for this 2-year contract.

J. Management of Income and Tax Estate Issues

Like every aspect of the Brown 2000 Trust, the income and estate taxes were in shambles when Buchanan and Pope were appointed. After a year, Buchanan and Pope are working with the IRS and S.C. Department of Revenue to resolve numerous problems for the period 2003-2006 for Brown, individually; the Estate; the 2000 Trust; JBE, Inc.; and James Brown LLC.

The Estate Tax Return filed September 25, 2008 by Buchanan and Pope is currently under review. The IRS has been provided a copy of the March 26 Document.

Under the Estate Tax Return as filed, since the bulk of the Estate goes to charity, the only Estate Tax due relates to personal and Household effects ("PHE"), a portion of the TPP, which passes to 6 designated children. Under Brown's documents, the 6 children bear their share of the Estate Taxes.

As was testified to in great detail, the loss of an \$83 Million dollar Estate Tax deduction and \$40 Million Tax and interest payment is at stake.⁶⁰

In September of 2008, after Buchanan and Pope had learned of the "settlement" proposal, they invited the "settling" parties to work with them to present the Estate Tax

59 Defendant AG was served on March 24 and asked to waive the 30-day answer requirement for the Court to hear the approval. The AG refused to do so. On April 22, Buchanan and Pope received notice that the AG has, for reasons of Sovereign Immunity, declined to participate in the CORBIS settlement/agreement case. The Trustees/PRs agree that his participation is not necessary for Court approval; that his decision not to participate was correct because Buchanan and Pope are protecting the Trust's interest. The CORBIS settlement should be immediately approved; and the AG dismissed as requested. [See Mot.Dismiss, dtd. 4/21/09, 2009-CR-06-0597]
60 N.Y. State Ethics Advisory Opinion No. 06-06 illustrates the potential problems associated with the AG's proposed involvement in the operation of a private Trust which, if the March 26 Document were approved, would have massive tax issues and other problems. [See Exhibit A]

Return, to the IRS in the manner most beneficial to the Estate and Trust. The "settling" parties refused, and have consistently refused since, to work with Buchanan and Pope.

The devastating estate and income tax results which would occur if the March 26 Document were implemented have not been, and cannot be, refuted.

III. PROCEDURAL HISTORY OF OTHER CASES

A. Cases Pending in Aiken County.

Although numerous cases and petitions have been filed, the primary matters pending in Aiken County are:

1. Daryl Brown and Others v. David G. Cannon and Others, Aiken County Case Number 2007-CP-02-0122 ("Case 122") (the "Removal/Appointment/Accounting Matter")
2. Robert L. Buchanan, Jr. and Adele J. Pope v Deanna J. Brown Thomas and others (Part of Case 122) (the "DJ Action")
3. Daryl J. Brown and Others v. Adele Pope and Others, Aiken County Case Number 2008-CP-02-0872 ("Case 872") (the "Wills Trust Heirs Matter")
4. Robert L. Buchanan, Jr. and Adele J. Pope v. David G. Cannon and Others, Aiken County Case Number (the "Interference Suit")
5. McMaster and Others v. Dallas and Others ("Case 1647")
6. The Claims cases

Some are discussed below.

1. The Removal/Appointment/Accounting Matter

This case was commenced on January 24, 2007. Its history is described in detail in the Order of the Honorable Doyet A. Early, III dated April 8, 2008.⁶¹

⁶¹ The failure to give each case removed from the probate court to circuit court a separate number and require the

vacate the resignations of Dallas and Bradley; and

2. Whether the Circuit Court properly appointed Buchanan and Pope as Trustees.⁶⁵

Buchanan and Pope assert that all parties, other than Dallas and Bradley, are bound by the extensive findings of both the March 7 and April 8 Orders in Case 122, which they did not timely appeal. (Order dtd. 3/7/08, 4/8/08)

2. Declaratory Judgment Matter

Buchanan and Pope brought this case for emergency guidance and rulings just 7 days after their November 20 appointment as Trustees and PRs. As discussed earlier, the Trust and Estate were in deplorable condition, with security at Beech Island costing more than \$5,000 per week and the Trust and Estate slated to run out of money by March 2008. Hearing on the matter was delayed until February 7, 2008 because of attempts to require Judge Early to recuse himself.⁶⁶

After a February 7 trial, on February 20, 2008 the Court acknowledged the dire financial condition of the Estate and ordered not only the sale of Brown's TPP, but the sale of Beech Island. The Court found:

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.

⁶⁵ No timely challenge has been made to the appointment of Buchanan and Pope as PRs.

⁶⁶ Forlando, Terry and Romunzo Brown interfered with the Declaratory Judgment action at its commencement, asserting the Court had no jurisdiction to proceed and demanding a jury trial as to all jury matters.

making the proper management of these cases more difficult.⁷⁰ Some of the pending cases are briefly described below.

1. James Brown, The New James Brown Enterprises, Inc. and others v. CORBIS Corporation, Cir. Ct., Cook Cty., Illinois, Cty. Dept., Law Div. No. 02 L 005872 ("CORBIS LITIGATION")

This action was commenced by James Brown in 2002, after an investigation which he initiated in 2000, to protect Brown's publicity rights (sometimes referred to as Image, Persona and/or Publicity Rights). It was successfully concluded with a proposed settlement which implements a 2-year contract with Bill Gates Company, Greenlight, LLC to exploit Mr. Brown's publicity rights for the benefit of the Estate.

A petition for S.C. Court approval of the CORBIS settlement and Greenlight contract was filed on March 24. (See Case No. 2009-CP-02-0597) Buchanan and Pope have sought expedited approval of this valuable settlement. It appears that there may be interference with the settlement by Terry Brown and/or other "settling" parties.

If the CORBIS settlement/agreement is finalized, the total attorneys' fees and litigation costs for seven years will be approximately \$185,000. CORBIS will pay \$100,000 and the remainder to be taken out of the Publicity proceeds over the next two years. (10% of each payment to the Estate until paid in full)

2. James Brown, JBE, Inc, James Brown, LLC, vs. The Pullman

⁷⁰ The Letter of Bell to counsel for Buchanan dated April 10, 2009, presented to the Court, and the call to Pope's counsel in another case the night before her testimony in this case, to advise that matters would get ugly if she and Buchanan did not resign, are just two examples of the tactics employed by the "settling" parties. More troublesome, however, than the personal attacks is the damage which is being inflicted on the Trust and Estate by inappropriate interference with the operation of the Trust and Estate.

IV. ARGUMENTS

A. THE PROPOSED SETTLEMENT IS PROCEDURALLY AND SUBSTANTIVELY DEFECTIVE.

Since being served Buchanan and Pope, as well as the former Trustees, have asserted continuing objections, including but not limited to, jurisdictional issues, due process and notice issues, as well as lack of authority of the Attorney General to bind the Estate and Trust in a proposed settlement without the concurrence of the fiduciaries, and substantive problems which are detrimental to the Estate and Trust.

Jurisdictional and Due Process Objections to McMaster v. Dallas

A1. Joinder and Service on Necessary Parties

Plaintiffs failed to join or serve the current PR/Trustees, Buchanan and Pope, who are essential parties necessary to any action or matter concerning the Estate and Trust.

Plaintiffs have failed to serve other parties. No proofs of service, notice, waivers of objections or answers for grandchildren Forlando Brown or Romunzo Brown have been filed. No proofs of service, notice, waivers of objections or answers have been filed for necessary parties who have not been joined.

Plaintiffs failed to join, add, serve and/or give notice to at least the following necessary parties who must be heard (and have their interests protected) if there is to be any distribution to persons claiming to be "Heirs" and/or any alteration of a Trust of which they may be beneficiaries:

A. Lisa Brown;

- B. Jeanette Mitchell;
- C. LaRhonda Pettit;
- D. Cinnamon N.M. Parris;
- E. Voorhees College;
- F. USC - Salkehatchie;
- G. USC – Aiken; and
- H. Minor grandchildren/beneficiaries

A2. Notice and Due Process

Section 62-1-401 requires 20 days' notice of hearing. The Court conducted the hearing without the required 20 days' notice to parties, resulting in violation of substantial rights, prejudice and damage to necessary parties, potential Heirs and unrepresented minors.

The Court commenced the hearing in this matter on five-days' notice, with PR/Trustee Buchanan unable to attend, in part, by virtue of being requested to hold Federal Court. The insufficient notice prejudiced the PR/Trustees by limiting the amount of preparation time and continuing due diligence where formal discovery has been not been completed. The insufficient notice further prejudiced PR/Trustees because Buchanan, a fiduciary who must vigorously defend the valid Estate and Trust, was unable to participate in portions of hearings in which substantial rights of the Estate and Trust are subject to being altered.

A3. Dispositive motions are still pending and the actions are barred.

Before approving any settlement which alters the Estate Plan, affecting a substantial right of Testator/Settlor James Brown and his intended beneficiaries, the Court should rule on pending motions for summary judgment and motions to dismiss. If

Neither the State of South Carolina nor the Estate, Trust, Trustees or PR s should be bound by the March 26 Document (including the August 10 Document and components thereof).

A6. The proposed personal involvement of the AG in the Estate, Private Grandchildren's Trust and "I Feel Good" Private Foundation, if approved, would create an impermissible conflict with the AG's statutory duty to protect the interests of the State.

It is unprecedented that non-beneficiaries of a mixed charitable and noncharitable Trust, along with the AG, and over the strenuous objections of the Trustees and PRs of Brown's estate, would attempt to dismantle a private foundation, take about \$50 Million of its assets from the foundation for non-beneficiaries, their taxes and their secret contingent attorneys' fees and culminate the proposal by putting the AG in unfettered control of appointing and removing the Trustee of the trust, in direct conflict with his duty under the law and in conflict with Mr. Brown's intentions.

Trustees Buchanan and Pope have been unable to find a reported case similar to the proposal of the "settling" parties. The closest analogy is a New York State Ethics Advisory Opinion requested by then-AG Elliot Spitzer related to his service as a Trustee of his own family's Private Foundation while he served as AG and was a candidate for Governor.

Like our AG, as AG of New York Spitzer was charged with both civil and criminal enforcement of matters related to charities. In response to criticism that it was inappropriate to serve on a private family foundation which, as AG, he regulated,

Spitzer obtained N.Y. State Ethics Advisory Opinion No. 06-06. (Attached hereto as Exhibit A)

The AG's involvement in Brown's private foundation, as proposed in the March 26 Document would be different from, and far greater than, the Spitzer involvement. In Spitzer, the money in the private foundation was Spitzer's parents' money. Here, the AG proposes to take control of Brown's money. Spitzer was 1 of 4 Trustees, with only 1 of 7 votes.⁷⁵ Spitzer had no effective control over either the placement of the Spitzer Trust funds with investment bankers, who would receive large fees, or the selection of charities. Here, with the absolute and uncontrolled right of the AG (in direct contravention of the Donor's intent as expressed in the 2000 Trust) to appoint and remove Trustees at will, the AG would have effective control over all management and investment decisions of both the charitable and noncharitable Trust.

The Spitzer Ethics opinion held that it was appropriate for Spitzer to remain on the Board of his own family's private foundation only if certain safeguards were taken, and independent persons other than Spitzer were placed in control, if either criminal or enforcement issues arose.

The hypothetical criminal and civil enforcement issues raised in Spitzer, are already at play in the Brown private "I Feel Good" foundation, even prior to its funding. Between July 1 and December 28, 2006 Cannon misappropriated \$900,000 from the account of the 2000 Trust. That is the Trust the March 26 Document proposes to place under control of the AG. Nearly 2 years have passed since discovery of the \$900,000

Not only should this Court deny the proposed settlement, it should grant summary judgment, as a matter of law, in favor of the Trust and Estate as to the validity of both the 2000 Trust and Will, and dismiss the allegations of undue influence. When the pleadings ... admissions...affidavits, if any, show that there is no genuine issue of material fact, summary judgment is appropriate. Rule 56(c), SCRCP (also cited in *Russell* (2003)). There is no genuine issue of fact as to the validity of the will or the irrevocable trust. Any genuine issue would have long ago been brought to the attention of the current fiduciaries and the Court by any party seeking, in good faith, to approve a settlement which seeks to alter a well-planned devise.

An Estate Plan consisting of a Will and Irrevocable Trust, consists of sacred documents in name and substance, must be secured against violation. In Mr. Brown's case, it is abundantly clear that the charitable and educational intent expressed in his Estate Plan is, in fact, his own intent. The notion that his well-known love of education, and his desire to leave the bulk of his assets to further education, was, in fact, the substituted intent of someone else – which the "settling" parties must prove to prevail on a claim of direct/causal undue influence – is, preposterous. James Brown may have unknowingly been betrayed by some in his inner circle, but it's clear from the record that he was certainly no one's puppet.

James Brown has been sued both in life and death by his own family members. There are many similarities between the facts underlying the Estate Plans of Judge Russell and James Brown. Both men had litigious families. Both men spent time,

3. Yamma accepted a position as Advisor to Trustees and thereafter, without probable cause, challenged its validity. (See Russell.)
4. Terry confirmed the validity of the 2000 Trust and Will and then joined the settling parties. (See Russell.)
5. Forlando filed suit in Federal Court to enforce the Trust, then joined the settling parties. (See Russell.)
6. Sydney and Carrington Lumar, through their deceased father, accepted education funds. Through their mother Yamma cannot contest the validity of the 2000 Trust on their behalf.
7. By August 1, 2008, all purported grandchildren, through their attorney Levenson, or otherwise, had requested education benefits from the 2000 Trust. They are estopped to deny its validity. [See Mot. Alt./Amend, Case 872]

B2. The 2000 Trust is valid and its validity cannot be contested.

The 80 boxes of documents and extensive sworn testimony confirm that the 2000 Trust, and the deed to the 2000 Trust of Beech Island, were both in the public record, and both were matters Brown widely discussed. These documents were known to his children and grandchildren for more than 6 years before any suit was brought. The validity of the Trust can no longer be questioned. All had knowledge of the 2000 Trust for longer than the statutory period. See S.C. Probate Code Section 62-7-104, defining knowledge as actual knowledge of a fact, notice of a fact, or reason to know it based on all the facts and circumstances known to the person at the time. Also see Section 62-1-106 and Comments thereto: even if fraud existed, the claim must be brought within two years of discovery, but no later than 5 years after the act, and no later than 6 years after the alleged fraudulent action for alleged fraud committed during the decedent's lifetime, as provided by 15-3-530(7).

Further, the AG, Terry, Forlando, Larry Fridie, Deanna and Yamma have confirmed the family's knowledge of Brown's intentions. Deanna has been on both the Advisory Board and served as a Trustee of the 2000 Trust. Yamma served as Executive Assistant to the Board. Hynie witnessed Deanna's appointment to the Advisory Board.

Deanna served as attorney in fact for Brown, along with Cannon, Dallas and Bradley, for 7 years before his death. As such, she had access to his documents and information.

This incontestable Trust, under Article XXI, provides that anyone who contests either the Trust or the 2000 Will is subject to forfeiture under the *In Terrorem* clause.

The March 26 Document takes the position that 6 of Brown's acknowledged children and Hynie, none of whom is a beneficiary of the 2000 Trust, can divide the incontestable 2000 Trust among themselves; dilute the share of the private noncharitable Grandchildren's Trust without GALs for the minor children they cannot represent due to conflict of interest; avoid the imposition and forfeiture of the *In Terrorem* clause; ignore the prohibition against transfers contained in the Spendthrift provision of Article XX; ignore Brown's clearly stated intention that he does not intend to provide for any past or future spouse (Article XVIII) or non-named children (Article XXII); divide the 2000 Trust among themselves; cause a \$40 Million Tax problem to the Trust and Estate; and then turn what is left over to the absolute control of the AG,

2. Enhancement of income and value through exploitation of publicity right, with high-quality professional involvement, accompanied by continued monitoring and due diligence related to royalties.

E. OTHER RELIEF.

- E1. The shares, if any, of Terry and Forlando Brown should be charged with the costs of their improper acts.**

The shares of Terry and Forlando, to the extent not forfeited under the *In Terrorem* clauses, should be charged with all costs of the Forlando Suit⁸⁶.

- E2. Plaintiffs, jointly and severally, should pay a portion of the attorneys' fees of this case, and all damages.**

\$43,350.00, a portion of the Trust and Estate's Attorneys' fees and costs, should be equitably charged to Plaintiffs, jointly and severally.

CONCLUSION

The privilege of disposing of property by will according to testator's pleasure, whether judicious or capricious, just or unjust, is one of the basic rights known to our civilization. *Smoak v. Smoak*, 286 S.C. 419, 334 S.E.2d 806 (1985). In our civilization, there is no converse right for others to violate this principle with an unjust, unreasonable alteration. The proposed drastic deviation would violate the wishes of Mr. Brown and his intended legacy, without merit or cause, all to the detriment of Mr. Brown's own grandchildren as well as other children, and is against the best interest of the State.

For the reasons stated herein, and based on the record in its entirety, and under all applicable law, the Motion to Approve Settlement and the March 26 Document

⁸⁶ §62-7-1004

(including the August 10 Document and all attachments thereto) should be denied, and Buchanan and Pope's other requested relief, along with any other relief deemed appropriate by this Court, should be granted.

Respectfully submitted,



Tressa T. H. Hayes
Shipley & Hayes, PC
445 Meeting Street
West Columbia, SC 29169
Telephone: 803-794-7588
Facsimile: 803-739-2024

James D. Bailey
Law Office of James D. Bailey, PC
100 Park Avenue SW
PO Box 2378
Aiken, South Carolina 29802
Telephone: 803-648-9529
Facsimile: 803-642-6041

April 23, 2009

Attorneys for Defendants Buchanan and
Pope as PR/Trustees

EXHIBIT A

Ethics Commission Directory of Advisory Opinions Directory of Laws and Regulations N.Y.S. Department of State

New York State Ethics Commission
Alfred E. Smith State Office Bldg.
80 South Swan Street, 11th Floor, Suite 1147
Albany, NY 12210

Advisory Opinion No. 06-06

Whether the Attorney General's service as one of the four trustees of his family's charitable trust regulated by the Charities Bureau is a conflict of interest or creates the appearance of such a conflict under Public Officers Law §74.

Introduction

The following advisory opinion is issued in response to a request submitted by the Attorney General, who asks whether he may continue to serve as one of the four trustees of the Bernard and Anne Spitzer Charitable Trust ("Trust").

Pursuant to its authority under Executive Law §94(15), the New York State Ethics Commission ("Commission") concludes that the Attorney General may continue to serve as one of the four trustees of the Trust, provided that he and all persons in the Office of the Attorney General ("OAG") adhere to the strict recusal guidelines established herein.

BACKGROUND**The Trust**

On July 11, 2001, the Attorney General and certain members of his family created the Trust for the purpose of making distributions "for charitable, religious, scientific, literary or educational purposes, or for the prevention of cruelty to children."¹ The Trust has four trustees – the Attorney General's father, mother and brother, and the Attorney General. The Attorney General's father has four votes on Trust matters, and each of the other trustees has one vote, for a total of seven votes.

According to the Trust agreement, the trustees maintain full investment control of the assets of the Trust and make distributions from income or principal, or both, exclusively for charitable purposes. All Trust assets will pass to those charities named in the surviving trustee's last will and testament. None of the trustees is compensated for his or her services.

The OAG has advised the Commission that the Trust does not solicit funds from the public. The Trust's only assets are funds contributed by the Attorney General's parents. The Trust makes distributions to various museums, libraries, schools, and other not-for-profit organizations.

The Trust is exempt from federal income tax under Internal Revenue Code §501(c)(3).

The Regulatory Role of the IRS Over Charitable Trusts

Charitable trusts, such as this Trust, are exempt from federal income tax and must file an annual information return with the Internal Revenue Service ("IRS") [Form 990-PF].² This form is available for public inspection and serves as the main source of information for federal and State regulators and the public about the Trust's finances and governance.³ The Trust's Form 990-PF lists the Trust's assets, receipts, expenditures, and grants made during the year.⁴ We understand that the IRS audits these forms for evidence of inflated compensation packages, insider-dealing, and other irregular transactions. The IRS can impose excise taxes on a trust for failing to make minimum

distributions each year, engaging in acts of self-dealing, retaining any excess business holdings, making investments which jeopardize charitable purposes and making any taxable expenditures.² The IRS also can revoke a trust's tax exempt status.

The IRS's oversight responsibility is shared with state attorneys general.

The Regulatory Role of the OAG

The OAG role is to represent all public beneficiaries of charitable organizations who cannot sue in their own right (See Estates, Powers and Trusts Law ("EPTL") §8-1.1(c)(2)(i), (f) and (h) and §8.1-4).⁶ Pursuant to State law, the OAG has the authority to regulate not-for-profit organizations and charitable trusts and to commence law enforcement investigations and legal actions to protect the public interest. This statutory mandate is derived from Article 7-A of the Executive Law governing charitable entities that solicit contributions from New Yorkers, and Article 8 of the EPTL governing entities that administer charitable assets in the State.

