

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

RECEIVED

Court of Common Pleas

JUL 30 2020

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

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. 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, Respondents.

v.

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

Of whom Adele J. Pope is Appellant.

PETITION FOR ORDER LIFTING AUTOMATIC STAY

TO THE HONORABLE CHIEF JUDGE OR AN ASSOCIATE JUDGE:

Pursuant to Rule 241 SCACR and other applicable rules and law, Appellant Adele J. Pope petitions this Honorable Court, or a Judge thereof, for an order lifting the automatic stay imposed by this appeal, and an earlier appeal in this ten-year-old case (Richland 4900). Attached hereto is copy of the Order Denying Motion of the Defendant to Lift Stay and for Related Relief of the Honorable Clifton Newman dated July 28, 2020.

Lifting the automatic stay has been important since September 2017, when Appellate Case 2017-001899 was filed with this Court.¹ That month, the trial of Aiken County Case 2013-CP-02-1337 (“Aiken 1337”) began. During the Aiken 1337 trial, which lasted until June 2018, details of the actions of Russell Bauknight, Tommie Rae Hynie and Peter Afterman since 2009 to damage Robert Buchanan, Jr. and Appellant (“Pope”) to secure about \$1 million a year and a quarter of entertainer James Brown’s music empire were revealed.²

Lifting the stay is far more urgent in 2020 where Hynie has received \$1.75 million subject to the jurisdiction of this Court; been declared not to be James Brown’s spouse; and moved to London, U.K. In addition her son James Brown II (“James”), after being awarded \$700,000.00 for litigation costs is now an adult and living in London, U.K. Further, the lower court has taken action at the request of Respondent Deanna Brown Thomas to deprive this Court of jurisdiction

¹ The Court is asked to take judicial notice of Appellant’s brief and reply brief in Case No. 2017-001899; the Court’s initial decision; and Appellant’s Petition for Rehearing filed therein on July 29, 2020.

² The Court is asked to take judicial notice of Appellant’s brief and reply brief, as well as the record on appeal (to be amended) in Appellate Case No. 2019-000362, which shows the Aiken Circuit Court’s actions and rulings between May 29, 2013 and the January and February 2019 order to support and advance the May 29, 2013 announced Plan of Hynie and Louis Levenson, Esq., on behalf of most Respondents, to disregard *Wilson v. Dallas* to , Pope v. Estate,

over approximately \$400,000 of vested termination interests under sections 304 and 203 of the U.S. Copyright Act (“Termination Interests”) in 246 copyright owned by the estate of Plaintiff/Respondent Venisha Brown (Venisha).

A summary of events showing the need to lift the stay follows.

Attempts by Respondent Hynie and James to dismember James Brown’s estate plan began fewer than six weeks after Brown’s death on December 25, 2006. Robert Buchanan, Jr. and Pope opposed Hynie’s actions, and the Attorney General’s support for Hynie’s action, from November 2007 until May 2013.

From 2009 until 2013 the AG, Hynie and Bauknight waged a bitter battle, including the filing of Richland 4900, to discredit Buchanan and Pope so that they would abandon their appeal of the AG’s 2008 settlement which became the subject of *Wilson v. Dallas*.

The 40% Wingate Contract to bring Richland 4900 was signed by Bauknight, as trustee of Respondent Legacy Trust; Alan Medlin, Esq., for Hynie; Louis Levenson, Esq., on behalf of most Richland 4900 individual Plaintiffs/Respondents; and by David Bell, Esq., for Terry Brown (Terry). Bauknight also signed as PR/Trustee under Brown’s estate plan, but his appointments to those positions were voided by the Supreme Court in 2013 in *Wilson v. Dallas*.³

If Medlin, Levenson and Bell had been able to stop the *Wilson v. Dallas* appeal with Richland 4900, they would have reaped about \$20 million in contingency legal fees for themselves.

³ The Court is asked to take judicial notice of Appellant’s Return and Opposition to Respondents’ Motion Related to Asserted Scrivener’s Error dated July 28, 2020 in Appellate Case No. 2017-001899 which addresses the overlapping claims to be James Brown’s fiduciary between May 2009 and May 2013. Also see the testimony of Respondents’ expert Tiffany Provence, Esq., about the impact of the Supreme Court’s ruling that Bauknight’s service as PR/Trustee for this 4-year period was void.

In addition, Hynie and the Attorney General, through Bauknight, would have kept 75% control of the James Brown's music empire through the Legacy Trust, as represented by SWB in the Richland 4900 complaint and other filings in 2010.