Within the OAG, a specialized unit, the Charities Bureau, carries out the Attorney General's responsibilities with respect to charities. In addition to the above, the Charities Bureau maintains records pertaining to charities. Charitable trusts must register and file annual IRS Form 990 with the Charities Bureau. The public may inspect all registrations and annual filings submitted to the Charities Bureau (See EPTL §8-1.4 [l]).

The Charities Bureau has 22 Assistant Attorneys General ("AAG") and three accountants who audit IRS Form 990's. In addition to IRS review, we have been advised that State auditors review the Form 990's for evidence of irregularities, including excessive compensation and self-dealing. According to the Bureau Chief of the Charities Bureau, accountants review the Form against standard criteria to identify Forms requiring further scrutiny. Forms with issues or questions then are referred to an AAG. The Commission has been advised that, in the past, any such issues and questions have been resolved through discussion and negotiations between counsel for the charitable trust and the Charities Bureau without the filing of formal objections and litigation. In appropriate cases, the Attorney General has issued "no action" letters or letter agreements seeking restitution. The Attorney General's Executive staff reviews these "no action" letters and letter agreements.

The Charities Bureau is also responsible for overseeing the management of the assets of charitable trusts. Under the EPTL §8-1.4, the OAG may investigate transactions and relationships of trustees for the purpose of determining whether or not property held for charitable purposes has been properly administered and may institute appropriate proceedings to secure compliance with this section (See EPTL §8-1.4[i] and [m]). The OAG may seek to remove a trustee who authorizes, or acquiesces in, inappropriate payments or other benefits to fellow trustees and may seek restitution to the charitable organization (See EPTL §8-1.4[m]; Not-For-Profit Corporation Law §715).

The Charities Bureau may refer a matter to the IRS.⁷

The Attorney General's Disclosure and Recusal with Respect to the Trust

Since the Trust's creation in 2001, the Attorney General has disclosed his position as a trustee on his financial disclosure statements filed with the Commission, and, according to Deputy Attorney General Richard Rifkin, the Attorney General has recused himself from any matters involving the Trust.

Rifkin states that David Nocenti, Counsel to the Attorney General, sent senior staff a memorandum setting forth the procedure to ensure that the Attorney General is properly screened from involvement in, or knowledge of, those legal matters involving certain specified individuals and entities.⁸ The Trust is listed as an entity subject to recusal.

The memorandum states in pertinent part:

All matters involving the individuals, entities, lawsuits and investigations listed on [the attachment] should be handled in the same manner and through the same supervisory process as all other Department of Law matters. However, if an issue arises that would otherwise require the attention of the Attorney General, that issue should instead be discussed with [First Deputy Attorney General], who will determine whether the Attorney

General can participate, and will make any and all decisions on behalf of the Attorney General if it is determined that the Attorney General should continue to be screened from the matter.

Rifkin states that, since the Trust's creation, no investigations or inquiries involving the Trust have arisen in the OAG.

APPLICABLE STATUTES

Public Officers Law §74(2), the rule with respect to conflicts of interest, provides:

No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

Following the rule with respect to conflicts of interest, Public Officers Law §74(3) recites the standards of conduct which address actual as well as apparent conflicts of interest. Relevant to this discussion are the following subsections:

- (d. No officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
- e. No officer or employee of a state agency . . . should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
- g. An officer or employee of a state agency . . . should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.
- h. An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

DISCUSSION

In its early opinions applying §74 of the Public Officers Law, the Commission employed a broad rule that precluded all policymaking employees of an agency from serving on the board of directors of an entity regulated or funded by the agency (See Advisory Opinion Nos. 90-25, 92-04, and 92-18). The Commission's application of Public Officers Law §74 to the outside activities of State employees was later modified following the Supreme Court, Appellate Division decision in *Matter of Hancox v. Bress*, 208 A.D.2d 1031 (3d Dept. 1994), which held that an employee's status as a policymaker did not, by itself, create the appearance of a conflict of interest.

In the wake of this Appellate Division decision, the Commission has considered several factors in evaluating outside activity, including (i) the official's duties on behalf of the State; (ii) the relationship of the agency and the official to the proposed outside activity; (iii) whether the official would be in a position to secure unwarranted privileges; (iv) whether the outside activity would impair the independence of judgment in the exercise of official duties; and (v) whether the principles of disclosure and recusal remedy any appearance of impropriety (See Public Officers Law §74 (3)(c), [d] and [h]; Advisory Opinions Nos. 95-09, 97-25 and 03-09).

In Advisory Opinion No. 95-18, the Commission addressed the application of Public Officers Law §74 to a member of the Board of Regents ("Regents") and his service as a compensated trustee of a private foundation that was chartered by the Regents and provided grants to institutions of higher learning in the State.

The foundation was a trust that had, as its sole purpose, the provision of grants to advance education and training in hotel management. The Regent was one of twelve trustees, and each trustee had one vote on foundation matters. Pursuant to Education Law §216, educational trusts, such as the foundation and all institutions of higher learning in the State, must receive a charter from the Regents. In addition, the State Education Department performs periodic programmatic reviews of the curriculum of institutions of higher learning and their financial aid and admission criteria.

On these facts, the Commission concluded that the service of the Regent as one of twelve trustees of a foundation that made grants to institutions chartered by the Regents was insufficient to create a conflict or the appearance of a conflict with his position as a Regent. The Commission stressed that the Regent "would have to disclose his service as a trustee of the [f]oundation to the Regents and recuse himself from any decision that might come before the Regents regarding the [f]oundation's charter or its activities, including a review of any matters relating to its grants." In addition, the Commission noted that "there is nothing to indicate that [the Regent] would be in a position to disclose confidential information to the [f]oundation or any of the recipient institutions, or otherwise use his position as a [Regent] to benefit the [f]oundation or these institutions, or to advance his personal interests."

This same analysis should be applied in determining whether the Attorney General may continue his service to his family's charitable trust. The Commission recognizes at the outset that creating and participating in a family charitable trust serves a broad public purpose and is a practice that society and the government should encourage.

Accordingly, unless necessary, we should not construe Public Officers Law §74 to bar the Attorney General, solely by virtue of his office, from service as a trustee of a charitable trust or even from setting up such a trust. These rights are available to every qualified citizen of this State, and our task here is to determine whether strict recusal requirements can address any potential or actual conflict from the Attorney General's service as one of the four trustees of the Trust.

Moreover, in interpreting the ethics law, the Commission must consider that governmental officials often interact in their private lives with government agencies in which they may have official duties. To cite just two examples, the Commissioner of the Department of Tax and Finance files a State income tax return with the Department, and all Public Service Commission Commissioners receive gas, electric and/or telecommunications services from regulated entities.

Because the OAG is charged with supervision of charitable assets and has enforcement responsibilities under the EPTL, the question presented is whether the Attorney General's recusal is sufficient under Public Officers Law §74 to remove any conflict or the appearance of a conflict of interest created by his service as one of four trustees of the Trust.

In answering this question, the Commission believes that the following factors substantially mitigate against the existence of a conflict with respect to the Attorney General's service as one of the four trustees of the Trust.

First, the OAG does not license the Trust and did not provide prior regulatory approval for the Trust to commence its operations.

Second, the IRS and the OAG have overlapping roles in the regulation of charitable trusts. For example, both agencies can impose penalties for mismanagement of investments and overcompensation. Because the IRS has jurisdiction and resources to address a matter involving the Trust, we believe the risk of a conflict arising from the Attorney General's service as a trustee is reduced.

Third, we have been advised that the Trust is a family charitable trust that does not receive or solicit funds from the public. Instead, the Trust is an entity through which the Attorney General's parents make charitable contributions with their own funds. Thus, the OAG's regulatory concern that public donations would be misspent by a not-for-profit entity is not present with respect to its oversight of the Trust.

Fourth, we have been advised that the Attorney General's primary role as one of the four trustees is to assist in determining the Trust's donations to qualified not-for-profit organizations. As noted above, the Attorney General has only one of seven votes with respect to Trust matters, including donations. In any event, the OAG does not review

the donations of the charitable trusts as long as those donations are made to qualified not-for-profit organizations.

Fifth, the issue of whether trustees are overcompensated is not a concern here, because none of the trustees, including the Attorney General, is compensated for his/her service to the Trust.

Finally, the Trust is subject to public accountability, because its annual filings are available for public inspection.

Although we believe that these circumstances substantially mitigate against the risk of any conflict, there may be circumstances where a conflict may exist from the Attorney General's service as one of the four trustees of the Trust. In rendering this opinion, we are mindful of the Attorney General's role as one of the four statewide elected officials in the State, and his special responsibilities for law enforcement.

Accordingly, if an internal review by the Charities Bureau of the Trust's IRS Form 990 identifies a question or issue, the Attorney General's recusal policy must be invoked: the Attorney General must not participate in the matter or be advised, directly or indirectly, that the Trust is under review. If further action is required, the OAG must refer the matter to the IRS and, if a criminal violation is involved, to the Governor for appointment of a special prosecutor. Similarly, if the OAG receives a credible, bona fide complaint alleging a violation of law involving the Trust, the OAG must refer the complaint to the IRS and, if the situation raises a possible criminal violation, to the Governor for appointment of a special prosecutor.

All members of the OAG, including the Attorney General, must abide strictly by the Attorney General's recusal policy at all times, and the Attorney General must have no role whatsoever in any OAG matters involving the Trust. In addition, no member of the OAG may inform the Attorney General, directly or indirectly, of any matter involving the Trust, including any review of the Trust. The OAG should address any issue or question concerning the application of the Attorney General's recusal policy, or any other issue under Public Officers Law §§73, 73-a and 74 with regard to the Attorney General's service as a trustee of the Trust, to the Commission.

The Commission notes that the Attorney General's present screening arrangement, which designates an official to act in lieu of the Attorney General and to whom all covered matters are to be referred, is similar to the federal guidelines for governmental employees' recusal obligations (See United States Office of Government Ethics ("OGE") DAEOgram DO-04-012).

The Commission believes that the Attorney General's recusal guidelines, as modified by the additional requirements specified in this opinion, are sufficient to remedy any actual or apparent conflicts of interest by the Attorney General's service to his family's charitable trust.

CONCLUSION

Pursuant to its authority under Executive Law §94(15), the New York State Ethics Commission ("Commission") concludes that the Attorney General may continue to serve as one of the four trustees of the Trust, provided that he and the OAG staff adhere to the strict recusal guidelines established herein.

This opinion, unless and until amended or revoked, is binding on the Commission in any subsequent proceeding concerning the person who requested it and who acted in good faith, unless material facts were omitted or misstated by the person in the request for opinion or related supporting documentation

All Concur:

Robert J. Giuffra, Jr.

Lynn Millane

Susan E. Shepard

Members

Chair Shechtman and Commissioner Loewenson took no part in the consideration of this matter.

Dated: August 28, 2006

1. A trust is defined as "any arrangement whereby property is transferred with intention that it be administered by a trustee for another's benefit." (See Black's Law Dictionary [5th ed 1979].
2. Internal Revenue Code §6033(a).
3. Internal Revenue Code §6104(b).
4. Part VIII of the Trust's Form 990-PF, which provides information regarding compensation of officers, directors, or trustees, reflects that no compensation was received by any of the trustees, including the Attorney General.
5. See Internal Revenue Code §§4942, 4941[d], 4943[c], 4944, and 4945[d].
6. Both the New York State Supreme Court and the Surrogate's Court have jurisdiction over matters relating to charitable trusts.
7. "Internal Revenue Code 26 U.S.C §§2055 and 2522, govern the deductibility of charitable gifts, and the legislature designed Article 8 of the EPTL, in part, to conform with the tax laws." (Turano, Practice Commentaries, McKinney's Cons Laws of NY, Book 17B, EPTL §8-1.1, at 67).
8. This memorandum was originally created in 1999 when the Attorney General took office and has been periodically updated through 2003.

STATE OF SOUTH CAROLINA

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
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 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
of James Brown.

Defendants.

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER: 2008-CP-02-872

FILED

8-1-2008

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

Arita Knoepfle
Deputy Clerk

ORDER APPROVING
AND SETTING CONDITIONS OF
INTERIM PAYMENTS OF
EDUCATIONAL BENEFITS

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

AUG 01 2008

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

Arita Knoepfle
Deputy Clerk

AND IT IS SO ORDERED.

July 25, 2008
Aiken, South Carolina

[Signature]

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

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

RESPONSE TO MOTION TO
DISQUALIFY LOUIS LEVENSON

**RESPONSE TO FORLANDO BROWN'S
MOTION TO DISQUALIFY LOUIS LEVENSON AND CROSS MOTION FOR
ATTORNEY'S FEES PURSUANT TO SCRCP RULE 11(a)**

**TO: ALL PARTIES ON THE ATTACHED DISTRIBUTION SHEET AND
THEIR ATTORNEYS:**

COME NOW the following lawful heirs of James Joseph Brown (hereinafter James Brown): 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), Tonya Brown (grandchild of James Brown) individually, as Petitioners in the above styled case and Respondents to the Motion to Disqualify Louis Levenson, and along with Louis Levenson file this Return showing this Honorable Court as follows:

FACTS

During the first few weeks of January 2007, Louis Levenson and the law firm Levenson and Associates were hired by Terry Brown, Larry Brown, Daryl J. Brown, Vanish Brown, Deanna J. Brown Thomas, Yamma N. Brown Lumar, Tonya Brown,

LAW OFFICES OF
DAVID B. BELL
BELL & BELL ASSOCIATES

619 GREENE STREET
POST OFFICE BOX 1011
AUGUSTA, GEORGIA 30903-1011



DAVID B. BELL
SHARON BLAIR ENOCH

April 4, 2007

JOHN C. BELL
(1916-1967)

AREA CODE 706
TELEPHONE 724-1882
706-722-0222
FAX 706-722-2507
E-MAIL ADDRESS:
davidbell@davidbelllawfirm.com

VIA FACSIMILE #1-404-659-1355 AND MAIL

Mr. Louis Levenson
Levenson and Associates
125 Broad Street SW
Atlanta GA 30303

Re: James Brown Estate

Dear Mr. Levenson:

This office has been retained by Darren "Chip" Lumar, Romunzo Brown, Forlando Brown, and Terry Brown. They have each retained my office to represent them with regard to their interests as children, grandchildren, and as a parent of grandchildren of James Brown. Please notify the South Carolina court that you no longer represent these individuals. In the near future, I will be filing a Notice of Appearance. Ronnie Maxwell, a South Carolina attorney, will serve as my co-counsel and will introduce me to the South Carolina court.

Furthermore, by this letter, I am requesting that you cease any and all activity on behalf of these clients. Please notify the court immediately that you no longer represent these individuals.

I am,

Sincerely,

David B. Bell

DBB:dg

cc: Mr. Terry Brown
Mr. Romunzo Brown
Mr. Forlando Brown
Mr. Darren Lumar



1 ~~my life that's the one I've been most associated with and~~
2 known better as far as handling my grandfather's business
3 and things of that nature.

4 Q. That is to say Mr. Dallas?

5 A. Yes.

6 Q. Tell me why then--strike that.

7 Did you ever say I've spent so much of
8 your--strike that.

9 Did you ever say I spent so much of my time with
10 this man, referring to David Cannon?

11 A. Yes, yes.

12 Q. What interaction did you have with Mr. Cannon
13 which would lead you to believe that he's a very courageous
14 and honest person?

15 A. Well, a lot of the times--you know, you have to
16 understand I'm in school at Carrollton so I visited my
17 grandfather, you know, two or three times a month on the
18 weekends. I'd call ahead and call Mr. Washington. A lot of
19 the times he'd be either with Mr. Cannon or eating somewhere
20 with him or doing something with him. But I had some kind
21 of interaction as to being around him. And some of the
22 times when I would come to visit my grandfather and he
23 wasn't there or he didn't want to be seen that day and I
24 went to the gate--you know, I'd call and get in touch with
25 someone and I always was either directed to Mr. Cannon or

1 everything at school I needed, did I need anything, these
2 types of things, because my grandfather instructed them to
3 but more so 'cause they were concerned. And I figure if they
4 show me that type of concern, you know, they could also show
5 or extend the same courtesy to, you know, children which
6 really need it. And I think it was a tragedy that all of
7 this caused him to have to, you know, leave this position.

8 Q. So today you still contend, Forlando Brown, that
9 it is a tragedy that Mr. Cannon would have resigned from his
10 fiduciary responsibilities as a co-trustee and a personal
11 representative?

12 A. Absolutely. My grandfather named him and thus it
13 should be.

14 Q. And do you have any questions in your mind having
15 read any of the documents that were filed in the court about
16 failures of accounting--I'm speaking only about Mr.
17 Cannon--missing assets, missing funds? For example, the
18 report Ms. Pope and Mr. Buchanan filed with the court. Did
19 you read that?

20 A. I'm not aware--you mixed a lot of things together.
21 Can you kind of break them down so--

22 Q. Sure. I'll break it down more simply. Did you
23 read a report that was filed with the court on September
24 24th, 2007, penned by Mr. Buchanan here and Ms. Pope? Did
25 you read it? That's my first question.

~~Pope in their actions as appointees by the judge? Do you~~

consider them to be trustworthy?

A. Yes.

Q. Courageous?

A. I do.

Q. Honest?

A. I do. I've had a conversation with Ms. Pope in the courtroom and I told her how much I appreciated everything she's done. She has, you know, really tried to do the right thing thus far, from what I can tell. And Mr. Buchanan has spoken with my brother and myself as far as trying to really help facilitate and have the wherewithal to get our education paid for, which is the most important thing. You know, outside of all this stuff I have a life that I want to get an education and go on to be an attorney and make a living similar to what you do. And outside of all that stuff, that's something that I would like to get done. So yes, they're concerned and as much as they care about it, absolutely I trust them.

Q. Just a couple more questions. Other than items 1 through 6 do you have any other photographs?

A. No, sir.

Q. Any other videos?

A. No, sir.

Q. Any other audio recordings?



1 Q. ~~And when was that conversation with your trustee~~
2 Mr. Dallas that you're referring to that changed your point
3 of view?

4 A. Gosh, that's some months ago. Around the same
5 time that I fired you.

6 Q. Then, similarly, five or six months ago?

7 A. Four/five/six months.

8 Q. Has your lawyer filed anything in court? Mr.
9 Bell--to your knowledge?

10 A. Yes.

11 Q. Any paper, any pleading, any petition, any
12 response to any petition or any pleading on your behalf
13 articulating any position whatsoever?

14 A. Other than trying to uphold the trust, no, sir.
15 I'm not aware of any.

16 Q. Well, I mean you've got a point of view--

17 A. Yes, sir.

18 Q. --which is germane to this case; correct?

19 A. Yes, sir.

20 Q. That has changed from what you've filed in this
21 case initially?

22 A. Yes, sir.

23 Q. And you came to that realization about five or six
24 months ago?

25 A. Yes, sir.

~~1 if Terry is an industry guy, he knows his stuff. And if he~~

2 gets with them, maybe they can come up with some solution to
3 get my education paid, get the students who need this money,
4 the needy people that need this money, and get past all
5 these lawyers taking all the money out of my grandfather's
6 estate and trust.

7 Q. The purpose of the introduction was for what
8 exactly, sir?

9 A. So that they could share their entertainment
10 expertise as to what things--how the entertainment business
11 works. This is a business guy; he's a financial guy.

12 Q. When did these meetings take place?

13 A. I would have to say to put an approximate number
14 of months, maybe five. Four/five/six months ago, something
15 like that.

16 Q. And was it before the August the 10th hearing?

17 A. Yes, sir.

18 Q. And did you indicate to Alvin and Calvin Waters
19 that there was a buyer that was willing to pay \$10
20 million--excuse me, incorrect. \$100 million for the assets
21 of the estate and trust, of which \$10 million had to be paid
22 to Mr. Dallas before August the 10th?

23 A. No, sir, I did not.

24 Q. Did you participate in any such meetings?

25 A. No, sir, I did not.

1 Q. ~~So this is the first--today, October 31st, 2007,~~

2 is the first time on this planet you ever heard that from
3 anyone?

4 A. Yeah. 100 million and \$10 million. I would
5 expect it to maybe even be more than that, but if you say
6 so.

7 Q. That's not my question. Is today the first you've
8 ever heard that there was a proposal for \$100 million of
9 which 10 million was to be paid in a non-refundable form on
10 or before August 10th to Mr. Dallas?

11 A. Yes, sir.

12 Q. So if you would have--if Alvin and Calvin Waters
13 said you discussed that with them at or around the time of
14 the negotiation, they would not be speaking truthfully?

15 A. Absolutely not.

16 Q. Did you meet with Mr. Dallas during the period
17 that you were discussing the introduction of Mr.
18 Waters--Alvin and Calvin Waters to Terry Cox?

19 A. Yes, sir. But it was on a separate issue. It was
20 concerning why we were even dealing with all this when I
21 thought that the will and the trust were explicit and clear,
22 and what he thought--how long he thought all this would take
23 before the money started going to the kids who needed it.

24 MR. LEVENSON: Would you read back my question,
25 please.

1 ~~[The previous question is read back by the court]~~

2 reporter.]

3 Q. [Mr. Levenson] Yes or no?

4 A. Yes, I did.

5 Q. And what was the subject matter of your meeting
6 with Mr. Dallas during the period you were introducing Mr.
7 Waters to Mr. Cox?

8 MR. BELL: Didn't he just answer that?

9 THE WITNESS: It's okay.

10 Q. [Mr. Levenson] The subject matter?

11 A. Education for myself, when it was going to be
12 paid, and education for these needy children so we can move
13 this business along.

14 Q. And it was not in connection with any proposed
15 transaction for the sale of the estate or the trust before
16 the August 10th hearing?

17 A. No, sir.

18 Q. And you were not involved in any such transaction,
19 either as a principal or an agent; is that your testimony?

20 A. Yes, sir. I just went to Terry Cox.

21 Q. And your previous testimony is you knew nothing
22 about that transaction until I just told you here today--

23 A. Yes, sir.

24 Q. --correct? Have you read any documents prior to
25 your deposition here today? You said you did not read the

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

a/k/a JAMES JOSEPH BROWN

ATTORNEY'S FEES AFFIDAVIT



AFFIDAVIT OF LOUIS LEVENSON

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, LOUIS LEVENSON who, after being sworn, states as follows:

1. My name is Louis Levenson and I am over 18 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.
2. I am an attorney at law duly licensed in the State of Georgia since 1978 and in good standing with the State Bar of Georgia. I am an attorney at law duly licensed in the State of South Carolina since 1994 and in good standing with the State Bar of South Carolina. I am currently employed by the law firm of Levenson & Associates, located at 125 Broad Street, SW, Atlanta, Georgia 30303.
3. I am the attorney of record for the following parties in the above styled case, to wit: the lawful heirs of James Joseph Brown (hereinafter James Brown): 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), Venisha 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), Tonya Brown (grandchild of James Brown) individually, (hereinafter "Petitioners").

~~4. I have been the lead attorney of record for the Plaintiffs named above since the inception of this~~
estate and trust matter.

5. I give this Affidavit in support of Petitioners' Response to a Motion to Disqualify filed by the attorney for Forlando Brown, Mr. David Bell.

6. I am a member of the State Bar of Georgia since 1978 and of South Carolina since 1994. My current rate is \$375 per hour which is the customary rate for an attorney in this field with like experience and is a rate customarily charged by other attorneys in the states of Georgia and South Carolina.

7. Members of my law firm bill hourly for work at the following rate: associate attorneys bill at \$200 per hour and paralegals at \$85 per hour.

8. Members of my firm and I spent approximately 29.5 hours (10 for Louis Levenson, 15 for David Yount and 4.5 for Lori Christman) in connection with studying Forlando Brown's motion, researching law, and briefing this return. (See attached Billing Invoices).

9. Legal services were rendered on behalf of our clients and performed inside and outside the regular course of day-to day business. All services provided were necessary to respond to the Motion to Disqualify Louis Levenson.

10. The amount for legal services rendered on behalf of my clients, exclusively in relation to the Disqualification matter, totals approximate \$3,750.00, for Louis Levenson, \$3,000.00 for David Yount and \$900.00 for Lori Christman.

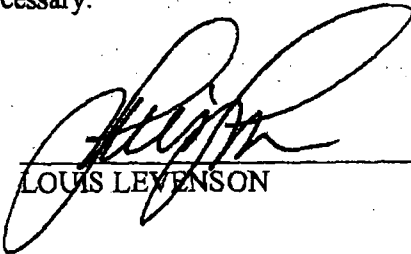
11. I am personally familiar with the subject litigation. Based upon my experience practicing law and the rates charged within the Metro-Atlanta area and in the Aiken-Bamberg, South Carolina areas also for similar litigation (based on rates charged by counsel for the former personal representatives and the former trustees), it is my opinion that my hourly rate and the rates charged for the associate attorneys and paralegals in my firm are reasonable and were justified in order to represent my clients' interests.

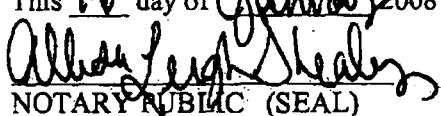
12. I incorporate herein Rule 407 of the South Carolina Appellate Court Rules which contains the

Rules of Professional Conduct and further calls the attention of the Court to the holding in Glasscock v. Glasscock, 403 S.E.2d 313 (SC 1991) concerning the factors and criteria which should be considered in the setting of attorney's fees. I rely upon the discretion of this Court in the determination of the amount of fees, based, among other things, upon the Court's file, the Court's knowledge of the litigation between the parties, which reflects the difficulty of the services rendered, the time necessarily expended.

13. This affidavit does not contain any time relative to actual appearance in Court on February 7, 2008 should argument on this motion be necessary.

FURTHER AFFIANT SAITH NOT.


LOUIS LEVENSON

Sworn to and subscribed before me
This 16 day of January 2008

NOTARY PUBLIC (SEAL)



DAVID YOUNT

<u>Date</u>	<u>Description</u>	<u>Time</u>
1/10/08	Review Motion to Disqualify; meeting with Louis Levenson; research	2.5
1/11/08	Research; First Draft of Response	2.0
1/12/08	Review deposition transcripts	3.0
1/13/08	Conference with clients	.5
1/14/08	Second Draft of Response	3.0
1/14/08	Meeting with Louis Levenson/Lori Christman	1.0
1/15/08	Final Draft completed	3.0

TOTAL HOURS 15

15 hours x \$200.00 = \$3,000.00

LORI CHRISTMAN

<u>Date</u>	<u>Description</u>	<u>Time</u>
1/11/08	Research; First Draft of Response	2.0
1/13/08	Conference with clients	.5
1/14/08	Second Draft of Response	1.0
1/14/08	Meeting with Louis Levenson/David Yount	1.0

TOTAL HOURS 4.5

4.5 hours x \$200.00 = \$900.00

TOTAL: \$7,650.00

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

2010 AUG 11 AM 11:34
JEROME L. McBRIDE
C.C.P. & G.S.

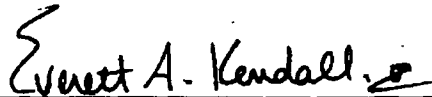
**MOTION TO STRIKE
DEFENDANTS'
MOTION TO TRANSFER VENUE**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order to strike Defendants' Motion to Transfer Venue. Defendants, upon information and belief, have omitted from an earlier-filed Motion to Dismiss any defense or objection then available to them which Rule 12 of the South Carolina Rules of Civil Procedure permits to be raised by motion and not provided for in Rule 12(h)(2), SCRPC. Namely, Defendants failed to include the defense of improper venue in their Motion to Dismiss, served on June 22, 2010. Therefore, Defendants have waived the defense of improper venue and their motion for transfer of venue should be stricken. See Rule 12(h)(1), SCRPC.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
Ryan C. Holt
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 10, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN II**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA J. BROWN THOMAS**; **JASON BROWN-LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LUMAR** and **CARRINGTON LUMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**,
Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

2010 AUG 27 PM 4:24
FILED
JEANETTE W. McBRIDE
C.C.P. & G.S.

ACKNOWLEDGEMENT

The undersigned acknowledge the following:

1. That, when as part of the settlement process they proposed the appointment of Russell L. Bauknight ("Bauknight") as Trustee of the 2000 Irrevocable Trust of James Brown

("Trust"), they understood that the principal place of administration of the Trust would be in Richland County, South Carolina, which is where Bauknight maintains his principal place of business and keeps the records of the Trust; they also understood that the predecessor trustees of the Trust maintained the records of the Trust in Richland County.

2. That they consider their settlement agreement dated August 10, 2008, and amended and restated on March 31, 2009, and the court order approving the proposed settlement and appointing Bauknight as Trustee to satisfy any and all requirements for maintaining the Trust's principal place of business in Richland County, South Carolina.

3. That, to the extent notice regarding the maintenance of the Trust's principal place of administration was necessary, the settlement process and the court order approving the settlement served as sufficient notice to them; to the extent that the settlement process and the court order approving the settlement did not serve as sufficient notice, they hereby waive any notice requirement and reaffirm their consent to the maintenance of the Trust's principal place of administration in Richland County, South Carolina.

4. That, to confirm that the Trust's principal place of administration is and will be in Richland County, South Carolina, they agree that the Trust's principal place of administration is and will be in Richland County, South Carolina and consider this agreement to be a binding nonjudicial settlement agreement pursuant to S.C. Code section 62-7-111.

5. That most of the undersigned are represented by counsel with a presence in Richland County, South Carolina, and that all of the undersigned consider Richland County, South Carolina, to be the most appropriate venue for the sake of convenience to the undersigned.

S. Alan Medlin, Counsel for Tommie Rae
Hynie Brown

C. Havird Jones, Jr., Counsel for the South
Carolina Attorney General

Louis D. 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 child
Vanisha Brown, Lindsey Delores Brown,
Jason Brown Lewis and Tonya Brown

Matt D. Bodman, Counsel for Terry Brown

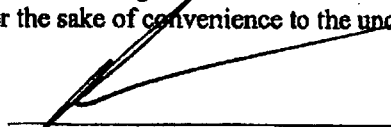
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Matt D. Bodman, Counsel for Terry Brown

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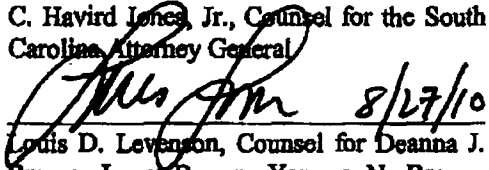
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Hynie Brown

C. Havird Jones, Jr., Counsel for the South
Carolina Attorney General

 8/27/10
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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 child
Vanisha Brown, Lindsey Delores Brown,
Jason Brown Lewis and Tonya Brown

Matt D. Bodman, Counsel for Terry Brown

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 2010-CP-40-4900

RICHLAND COUNTY
FILED
2010 SEP 30 PM 1:06
JEANETTE W. McBRIDE
C.C.P. & G.S.

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE

(Jury Trial Demanded)

Defendants Robert L. Buchanan, Jr. and Adele J. Pope, subject to their Motion to Dismiss and any Motion filed or to be filed for a change of venue, answer the Complaint of Plaintiffs and Counterclaim against Plaintiffs, as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)
As to Parties

1. (a) The following general allegations are incorporated by reference in Defendants' responses to each and every allegation contained in the Complaint, including the prayer for relief:

(i) Henry Dargan McMaster ("McMaster"), the Attorney General of South Carolina ("AG") brings this private tort suit on behalf of persons disinherited in James Brown's carefully crafted estate plan. The Attorney General's duty is to serve the public interest, not private interests.

(ii) On August 10, 2008, McMaster and some of the Plaintiffs met to divide what Mr. Brown did not give them. As part of their plan, Plaintiffs agreed that the Defendants, who were dutifully defending Mr. Brown's estate plan, should be removed as PR/Trustees.

(iii) The plan agreed to give Tommie Rae Hynie Brown, who had been disinherited, more than \$20 million. It further provided that five of Mr. Brown's dozen or more children would receive approximately \$4 million each.

(iv) Five months later on January 30, 2009, McMaster entered into an agreement with Mr. Brown's son Terry, who did business with discredited former trustee Dallas and now-indicted former trustee Cannon, in which Terry received a 10-year right to buy all of James Brown's assets. This not only destroyed the value of Mr. Brown's assets, it threatened loss of the IRS qualification of Mr. Brown's "I Feel Good" Trust, which is part of the 2000 Trust (the "Trust").

(v) When the dealing was done, McMaster and the other Plaintiffs had stripped about 65% of Mr. Brown's \$85 million music empire from his estate plan. Upon information and believe, Plaintiffs had placed under McMaster's control not only Mr. Brown's "I Feel Good" private foundation but also Mr. Brown's estate and the Brown Grandchildren's Education Trust, which is also a part of the Trust. Furthermore, the plan gave McMaster the right to remove and replace personal representatives and trustees.

(vi) The circuit court's approval of Plaintiffs' actions is on appeal to the Supreme Court. The Supreme Court will determine if Plaintiffs can do all this. The Supreme Court will determine if after removing Defendants, the lower court, at McMaster's request, may require them, under penalty of contempt, to sign documents which they cannot sign while properly performing their duty to James Brown. The Supreme Court will determine if the lower court, at McMaster's request, will require Defendants to agree to say nothing bad about McMaster's deals or about McMaster himself.

(vii) Upon information and belief, James Brown anticipated trouble with his estate

plan, and he stated what he expected of his fiduciaries:

"... any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument...shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries." [Tr. Art. XXI; See Will Item X for similar provision. Emphasis Supplied.]

(viii) Mr. Brown's clear intention was to dedicate his entire music empire solely to the education of certain grandchildren and needy and deserving students:

"Except as otherwise provided...I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake... It is the Grantor's intention that the trust estate be available only to the beneficiaries and not to the Grantor's past or future spouse. The Trustee(s) are directed to enforce this provision." [Emphasis supplied.] [Will, p1; Tr. Art XVIII, XXII.]

(ix) James Brown intended to establish what may be South Carolina's largest private foundation dedicated solely to the education of needy students. The Supreme Court will decide whether to uphold Plaintiffs' contracts to dismantle that foundation. Whatever the Court may decide, Defendants' record of service proves that Defendants properly managed the 2000 Trust and Mr. Brown's estate. As directed by Mr. Brown, Defendants vigorously defended his estate plan.

(x) Upon information and belief, \$50 million loss to Mr. Brown's estate and the 2000 Trust, as well as significant damages to Defendants have been inflicted upon them by Plaintiffs and by others acting in Plaintiffs' behalf.

(xi) Upon information and belief, Defendants allege that Plaintiffs have combined in their efforts to establish an unrealistically low value of the assets of James Brown as much for the purpose of interfering with Defendants' commissions, thereby causing them special harm, as for the purpose of enabling a purchasing entity, in which one or more Plaintiffs or their family members will own an interest, to acquire assets worth \$80-to-\$100 million or more for as little as \$12 million.

(b) More specifically with respect to the allegations of paragraph 1 of the Complaint, Defendants allege as follows:

(i) Defendants admit that James Brown was a celebrated entertainer who died on December 25, 2006, a resident of Aiken County, South Carolina.

(ii) Defendants admit that Bauknight serves as court-appointed Trustee of the James Brown 2000 Irrevocable Trust and as Personal Representative of the Estate of James Brown, with the qualification that his service is based only on a settlement between McMaster and some of the Plaintiffs, none beneficiaries of the 2000 Trust; Defendants further admit that the lower court appointed Bauknight and approved the settlement, with the qualification that Defendants were not removed for cause and the order is not final and is on appeal before the Supreme Court.

(iii) Defendants admit, upon information and belief, that Bauknight is the Trustee of the Legacy Trust to which Mr. Brown gave nothing, which was created solely by contract of Plaintiffs Bauknight, McMaster, Hynie Brown and the Brown Family LLC; further, the Defendants allege the Legacy Trust is not a part of Mr. Brown's estate plan, and the lower court order approving the contract and appointing Bauknight is not final and is on appeal before the Supreme Court.

(iv) Except for the qualified admissions above, the allegations of paragraph 1 of the Complaint are denied.

2. With respect to the allegations of paragraph 2 of the Complaint:

(a) Defendants deny having any duty to the Legacy Trust or its beneficiaries.

(b) Defendants admit that Bauknight brings this action as PR/Trustee of the Estate and Trust of James Brown based solely on a settlement approved by the lower court, which is now on appeal to the Supreme Court.

(c) Defendants allege that Bauknight's interests conflict with the interests of the beneficiaries of the Estate and Trust.

(d) All allegations of paragraph 2 of the Complaint that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

3. With respect to the allegations of paragraph 3 of the Complaint, Defendants allege as follows:

(a) With respect to McMaster, Defendants deny: (i) that McMaster has standing or is authorized to bring a private tort suit against or concerning a 501(c)(3) private foundation or its agents to benefit the family at the expense of the needy and deserving children

desiring an education for the reasons hereinafter more fully alleged; (ii) that McMaster has standing or is authorized to dismantle the grandchildren's education trust, especially as some grandchildren have expressly objected to the settlement; (iii) that McMaster has standing or is authorized to take over the estate of a decedent; (iv) that McMaster has standing or is authorized to commence an action to recover money damages for private individuals; (v) that Bauknight has standing or is authorized to commence a lawsuit for McMaster under any circumstances, and especially, as here, where McMaster cannot act, and (vi) that private counsel for private parties may simultaneously represent McMaster in this action.

(b) With respect to Tommie Rae Hynie Brown and James Brown II.

(i) Defendants deny Tommie Rae has standing because she was not included in Mr. Brown's estate plan; she is limited by a pre-nuptial agreement she signed before the 2001 marriage ceremony with Mr. Brown; she was married to another man when she conducted the marriage ceremony with Mr. Brown in 2001; after a 2004 annulment of the marriage pursuant to Mr. Brown's claim to void their marriage, she contracted never to claim to be Mr. Brown's common law wife, which was incorporated into an Aiken County Family Court order; she did not marry Mr. Brown after the annulment; she is not listed as Mr. Brown's spouse on his death certificate.

(ii) Defendants deny James II has standing because he is specifically excluded from Mr. Brown's estate plan even if a child; he has refused to undergo the official Estate and Trust DNA protocol to demonstrate paternity; he is a minor and has a guardian ad litem ("GAL") in other court proceedings related to the Estate and Trust, but he has no GAL in this litigation; he cannot be represented by his mother in this case because of her conflict of interest.

(c) With respect to Daryl J. Brown, and his minor child Janise:

(i) Defendants deny that Daryl has standing because he is not a beneficiary of the 2000 Trust, and, on information and belief, his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(ii) Defendants deny that Janise has standing because, as one of the seven beneficiaries of the Brown Family Education Trust (the Grandchildren's Education Trust), she has a potential education fund of about \$285,000.00, and the appointment of a guardian ad litem ("GAL") for her is necessary because her father's settlement eviscerates this educational benefit and his attack on the estate plan as her representative may subject her to forfeiture under the *In Terrorem* clause as well.

(d) With respect to Lindsey Delores Brown: Defendants deny that Lindsey has standing because she is not a beneficiary under the Will, and they are informed and believe her interest under the Trust is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(e) With respect to Venisha Brown: Defendants deny that Venisha has standing because she is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that her 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(f) With respect to Deanna J. Brown Thomas: Defendants deny that Deanna has standing because she is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that her 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(g) As to Jason Brown-Lewis: Defendants deny that Jason has standing because he is not a beneficiary under the Will, and they are informed and believe his interest under the Trust is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(h) As to Yamma N. Brown and her minor children, Sydney L. and Carrington L.:

(i) Defendants deny that Yamma has standing because she is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that her 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(ii) Defendants deny that Sydney and Carrington have standing because, as two of the seven beneficiaries of the Brown Family Education Trust (the Grandchildren's Education Trust), each has a potential education fund of about \$285,000.00, and each needs a guardian ad litem ("GAL") because their mother's settlement eviscerates this educational benefit and her

attack on the estate plan as their representative may subject them to forfeiture under the *In Terrorem* clause.

(i) As to Larry Brown: Defendants deny that Larry has standing because he is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(j) As to Tonya Brown: Defendants deny that Tonya has standing because she is specifically excluded from the estate plan, she failed to timely commence an action to be declared an heir, and she has filed documents admitting she is not an heir.

(k) As to Terry Brown: Defendants deny that Terry has standing because he is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(l) Defendants deny that the Legacy Trust and its beneficiaries, who to date cannot be ascertained from the filed settlement documents, have standing to bring a suit against Defendants, who owe them no duty.

(m) Defendants deny that Bauknight has standing because:

(i) Bauknight has a conflict of interest under provisions of the 2000 Trust and Mr. Brown's Will and under applicable law because Bauknight has a duty to protect the "I Feel Good" private foundation, part of the 2000 Trust, pending the outcome of the Case 1647 appeal under the November 6, 2009 Court of Appeals Order.

(ii) Bauknight has a conflict of interest in purporting to represent the minor grandchildren beneficiaries while serving Tommie Rae, Terry and other beneficiaries of his Legacy Trust, which dismantles the Grandchildren's Education Trust.

(iii) Bauknight may not serve as an agent for McMaster to achieve a private purpose.

(n) Defendants allege there are other necessary parties who are absent,

namely, grandchildren Romunzo and Forlando, because (i) they have taken the position in the Circuit Court of Aiken County that all Plaintiffs have forfeited any interest under the *in terrorem* clauses, (ii) they have objected to the settlement, and (iii) they are beneficiaries of the Grandchildren's Education Trust, which is being dismantled by the very settlement that is on appeal in the Supreme Court.