By 2011, mostly under the guidance of Hynie's counsel, Bauknight, Hynie and the Richland 4900 Plaintiffs/Respondents had begun a 9-year interference with FOIA compliance related to James Brown's documents. They repeatedly threatened lawsuits and sanctions against anyone who tried to obtain under FOIA a handful of public documents which would have brought Richland 4900 – and Hynie's claims -- to a swift end. They were: Hynie's discarded handwritten admissions that she was married and living with her first husband before falsifying a marriage license application and conducting a ceremony with Brown; the claimed Peter Afterman \$79 million devaluation of Brown's music empire to \$4.7 million; the 2011 Legacy Trust amendments and transfer by Terry Brown (Terry) of his Legacy Trust interest to son Forlando Brown (Legacy Trust); and the contingency-fee Wingate Contract that was not signed by the Attorney General or most Richland 4900 Plaintiffs.

While Hynie's counsel formulated most of the plans to discredit "Bobadele," including the Afterman devaluation of the music empire, the remaining Plaintiffs/Respondents went along. By 2020 most Respondents were openly denouncing, including in the Supreme Court, the very claims they had helped Bauknight make in 2011, namely: Hynie's elective share claim was a "slamdunk"; Brown's estate and 2000 Trust had no corpus to speak of; and that Hynie and James control the termination rights.

In the first *Wilson v. Dallas* decision the Supreme Court directed the Attorney General to conclude Richland 4900 and the FOIA cases in the first instance.

Between the first and final *Wilson v. Dallas* decisions Pope met individually with the Attorney General, the Solicitor General, and the Chief Deputy AG to discuss the damage Bauknight, Hynie and the Attorney General's own staff had done by their efforts to secure spousal status for Hynie and by the Afterman \$4.7 million value.

The damage of the \$4.7 million value, which was not corrected by *Wilson v. Dallas*, included a shifting of \$1 million a year and nearly 1/3 (31%) of Brown's charity from the charity to a trust for Forlando and children of Richland 4900 Plaintiffs' Respondents Thomas and Yamma Brown (Yamma), and possibly the children of Daryl Brown (Daryl).

In March 2014 the Attorney General told the Supreme Court he was getting out of Richland 4900 and hoped to conclude the FOIA cases shortly. James defended the claimed \$4.7 million value, including Afterman's \$3+ million overstatement of Brown's debt and valuation of his tangible personal property (TPP) at zero, or near zero. Bauknight promised the Supreme Court that he would defend the estate plan if reinstated, and supported his claim with an affidavit of Afterman.

Buchanan's and Pope's service ended with the Supreme Court's May 8, 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). In 2020 Hynie, however, would still be claiming it was good for Brown's charity for her to be Brown's spouse, but the argument had been rejected by the Supreme Court.

From May 2013 until June 10, 2015 Pope, without expectation of pay, worked to try to convince the Attorney General and others not to allow the announced second dismembering of the "I Feel Good" charity. This effort ended abruptly on June 10, 2015.

On May 29, 2013 Levenson and Medlin announced to the Aiken Court the plan of most Richland 4900 Plaintiffs/Respondents to disregard *Wilson v. Dallas* and reinstate the Attorney General's 2008 settlement.

On June 10, 2013 the Aiken Court removed Buchanan and Appellant from any participation in Aiken James Brown cases other than their own fee claims, and directed the clerk of court to return any filings by them not in those two matters.

By August 2013 Bauknight had testified under oath in support of the AG's 2008 settlement; claimed Pope (and presumably Buchanan) had "raped" James Brown's estate; and called Pope dishonest. By then, Peter Afterman had already helped Hynie and James file public termination rights claims to siphon off U.S. royalties from more than 90 copyrights between 2015 and 2023.

In October 2013 the Aiken Court "double approved" the service of Buchanan, all of which was joint with Pope. The Aiken Court approved Buchanan's already-paid 2007 SA fee and partial PR/Trustee commission and costs paid under the Buchanan/Pope court-approved contract with the Estate/2000 Trust. The Aiken Court found no basis for disgorgement, and allowed the possibility of Buchanan's re-entry into Richland 4900 as to his counterclaims against parties other than Brown's Estate/2000 Trust.

That month, the Aiken Court appointed Bauknight PR/Trustee. Pope was denied the speedy and efficient *Wilson v. Dallas* remand given Buchanan, although all of their work had been joint. By 2020 she had not been paid the \$47,972 SA fee she was owed as of March 2008, even though it had been earning interest at 8 ¾% for 11 years.

By January 2015 the Aiken Court had declared Hynie to be Brown's spouse, and the Attorney General had made no effort to make Bauknight return the \$1 million a year and nearly 1/3 (31%) of Brown's charity he had shifted over to disinherited family members.

In a status report filed with the Supreme Court on May 8, 2015 the Aiken Circuit Court failed to tell the Supreme Court of the announced May 29, 2013 plan of Hynie and the Levenson clients to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement; denigrated Appellant and Buchanan; praised Bauknight and Afterman; and asserted its belief that Appellant's \$47,972 unpaid SA fee claim appeared to be for \$2 million for three months.