(o) All allegations of paragraph 3 that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

4. Defendants admit the allegations of paragraph 4 of the Complaint.

As to Jurisdiction and Venue

5. Defendants admit the allegations of paragraph 5 of the Complaint.

6. With respect to paragraph 6 of the Complaint, Defendants lack information or knowledge sufficient to form an opinion or belief as to the location where Bauknight maintains his usual place of business or where he maintains records. Based on unsigned documents related to the Legacy Trust, an Aiken County Circuit Court order dated August 10, 2007, the location of James Brown's home place in Aiken County, which is owned by the trust, and the various Estate and Trust issues that are pending in or on appeal from the courts of Aiken County, the Defendants are informed and believe that Aiken County remains the principal place of the administration of the Trust, not Richland County. All allegations of paragraph 6 of the Complaint that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

7. With respect to paragraph 7 of the Complaint, Defendants admit that Pope is a licensed attorney residing in Newberry County; Defendants admit that prior to September 30, 2009, Pope's law office was located in Richland County; that pursuant to orders of the Aiken

County Circuit Court, the Estate and Trust documents were located at relevant times in Aiken, Barnwell, Greenville and Richland Counties. All allegations of paragraph 7 of the Complaint that are contrary to or inconsistent with the aforesaid allegations are denied.

8. With respect to paragraph 8 of the Complaint, Defendants admit Buchanan is a licensed attorney residing in Aiken County; Defendants allege Buchanan has received very little, if any, income for administering the Estate and Trust, and to the extent any payments were related to his service as PR/Trustee, they were properly made from an Aiken bank pursuant to an Aiken County Circuit Court order dated January 8, 2008; Defendants allege Buchanan transacted business in the administration of the Estate and Trust during relevant times within and outside of South Carolina, and particularly in Aiken, Barnwell, Bamberg, Beaufort, Charleston, Darlington, Florence, Greenville, Kershaw, Lee, Lexington, Greenville and Richland Counties, South Carolina, but mostly in Aiken County; Defendants allege that 212 Newberry Street, NW, Aiken, S.C. 29801 was the formal address and principal location of the Estate and Trust during relevant times; that pursuant to orders of the Aiken County Circuit Court, the Estate and Trust documents were located at relevant times in Aiken, Barnwell, Greenville and Richland Counties. All allegations of paragraph 8 of the Complaint that are contrary to or inconsistent with the aforesaid allegations are denied.

9. Defendants deny the allegations of Paragraph 9 of the Complaint.

10. Buchanan and Pope deny the allegations of paragraph 10 of the Complaint, and allege that venue in Aiken County is proper.

As to Factual Allegations

11. With respect to paragraph 11 of the Complaint, Defendants admit that James Brown executed a Will on August 1, 2000, in which Mr. Brown nominated Albert H. Dallas

("Dallas"), David G. Cannon ("Cannon") and Alfred A. Bradley ("Bradley") as Personal Representatives of his Estate, and that on January 18, 2007, the Will was admitted to probate in Aiken County, and Dallas, Cannon and Bradley were appointed Personal Representatives of the Estate; Defendants further admit that James Brown executed a Trust on August 1, 2000, in which Mr. Brown appointed Dallas, Cannon and Bradley as Trustees. All allegations of paragraph 11 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

12. With respect to paragraph 12 of the Complaint, Defendants admit that approximately twenty cases were filed in various courts, with some moved to circuit court. All allegations of paragraph 12 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

13. With respect to paragraph 13, Defendants admit the Attorney General of South Carolina ("AG") appeared on or about September 24, 2007, and was allowed to intervene in Civil Action No. 2007-CP-02-0122 ("Case 122"). All other allegations of paragraph 13 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

14. Defendants admit the allegations of paragraph 14 of the Complaint and allege the Court conferred upon them all authority as if originally appointed by Mr. Brown.

15. With respect to the allegations of paragraph 15 of the Complaint, Defendants allege that on August 10, 2008, McMaster, through his agents, and some Plaintiffs executed the August 10th contract which they described as a "private binding Agreement" and valid without court approval. Upon information and belief, from August 10 through January 30, 2009, they, Terry Brown and others entered into additional contracts. On May 26, 2009, the lower court approved the contracts and removed Defendants as PRs and Trustees. The order is on appeal in

the Supreme Court. All allegations of paragraph 15 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

AS TO THE FIRST CAUSE OF ACTION

16. All allegations made above are incorporated herein where relevant.

17. With respect to paragraph 17 of the Complaint:

(a) Defendants deny having a fiduciary duty to Hynie Brown, James II, Tonya, the Brown Family, LLC and Bauknight's Legacy Trust or its beneficiaries.

(b) Defendants deny having any duties related to the management and administration of the Estate and Trust from May 26, 2009 to date.

(c) Defendants deny having duties other than such duties of care, impartiality and loyalty as are required and limited by the specific terms of the 2000 Trust, the Will, the S. C. Probate Code, the S. C. Trust Code, valid final court orders and other relevant South Carolina law.

(d) Subject to the above, Defendants admit they have or have had the following fiduciary duties:

1. To administer the Estate in accordance with the terms of the Will and applicable law, including defending the Will as directed by Brown.
2. To enforce the terms of the 2000 Trust, including defending it as directed by Brown.
3. To uphold the Will, which leaves Brown's entire residuary estate to the 2000 Trust.
4. As to the Estate, subject to the In terrorem clause, to deliver to each of the named children 1/6 of Brown's personal and household effects, or the net proceeds, reduced by applicable Estate Taxes, and to deliver the remainder, after debts and expenses, to the 2000 Trust.

5. As to Terry, their fiduciary duty, on information and belief, ended on January 30, 2009 when Terry knowingly violated the *In Terrorem* clause after demanding it be enforced.
6. As to the 7 Grandchildren Beneficiaries, subject to the *In Terrorem* and Spendthrift clauses, to defend and create an education trust share of about \$285,000 each for Janise, Lindsey, Jason, Sydney, Carrington, Romunzo and Forlando, as set out in Articles V and VI of the 2000 Trust.
7. To seek court guidance where appropriate, as they have done as evidenced by numerous written Orders.

All allegations of paragraph 17 of the Complaint that are inconsistent with or contrary to the Defendants' aforesaid allegations are denied.

18. Defendants deny the allegations of paragraph 18 of the Complaint.
19. Defendants deny the allegations of paragraph 19 of the Complaint.
20. Defendants deny the allegations of Paragraph 20 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION

21. All allegations made above are incorporated herein where relevant.
22. Defendants deny the allegations of paragraph 22 of the Complaint.
23. Defendants deny the allegations of paragraph 23 of the Complaint.
24. Defendants deny the allegations of Paragraph 24 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION

25. All allegations made above are incorporated herein where relevant.
26. With respect to paragraph 26 of the Complaint, Defendants admit they properly served as court-appointed, non-fiduciary Special Administrators of the Estate ("SAs") from March 7, 2007 until November 20, 2007. The remaining allegations of paragraph 26 of the Complaint are denied.

- 27. Defendants deny the allegations of paragraph 27 of the Complaint.
- 28. Defendants deny the allegations of paragraph 28 of the Complaint.
- 29. Defendants deny the allegations of Paragraph 29 of the Complaint.

AS TO THE PRAYER FOR RELIEF

30. Defendants deny that Plaintiffs are entitled to any relief against Defendants alleged in their prayer for relief.

AS TO ALL ALLEGATIONS OF THE COMPLAINT

31. All allegations of the Complaint, including the allegations contained in the prayer for relief, not hereinabove admitted, qualified or explained are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Standing)

- 32. All allegations previously set forth herein are incorporated herein.
- 33. All Plaintiffs lack standing to bring this action under the Article IV of the Will, and Item XXI of the 2000 Trust, and as otherwise alleged in paragraph 3 above, and the case should be dismissed with costs taxed to Plaintiffs.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION
(AG's Exceeding and Abusing Authority)

- 34. All allegations made above are incorporated herein where relevant.
- 35. Defendants are informed and believe that McMaster has a duty to defend the "I Feel Good" private foundation and its agents from private tort suits intended to dissipate Brown's scholarship funds for needy and deserving students.
- 36. McMaster's private contracts and acts and omissions related to the contracts and this litigation serve no public purpose; exceed and/or abuse his constitutional and statutory

authority; and violate the due process and First Amendment rights of Defendants and all other fiduciaries and beneficiaries of the 2000 Trust and Will other than Bauknight, who serves at McMaster's pleasure; and generally constitute bad faith and violate the public trust; the case should be dismissed with costs taxed to Plaintiffs.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Affidavit Required by S.C. Code Ann. §15-36-100 (Supp. 2005))

37. All allegations made above are incorporated herein where relevant.

38. Plaintiffs failed to file as part of the Complaint an affidavit of an Expert Witness specifying at least one negligent act or omission claimed to exist and the factual basis therefore, as a result of which the case should be dismissed for failure to state a claim.

FOR A FIFTH DEFENSE
(Charitable Immunity for Private 501(c)(3) Foundations)

39. All allegations previously set forth herein are incorporated herein.

40. Defendants are informed and believe their actions as agents protecting the "I Feel Good" private foundation, a 501(c)(3) private foundation, have the same statutory immunity and protection from private tort suits as agents of public charities to ensure: (a) that qualified trustees, like Defendants, will accept such positions without fear of financial ruin of the very kind Plaintiffs are attempting to inflict by this lawsuit, and (b) the scholarship funds of the "I Feel Good" private foundation will not be depleted directly or indirectly in the defense of those who properly protect and serve it.

41. Defendants are informed and believe this lawsuit must be dismissed with prejudice and with costs taxed to Plaintiffs.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION
(Improper Venue, Rule 12(b)(3), SCRPC)

42. All allegations previously set forth herein are incorporated herein.

43. Pursuant to S.C. Code Ann. §§ 15-7-40, 62-1-303, 62-3-201 and 62-7-204, on information and belief, venue with respect to the within-captioned action is exclusively within the Aiken County Circuit Court, and this action should be dismissed.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Subject Matter Jurisdiction, Rule 12(b)(1), SCRPC)

44. All allegations previously set forth herein are incorporated herein.

45. Pursuant to S.C. Code Ann. §§ 62-1-303, 62-3-201 and 62-7-204, on information and belief, subject matter jurisdiction was exclusively within the Aiken County Court, and this action should be dismissed.

FOR A EIGHTH DEFENSE TO ALL CAUSES OF ACTION
(Joinder of Persons Needed for Just Adjudication, Rule 19, SCRPC)

46. All allegations made above are incorporated herein where relevant.

47. Defendants are informed and believe that certain parties hereinafter identified must be joined in that they are subject to service of process, their joinder will not deprive the Court of jurisdiction, in their absence complete relief cannot be accorded among those already parties, they claim an interest in the subject of the action whose absence may impede their ability to protect that interest, and/or that Defendants are subject to a substantial risk of double, multiple or inconsistent obligations by reason of their absence. The parties include:

(a) Minor Plaintiffs have no GALs, and those speaking for them are giving away their educational benefits under the Grandchildren's Education Trust;

(b) Forlando Brown and Romunzo Brown are adult grandchildren whose interests under the Grandchildren's Education Trust are eviscerated by the settlement, and they have objected to the settlement in the Aiken County Circuit Court;

(c) The Brown Family LLC is an entity with some relationship to the

settlement, and it is not a party to this action.

48. Defendants are informed and believe that in the absence of their joinder, the case should be dismissed.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION
(Estoppel)

49. All allegations made above are incorporated herein where relevant.

50. Plaintiffs have engaged in conduct during relevant times which was calculated to convey the impression that the facts were otherwise than and inconsistent with those they now seeking to assert, including at least the following conduct:

A. **AS TO AG McMASTER:**

(i) On July 30, 2008, AG McMaster, personally, wrote a letter to Defendants supporting their service as PRs and Trustees.

(ii) AG McMaster has ratified the Will and Trust which Defendants seek to uphold.

B. **AS TO TOMMIE RAE BROWN:**

(i) Prior to her 2001 ceremonial marriage to Mr. Brown, she executed a Pre-Nuptial Agreement in which she waived all rights as a spouse to share in or make any claim against the estate of Mr. Brown; all rights as a spouse in the property of Mr. Brown; any spouse's right of election or claim as an omitted spouse against Mr. Brown's estate under the law of any state; and any right to serve as a fiduciary under Mr. Brown's estate.

(ii) During Mr. Brown's 2004 action against her to void the marriage, Tommie Rae contracted never to claim to be Mr. Brown's common law spouse.

(iii) She admits and has complained that after the 2004 annulment, Mr. Brown would not marry her again.

(iv) She claims to have been a member of the Advisory Board to the Trust that Defendants are seeking to uphold.

(v) She has otherwise ratified the Will and Trust which Defendants seek to uphold.

C. **AS TO DEANNA J. BROWN THOMAS AND YAMMA BROWN:**

(i) Deanna and Yamma have affirmed under oath their status as beneficiaries under the same Will Defendants are seeking to uphold.

(ii) Deanna accepted a position as Trustee of the Trust, and Yamma accepted a position as Executive Assistant to the Board of the Trust, the same Trust Defendants are seeking to uphold.

(iii) Deanna and Yamma acknowledged in the 2002 lawsuit they filed against their father, James Brown, that they were not a part of his estate plan (though actually they were devised a share of personal and household effects).

(iv) Deanna J. Brown Thomas has acknowledged that the devise of personal and household effects to the named children in the Will was what her father wanted, the same Will Defendants are seeking to uphold.

(v) Deanna and Yamma, with other Plaintiffs, have advised the Court in a Memorandum submitted in this case that James Brown is one of South Carolina's most famous and generous icons and that the establishment of a Trust intended to provide financial assistance to deserving students who seek an education in South Carolina "was the often-stated and well known desire of James Brown." (Plaintiffs' Memorandum dated and filed August 27, 2010, p. 2).

(vi) They have otherwise ratified the Will and Trust which Defendants seek to uphold.

D. AS TO DARYL BROWN:

(i) He has affirmed under oath his status as a beneficiary under the same Will the Defendants are seeking to uphold.

(ii) He has otherwise ratified the Will and Trust which Defendants are seeking to uphold.

E. AS TO TERRY BROWN:

(i) He alleged Attorney Levenson, the attorney for Daryl, Deanna and Yamma, had engaged in unethical activity by contesting Mr. Brown's Will and Trust which Defendants are seeking to uphold.

(ii) He has consistently ratified the validity of the Will and Trust which Defendants are seeking to uphold, even claiming after the announced August 10, 2008 settlement, until as late as February 2009, that he was then the devisee of all of Mr. Brown's personal effects, asserting that Daryl, Deanna and Yamma, his co-Plaintiffs, had forfeited their share under the *In Terrorem* clauses of the Will and Trust.

F. AS TO ALL PLAINTIFFS:

(i) All Plaintiffs have acquiesced in, actively supported and/or failed to challenge the material findings of the orders of, as well as the documents presented and representations made by Plaintiffs in, the Aiken County Circuit Court and/or the South Carolina Court of Appeals, approving, after review, many actions taken by Defendants that are the subject of Plaintiffs' Complaint in this case, including at least:

(a) Orders characterizing the condition of the Estate and Trust as deplorable when Defendants began serving as PRs and Trustees;

(b) Orders providing for bank accounts;

(c) Orders providing for accounting;

(d) Orders concerning the protection of Mr. Brown's estate plan;

(e) Orders approving the service of Defendants as PRs of the Estate and as Trustee of the Trust;

(f) Orders characterizing the service of Defendants as excellent;

(g) Orders with respect to the Christie's sale;

(h) Orders with respect to Estate and Trust property not sold at Christie's;

(i) Orders providing for payment of fees, commissions and costs to Defendants and for their staff;

(j) Orders concerning the Grandchildren's Education Trust;

(k) Orders with respect to taxes;

(l) Order addressing mismanagement on or after May 26, 2009;

(m) Orders, as well as the briefs and representations of Plaintiffs to the Court, related to the value of the James Brown assets;

(ii) All Plaintiffs failed to seek a global settlement of all issues by inviting Defendants and others, who were necessary parties to a settlement, to their mediation, but instead conducted a private mediation with no notice to or knowledge of Defendants. All Plaintiffs knew or should have known that Defendants would be left in the position of defending the estate plan as well as other interested parties whose rights were eviscerated as a result of the mediation.

(iii) All Plaintiffs failed to present evidence to the Court that the settlement was reduced to writing; was signed by all parties affected thereby; does not violate the provisions and purposes of the Trust; protects the heirs and devisees not made parties; does not violate the First Amendment and Due Process rights of non-parties; protects all other rights of non-settling parties; protects the beneficiaries of the 2000 Trust; protects the needy and deserving students; and protects all creditors and taxing authorities; but instead, Plaintiffs called (other than Defendants) only Bauknight – who by their agreement now serves, *inter alia*, as PR of the Estate and as Trustee of the Trust – and who admittedly had not investigated material issues regarding the settlement and had no opinion on them, including the tax and federal copyright implications. Plaintiffs knew or should have known that their failure to determine the heirs of James Brown; their failure to honor the desires of James Brown; their grant to Terry Brown of the 10-year right of first refusal; and their efforts to devalue the James Brown assets to the detriment of needy students and for the benefit of disinherited persons left Defendants in the position of having to appeal the order to zealously protect the estate plan and its beneficiaries as directed by the Will and Trust.

51. When Plaintiffs engaged in said conduct, they expected it would be acted upon by others, including Defendants.

52. Defendants are now informed and believe that Plaintiffs well knew they would subsequently engage in inconsistent conduct as circumstances permitted and when necessary or appropriate to advancing their own, personal agendas rather than the estate plan of Mr. Brown.

53. At the time Plaintiffs engaged in the original conduct or took the original positions, Defendants had no knowledge or means of knowing that Plaintiffs would subsequently behave inconsistently or assert inconsistent positions, and Defendants are prejudiced by Plaintiffs' inconsistent conduct and their assertion of inconsistent positions.

54. As a result, Plaintiffs' case should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION
(Waiver)

55. All allegations made above are incorporated herein where relevant.

56. To the extent Defendants breached any duties in the management and administration of the Estate and Trust, which is denied, Plaintiffs have intentionally relinquished

known rights by, *inter alia*:

(a) Their interference with Defendants' management and administration in an effort to preserve and maximize opportunities for their own personal gain and to minimize or abate actions planned or taken to preserve, protect and enhance Mr. Brown's estate plan;

(b) Their failure to appeal final orders of the Aiken County Circuit Court authorizing and directing Defendants to take actions for which Plaintiffs are now suing;

(c) Their refusal to help with many matters of administration and management that required attention after they announced a settlement, notwithstanding Defendants' invitation to Plaintiffs that they assist with such matters in light of the announced settlement, about which they now complain and for which they are suing;

(d) Their attacks on the validity of Mr. Brown's Will and Trust without probable cause;

(e) Their intentional violations of the *In Terrorem* clauses of Mr. Brown's Will and Trust;

(f) In knowingly failing and refusing to comply with requirements of the South Carolina Trust and Probate Codes and other applicable law by forcing the approval of a settlement which adversely affects interested persons who were not a part of the settlement and others who were incapable of protecting themselves; and

(g) In intentionally ignoring provisions of the Trust Code applicable to a settlement, contending at the hearing to approve the settlement there was no valid Trust, yet basing this lawsuit on the Trust.

57. The Plaintiffs' case should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR AN ELEVENTH DEFENSE TO ALL CAUSE OF ACTION
(Unclean Hands)

58. All allegations made above are incorporated herein where relevant.

59. Defendants are informed and believe that in early January 2007, certain Brown family members (all Plaintiffs in this case) met with lawyers in Atlanta, GA and formulated a plan to sabotage Mr. Brown's carefully created estate plan with the objective of acquiring assets he expressly declined to give them; contemporaneously, Tommie Rae assembled a team of at least six lawyers to attempt to take up to half of Mr. Brown's assets, to which she was not entitled.

60. Defendants are further informed and believe that in early January 2007 Dallas and Cannon and others, who had their own pecuniary agenda, began manipulating evidence as to the ownership of assets in an effort to preclude or minimize the opportunities of the family and Tommie Rae.

61. Within those dynamics, the family and Tommie Rae sued in or around January 2007 to remove Dallas, Cannon and Bradley as fiduciaries, many relying on the estate plan they now seek to dismantle for their standing.

62. Defendants are further informed and believe that in approximately March of 2007, Dallas and Cannon successfully solicited Forlando Brown, a grandson of Mr. Brown who plans to own the James Brown assets and had participated in the family meeting in Atlanta in January and February, to abandon the family and join them. His brother, Romunzo Brown, and his father, Terry Brown, joined Forlando in abandoning the family and aligning themselves with Dallas and Cannon.

63. Within these dynamics, in an effort to calm all parties, the Aiken County Circuit Court appointed Defendants as non-fiduciary SAs of the Estate on March 7, 2007, with limited

authority.

64. Almost immediately, the family, Tommie Rae and Dallas and Cannon undertook to promote their own individual interests; and though adverse to one another in other respects, the family and Tommie Rae were united in their opposition to Dallas, Cannon and Bradley. As a result, Dallas and Cannon became defensive and uncooperative, and they began to resist Defendants' scrutiny.

65. Despite the resistance of Dallas and Cannon, on July 17, 2007, Defendants discovered Cannon's \$900,000 misappropriation from the Trust. Nevertheless, Cannon resigned on August 10, 2007 from all positions, fiduciary and otherwise, with the Estate, the Trust and most Brown business entities.