By 2016 Hynie had been paid \$1.75 million in royalties, secured by Afterman; the Aiken Court had awarded James \$700,000.00 in legal and GAL fees; and the two had moved to London, U.K. That year the Aiken Court also held in a FOIA case that the Legacy Trust did not exist, and in two FOIA cases that the Attorney General could subordinate FOIA requests to Richland 4900 discovery.

At the 2017 – 2018 Aiken 1337 trial of Aiken County Case 2013-CP-02-1337 ("Aiken 1337") Bauknight continued to support the Peter Afterman valuation of James Brown's music empire at \$4.7 million, despite Bauknight's admission to a federal court during the trial that tens of millions of dollars of litigation costs had been spent from James Brown's charity since Brown's death in 2006. To support Afterman's value claim, Bauknight continued to claim that Brown's TIAA debt was nearly \$19 million when Brown died, but the records showed the debt was actually just over \$15 million when Brown died.

Appellant's first motion to lift the stay imposed in a Richland 4900 pretrial appeal was made on October 24, 2017.

By then, SWB and Bauknight were claiming that the Legacy Trust either did not exist, or never had any charitable purpose. Bauknight had filed a 2016 affidavit confirming that the Attorney General had no involvement in the Legacy Trust after *Wilson v. Dallas*. With the AG having abandoned any charitable claim, this made the Richland 4900 individual Plaintiffs/Respondents more than 90% owners (or successors) of the Legacy Trust, in approximately the following shares: Hynie, 46%; Venisha Brown (“Venisha”), 9%; Deanna Brown Thomas, 9%; Yamma 9%; Daryl Brown (“Daryl”), 9%; Larry Brown (“Larry”), Daryl Brown (“Daryl”), 9%. In addition, grandson Forlando Brown (“Forlando”) had received a 9% interest from his father Terry Brown (“Terry”)

On November 1, 2017 Levenson, who represented most of the Legacy Trust owners other than Hynie, and had joined with Hynie’s lawyer Alan Medlin, Esq., in the May 29, 2013 announced plan to disregard *Wilson v. Dallas*, was deposed in Aiken 1337. He testified about the claimed \$4.7 million Peter Afterman valuation and the efforts of Peter Afterman to represent his clients, in addition to Hynie, to secure U.S. royalties from Brown’s charity.

On November 13, 2017 Hynie and the other Richland 4900 Plaintiffs filed a 97-page opposition to the motion to lift stay, and the motion to lift stay was denied by the Aiken Circuit Court on December 6, 2017.

In December 2017 Bauknight presented Levenson, who had signed the May 2010 40% Wingate Contract to sue Buchanan and Pope to try to stop the appeal which became *Wilson v. Dallas*, as a fact witness in Aiken 1337. Levenson gave his opinion that Buchanan and Pope should not have defended Brown’s estate plan. By then, five Richland 4900 Respondents had accepted just \$37,500.00 to drop their challenges to the estate plan, and Respondent Terry had

asserted that the Will/2000 Trust challenges were baseless and asked the circuit court to enforce Brown's *In Terrorem* clauses against his Richland 4900 co-Plaintiffs.

By 2018 Respondents' termination rights and valuation experts had testified that Brown's copyrights were worth as much as \$80 million (15 – 20 times the \$4 million they were earning when Buchanan and Pope served as PR/Trustees). The value of the Termination Interests of all James Brown heirs was confirmed to be \$8.8 million. And the undisputed record was that, despite constant disruption, Buchanan and Appellant had brought in \$7.83 million in eighteen months as PR/Trustees. Their legal costs had been very small.

By contrast, Bauknight claimed to have brought in as much as \$35 - \$40 million by 2018. He had never properly accounted for these funds. He and his spouse/CPA had failed to pick up the tax and estate tax file of court-appointed CPA William Sellars, allowing it to be destroyed as abandoned after more than six years. He had admitted that tens of millions of dollars in litigation had been spent, but the circuit court has discarded those records after Appellant's counsel objected to their being filed *ex parte*. And there was no evidence that either Bauknight or his spouse filed proper income tax return to show the shifting of \$1 million a year of income out of the charity and over to the trust for family members.

Bauknight testified that he spoke almost daily to Peter Afterman. He testified that he did not know the value of the music empire, but had \$8 million in the bank.

During the Aiken 1337 trial Bauknight continued to claim that Peter Afterman had properly valued Brown's worldwide music empire at \$4.7 million, even though Bauknight's federal court filings during the Aiken 1337 trial revealed that tens of millions of dollars in litigation costs had been spent from the claimed \$4.7 million music empire since Brown's death .

At trial Bauknight claimed that Robert Buchanan, Jr. and Appellant (“Pope”) had breached their fiduciary duty under James Brown’s estate plan by challenging the Aiken Court’s approval of the Attorney General’s 2008 settlement which dismembered Brown’s estate plan and threatened the \$4 million annual royalty stream Brown intended for needy students.