66. Eventually, Dallas and Cannon undertook, individually and through certain agents, to falsely convince the AG that Defendants were bad. The Office of the AG was receptive to the efforts of Dallas and Cannon.

67. As a result of continuing scrutiny and pressure, Dallas and Bradley resigned as Estate and Trust fiduciaries at a hearing on November 20, 2007, rather than defend against the case for their removal.

68. Immediately upon the resignation of all three fiduciaries and with no advance notice, the Court appointed Defendants as substitute PRs and Trustees. All Plaintiffs except for Bauknight and the AG supported and encouraged the appointment.

69. By their appointment, Defendants were charged with the legal duty of upholding Mr. Brown's Will and Trust. Brown's Will and Trust were contrary to the interests of the family and Tommie Rae.

70. By November 21, 2007, Dallas, Cannon and Bradley were experiencing second

thoughts about their resignations, and Assistant AG Jones had communicated with Pope, insisting that Defendants resign immediately as PRs and Trustees or risk removal proceedings. They, and the other Plaintiffs, thereafter engaged in the following activities:

- (a) Accusing Buchanan and Pope of impropriety in November 2007 after having just represented to the Court that Defendants' behavior was extraordinary;
- (b) Threatening Buchanan and Pope with grievances, harm and liability for not agreeing with the settlement;
- (c) Asserting Buchanan and Pope should have obtained appraisals after having reviewed and acquiesced in or adopted Defendants' proposal to value assets without an appraisal;
- (d) Sabotaging the Christies' auction in violation of court orders;
- (e) Falsely accusing Defendants of impropriety with intent to damage their professional standing.

71. Such inequitable conduct touched Defendants personally, touched the subject matter of this litigation and prejudiced or injured Defendants as hereinafter more fully alleged, as a result of which this litigation should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR A TWELFTH DEFENSE
(Comparative Negligence/Recklessness/Willfulness)

72. All allegations previously set forth herein are incorporated herein.

73. To the extent that Plaintiffs are entitled to anything, and to the extent Defendants were careless, negligent, grossly negligent, willful, wanton or reckless in any particular, which is denied, Plaintiffs were more than fifty percent (50%) negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton in the particulars hereinabove alleged, and as to certain Plaintiffs in the following additional particulars, which upon information and belief, include the

following:

(a) AS TO AG McMASTER:

- (i) In failing to determine the heirs of James Brown.
- (ii) In unreasonably attempting to agree with others as to the identity of the heirs of James Brown to the exclusion of real heirs, and with insufficient understanding or inquiry into the negative impact this incorrect finding has on the Estate and Trust's rights under the Federal Copyright Act.
- (iii) In unreasonably executing three different settlement contracts (August 10, 2008, the Legacy Trust and the January 29, 2009 contract), with insufficient understanding that they exposed an estate that would pay no estate taxes under the estate plan to between \$10 and \$40 million of estate taxes.
- (iv) In unreasonably executing the Legacy Trust with insufficient understanding that it would disqualify the "I Feel Good" private foundation under 501(c)(3) of the IRC, exposing the estate and 2000 Trust to millions of dollars of estate and income taxes.
- (v) In unreasonably failing to recover for the Estate and Trust \$12+ million from Dallas and Cannon and others, which Defendants began in Case 322 pending in Aiken County.
- (vi) In failing to timely seek dismissal of the Dallas appeal, and in failing to seek the recovery of costs of Case 122 from Dallas and Cannon.
- (vii) In joining or acquiescing in Terry Brown's and David Cannon's attempt to devalue the James Brown assets for the benefit of their joint venturers and diminishing the charitable gift.
- (viii) In failing to accept the Corbis/GreenLight proposal, causing loss and devaluation of the James Brown assets.
- (ix) In unreasonably interfering with a proposed right of first offer, thereby damaging and devaluing the James Brown assets.
- (x) In failing to properly protect the Federal Copyright Act rights of the Estate and Trust.
- (xii) In unreasonably contracting to give Tommie Rae approximately \$20 million where the overwhelming evidence demonstrated there was no basis in fact or law for such a contract.
- (xiii) In unreasonably substituting his judgment for that of properly performing fiduciaries, then unreasonably exercising such judgment.

(xiv) In unreasonably agreeing to give Dallas/Cannon joint venturer Terry Brown \$4 million and a right of first refusal, destroying Mr. Brown's estate plan and the value of his assets, causing irreparable harm and exposure to millions of additional dollars of taxes.

(xv) In unreasonably attempting to cover up their negligent acts or omissions by attacking properly serving fiduciaries who are entitled to reasonable compensation and reimbursement for the defense of this action.

(xvi) In unreasonably joining in a private tort suit to damage the "I Feel Good" private foundation and its agents for the personal benefit of private individuals.

(xvii) In unreasonably appointing and controlling Bauknight, including his reckless recommendation that the court approve the AG's actions with no due diligence, resulting in a loss to the Estate and Trust, if not overturned, of at least \$50 million.

(xviii) In unreasonably executing the August 10 contract without consulting with, and excluding, the court-appointed accountant and PR/Trustees, and without adequate knowledge of the Estate Tax impact on the Estate and Trust, or the income tax impact on Brown Entities.

(xix) In unreasonably refusing to participate with the court-appointed accountant and PR/ Trustees in preparing the Estate Tax Return, notwithstanding the PR/Trustees' invitation for the AG to participate.

(xxii) In unreasonably contracting on August 10 to defeat the interests of the beneficiaries and fiduciaries of Mr. Brown's estate plan who did not attend the secret mediation.

(b) AS TO BAUKNIGHT:

(i) In unreasonably recommending and ratifying the above actions of the AG.

(ii) In unreasonably failing to approve the GreenLight 2-year Publicity Rights contract which, but for his failure to approve the contract, could have been in place in May 2009 and would have enhanced the value of the James Brown assets.

(iii) In unreasonably making false and unsupported allegations against Defendants after testifying to the contrary.

(iv) In unreasonably failing to disclose to the Court that he had already undertaken a fiduciary duty to Tommie Rae and Terry Brown, while purporting to make an independent recommendation as to whether the settlement should be approved.

(v) In unreasonably failing to complete the claims litigation.

(vi) In unreasonably failing to ascertain, categorize and pay valid debts and claims of

the 2000 Trust and Estate, including the proper expenses for the defense of the estate plan.

(vii) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of Brown's estate plan.

(viii) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of the tax implications.

(ix) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of likely outcomes regarding allegations related to the issues related to spousal claims, capacity and/or undue influence.

(x) In unreasonably recommending the proposed determination of heirs with insufficient understanding of the federal copyright law implications.

(xi) In unreasonably recommending the proposed settlement which Defendants are informed and believe result in more than \$50 million of damage to the Estate and Trust, taking more than 65% of Brown's assets from Brown's estate plan.

(c) AS TO THE REMAINING PLAINTIFFS:

(i) In unreasonably interfering with the Christie's sale, which Defendants are informed and believe would have provided liquidity for the management and administration of the Estate and Trust, and causing financial detriment to the Estate and Trust and to the value of the James Brown assets.

(ii) In unreasonably, purposely chilling the Christie's sale by their individual acts and those of their duly authorized agents for the purpose of rendering the Estate and Trust unable to compensate Defendants, in an attempt to force Defendants to quit or abdicate their duties under the Will and Trust.

(iii) In unreasonably interfering with the Defendants' proposed GreenLight contract, which Defendants are informed and believe would have enhanced the value of all James Brown assets and would have provided liquidity for management and administration purposes.

(iv) On information and belief, in unreasonably forming alliances with Dallas and Cannon, whom they initially opposed for good reason, so they could all get paid at the expense of Mr. Brown's estate plan and at the expense of the Defendants as properly performing fiduciaries.

74. As a direct and proximate of one or more of Plaintiffs' aforesaid negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton acts or omissions, which Defendants are informed and believe render Plaintiffs 51% or more at fault, Plaintiffs are

barred from recovery; if, however, Plaintiffs are 50% or less at fault, Defendants are entitled to a setoff against any Plaintiff's verdict, the entitlement to which Defendants deny, equal to the percentage of Plaintiffs' fault.

FOR A THIRTEENTH DEFENSE
(Intervening Acts of Others)

75. All allegations made above are incorporated herein where relevant.

76. Defendants respectfully allege that the intervening negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and intentional acts or omissions of third parties interfered with the management and administration of the Estate and Trust and proximately caused Plaintiffs' damages, if any (which are denied).

FOR A FOURTEENTH DEFENSE AND FIRST COUNTERCLAIM
(Abuse of Process)

77. All allegations made above are incorporated herein where relevant.

78. Defendants are informed and believe that Plaintiffs have maliciously commenced this legal action for an ulterior purpose of forcing Defendants to abandon or dismiss the appeal of the May 26, 2009 order of the Circuit Court of Aiken County approving a settlement desired by Plaintiffs.

79. Plaintiffs' commencement of this action is not a legitimate use of process in that, assuming Plaintiffs succeed in the lawsuit (their entitlement to which is denied), Plaintiffs' improper and collateral objective cannot be accomplished.

80. As a direct and proximate result of Plaintiffs' abuse of process, Defendants have sustained actual damages in such amount as they shall prove at trial, for which they are entitled to judgment against Plaintiffs.

81. Defendants are informed and believe they are entitled to judgment against

Plaintiffs for punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A FIFTEENTH DEFENSE AND SECOND COUNTERCLAIM
(Civil Conspiracy)

82. All allegations made above are incorporated herein where relevant.

83. Defendants are informed and believe that all Plaintiffs agreed and combined with each other and with third parties for the purpose of injuring Defendants, and acted in furtherance of the conspiracy, which has caused Defendants special damages as hereinafter and otherwise alleged in this Answer and Counterclaim.

84. Upon information and belief, Defendants allege that in early January 2007, various family members and/or their agents (Plaintiffs in this case) met with lawyers in Atlanta, GA and formulated a plan to sabotage Mr. Brown's carefully created estate plan with the objective of acquiring assets he expressly declined to give them. (Forlando, Romunzo and Terry Brown later switched their allegiance to Dallas and Cannon.) Relatively contemporaneously with the family's undertaking, Tommie Rae assembled a team of at least six lawyers to attempt to take up to half of Mr. Brown's assets, to which she was not entitled.

85. In furtherance of these schemes, the family and Tommie Rae separately filed lawsuits attacking the validity of the Will and Trust, and, in addition, Tommie Rae asserted she was entitled to relief as a surviving spouse.

86. Upon information and belief, Defendants allege that by not later than November 20, 2007, in light of the resignations of Dallas and Cannon and the court appointment of Defendants as PR/Trustees, Dallas, Cannon, Forlando, and Terry realized that their scheme to sell the James Brown assets at a low value to an entity owned by one or more of themselves, with a kickback to one or more of themselves, and which also included a plan to pay the fiduciary-related claims of Dallas and Cannon from the sale(s) proceeds, was in substantial jeopardy.

Accordingly, upon information and belief, they jointly agreed to undertake a course of action, individually and through certain duly authorized agents, to demean, discredit, attack and otherwise harm Defendants in order to neutralize Defendants' efforts to administer and manage the Estate and Trust and to keep their personal agenda alive at the expense of Mr. Brown's estate plan.

87. In furtherance of this agreement, in addition to the aforesaid acts, Forlando sued Defendants in federal court, in which he mostly sought to paralyze the Trust by enjoining Defendants from acting as Trustees, as well as returning Dallas and Cannon as Trustees.

88. In furtherance of this agreement, Defendants allege that the Attorney General refused to protect the Trust by intervening in or taking other action with respect to the federal lawsuit, and he used the federal lawsuit as evidence in his effort to assist Dallas in having the state court reconsider its appointment of Defendants as Trustees and also in seeking the appointment of a special Trustee.

89. Upon information and belief, by July or August of 2008, the family and Tommie Rae realized, in light of their idea of what a settlement should include and knowing of Defendants' commitment to vigorously defend Mr. Brown's estate plan or achieve a settlement consistent with it, Defendants constituted an obstacle that had to be removed.

90. As a result, Tommie Rae and the family (excluding Forlando, Romunzo and Terry Brown) and Assistant AG Jones, attended a mediation conference without notice to Defendants, after which they announced a settlement.

91. Notwithstanding the announcement, Tommie Rae, the family and the Attorney General continued to seek a settlement until late January 2009, when they joined with Terry Brown, and, on information and belief, directly or indirectly with his joint venturers, in an

agreement which provides, *inter alia*, that they would seek removal of Defendants as fiduciaries and oppose Defendants' request for any commission.

92. Defendants are informed and believe that Bauknight has joined the remaining Plaintiffs in the agreement and is acting in furtherance thereof.

93. As a direct result of Plaintiffs' improper agreement and their many acts and intentional omissions in furtherance of the agreement, Defendants have sustained special damages for which they are entitled to judgment, including, but not limited to (a) the expenditure of Defendants' personal money in fulfilling the duty of protecting, defending and enhancing Mr. Brown's estate plan, (b) the loss of business and income from Defendants' ordinary law practices, both of which are seriously crippled, while dealing with Plaintiffs' attempt to overwhelm Defendants and thereby force a resignation or the abdication of Defendants' responsibility under the Will and Trust; and (c) the further expense and time involved in collecting their claimed commission, which is fair and reasonable and customary for performing the usual and customary duties of fiduciaries in like circumstances, and insufficient for the extraordinary duties performed by Defendants under these circumstances.

94. Defendants are informed and believe they are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SIXTEENTH DEFENSE AND THIRD CAUSE OF ACTION
(Intentional Interference with Contract)

95. All allegations made above are incorporated herein where relevant.

96. Pursuant to their authority under the Will/2000 Trust and unappealed Order of the Court dated January 8, 2008, Buchanan and Pope were parties to an approved agreement to be paid as SAs, and for partial payment of their fiduciary commissions as approved by the Court, with interest on unpaid amounts. Plaintiffs were aware of this agreement.

97. Plaintiffs have intentionally interfered with Defendants' contract with the Estate/2000 Trust, causing it to be breached and Defendants to be damaged. As a result, Defendants are entitled to compensation for all damages resulting from Plaintiffs' interference with their contract for SA's fees, partial commissions and costs, with interest.

FOR A SEVENTEENTH DEFENSE AND FOURTH CAUSE OF ACTION
(Violation of §62-1-106)

98. All allegations made above are incorporated herein where relevant.

99. The term "heirs" has been used freely, and at times incorrectly, by Plaintiffs, but by March 28, 2008 all Plaintiffs, on information and belief, had knowledge that the heirs of James Brown should be properly determined, even though most were entitled to nothing under Brown's Estate Plan.

100. On information and belief, Plaintiffs had knowledge that an improper determination of heirs would damage the Estate/2000 Trust under the Federal Copyright Act.

101. The Attorney General's answer in Case 2008-CP-02-0872 did not specifically address the "heirs" issues, leaving to Defendants the protection of the Estate/2000 Trust under the Federal Copyright Act.

102. On August 10, 2008, however, without consulting with Defendants, the Attorney General and some of the Plaintiffs stipulated to what is, upon information and belief, an incorrect determination of heirs.

103. Thereafter, in numerous representations and filings with the Court, said Plaintiffs have been presented to the Court as the sole and correct heirs of James Brown, a determination which upon information and belief is false, material, and known by Plaintiffs to be false.

104. On information and belief, said Plaintiffs intended for this known incorrect determination to be relied on and acted on by the Court and the Court and others have relied on

such representations, proximately causing injury to the Estate, 2000 Trust and Defendants.

105. On information and belief such representations circumvented the provisions and/or purposes of the South Carolina Probate Code, including 62-1-102(b)(2), which purpose is to discover and make effective the intent of the decedent in the distribution of his property and (4) to facilitate use and enforcement of certain Trusts and have benefitted from the statements and filings; having been injured thereby, Defendants, on information and belief, are entitled to appropriate relief.

FOR AN EIGHTEENTH DEFENSE AND FIFTH CAUSE OF ACTION
(Attorneys' Fees)

106. All allegations made above are incorporated herein where relevant.

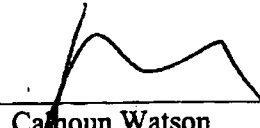
107. On information and belief, Plaintiffs are entitled to recover the costs of this action, including attorneys' fees, under South Carolina Probate Code Section 62-7-1004 and other applicable law.

WHEREFORE, Defendants pray that the Court inquire into the matters set forth herein and (a) dismiss the Complaint in its entirety, with prejudice, and with all costs taxed to Plaintiffs; (b) award actual damages to Defendants in such amount as they shall prove to a jury; and (c) award punitive damages to Defendants in such amount as a jury shall find to be fair, reasonable and just.

DEMAND FOR JURY TRIAL

Defendants demand a jury trial as to all legal defenses and causes of action pursuant to Rule 38, SCRCP; and Defendants request the Court, of its own initiative, try any and all equitable issues by the same jury sitting as an advisory jury pursuant to Rule 39(c), SCRCP.

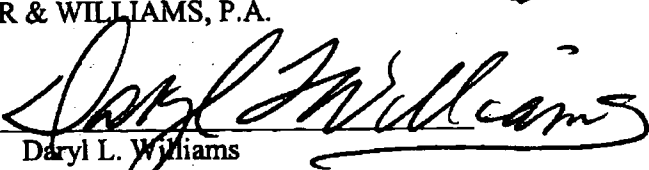
SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

J. Camoun Watson
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Robert L. Buchanan, Jr.

JETER & WILLIAMS, P.A.

By: 

Daryl L. Williams
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

Attorney for Defendant Adele J. Pope

Columbia, South Carolina
September 30, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

2010 OCT - 1 PM 3:42
JEANETTE W. McBRIDE
C.C.P. & G.S.

FILED

**MOTION TO STRIKE
DEFENDANTS'
AFFIDAVIT IN SUPPORT OF
DISMISSAL**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order to strike Affidavit of Buchanan and Pope in Support of Dismissal Based on Statutes of Limitation. Defendants served this Affidavit on Plaintiffs on September 21, 2010. The Affidavit should be stricken as untimely in accordance with Rule 6 of the South Carolina Rules of Civil Procedure which provides that the Affidavit should have been served with the Motion to Dismiss on June 22, 2010. The Affidavit should also be stricken as one or more of its forty-two Exhibits have not been sworn or certified as required in Rule 56(e), SCRPC. The Affidavit should be further stricken as it contains statements that are not based on personal knowledge, are not relevant, or contain hearsay. The inclusion of these statements violates Rule 56(e) which requires that affidavits set forth only those facts which are admissible in evidence.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
October 1, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 10-CP-40-4900

**MOTION TO SET ASIDE ENTRY OF
DEFAULT**

RICHLAND COUNTY
FILED
2010 NOV 16 PM 4:45
JEANETTE W. McBRIDE
C.C.P. & G.S.

**TO: J. CALHOUN WATSON, JR. AND DARYL L. WILLIAMS, ATTORNEYS FOR
THE DEFENDANTS:**

YOU WILL PLEASE TAKE NOTICE the undersigned, as attorney for the Plaintiffs above named, will move before the Presiding Judge of the Richland County Court of Common Pleas, at the Richland County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order setting aside the entry of default. This Motion is made pursuant to South Carolina Rules of Civil Procedure 55(c). The Motion is based on the following grounds:

(1) Defendants filed an Affidavit of Default on November 10, 2010 claiming that Plaintiffs had failed to serve a timely answer to their counterclaims.

(2) Defendants contend that the Answer and Counterclaims were served by hand-delivery on September 30, 2010. Defendants contend that the response to the counterclaims was due November 1, 2010.

(3) Plaintiffs will demonstrate good-cause for its failure to serve an answer on or before November 1, 2010.

(4) Plaintiffs served an Answer to the Counterclaims promptly upon receipt of the Affidavit of Default. The Answer to Counterclaims was filed and served on November 16, 2010.

(5) Plaintiffs have and have asserted a meritorious defense to the Counterclaims.

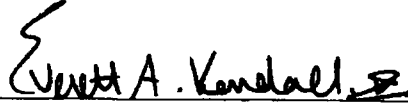
(6) Defendants are in no way prejudiced by setting aside the default.

These grounds are supported by the Affidavit of Kenneth B. Wingate, attached hereto and made a part hereof. This Motion may be further supported by additional affidavits and a Memorandum of Law.

Motion to Set Aside Entry of Default
10-CP-40-4900

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Kenneth B. Wingate", is written over a horizontal line.

Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
November 16, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 10-CP-40-4900

ANSWER TO COUNTERCLAIM

RICHLAND COUNTY
FILED
2010 NOV 16 PM 4:47
JEANETTE W. McBRIDE
C.C.P. & G.S.