In September 2018 Venisha Brown (Venisha) died.

On October 30, 2018 Appellant filed a Supplemental Motion to Lift Stay which related to Venisha’s death and new matters, as well as matters to lift the stay proposed on October 24, 2017.

In December 2018 this appeal was filed. It became Case No. 2018-2229. Appellant appealed numerous orders of the Aiken Circuit Court which supported the efforts of Hynie, James and other Richland 4900 Plaintiffs to carry out the May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG’s 2008 settlement. [Exhibit A]

In December 2018 Appellant answered a complaint filed by Respondent Thomas in a case entitled Thomas v. Brown, Aiken County Case 2019-CP-02-00320; accompanied it with her petition for allowance of creditor’s claim and a request for the appointment of a PR for Venisha estate, as required by SCPC.

On January 16, 2019 the Aiken Circuit Court issued its Aiken 1337 order. The lower court overlook or discredited the testimony of the Governor; the Solicitor General; the Attorney General; AG Jones; other AG staff members; experts James Hardin III, Esq.; Wm Jeffrey Smith, Esq.; W. Steven Johnson, Esq.; Wallace Lightsey, Esq.; and others; Wingate and others.

The Aiken Court found that Brown’s music empire was worth less than \$5 million at his death; that Bauknight, aided by Afterman, had properly served James Brown’s estate and 2000

Trust; that Buchanan and Appellant had breached their fiduciary duty by conducting the appeal which became *Wilson v. Dallas*; and that neither was entitled to any compensation as PR/Trustee.

On January 19, 2019 Appellant filed a supplement to the October 30, 2018 motion to lift stay. Appellant set out the facts revealed in the Aiken 1337 trial that put the assets under the jurisdiction of the court in Richland 4900 in jeopardy. They included between \$35 million and \$40 million for which Bauknight had never properly accounted, while claiming that the music empire was worth less than \$5 million.

On February 1, 2019 Hynie and others moved to strike Appellant's motion to lift stay, asserting that the claims were "self serving" and "frivolous." The motions to lift stay were not granted by the Aiken Circuit Court.

In 2019 Levenson and Respondent Thomas requested that the Aiken Circuit Court hold Appellant in contempt of the Supreme Court's June 10, 2015 Order. Some of the history of those contempt requests is found in Exhibit L.

On April 27, 2020, Appellant filed a Motion for Order to Lift Stay and for Related Relief , Exhibit B, outlining the threatened loss of jurisdiction by the Court.

In 2020 Mark Gende, Esq., of SWB, counsel for Hynie and others, began seeking sanctions against Appellant, which would be made in both the Circuit and Supreme Courts. [See Exhibits E,I] Appellant opposed the sanctions requests. [Exhibit J, L]

On June 17, 2020 the Supreme Court found that Hynie was not James Brown's spouse, increasing the risk of her escaping the Court's jurisdiction. [Exhibit C]

On June 18, 2020, despite this ruling the lower court held that Richland 4900 and Appellant's case to be paid for her service to Brown's estate and 2000 trust were companion cases. [Exhibit D], and directed that her 2007 SA fee be held until the conclusion of Richland 4900.

On June 19, 2020 the Clerk of the Supreme Court advised Mr. Gende that his sanctions request should be in the form of an affidavit or verified petition. [Exhibit E]

As shown on the Exhibits attached hereto, the efforts of Hynie and other Respondents to deprive the Court of jurisdiction and render issues in this appeal moot have been unnecessarily vitriolic.

The Supreme Court's June 17, 2020 decision in *Brown v. Sojourner*, Supreme Court Opinion No. 27982, filed June 17, 2020 (Petition for Rehearing pending), and the actions of SWB and Respondents since that decision, have placed this Court in direct jeopardy of loss of jurisdiction over the person and property of Respondent James Brown Legacy Trust ("Legacy Trust"); its trustee Russell Bauknight; and its owner-successors, including Hynie (approximately 46%); the Estate of Venisha Brown, (approximately 9%); and others.

Jurisdiction over the person and property of Respondent James Brown II ("James"), now a resident of London, U.K, with Hynie, and Tonya Brown (Tonya) are also in jeopardy.

Since 2017 Respondents and SWB have sought to render the contested issues in this appeal moot by depriving the courts of the benefit of the sworn public admissions of Respondents, as well as the sworn testimony and documents of Governor Henry McMaster; Legacy Trust music manager Peter Afterman; Kenneth Wingate, Esq.; SWB partner Everett Kendall, Esq.; IP expert Wallace Lightsey, Esq.; Roger Miller, Respondents' expert related to termination rights under Sections 304 and 203 of the U.S. Copyright Act ("Termination Interests"); and others.

Respondents' and SWB's successful, repeated resistance to motion to lift the stay and complete the record threatens to render moot the numerous contested issues in this appeal, including:

1. Should the lower court have granted the Legacy Trust Summary Judgment as to the counterclaims of Robert Buchanan, Jr. and Appellant ("Pope") for abuse of process; civil conspiracy to devalue Brown's assets by \$79 million to discredit "Bobadele"; interference with their contract with Respondent Estate/2000 Trust to be paid approximately \$2.1 million as of 2009; and violation of Section 62-1-106 of the South Carolina Probate Code (SCPC) where, at the time of the ruling, the Legacy Trust was claiming not to exist?
2. Should the lower court have granted Hynie, James and Tonya summary judgment as the counterclaims of Buchanan and Pope where none is a beneficiary under the estate plan of entertainer James Brown and Buchanan and Pope never owed them any duty?
3. Where Sr. Asst. Attorney General Jones was present when the May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement deal was made to the Honorable Doyet A. Early, III, in open court by Alan Medlin, Esq. and Louis Levenson, Esq., counsel for most Respondents, and thereafter violated Appellant's FOIA rights, Due Process rights, and similar rights of and those opposing the AG's 2008 Settlement, should the lower court have granted the Attorney General summary judgment as to the counterclaims of Buchanan and Appellant?
4. Did the lower court violate the Due Process and other rights of Buchanan and Appellant by its inaccurate and derogatory status report to the Supreme Court and active participation in, and support for the May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement?
5. Did the lower court err in granting the Attorney General summary judgment as to the counterclaims of Buchanan and Pope before considering whether Buchanan should re-enter Richland 4900 to pursue counterclaims against all Plaintiffs other than the Estate/2000 Trust of James Brown?
6. Did the lower court err in granting the Attorney General summary judgment as to the counterclaims of Buchanan and Pope after dismissing him as a party under Rule 21?
7. Did the lower court err in granting Venisha Brown summary judgment as to the counterclaims prior to conclusion of discovery; where she had been incarcerated or missing at all times between Richland 4900 and her death in September 2018; and where SWB secured orders preventing the appointment of a guardian *ad litem* for her?
8. Where Bauknight has acted "on behalf of" the State/Attorney General since 2010, is he liable for the State's damage to Buchanan and Appellant in Richland 4900?
9. Where now-Governor McMaster has testified under oath that he did not authorize Wingate's firm to bring Richland 4900 in the name of the State/AG; did not authorize

Bauknight to act “on behalf of” the State/AG; and did not even know he, as Attorney General, was a named Plaintiff until after leaving office in January 2011, should Richland 4900 be dismissed as unauthorized and unconstitutional, with the State/AG liable for its continuation since 2013?

10. Where the Attorney General has testified under oath that in January 2011 he authorized Richland 4900 to continue to maintain the *status quo*, but did nothing to oversee the actions of Bauknight or the Legacy Trust, despite warnings, is the State/Attorney General liable for the damage caused to Buchanan and Appellant by Bauknight acting “on behalf of” the State/Attorney General while serving Hynie and others seeking to dismember the estate plan?

CONCLUSION

The motion to lift stay should be granted. It is necessary to preserve the Court’s jurisdiction over Hynie, James, the estate of Venisha, and others. It is necessary to prevent the issues in this appeal from becoming moot.

Respectfully Submitted,

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July 29, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

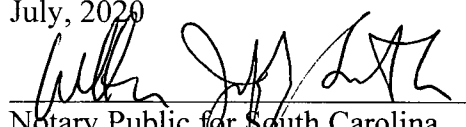
VERIFICATION

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly sworn,
deposes and says:

1. I am the Appellant in the above-captioned case.
4. I have reviewed the statements in the above Petition and Memorandum, and, to the best of my knowledge every statement is true and correct except those matters stated to be on information and belief, which I believe have a sound basis for such belief.

FURTHER DEPONENT SAYETH NOT:

SWORN TO BEFORE ME, this 29th Day of
July, 2020


Notary Public for South Carolina

My Commission expires: 2/27/2027

(L.S.)



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
THE FIFTH JUDICIAL CIRCUIT

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust, as
Personal Representative of the Estate of James
Brown; 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
children Sydney L. and Carrington L.; Tonya
Brown; Venisha Brown; Larry Brown; and
Terry Brown,

and

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 children SYDNEY
L. and CARRINGTON L.; TONYA
BROWN; VENISHA BROWN; LARRY
BROWN; and TERRY BROWN,

Plaintiffs,

v.

Adele J. Pope

Defendant.