**TO: J. CALHOUN WATSON, JR. AND DARYL L. WILLIAMS, ATTORNEYS FOR
THE DEFENDANTS:**

COME NOW the Plaintiffs, who hereby answer the allegations of the Counterclaim of the Defendants, subject to all applicable motions, affirmative defenses, and other pleadings as follows:

1. In answering Paragraphs 1 – 76, Plaintiffs deny all factual allegations contained therein which are or may be construed to be inconsistent with the allegations in the Complaint.
2. In answering Paragraph 77, Plaintiffs incorporate all allegations and defenses set forth herein to the extent not inconsistent herewith.
3. Paragraphs 78 – 81 are denied.
4. In answering Paragraph 82, Plaintiffs incorporate all allegations and defenses set forth herein to the extent not inconsistent herewith.
5. Paragraphs 83 – 94 are denied.
6. In answering Paragraph 95, Plaintiffs incorporate all allegations and defenses set forth herein to the extent not inconsistent herewith.
7. Paragraphs 96 and 97 are denied.
8. In answering Paragraph 98, Plaintiffs incorporate all allegations and defenses set forth herein to the extent not inconsistent herewith.
9. Paragraphs 99 – 105 are denied.
10. In answering Paragraph 106, Plaintiffs incorporate all allegations and defenses set forth herein to the extent not inconsistent herewith.
11. Paragraph 107 is denied.

FOR A FIRST DEFENSE

(Failure to State a Claim)

12. The allegations contained in paragraphs 1 through 11 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

13. Pursuant to S.C.R.C.P., Rule 12(b)(6), the allegations contained in the Counterclaim fail to state a claim upon which relief may be granted against these Plaintiffs.

FOR A SECOND DEFENSE

(Waiver and Estoppel)

18. The allegations contained in paragraphs 1 through 13 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

19. The Plaintiffs would show that Defendants' Counterclaim is barred by the doctrine of waiver and estoppel.

FOR A THIRD DEFENSE

(Unclean Hands)

22. The allegations contained in paragraphs 1 through 19 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

23. Plaintiffs would show, upon information and belief, that Defendants' claims are barred by the doctrine of unclean hands.

FOR A FOURTH DEFENSE

(*res judicata*/collateral estoppel)

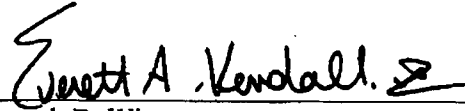
24. The allegations contained in paragraphs 1 through 23 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

25. Plaintiffs would show, upon information and belief, that Defendants' claims are barred by the doctrines of *res judicata* and/or collateral estoppel.

WHEREFORE, having fully answered the Defendants' Counterclaim, subject to any motions or other pleadings, and having asserting these affirmative defenses, Plaintiffs, pray that the Defendants' Counterclaim be dismissed with prejudice and that Plaintiffs be awarded the costs and reasonable fees associated with this matter and other such relief as the Court may deem just and proper.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
November 16, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-4900

JEANETTE B. LURIDE
C.C.P. & G.S.

2010 NOV 19 PM 3:57

NOTICE OF MOTION AND
MOTION PURSUANT TO
SCRP 59(e) TO ALTER OR
AMEND ORDER DENYING
MOTION TO DISMISS

TO: ALL PLAINTIFFS AND THEIR ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned counsel, will move before the Honorable L. Casey Manning, judge of the Richland County Court of Common Pleas, at ten o'clock a.m. (10:00) on the tenth (10th) day after service hereof at his chambers in the Richland County Judicial Center, Columbia, South Carolina, or at such other time and places as may designated, for an Order pursuant to SCRCP 59(e) to alter or amend the Order Denying Motion to Dismiss entered November 9, 2010 and notice of entry of which was first received by counsel on November 9, 2010 in the following particulars:

1. Failure to consider or decide whether the Plaintiff Attorney General lacks constitutional and statutory authority to join with private plaintiffs in this action;
2. Failure to consider or decide whether Plaintiff Bauknight lacks constitutional and statutory authority to act as the agent for the Plaintiff Attorney General;
3. Failure to consider or decide whether the Plaintiff Attorney General lacks constitutional and statutory authority to bring a private action for tort damages;
4. Failure to consider or decide whether any Plaintiffs are beneficiaries of the 2000 James Brown Irrevocable Trust and therefore have standing to bring this action;
5. Failure to consider or decide whether the Plaintiff Attorney General may proceed in this action with private counsel without appearance by staff attorney;
6. Failure to consider or decide whether the same issues involved in this action are before the South Carolina Supreme Court in the appeal of Case No. 1647.

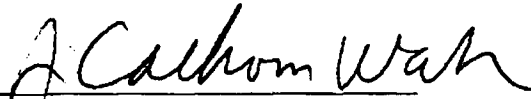
This motion is based on the pleadings and orders entered in this action and on the applicable law.

JETER & WILLIAMS, P.A.



By: Daryl L. Williams.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
Attorneys for Defendant Adele J. Pope

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



By: J. Calhoun Watson
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Telephone: 803-929-1400
Facsimile: 803-231-7889
Attorneys for Defendant Robert L. Buchanan, Jr.

November 19, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 2010-CP-40-4900

**DEFENDANTS' NOTICE OF MOTION
AND MOTION PURSUANT TO SCRP
RULE 59(e) TO ALTER OR AMEND
ORDER DENYING MOTION TO
CHANGE VENUE**

2010 NOV 16 PM 3:56
JEANETTE
C.C. HIDE

TO: ALL PLAINTIFFS AND THEIR ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned counsel, will move before the Honorable L. Casey Manning, judge of the Richland

County Court of Common Pleas, at ten o'clock a.m. (10:00) on the tenth (10th) day after service hereof at his chambers in the Richland County Judicial Center, Columbia, South Carolina, or at such other time and places as may designated, for an Order pursuant to SCRCP 59(e) to alter or amend the Order Denying Defendants' Motion to Change Venue entered November 9, 2010 and notice of entry of which was first received by counsel on November 9, 2010. This motion is based on the pleadings and orders entered in this action and on the applicable law. In addition, Defendants will submit a Memorandum of Law further detailing the grounds for this Motion prior to the hearing of this matter.

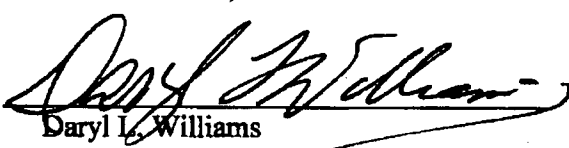
SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

J. Calhoun Watson
1314 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Robert L. Buchanan, Jr.

JETER & WILLIAMS, P.A.

By: 

Daryl L. Williams

1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
(803) 765-0600

Attorney for Defendant Adele J. Pope

Columbia, South Carolina
November 19, 2010

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

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

REC'D
FILED
2011 FEB 16 PM 4:13
CLERK OF COURT
RICHLAND COUNTY
S.C.

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

and

ALAN WILSON,¹ in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Plaintiffs,

v.

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

OF WHOM:

Adele J. Pope is the Appellant.

NOTICE OF APPEAL

¹ Pursuant to Rule 265(d), Petitioner has updated the caption to reflect the new Attorney General. It is unclear whether Russell L. Bauknight, who is designated in the complaint as acting "on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina" has been authorized to act on behalf of Attorney General Wilson.

Appellant Adele J. Pope appeals the following Orders of the Honorable L. Casey Manning in the above matter:

1. Order Denying Motion to Dismiss, dated November 8, 2010;
2. Order Denying Motion to Change Venue, dated November 8, 2010;

and

3. Order Denying Defendants' Motions to Alter or Amend, dated January 7, 2011 and filed January 12, 2011.

The Order Denying Defendants' Motions to Alter or Amend was received by Appellant on January 18, 2011.

A copy of each of said Orders is attached hereto and made part of this Notice of Appeal.



Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

February 16, 2010

Attorneys for Appellant

Other Counsel of Record:

**Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
Sweeney, Wingate & Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233**

Attorneys for Plaintiff-Respondents.

**J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211**

Attorneys for Respondent Robert L. Buchanan, Jr.

)
) IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-4900

2011 MAY 19 PM 1:07
C.C.P. & G.S.

**DEFENDANT ADELE J. POPE'S
MOTION TO DISQUALIFY
AND/OR ENJOIN SWEENEY,
WINGATE & BARROW FROM
REPRESENTING STATE OF
SOUTH CAROLINA OR
ATTORNEY GENERAL; TO
ENJOIN RUSSELL
BAUKNIGHT; TO AMEND
ANSWER FOLLOWING
DEPOSITIONS AND TO SET
DEPOSITIONS IF REQUIRED**

Plaintiffs,

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

0412

You will please take notice that ten days after the service hereof, or as soon thereafter as counsel may be heard, and based on filings in Aiken County and the Supreme Court of South Carolina on or about May 4, 2011, an Inventory and Appraisal valuing (for the first time in the four years and four months since his death) James Brown's worldwide musical empire at \$4,697,736 – less than 1/12 of its \$84 Million fair market value – and prior filings herein, Defendant/Counterclaimant Adele J. Pope will move before the presiding judge at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201 for an Order and injunction as follows:

- a. Disqualifying Sweeney, Wingate & Barrow (the "Sweeney Firm") as counsel for the Attorney General of the State of South Carolina (and the State of South Carolina) herein, and/or enjoining the Sweeney Firm from purporting to represent or representing the Attorney General or the State of South Carolina in this case;
- b. Enjoining Bauknight purporting to as agent for the Attorney General or the State of South Carolina;
- c. Dismissing the Attorney General and/or the State of South Carolina as a party plaintiff to this action;
- d. Setting a day certain for the depositions of former Attorney General McMaster and Attorney General Wilson should they not appear for their depositions; and
- e. Following the depositions of former Attorney General McMaster and Attorney General Wilson, granting Defendant leave to amend her answer and counterclaims and/or crossclaims, including the addition of other parties, consistent with such deposition testimony and/or the additional damages caused by Terry Brown, Bauknight, AG Jones and others in connection with the sworn devaluation of the James Brown assets to less than 1/12 of their actual value and the false allegations associated therewith.

The grounds of this motion are:

1. The contingency-fee contract entered into by former AG McMaster and the Sweeney firm, in which McMaster seeks money damages against Defendants for himself and private individuals, is illegal and void, and violates the Due Process and First Amendment rights of Defendants, rendering

the Sweeney Firm unable to represent or speak for the State of South Carolina.

2. The Sweeney Firm has an irreconcilable conflict of interest in representing the State of South Carolina and its AG, whose duty it is to protect private foundations while simultaneously representing Terry Brown in his attempt to purchase James Brown's worldwide music empire for less than \$5 Million, reducing the "I Feel Good" Trust from the \$80 Million James Brown gave to it to less than \$1 Million, as follows:

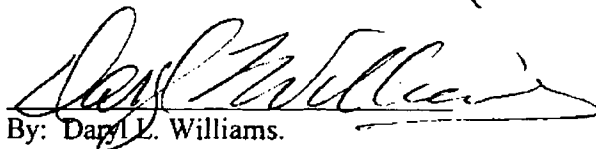
a. To Brown's disinherited companion (18.96%)	\$1,128,775
b. To children and claimed children Brown specifically excluded from his music empire (4.79% x 7)	\$2,000,390
c. To the Family Education Trust, rewritten by McMaster	\$2,000,000
d. To The James Brown "I Feel Good" private foundation (47.5% LESS \$2 Million)	\$ 827,292

3. Russell Bauknight, who carried out the massive devaluation of Brown's assets for the Benefit of Terry Brown should be enjoined from purporting to speak as agent for the State of South Carolina or its Attorney General.

8. To the extent the contingency fee contract with AG McMaster gives the Sweeney Firm authority to act as an agent of the State of South Carolina, on information and belief, McMaster and the Sweeney Firm have an impermissible financial stake and interest in this case, and further, a constitutionally impermissible motivation to use the power of the State to seek money damages for their private co-plaintiffs.

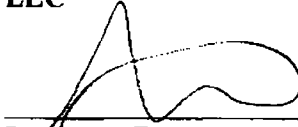
This motion is based on the Affidavit of Adele J. Pope dated May 18, 2011 filed herewith, with Exhibits, including "Private Foundations, Copyright Heirs and Musical Millionaires:..." (April 2011 draft) and Chart C attached hereto; all prior motions and filing of Defendants in this case; and such additional information as shall be presented to the Court prior to the hearing on this matter.

JETER & WILLIAMS, P.A.



By: Daryl L. Williams.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

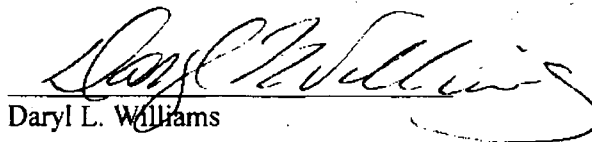
**LAW OFFICE OF ADAM T. SILVERNAIL,
LLC**



By: Adam T. Silvernail
1218 Taylor St.
Columbia, South Carolina 29201
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Attorneys for Defendant Adele J. Pope

May 18, 2011

The undersigned hereby certifies pursuant to SCRCP 11 that conferring with opposing counsel would serve no useful purpose.



Daryl L. Williams

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

2011 JUN - 1 PM 12:13
MOTION TO COMPEL
DISCOVERY
(Deposition of Terry Brown)

TO: THE PLAINTIFF TOMMIE RAE BROWN AND HER COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as

soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRPC, and all applicable South Carolina Rules of Civil Procedure, for an order compelling Plaintiff Terry Brown to appear at the deposition currently noticed for 10:30 a.m. on June 14, 2011 at the offices of Sowell Gray Stepp & Laffitte, L.L.C., 1310 Gadsden Street, Columbia, South Carolina 29201 (or at such other date and time as the Court shall Order); awarding this Defendant Pope costs, including attorneys' fees, of this motion, and such other sanctions as the Court shall deem proper.

The grounds for this motion are as follows:

1. Plaintiffs, including Terry Brown, filed this action on May 19, 2010.

Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.¹

2. On April 29, 2011 counsel for Defendant Pope noticed the deposition of Plaintiff Terry Brown for June 14, 2011 in Columbia. Counsel for Defendant Pope enclosed with the notice of deposition a letter offering to extend courtesies to Plaintiffs and their counsel in selecting an alternate date, if necessary.

3. On May 5, 2011 counsel for Plaintiffs responded, indicating that he was "conferring with co-counsel" regarding the scheduling of the deposition.

4. On May 17, 2011 counsel for Defendant Pope inquired via email whether Plaintiffs' counsel had come to a consensus on scheduling the depositions.

5. On May 19, 2011 counsel for Plaintiffs advised that he was "[s]till working on

¹ Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

it."

6. On May 26, 2011 counsel for Defendant Pope again asked Plaintiffs' counsel whether the scheduled dates were workable and requested that Plaintiffs' counsel immediately provide alternative dates if June 22, 2011 did not work.

7. Also on May 26, Plaintiffs' counsel responded, stating that Terry Brown would not appear on the noticed date and providing no alternative dates for her deposition.

8. Nearly a month has elapsed since Defendant Pope noticed the deposition of Tommie Rae Brown and offered to accommodate Plaintiffs' counsel with scheduling on an alternate date, if necessary. To date, Plaintiffs have not proposed a single alternate date, but have unequivocally stated that Ms. Brown will not appear at the noticed deposition.

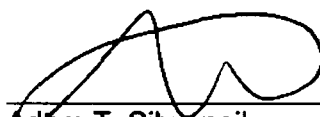
9. This case has been pending for more than a year, and no depositions have been taken. It is necessary that discovery proceed, so that dispositive motions may be heard.

10. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 30, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

The above motion is based on the South Carolina Rules of Civil Procedure, especially Rules 30 and 37, applicable case and statutory law, the Affidavit of Adam T. Silvermail, filed herewith, the Affidavit of Adele J. Pope to be filed in support of this motion, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

May 27, 2011

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

RETURN AND OPPOSITION TO
PLAINTIFFS' MOTION
FOR A PROTECTIVE ORDER
AND/OR MOTION TO QUASH
DEPOSITION NOTICE OF
LINDSEY DELORES BROWN

FILED
2011 JUN 23 PM 1:45
CLERK OF COURT
C.C.P. & G.S.

TO: ALL PARTIES AND/OR THEIR COUNSEL OF RECORD.

Defendant Adele J. Pope responds to the Motion of Lindsey Delores Brown for a

protective Order and/or Motion to Quash Deposition Notice of Lindsey Delores Brown to be held at 10:00 a.m. on August 30, 2011 at 1218 Taylor Street, Columbia, South Carolina as follows:

1. The two grounds stated by Lindsey Delores Brown to oppose and/or delay her deposition do not exist.
2. Lindsey Delores Brown gives no reason why she cannot appear at a deposition scheduled with more than 5 weeks' notice.
3. At the time she filed the motion on June 21, 2011, Lindsey Delores Brown had knowledge that Defendant's counsel has never attempted to prevent Sweeney Wingate & Barrow from appearing in this matter as counsel for Lindsey Delores Brown.
4. Lindsey Delores Brown was given adequate notice and an opportunity to schedule an alternate date before the deposition was noticed for August 30, 2011 in Richland County, South Carolina.
5. On information and belief, by filing this case in Richland County, Lindsey Delores Brown is subject to the jurisdiction of this Court and to being deposed here.
6. Defendant's counsel began trying to schedule depositions of Plaintiffs in or about April, 2011 and to date, Plaintiffs, including Lindsey Delores Brown, have declined to appear or propose alternate dates for their depositions.
7. But for the deposition of Lindsey Delores Brown, Defendant Pope is ready to proceed with dispositive motions as to both the claim of Lindsey Delores Brown and the counterclaims against Lindsey Delores Brown herein.

Plaintiff Lindsey Delores Brown's motion should be denied and the deposition should proceed as noticed on August 30, 2011 or at an alternate date and time set by the

Court.

This return is based on the South Carolina Rules of Civil Procedure, including Rule 30; the Affidavit of Adele J. Pope filed herewith and such additional affidavits, memoranda or other filings as shall be presented prior to the hearing.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

By: 

Adam T. Silvernail - SC Bar #80219
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

June 22, 2011

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40,4900

2011 JUL -5 AM 11:26
JENNIFER H. POPE
C.C. # 65.

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
VARIOUS DOCUMENTS REQUESTED
BY DEFENDANT ADELE J. POPE**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

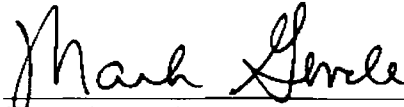
The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17, 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

July 1, 2011

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMAN BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

Defendants.

)
) IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-4900

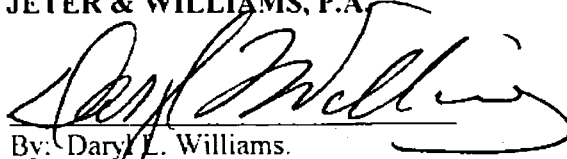
**FIRST REQUEST TO PRODUCE
FROM DEFENDANT ADELE J.
TO PLAINTIFF RUSSELL L.
BAUKNIGHT**

TO: PLAINTIFF RUSSELL L. BAUKNIGHT AND HIS ATTORNEY:

Defendant Adele J. Pope hereby requests the production of the following documents and tangible things pursuant to Rule 34 of the South Carolina Rules of Civil Procedure within thirty (30) days from the date of service hereof:

1. All items received in response to the attached May 23, 2011 letter from Mr. Bauknight's attorney William Y. Klett, III, Esquire, to Raymond G. Gonzalez, Esquire, Shackelford, Zumwalt & Hayes, LLP, including both paper and electronic files in the format received by Mr. Bauknight.

JETER & WILLIAMS, P.A.



By: Daryl L. Williams.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

Adam T. Silvermail, Esquire
Law Office of Adam T. Silvermail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

Attorneys for Defendant Adele J. Pope

May 26, 2011

NEXSEN|PRUET

William Y. Klett III
Member
Registered Patent Attorney
Admitted in SC, DC, TX, CO

May 23, 2011

VIA ELECTRONIC (rgonzalez@shacklaw.net) AND U.S. MAIL

Raymond G. Gonzalez, Esquire
Shackelford Zumwalt & Hayes, LLP
1014 16th Ave. South
Nashville, Tennessee 37212

Re: Request for James Brown - related client files
Our File No.: 44146-4

Dear Mr. Gonzalez:

I represent Russell Bauknight, the Personal Representative of the Estate of James Brown, as well as the Trustee of the James Brown 2000 Irrevocable Trust. I have attached for your reference a Certificate of Appointment dated May 29, 2009 from the Aiken County Probate Court evidencing Mr. Bauknight's position

Charleston
Charlotte

Columbia

Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

The purpose of this correspondence is to request on behalf of Mr. Bauknight a return of all client files that you and your firm may have in your possession relating to representation of Mr. Brown or his related business. In addition to all personal files related to James Brown, including all files related to his life, business, intellectual property, musical recordings, tax matters, and his likeness, persona, or image, I would appreciate, on behalf of the Estate, return of all other files related to the following:

James Brown Enterprises
The New James Brown Enterprises
James Brown Royalty Venture ISPC
Universal Music Group
Dynatone
Cited
Tansoul
Golo
James Brown, LLC
Geronimo

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.253.8205
F 803.727.1452
E WKlett@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

May 23, 2011
Page 2

Intrigue Music Management
DGC Associates
Godfather of Soul Entertainment
James Brown Music Education Foundation
Music Royalty Band prepared by the Phillman Group

This list should not be considered exhaustive.