Civil Action No. 2010-CP-40-04900

**ORDER DENYING MOTION OF THE
DEFENDANT TO LIFT STAY AND FOR
RELATED RELIEF**

This matter comes before the Court on June 26, 2020, for a hearing on a Motion filed by the Defendant on April 27, 2020, to Lift the Automatic Stay pursuant to Rule 241, SCACR, and for related relief. For the reasons set forth herein, the Motion of the Defendant is DENIED.

Attorneys Adam T. Silvermail, Esq. and Jeffery Smith, Esq. appeared on behalf of the Defendant. Attorneys Mark V. Gende, Esq., Kenneth B. Wingate Esq., and Charles G. Doolittle Esq., appeared on behalf of the Plaintiffs.

The Court carefully considered all briefs filed by the parties and oral arguments made at the hearing.

FINDINGS OF FACT

1. The current motion of the Defendant is the third time Defendant has moved to lift the Rule 241, SCACR, automatic stay in this matter.
2. The first two motions of the Defendant were denied.
3. The Defendant has appealed one of the denials to the court of appeals and that appeal is currently pending.

CONCLUSIONS OF LAW

The motion of the Defendant to lift the stay represents her third attempt to do so. Defendant has also appealed the order of the trial court denying one of her previous motions to lift the stay.

The motion of the Defendant to lift the stay and for related relief represents a successive motion based on the same or similar grounds as her prior motions and is, therefore, improper.

Our Supreme Court has addressed and cautioned against filing successive motions. In *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court decided whether an appeal was timely after the Department of Transportation filed successive written motions. The Court declared that successive motions for reconsideration on the same or similar

grounds are improper, because a “losing litigant is not entitled to return to trial court indefinitely hoping for a change of heart or a more sympathetic judge, or to string out arguments. The Court noted ‘[t]here must be finality, a time when the case in the trial court is really over and the loser must appeal or give up.’” *Id.* at 20; 602 S.E.2d 777-78 (citations omitted). While the issue in Elam was the successive filing of motions for reconsideration, the same rationale applies to the successive motions of the Defendant in the instant matter.

The successive motions of the Defendant are improper, and there is no right to repeated petitions to the Court to change its rulings on matters previously decided, especially when Defendant has already appealed a previously denied motion.

IT IS THEREFORE ORDERED that the motion of the Defendant to lift the automatic stay during appeal and for related relief is DENIED.

AND IT IS SO ORDERED.

_____, 2020

Clifton Newman
Presiding Judge



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/ Clifton B. Newman, 2127

Exhibit A – Petition to Lift Automatic Stay

88578

**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**

RECEIVED

Case No. 2010-CP-40-4900

DEC 17 2018

Appellate Case No. 2017-001899

SC 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. 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, Respondents

v.

Adele J. Pope and Robert L. Buchanan, Jr., Defendants,
Of whom Adele J. Pope is Appellant.

SUPPLEMENTAL NOTICE OF APPEAL

Adele J. Pope appeals the following Orders issued in this action.

1. ORDER DENYING DEFENDANT/COUNTERCLAIM PLAINTIFF'S MOTION TO ALTER, AMEND, RECONSIDER AND/OR VACATE ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT of the Honorable Doyet A. Early, III, signed November 25, 2018, and electronically filed and received by Appellant on November 26, 2018, attached hereto as Exhibit A.
2. ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS of the Honorable Doyet A. Early, III, dated June 23, 2017, filed July 8, 2017 and received by Appellant on or before July 18, 2017, attached hereto as Exhibit B.
3. ORDER DENYING DEFENDANT'S MOTION TO LIFT STAY WHILE ON APPEAL of the Honorable Doyet A. Early, III, dated December 6, 2017, filed December 8, 2017, and received by Appellant on or before December 18, 2017, attached hereto as Exhibit C.
4. FORM 4 ORDER of the Honorable Doyet A. Early, III, dated July 15, 2016, filed July 20, 2016, and received by Appellant on or before July 30, 2016 (Denying Motion to Consolidate this case [Richland 4900] with Aiken County Case 2013-CP-02-1337 [Aiken 1337]), attached hereto as Exhibit D.
5. ORDER of the Honorable Doyet A. Early, III, dated June 6, 2017, filed June 8, 2017 and received by Appellant on or before June 18, 2017 (Related to Depositions of Kenneth B. Wingate, Esq. and Everett A. Kendall, Esq., Richland 4900 and Aiken 1337), attached hereto as Exhibit E.
6. ORDER REGARDING MOTION FOR PROTECTIVE ORDER AS TO TOMMIE RAE BROWN'S DEPOSITION of the Honorable Doyet A. Early, III, dated March 9, 2017, filed March 21, 2017 and received by Appellant on or before March 31, 2017, attached hereto as Exhibit F.
7. ORDER CONCERNING PLAINTIFFS' MOTION TO STRIKE A JANUARY 17, 2017 AFFIDAVIT OF DEFENDANT of the Honorable Doyet A. Early, III, dated March 9, 2017, filed March 15, 2017, and received by Appellant on or before March 25, 2017, attached hereto as Exhibit G.
8. ORDER COMPELLING DEFENDANT'S PRODUCTION OF DOCUMENTS of the Honorable Doyet A. Early, III, dated March 7, 2017, filed March 13, 2017 and received by Appellant on or before

March 23, 2017, attached hereto as Exhibit H.