Please note that this request is not limited to paper files, and all electronic files should be returned via a portable hard drive in native unaltered data format. I look forward to receipt of the requested files.

Sincerely,

A handwritten signature in black ink, appearing to read "William Y. Klett III", with a stylized flourish at the end.

William Y. Klett III

WYK/amc
Attachment: Certificate of Appointment

MAY 29 2009

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF AIKEN

IN THE MATTER OF James Brown

CASE NUMBER 2007-ES02-0056

CERTIFICATE OF APPOINTMENT

This is to certify that

Russell L. Bauknight

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☒ TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST

in the above matter and that this appointment, having been executed on the 26th day of May, 20 09, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: None.

Executed this 26th day of May, 20 09

Sam H. Roe

Aiken County, Probate Court Judge

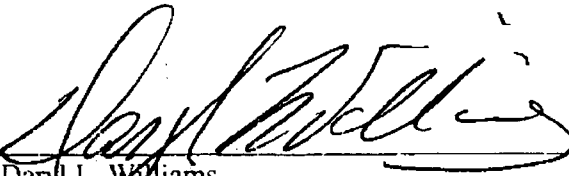
Do not accept a copy of this certificate without the raised seal of the Probate Court.

19th January 11
Sam H. Roe
JUDGE OF PROBATE
K. Gelfing

CERTIFICATE OF SERVICE BY MAIL

I, Daryl L. Williams, of Jeter & Williams, P. A., attorneys for the Defendant Adele J. Pope, do hereby certify that on the date noted below the foregoing document, was served on counsel of record by placing a copy thereof in the United States Mail, postage prepaid, addressed as noted below.

Dated Mailed: **May 26, 2011**


Daryl L. Williams

Mailed To:

Mark V. Gende, Esquire
Sweeney, Wingate & Barrow
PO Box 12129
Columbia, SC 29211

Attorney for the Plaintiffs

J. Calhoun Watson, Esquire
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Robin A. Braithwaite, Esquire
Braithwaite, Farmer, Boni & Timmerman
P. O. Box 324
Aiken, SC 29802

Attorneys for Defendant Robert L. Buchanan, Jr.

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

MOTION TO COMPEL
PRODUCTION OF CONTINGENCY-
FEE CONTRACT AND RELATED
DOCUMENTS PRIOR TO HEARING
ON MOTION FOR INJUNCTION

2011 JUL 28 PM 2:50
CLERK OF COURT

TO: THE PLAINTIFFS, DEFENDANT ROBERT L. BUCHANAN, JR. AND/OR THEIR
COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move for an order compelling the above-named Plaintiffs to produce the following documents before this Court hears Defendant Pope's pending Motion for injunctions against Plaintiff Russell L. Bauknight and Kenneth B. Wingate and Sweeny Wingate & Barrow, P.A. (collectively, "Wingate") from attempting to act for the Attorney General ("AG") and/or the State of South Carolina (collectively, the "State") while serving all private plaintiffs ("Private Plaintiffs"):

1. The James Brown Legacy Trust under which Bauknight asserts status in the complaint;
2. Any authorization under which Bauknight is authorized to act for the current or former AG;
3. Wingate's contingency-fee contract with Private Plaintiffs and/or the AG/State.

The Grounds of this motion are as follows:

1. That Defendants have sought these and other relevant documents since October 12, 2010.
2. Wingate, Bauknight and Private Plaintiffs have refused to produce these and other documents and 8 Private Plaintiffs have refused to appear at depositions, obstructing Defendant's efforts to obtain these critical documents.
3. Plaintiffs' refusal to produce these critical documents is wholly inconsistent with the policy of the AG as stated in Public Official's Guide to the Freedom of Information Act (FOIA) in which he states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information
...When in doubt, release the document

4. Issues of the use of the name and power of the State in violation of Defendant Pope's constitutional rights are at issue in this case, and Plaintiffs should not be allowed to conceal the authority under which Bauknight and Wingate purport to act for the State

4. On or about May 18, 2011, Defendant Pope moved to enjoin Russell L. Bauknight from attempting to act as agent for the State of South Carolina and to enjoin Wingate from representing the State jointly with the dozen-or-more Private Plaintiffs. Defendant Pope does not challenge, and has never challenged, Wingate's representation of Private Plaintiffs in this action.

5. On or about June 30, 2011, Defendant Pope made a FOIA request for these documents from Bauknight as Trustee of the James Brown Legacy Trust and also of the AG. Counsel for Defendant Pope sent a courtesy copy of the requests to Wingate. The time for the AG to respond has not elapsed, but on or about July 15, 2011, Pope received the response attached as Exhibit A from David Black, who represents Bauknight in other matters.

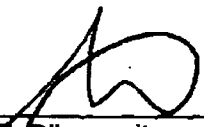
6. On July 13, 2011 a status conference was held before the Honorable Alison Renee Lee, wherein Judge Lee indicated that she would seek to schedule the motion for injunctions against Wingate and Bauknight for hearing as soon as possible and, in any event, before other pending motions in this action.

This motion is based on the United States Constitution; the Affidavit of Nathan Crystal on behalf of the Plaintiff in the case of *AstraZeneca vs. Wilson, as Attorney General*, Spartanburg County Case No. 2011-CP-42-1213, and the entire file in that action, of which the Court is asked to take judicial notice; the entire record herein; and

such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvermaillawfirm.com

July 26, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT A

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

July 15, 2011

VIA US MAIL

Adele J. Pope, Esquire
1228 Walnut Street
Newberry, South Carolina 29108

**Re: Request for Documents under the South Carolina Freedom of
Information Act**

Dear Ms. Pope,

I am writing you in reference to your June 30, 2011 South Carolina Freedom of Information Act (FOIA) request for "The final and all drafts, signed and unsigned, of the James Brown Legacy Trust" (James Brown Trust).

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

As you are aware, for FOIA purposes, the James Brown Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 33-40-20(a). Accordingly, your request for public records is improper.

Furthermore, even in the event that such request were proper, the documents that you have requested are exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(7) as the FOIA request calls for the production of Attorney Work Product and Attorney Client Privileged Materials related to ongoing litigation.

Please be advised that FOIA is not intended as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers*, 2002-CP32-1890 (Order of Judge Westbrook, 11th Jud. Cir., 2002) (citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975); *U.S. v. Murdock*, 548 F.2d 599, 602 (5th Cir. 1977); *Fruehauf Corp. v. Thornton*, 507 F.2d 1253, 1255 (6th Cir. 1974)).

In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2072
F 803.727.1408
E DBlack@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Adele J. Pope, Esquire
July 15, 2011
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. David Black', with a long horizontal flourish extending to the right.

J. David Black

JDB/JGH

cc: James B. Richardson, Jr., Esquire
Russell L. Bauknight

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-404900

2011 JUL -5 AM 11:26
DEANETTE W. MCGRIDD
C.C.P. & G.S.

**PLAINTIFF RUSSELL L.
BAUKNIGHT'S RESPONSES TO
DEFENDANT ADELE J. POPE'S
SECOND SET OF REQUESTS FOR
PRODUCTION, INCORRECTLY
DESIGNATION BY POPE AS HER
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

TO: DEFENDANT POPE AND HER ATTORNEYS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute

Russell L. Bauknight's Responses to Defendant Pope's Second Set of Requests for Production of

Documents, incorrectly designation as her First Set of Requests for Production of Documents.

1. All items received in response to the attached May 23, 2011 letter from Mr. Bauknight's attorney William Y. Klett, III, Esquire, to Raymond G. Gonzalez, Esquire, Shackelford, Zumwalt & Hayes, LLP, including both paper and electronic files in the format received by Mr. Bauknight.

RESPONSES:

Plaintiff Bauknight objects to this request as overbroad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff Bauknight also objects to the extent that the instant request seeks documents protected by the attorney-client privilege or Work Product doctrine. Further, the instant request is based upon a privileged client communication which was improperly transmitted to Defendants by Mr. Gonzalez. Plaintiff Bauknight has demanded that all copies of the referenced communication be retrieved. Mr. Gonzalez has demanded return of the privileged May 23, 2011 client communication, which demand has been refused by Defendants. Such refusal by Defendants will be addressed by separate motion in this action, as well as with the appropriate disciplinary authorities.

Subject to the preceding objections, as well as the objections set forth in counsel's June 17, 2011 correspondence, should any nonprivileged documents responsive to Defendants' requests relevant to the instant case be discovered, such documents shall be produced.

(Signature page to follow)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

Mark Gende /ch

Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
June 24, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

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

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and

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)

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

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Plaintiffs.

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v.

)

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

)

Defendants.

)

)

TO: ALL PARTIES AND/OR THEIR COUNSEL OF RECORD.

Defendant/Counterclaimant Adele J. Pope opposes Plaintiffs' Motion for Protective

Order because her discovery requests to date do not seek any confidential documents and/or for one or more of the reasons set forth below:

1. Plaintiffs' request for a confidentiality Order in June 2011, more than a year after the case was commenced, is unreasonable because more than 50 parties and non-parties have reviewed, had access to and/or disseminated the requested documents without executing the proposed confidentiality agreement.¹

2. Some Plaintiffs have lacked candor with the Court, failing to disclose they have argued correctly in Georgia and South Carolina Courts that all confidentiality and privilege have been waived as to most documents.²

3. The Court's Order dated August 10, 2007 in Case 122 made all James Brown, James Brown Estate and 2000 Irrevocable Trust documents generated on or before August 10, 2007 available to all Interested Persons, who were allowed to copy and keep all such documents.

4. The Tommie Rae Hynie Brown domestic file was opened and made public in Cases 122 and 322 and parts are contained within the record on appeal. It is also part of

¹ Some of those who have viewed, had access to, and/or disseminated the documents without signing the proposed confidentiality order are David G. Cannon, Albert H. Dallas, Esq., Sandra Matthews, William F. Hammond, Esq., C. Havird Jones, Esq., Mary Frances Jowers, Esq., Keith Babcock, Esq., S. Alan Medlin, Esq., Robert N. Rosen, Esq., Louis Levenson, Esq., David B. Bell, Esq., Daryl J. Brown, Larry Brown, Terry Brown, Deanna Brown Thomas, Yamma N. Brown, Forlando Brown, Romunzo Brown, Venisha Brown, Tonya Brown, Tommie Rae Hynie Brown, Jason Brown Lewis, Lindsey Delores Brown.

² See proper arguments of Louis Levenson, Esq., in Case 122 and before Ga. Court on behalf of Plaintiffs Daryl, Deanna, Yamma and others that privilege as to the Brown Historical Documents directed to be released under the August 10, 2007 Order of the Hon. Doyet A. Early, III, once waived, could not be reasserted.

the documents directed to be made, and made available, to all Interested Persons pursuant to the August 10, 2007 Order of Judge Early.

5. The Greenberg Traurig file was specifically made available and all confidentiality waived pursuant to the August 10, 2007 Order of Judge Early.

6. At the request of some Plaintiffs, the Estate Tax Return and Inventory & Appraisement, originally filed under seal, were made public in Case 322, as was every document presented in any James Brown case in Aiken County.

7. The Cannon and Dallas claim/collection files are directly relevant to the allegation in Plaintiffs' complaint that Buchanan and Pope failed to timely settle the debts of the estate and the counterclaim which alleged Bauknight was negligent, reckless or willful in unreasonably failing to complete the claims litigation. [See Complaint/CC.].

8. Bauknight's appraisal which asserts James Brown's music empire and claim against Cannon and Dallas were worth less than \$4.7 Million at his death are not confidential because they have been presented to the Supreme Court of South Carolina with no claim of confidentiality [See Exhibit A].

9. Bauknight's filing his \$4.7 Million claimed valuation of James Brown's music empire under seal does not make this public document confidential.

10. The "Order" of Judge Early cited as a basis for confidentiality of the Bauknight Inventory & Appraisement either has not been issued or was issued without proper notice and hearing.

11. Where the confidentiality and all privilege was waived on or before May 26, 2009 and documents disseminated broadly, confidentiality cannot be asserted by new counsel for only some of the persons who had access a rights.

12. All documents related to the James Brown Legacy Trust, signed by a former Attorney General, are subject to disclosure under the South Carolina Freedom of Information Act ("FOIA"). And Plaintiffs' counsel has no authority to attempt to make them secret in violation of FOIA, or to bind the State of South Carolina in FOIA violations.

13. The Zumwalt Almon & Hayes file is not confidential or privileged because it was made available to numerous non-parties and counsel by valid waiver prior to May 26, 2009 and it directly relates to the false allegation by Plaintiffs that Buchanan and Pope violated their fiduciary duty as follows:

18. . . .

(b) Failing to engage necessary advisors and appraisal assistance . . .

(c) Failing to use due diligence in pursuing business opportunities for the estate and trust;

(d) Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability.

. . . . [Complaint, p. 6]

and allegations against Bauknight by Buchanan and Pope that he acted negligently or wilfully by:

(iii) In unreasonably making false and unsupported allegations against Defendants after testifying to the contrary

. . . .

(x) In unreasonably recommending the proposed determination of heirs with insufficient understanding of the federal copyright law implications

(xi) In unreasonably recommending the proposed settlement which Defendants are informed and believe result in more than \$50 Million of damage to the Estate and Trust, taking more than 65% of Brown's assets from Brown's estate plan.

14. The appraisal and all correspondence with the IRS related to Bauknight's presentation to the IRS of a \$6.5 Million valuation of Brown's Estate and Trust is not confidential and is relevant for the reasons set forth above and the complaint's allegations of:

(d) Failing to use due diligence in determining the value of the estate

15. One year after this action was commenced, Plaintiffs' counsel has not reviewed or in good faith determined that any single document contains information protected from disclosure by statute or contains sensitive personal information, trade secrets, or confidential investigation, development or commercial information [p. 2, proposed Order]. Nor does this Defendant/Counterclaimant seek any such information. She seeks only documents which Plaintiffs and others have seen without signing such an Order.

16. Counsel for the individual Plaintiffs, including Bauknight, has no authority to bind the Attorney General of South Carolina in a confidentiality order.

17. Plaintiffs should be directed to produce – at a minimum – all documents requested from the million pages of James Brown documents which are not confidential.

18. Plaintiff's Motion to Compel Discovery file June 7, 2011, which is incorporated herein by reference, outlines how Plaintiffs have evaded basic discovery since October 11, 2010, and raise the issue of a confidentiality agreement only as a delaying tactic.

19. Plaintiffs have presented no evidence that any Plaintiff has been requested to sign, or signed, an Acknowledgment of Understanding and Agreement to be Bound to the confidentiality Order proposed to Defendant Pope, such as the language contained in the now-obsolete August 6, 2008 federal Order in the Forlando Brown case, 3:08-cv-00014-WO8, binding them as follows:

The undersigned hereby acknowledges that he or she has read the [proposed] Confidentiality Order ...in the above-captioned action, understands the terms thereof, and agrees to be bound byu such terms. The undersigned submits to the jurisdiction of the United States District Court for the District of South Carolina 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.

20. Plaintiff Deanna B. Thomas, and others, along with their agents, have openly discussed the assets, business information, and value of the James Brown assets, including the appearance of Thomas on national television to discuss the \$100 Million value (\$85 Million after the TIAA debt) placed on the Brown assets by all fiduciaries prior to Bauknight.

21. Plaintiffs current counsel, Sweeney, Wingate & Barrow, was not counsel in prior James Brown Estate/Trust litigation, and to date has failed to sign any certification that a single document is or should be subject to a confidentiality designation such as was contained in the now-obsolete August 6, 2008 federal order as follows:

**CERTIFICATION BY COUNSEL OF DESIGNATION
OF INFORMATIONAS CONFIDENTIAL**

Documents produced herewith [whose Bates numbers are listed below (or) which are listed on the attached index] have been marked CONFIDENTIAL, subject to the (proposed) Confidentiality Order entered in this action

By signing below, I am certifying that I have personally reviewed the marked documents and believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order...

....I understand that by completing this certification I am submitting to the Jurisdiction of the United States District Court for the District of South Carolina as to any matter relating to this certification.

22. Plaintiffs counsel has failed to accept the onus – even though they have had 10 months to do so – of identifying which, or how many, documents they claim are confidential, or to insert a paragraph such as Paragraph 3 of the now-obsolete federal Order of August 6, 2008, as follows:

3. Documents Which May be Designated Confidential. Any party may

designate documents as confidential but only after review by an attorney³ who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form Attached hereto as Attachment A [CERTIFICATION BY COUNSEL OF DESIGNATION OF INFORMATION AS CONFIDENTIAL] which shall be executed subject to the standards of Rule 11 of the Federal Rules of Civil Procedure. Information or documents which are available in the public sector may not be designated as confidential.

23. The proposed confidentiality order failed to contain a **Reading Room** provision such as was contained in the now-obsolete federal order of August 6, 2008 which would "facilitate timely disclosure of large number of documents which may contain confidential documents, but which have not yet been reviewed and marked", such as this Case. Such a provision would require Plaintiffs' counsel to establish a controlled location ("Reading Room") prior to designating any document as confidential; maintaining a log of all persons who have reviewed documents in the Reading Room and the dates and times of their presence; and other information to insure that the "CONFIDENTIAL" designation not be abused.

24. Plaintiffs' counsel has taken no steps to insure, as required in the now-obsolete federal order of August 6, 2008 that CONFIDENTIAL documents, if any, be protected as follows:

...a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or or any other persons identified below ...for any purpose whatsoever other than

³ The attorney who reviews the documents and certifies them to be CONFIDENTIAL must be admitted to the Bar of at least one state but need not be admitted to practice in the District of South Carolina and need not apply for *pro hac vice* admission. By signing the certification, counsel submits to the jurisdiction of this court in regard to certification.

preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

25. Plaintiffs have failed to mark as CONFIDENTIAL documents which they have disseminated to others and filed with the Supreme Court and which have been filed elsewhere, including in this case.

26. Plaintiffs have failed to acknowledge that, especially where public documents are involved, confidentiality is not favored, and providing a mechanism for challenging any claimed confidential documents should be included in any Order directing confidentiality, as for, example, paragraph 9 of the now-obsolete federal order of August 8, 2008:

9. 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 remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice of 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 the 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 challenges to the designation of documents as confidential, all material previously designated CONFIDENTIAL [Note: As certified by counsel] shall continue to be treated as subject to the full protection of this Order until one or more of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing

27. Plaintiffs, by their eleventh hour suggestion of a Confidentiality Order to which none of them have been bound for more than two years – and which does not subject them

– or those who disclose CONFIDENTIAL documents – to the jurisdiction of the Court, are attempting to place an extraordinary burden on Defendant with no burden on themselves, as shown by the following chronology:

August 10, 2007	Order of Judge Early makes 90 boxes of documents available to Plaintiffs, Defendants and all other Interested Persons, <u>including files of Greenberg Traurig, and others.</u> Interested persons copy and disseminate at will. Confidentiality and work product waived by then-PR /Trustees Dallas and Bradley.
2007 - 2009	Complete Hynie/James Brown domestic record reviewed and disseminated, along with records of Yamma/Deanna suit against James Brown, and other records.
August 6, 2008	Federal Court Confidentiality Order creates Reading Room and small number of Confidential Document are certified by counsel for Trustees. Subsequent events render these designations obsolete.
November 2008	Confidentiality Order related to Estate Tax Return. It becomes obsolete when made a part of record and ROA in Case 1647.
2009	Most Plaintiffs ask that the entire record of all James Brown Aiken cases be made part of the record of Case 1647. No objection made, and tens of thousands of pages [now in custody of Bauknight] become part of record without confidentiality order.
January 2009	Bauknight and others have access to entire Estate/2000 Trust file.
2009-2010	Estate Tax Return and approximately \$85 Million value of Estate/2000 Trust part of discussion and ROA (without confidentiality Order) in Case 1647 Appeal. Original Inventory & Appraisal becomes part of ROA in various appeals.
May 26, 2009	Only the CORBIS settlement papers from January 2009 remain confidential.
May 26, 2009	Case 1647 Order replacing Buchanan/Pope without cause is issued. Bauknight named, subject to appeal which is pending.

May 26 - June 22, 2009	Buchanan/Pope deliver, without confidentiality request, approximately 150 boxes of documents to Bauknight, who agrees they will remain available for inspection and copying until the conclusion of the Case 1647 appeal (still pending). [See Custody receipt filed by Plaintiff Bauknight in this Case.]
May 19, 2010	Plaintiffs, who, with others, have had access to documents for a full year without signing the proposed confidentiality agreement, commence this action asserting breach of fiduciary duty of Buchanan and Pope. Appraisal, Valuation and Tax issues are primary components of both Complaint and the Answer and Counterclaim of Buchanan and Pope.
Oct. 10, 2010	Pope serves first of several requests to produce of Pope/Buchanan. [Plaintiffs also serve discovery with which Buchanan and Pope fully comply.]
Nov. 12, 2010	Plaintiffs advise Defendants' counsel documents requested by Pope are "being compiled"
Nov. 16, 2010	Pope responds fully to document request of Plaintiffs (50 pages), noting that many of the necessary documents for trial are in current custody of Russell Bauknight under the June 2009 Custody Agreement. Buchanan also responds fully to all discovery.
Nov. 2010 - April 29, 2011, and since -	Plaintiffs fail to produce documents.
April 29, 2011	Pope's counsel begins effort to see the documents Plaintiffs failed to produce.
May 6, 2011	Bauknight files information about his under-\$6.5 Million appraisal of the James Brown assets and his IRS filing with Supreme Court. Does not seek protective order.
May 6, 2011	Plaintiffs counsel notifies Pope's counsel he will have date for document review "shortly"
May 19, 2011	Counsel for Defendant Pope again writes counsel for Plaintiffs to seek to review responsive documents.