9. ORDER GRANTING MOTION TO STAY of the Honorable L. Casey Manning, dated and filed March 2, 2016, and received by Appellant on or before March 12, 2016, attached hereto as Exhibit I.

10. ORDER DENYING MOTION TO CONSOLIDATE DEPOSITIONS OF EXPERTS of the Honorable Doyet A. Early, III, dated February 6, 2017, filed February 13, 2017 (Richland 4900 and Aiken 1337), and received by Appellant on or before February 23, 2017, attached hereto as Exhibit J.

11. ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING DEPOSITION OF LARRY BROWN of the Honorable Doyet A. Early, III, dated January 23, 2017, filed February 1, 2017, and received by Appellant on or before February 11, 2017, attached hereto as Exhibit K.

12. SECOND AMENDED CONFIDENTIALITY ORDER of the Honorable Doyet A. Early, III, dated January 24, 2017, filed February 1, 2017, and received by Appellant on or before February 11, 2017, attached hereto as Exhibit L.

13. ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING DEPOSITION OF LARRY BROWN of the Honorable Doyet A. Early, III, dated December 27, 2016, filed January 5, 2017, and received by Appellant on or before January 15 2017, attached hereto as Exhibit M.

14. ORDER of the Honorable Doyet A. Early, III, dated November 22, 2016, filed November 30, 2016, and received by Appellant on or before December 10, 2016, (Denying Rule 59 Motion) attached hereto as Exhibit N.

15. ORDER GRANTING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER AS TO DARYL J. BROWN AND TONYA BROWN of the Honorable Doyet A. Early, III, dated September 21, 2016, filed September 27, 2016, and received by Appellant on or before October 7, 2016, attached hereto as Exhibit O.

16. ORDER DENYING DEFENDANT'S MOTION FOR SANCTIONS of the Honorable Doyet A. Early, III, dated September 13, 2016, filed September 20, 2016, and received by Appellant on or before September 30, 2016, attached hereto as Exhibit P

17. PROPOSED (sic) SCHEDULING ORDER of the Honorable Doyet A. Early, III, dated July 25, 2016, filed August 5, 2016, and received by Appellant on or before August 15, 2016, attached hereto as Exhibit Q.

18. ORDER CONCERNING PLAINTIFFS' MOTION FOR EXCEPTION TO THE PHYSICAL PRESENCE RULE AT MEDIATION of the Honorable L. Casey Manning, dated and filed October 13, 2015, and received by Appellant on or before October 22, 2015, attached hereto as Exhibit S.

19. ORDER LIFTING THE STAY, of the Honorable Doyet A. Early, III, dated April 8, 2016, filed April 13, 2016, and received by Appellant on or before April 23, 2016, attached hereto as Exhibit T.

20. ORDER CONCERNING PLAINTIFFS' MOTION FOR EXCEPTION TO THE PHYSICAL PRESENCE RULE AT MEDIATION of the Honorable L. Casey Manning, dated and filed October 5, 2012, and received by Appellant on or before October 12, 2015, attached hereto as Exhibit U.

21. ORDER OF DISMISSAL of the Honorable L. Casey Manning, dated and filed July 13, 2012, received by Appellant on or before July 23, 2012, attached hereto as Exhibit V.

22. ORDER CONCERNING PLAINTIFF'S MOTION FOR CONTINUANCE of the Honorable L. Casey Manning, dated and filed July 5, 2012, attached hereto as Exhibit W.

23. ORDER of the Honorable L. Casey Manning, dated January 7, 2011, filed January 12, 2011, and received by Appellant on or before January 22, 2011 (Denying Rule 59 motions related to Orders denying Motion to Dismiss and Motion to Change Venue), attached hereto as Exhibit X.

24. ORDER DENYING DEFENDANTS' MOTION TO CHANGE VENUE of the Honorable L. Casey Manning, dated November 8, 2010, filed November 9, 2010, and received by Appellant on or before November 19, 2010, attached hereto as Exhibit Y.

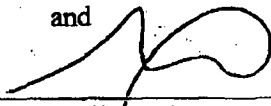
25. ORDER DENYING MOTION TO DISMISS of the Honorable L. Casey Manning, dated November 8, 2010, filed November 9, 2010, and received by Appellant on or before November 19, 2010, attached hereto to as Exhibit Z.