May 26, 2011	Counsel for Defendant Pope again writes requesting date to review documents.
June 7, 2011	Based on complete failure of Plaintiffs to comply, Pope files Motion to compel Bauknight and others to comply with discovery requests.
June, 2011	Plaintiffs assert they will comply, then produce proposed confidentiality order without certification that any document is CONFIDENTIAL or that any Plaintiff or counsel has signed a Certification , Acknowledgment or Consent to be censured by this court if confidentiality is violated.

CONCLUSION

Plaintiffs have for a year refused to comply with basic discovery. Some Plaintiffs have taken advantage of their new counsel, who has no experience in the James Brown proceedings, to present false representations to this Court about prior discovery in other James Brown cases.

This Defendant/Counterclaimant respectfully submits that the Plaintiffs' Motion for a Protective Order should be denied; this Defendant's Motion to Compel (and that of Defendant Buchanan) should be granted with attorneys' fees and costs; and Plaintiffs should be directed to produce all documents they or any other party or counsel has seen without signing the proposed Order.

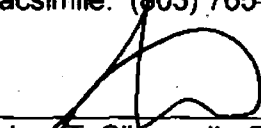
If a confidentiality Order is issued, all Plaintiffs, counsel and non-party advisors and others who have reviewed the documents which are alleged to be CONFIDENTIAL should be required to sign either a "Certification by Counsel of Designation of Information as Confidential" confirming in good faith that the document has never been disclosed to the public and is confidential, or an "Acknowledgment of Understanding and Agreement to be Bound", with signatories of both documents subjecting themselves to censure by this

Court if they disclose – or have previously disclosed – a document which is designated as “Confidential.” Such confidentiality Order should specifically exempt from any CONFIDENTIALITY all documents issued prior to May 26, 2009.

This return is based on the South Carolina Rules of Civil Procedure; the Motion to Compel (Production of Documents) filed herein; and such additional affidavits, memoranda or other filings as shall be presented prior to the hearing.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

By: 

Adam T. Silvermail - SC Bar #80219
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

July 12, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT A

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

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., 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 Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom 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 are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust w/a/d/ August 1, 2000.

**MOTION TO SUPPLEMENT THE RECORD PURSUANT TO
RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL
NOTICE OF RECORDS FILED IN A RELATED PROCEEDING**

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SOUTH CAROLINA SUPREME COURT:

Respondents respectfully request that this Court supplement the record of this appeal to include (1) Internal Revenue Service ("IRS") Federal Estate tax records that were received by Respondents after filing their initial brief on December 22, 2010, and that are related to the date of death valuation of the estate and the tax consequences of the settlement agreement and (2) the Supplemental Inventory and Appraisal of the James Brown Estate ("Estate") related to the date of death valuation and appraisal of assets for the Estate. In the alternative, this Court may take judicial notice of these documents as they were filed in the probate court or issued by the IRS in related proceedings.

FACTUAL BACKGROUND

This appeal presents a unique situation: it concerns an ongoing estate and trust that are continuing to be administered in the normal course of estate and trust administration, and matters relating to their ongoing administration are relevant to this appeal. Although the documents that Respondents seek to include in the record had not been prepared and were thus not available when the circuit court issued its May 26, 2009 Order approving the Settlement Agreement, the Supplemental Inventory and Appraisal should properly be considered in this appeal as it was filed as required by the South Carolina Probate Code in the ongoing probate proceeding, and the IRS tax records should properly be considered because they were created as a result of an independent IRS audit of the Estate.

The Supplemental Inventory and Appraisal and IRS tax records refute factual assertions that the Appellants make to support their legal positions before this Court. Because these documents provide *support* to the circuit court's decision to approve the settlement agreement, their inclusion in the record would neither undercut the circuit court's decision, nor hamper appellate review of it. *Cf. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*,

368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review.").

ANALYSIS

In their brief, Appellants argue: (1) that the settlement will cause serious tax problems for the James Brown Estate and Trust (the "Estate and Trust"); and (2) without the aid of a professional appraisal, Appellants contend that the combined Estate and Trust are worth roughly \$100 Million. Specifically, Appellants make the following misleading representations to this Court:

Tax Consequences:

- On page seven (7) of their brief, Appellants state that "the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest."
- On pages thirty-eight to thirty-nine (38-39), Appellants devote a section of their brief to argue that the settlement will cause serious tax problems. They note that the "settling parties offered no evidence to refute the evidence of a likely tax disaster. Instead, their counsel reassured the court that they were 'dedicated' to preventing it." *Id.* at 39.

Valuation:

- On page five (5), footnote five (5), of their brief, despite never having obtained a professional appraisal, Appellants state that the late James Brown's assets have been valued at roughly \$80-120 Million.
- On page thirty-two (32) of their brief, Appellants note that the trust could be funded with \$100 Million.

See Final Brief of Appellants at pp. 5, 7, 32, 38-39.

Following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, Russell L. Bauknight ("Mr. Bauknight") engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust. This is the first

professional valuation and appraisal of the James Brown music assets since James Brown passed away on Christmas Day 2006. The valuation and appraisal work is now complete. As required by S.C. Code Ann. § 62-3-706, Mr. Bauknight filed the Supplemental Inventory and Appraisal at the Aiken County Probate Court (Supplemental Inventory and Appraisal, Appendix R. pp. 1-6). To protect the Estate and Trust, Mr. Bauknight filed the Supplemental Inventory and Appraisal under seal.

Furthermore, following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, the IRS continued to conduct an independent audit involving the valuation of the James Brown Estate and Trust. The IRS Auditors reviewed all estate tax issues surrounding the James Brown Estate and Trust, including the tax consequences of the subject Settlement Agreement. The Respondents received the IRS Proposed Estate Audit Examination Report ("IRS Audit") on December 27, 2010. (IRS Proposed Estate Audit Examination Report, Appendix R. pp. 7-11). Respondents and the IRS agreed to all adjustments concerning the IRS Audit, and the Respondents received the Final IRS Estate Closing Letter ("Closing Letter") on January 31, 2011.¹ (Final IRS Estate Closing Letter, Appendix R. pp. 12-15). As noted above, the Respondents received each of these documents *after* filing their initial brief on December 22, 2010.

As noted in the IRS Audit, after reviewing the settlement agreement, the IRS specifically concluded that, pursuant to the Internal Revenue Code, the charitable deduction applied and that "[t]he charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 11). Further, the IRS

¹ Because Appellants filed the initial tax return that was subject to the audit, the IRS as a matter of course separately notified the prior fiduciaries that the incorrect estate valuation had been corrected and that the audited return had been accepted. (Appendix R. pp. 13-14). Appellants have since informed Respondents that they disagree with the IRS Final Closing Letter.

Audit found that the marital deduction applied: "[t]he marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 10). Respondents argued in their brief that this deduction would apply and that it favored a finding that the Settlement Agreement was *just and reasonable*. Final Brief of Respondents, at 35-36. (The tax return previously filed by Appellants did not seek the marital deduction.) Finally, as noted in the Closing Letter, the Settlement Agreement resulted in zero tax liability to the Estate. (Appendix R. pp. 13-14).

The IRS Audit and Closing Letter show that the IRS rejected Appellants' contention that the settlement agreement will cause additional tax liability, but instead, that the Estate is owed a \$10,000 federal tax refund due to Appellants' overpayment. (R.p. 2760 (Estate Accounting filed by Appellants, first entry on the page: "US Treasury – payment towards Estate Taxes . . . \$10,000"); (Appendix R. p. 7 ("The report, though not final, shows that the estate is entitled to a refund."); (Appendix R. pp. 12-15 (adopting audit, accepting return, and making final determination that no estate taxes are owed: "0.00.")). Additionally, these documents further underscore Respondents position that the Appellants are not professional fiduciaries and are ill-equipped to manage the Estate and Trust.

The Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter reveal that on the date of death, the James Brown Estate and Trust were actually valued at roughly \$6.5 Million.² Referring to the intellectual property—royalty interests, reversion rights, etc.—the IRS Audit revealed that, "[v]aluation of these interests was corrected to fair market value based

² The Supplemental Inventory and Appraisal accounts for only probate assets; it does not include the home of the late James Brown that is valued at roughly \$1.2 Million. That is the case because at the date of his death, the Trust owned the home and trust assets are not considered probate assets. (The Trust still owns the home.) The date of death, gross estate value reported to the IRS included the home, as both probate and non-probate assets must be reported for tax return purposes. Accordingly, the Estate and Trust were valued at roughly \$6.5 Million. (Appendix R. p. 10).

upon expert opinion and financial analysis"—that is, the independent professional appraisal authorized by Mr. Bauknight, as audited and accepted by the IRS. (Appendix R. p. 9). Consequently, the IRS rejected Appellants' prior inexperienced notion that James Brown's royalty interests and reversion rights were worth approximately \$84 Million dollars. Accordingly, the date of death valuation of these taxable interests was corrected from \$84 Million to \$4.697 Million.³ (Appendix R. p. 9). This IRS finding, based upon its own independent review and valuation, directly and incontrovertibly refutes Appellants' contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80-120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record.

Although these documents were not presented (could not be presented) to the circuit court because they did not exist at that time, this Court should consider the evidence. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000) (noting "the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice"); *see also In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) ("Normally, of course, [courts] are not required to consider evidence presented for the first time on appeal . . . [but] [i]t is within the discretion of the court . . . , however, to make limited exceptions to this

³ While this figure may appear low, it is the date-of-death value that controls for purposes of the Federal estate tax return and the probate inventory and appraisal. Furthermore, this final figure accurately accounts for the debts of James Brown including the outstanding bond executed by Mr. Brown during his lifetime whereby he exchanged the rights to his royalty stream for a lump sum payment of \$26 Million. Once the bond debt is retired, the royalty stream will flow to the Settlement Entity where it will be apportioned among the settling parties—which includes the charitable trust that will fund scholarships to needy children attending schools in South Carolina and Georgia.

rule when 'injustice might otherwise result.'" (citing and quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Here it would appear unjust for this Court to rely on Appellants' assertion that the Settlement Agreement will cause additional tax liability to the Estate when the IRS has clearly rejected that contention. Accordingly, these documents are relevant to the current appeal, as they are official records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief.

CONCLUSION

As the IRS has independently concluded, the Settlement Agreement does not create additional tax liability to the James Brown Estate. In fact, the Settlement Agreement has reduced the tax liability to the James Brown Estate. Due to the nature of the underlying proceedings, the ongoing probate record on which Appellants' base their appeal must be considered. Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission⁴ based upon their prior unsubstantiated position that the Estate was worth \$80-120 Million.

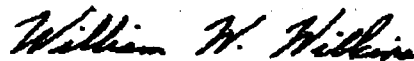
Alternatively, Respondents would respectfully request that this Court take judicial notice of these records for they were filed in a lower court or issued by the IRS in a related proceeding. See *Ins. Comm'n of S.C. v. New S. Life Ins. Co.*, 270 S.C. 612, 635-36, 244 S.E.2d 289, 301 (1978). Furthermore, pursuant to Rule 208(b)(7), SCACR, because the IRS Audit and Closing Letter were received after Respondents filed their initial brief, it would appear appropriate for this Court to recognize the IRS records as supplemental authority to Respondents' brief.

⁴ Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80-120 Million. (R. pp. 2879-80).

Respectfully submitted,



Alan Wilson
Attorney General, State of South Carolina
C. Havird Jones, Jr.
Senior Assistant Attorney General
Robert D. Cook
Assistant Deputy Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Office of the Attorney General
State of South Carolina 29211-1549
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970



William W. Wilkins
J. David Black
Fred L. Kingsmore, Jr.
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
(864) 370-2211
*Attorneys for Respondent Russell L. Bauknight, as
the Court-Appointed Trustee of the James Brown
2000 Irrevocable Trust and Personal
Representative for the Estate of James Brown and
as the Special Administrator and Special Trustee
for the Estate of James Brown and the James Brown
2000 Irrevocable Trust*

Louis D. Levenson
LEVENSON & ASSOCIATES
125 Broad Street
Atlanta, Georgia 30303
(404) 659-5000

Attorneys for James Brown Children and Grandchildren Daryl J. Brown, Individually and on Behalf of His Minor Children, Lindsey Delores Brown and Janise Vanisha 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, Carrington Lumar, and Tonya Brown; Vanisha Brown; Larry Brown

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
(843) 377-1700
Attorneys for Tommie Rae Hynie Brown

Matt Bodman
MATT BODMAN P.A.
1500 Calhoun Street
Columbia, South Carolina 29201
(803) 806-8605
Attorney for Terry Brown

Albert P. Shahid, Jr.
SHAHID LAW OFFICE, LLC
89 Broad Street
Charleston, South Carolina 29401
(843) 853-4500
Attorney for Stephen M. Slotchiver, Guardian ad Litem for James Brown II

May 6, 2011

Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

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., 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 Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom 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 are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

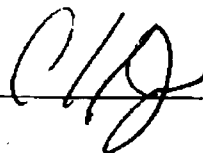
PROOF OF SERVICE

The undersigned certifies that a copy of **RESPONDENTS' MOTION TO SUPPLEMENT THE RECORD** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 6 day of May, 2011, to the address shown below.

James B. Richardson, Jr., Esquire
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

Tressa T. H. Hayes, Esquire
Post Office Box 7346
Asheville, North Carolina 28802

May 6, 2011.



**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem .. Respondents,

v.

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of whom 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 are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettit; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

APPENDIX TO THE RECORD ON APPEAL

**VOLUME 1 OF 1
(Pages 1-15)**

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STATE OF SOUTH CAROLINA

COUNTY OF: AIKEN

IN THE MATTER OF: JAMES BROWN

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2007-E902-0066

☐ ORIGINAL

☒ SUPPLEMENTAL # 1

Personal Representative(s): Russell L. Sandright

Decedent's Social Security Number: [REDACTED] Was there a will? ☒ YES ☐ NO
Decedent's Date of Death: 12/25/2006 Domicile at Death: Aiken SC
(county) (state)

The undersigned, being sworn, states: That the following schedule contains a complete and accurate inventory and appraisal of all real and personal property of the estate as far as the undersigned is informed; that he/she has estimated and appraised all listed property of its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 3rd day of

May, 2011.

Notary Public for South Carolina

My Commission Expires: 12/12

Signature: [Signature]

Name: Russell L. Sandright

Address: PO Box 1230

Columbia, SC 29203

E-mail:

Telephone (C): 803.771.8943

(H):

Signature:

Name:

Address:

E-mail:

Telephone (C):

(H):

Attorney: Fred L. Rasmussen, Jr.

Address: PO Drawer 2400

Columbia, SC 29203

E-Mail:

Telephone: 803.293.8294

For certain decedents, the gross fair market value of all assets, regardless of value, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for creating, updating or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items being appraised.

Within thirty (30) days following completion, a copy of the Inventory and Appraisal shall be sent to each interested person who requests it, and the original Inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$ 95,000.00	\$ 0
Schedule B - Stocks and Bonds	0	200,000.00
Schedule C - Notes Due Decedent and Cash	0	250,000.00
Schedule D - Insurance on Decedent's Life	0	0
Schedule E - Jointly Owned Property	0	0
Schedule F - Other Miscellaneous	118,000.00	4,812,384.00
Other Assets Payable to Estate	0	0
Schedule G - Transfers during Decedent's life	0	0
Schedule H - Powers of Appointment	0	0
Schedule I - Annuities and Retirement Accounts	0	0
TOTAL GROSS VALUE	\$ 213,000.00	\$ 5,012,384.00
ENCUMBRANCES	(0)	(0)
TOTAL NET WORTH	\$ 213,000.00	\$ 5,012,384.00

FORM 900PC (2/2004)
92-3-704, 92-3-705, 92-3-707, 92-3-708, 92-3-1303

Filed: May 4, 2011 FILED: May 4, 2011
Sup. H. Roe Judge of Probate
By: [Signature] Deputy Clerk

Form 886A (Rev. 1/89)		Department of the Treasury - Internal Revenue Service	
		Explanation of Items	
Estate of	Social Security Number	Date of Death	
James Brown		12 25 2008	
Schedule F, Other Miscellaneous Property			
	Description	Shown on Return	As Corrected
2	Royalty interests, Reversion Rights, etc.	84,000,000	4,887,736
	Total of these items	84,000,000	4,887,736
	Shown on Return		84,000,000
	Change to schedule		<79,302,264>

Item 2 - Royalty interests, Reversion Rights, Etc.
Valuation of these interests was corrected to fair market value based upon expert opinion and financial analysis. Adjustment is per section 2031, Internal Revenue Code.

**PROPOSED
ADJUSTMENTS
ONLY**

Form 8881 Rev. 3/05	EXPLANATION OF ITEMS	SCHEDULE NO. II - M
NAME OF TAXPAYER Estate of James J. Brown	DRAFT	DATE OF DEATH 12/28/2008

SCHEDULE M - MARITAL DEDUCTION	PER RETURN	CORRECTED
Item 1 - Marital Share under Estate Settlement Agreement	\$0	\$1,128,775
CHANGE TO RETURNED AMOUNT	1,128,775	XXXXXXXX
COMPUTED MARITAL DEDUCTION	\$1,128,775	\$1,128,775

The marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009.
Adjustment is per section 2055, Internal Revenue Code.

DRAFT 12/23/2010

Item 1 - Computation of Marital Share per Settlement Agreement, Approved By Court May 28, 2009

Gross Estate, including Assets of James Brown Trust u/a/d August 1, 2000		\$6,542,630
Less: Administrative Expenses, Schedule J	\$525,000	
Debts - Schedule K	64,373	
Mortgages & Liens, Schedule K	0	
Expenses: Non-claim prop. - Schedule L	0	
Federal Estate Taxes	0	
State Death Taxes	0	
	\$589,373	(589,373)
Residuary Share Computation Amount		5,953,257
Gross Percentage to Spouse	23.7500%	
Less: Share of James Joseph Brown, II	-4.7500%	
Net Percentage to spouse	18.9900%	18.9900%
Computed Amount to Spouse		\$1,128,775

DRAFT 12/23/2010

**PROPOSED
ADJUSTMENTS
ONLY**

Form 990A Rev. 999	EXPLANATION OF ITEMS	SCHEDULE II - O
NAME OF TAXPAYER ESTATE OF James J. Brown	DRAFT	DATE OF DEATH 12/28/06

SCHEDULE O - CHARITABLE DEDUCTION	PER RETURN	CORRECTED
Item 1 - Bequest of Residuary to Charitable Trust, computed below.....	\$83,989,981	\$5,953,457
Less: Federal Estate Tax.....	in above	in above
Less: State Death Taxes.....	in above	in above
SUBTOTAL.....	83,989,981	5,953,457
INCREASE/DECREASE TO AMOUNT SHOWN ON RETURN.....	(77,416,524)	XXXXX
	\$5,953,457	\$5,953,457

The charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009.
Adjustment is per section 2055, Internal Revenue Code.

COMPUTATION OF TRUST RESIDUE		
Gross Estate		\$6,542,830
Less: Administrative Expenses, Schedule J	\$825,000	
Debts, Sch. K	\$64,373	
Mortgages & Liens, Sch. K	\$0	
Marital Deduction, Schedule M	\$0	
Federal Estate Taxes	\$0	
State Death Taxes	\$0	
	\$689,373	(\$689,373)
Residuary Share Computation Amount	0	\$5,953,457
Percentage to Charitable Trust		47.5000%
Computed Amount to Charitable Trust		\$2,827,892

**PROPOSED
ADJUSTMENTS
ONLY**

DRAFT

12/23/2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-4900

JEANE L. M. McBRIDE
Clerk of Court
& G.S.

2011 AUG 11 AM 11:44

RICHLAND COUNTY
FILED

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
FEE AGREEMENT
AND/OR MOTION TO STRIKE
DEFENDANT POPE'S MOTION TO
COMPEL PLAINTIFFS' FEE
AGREEMENT**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. Fee Agreements are the epitome of privileged communication. Plaintiffs therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

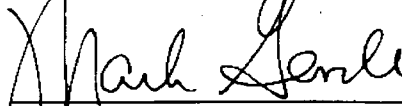
This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

The Plaintiffs also request costs and fees for the expense in bringing this Motion.

(Signature page to follow)

Respectfully submitted,

SWENY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011