[Signatures on Following Page]

Respectfully submitted,

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Attorneys for the Appellant

December 17, 2018

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Exhibit B – Petition to Lift Automatic Stay

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

Appellate Case Nos.: 2018-002229 and 2017-001899
Richland County Circuit Court 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 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.

MOTION FOR ORDER TO LIFT STAYAND FOR RELATED RELIEF

TO: PLAINTIFFS AND THEIR COUNSEL SWEENEY, WINGATE AND BARROW, P.A.

You will please take notice that ten days after service hereof, or as soon thereafter as this motion may be considered, Defendant Adele J. Pope will move before the Honorable Clifton Newman, Circuit Judge, pursuant to Rule 241 SCACR and other applicable rules and law for an order as follows:

1. Lifting the automatic stay imposed by Rule 241 SCACR which has been in force since September 12, 2017 as a result of the above appeals.
2. Upon lifting of the stay, voiding Respondents' attempted discovery as addressed in Exhibit A and Respondents' other attempted actions during the stay.
3. Joining pursuant to Rule 19, SCRPC, the successors in interest to Respondent Legacy Trust; the estate of Venisha Brown (Venisha)¹ and others as necessary.
4. Directing that discovery in this 10-year-old case proceed as expeditiously as possible in light of Court directions related to the COVID-19 pandemic.

The grounds of this motion are that Plaintiffs/Respondents, through Sweeny, Wingate & Barrow, P.A. (SWB), while opposing all motions to lift the automatic stay resulting from the above appeals are taking actions contrary to the stay and also actions to deprive the Court of jurisdiction and render the contested issues moot.

If the stay is not lifted; the parties corrected; and discovery allowed to proceed, the Court is in danger of losing jurisdiction over the parties and property subject to its jurisdiction since 2010. Further, the actions taken by Respondents threaten to render the contested matters in this pretrial appeal moot.

This motion is supported by the entire record in this case and in the two appeals from this case and the memorandum which follows.

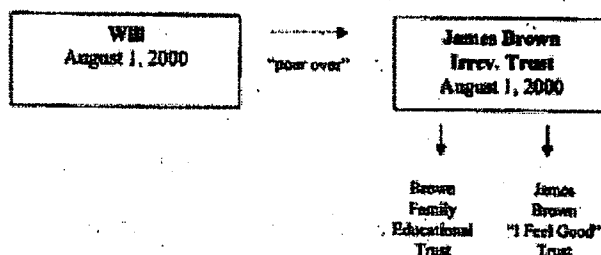
¹ To avoid confusion, persons with the last name Brown will be referred to herein by first names.

Memorandum in Support of Order Lifting Stay and Granting Related Relief

Richland 4900 and FOIA Before *Wilson v. Dallas*

On May 19, 2010 the AG, Legacy Trust and individual Plaintiffs, beneficiaries and owners of Respondent Legacy Trust,² sued Robert Buchanan, Jr. and Appellant Pope for tens of millions of dollars. The suit was to benefit the Legacy Trust, not the Estate/2000 Trust of entertainer James Brown. Respondents described the difference:

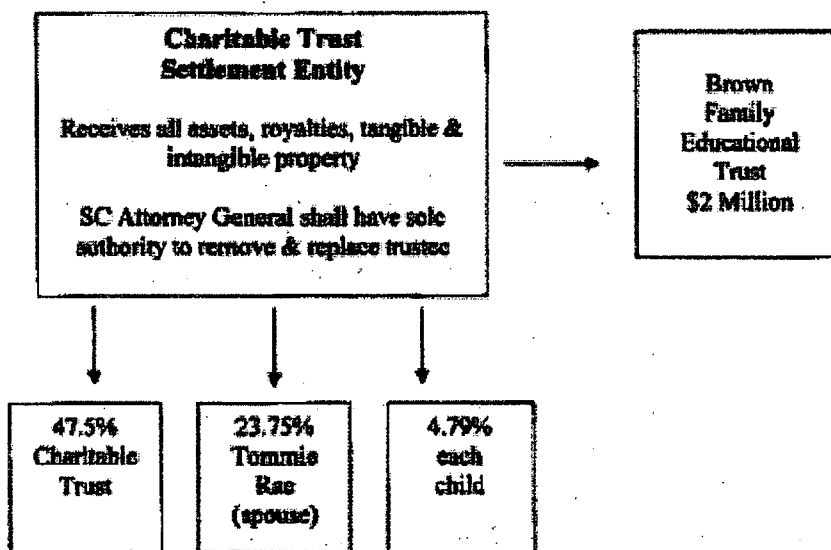
The original estate plan of James Brown included a Last Will and Testament which "poured over" the bulk of his estate to a separate, irrevocable trust that was created and funded on August 1, 2000. The relationship between the estate and the Irrevocable Trust are shown as follows:



Although in 2020 it has been shown to have no charitable component, in 2010 Respondents called the Legacy Trust a charitable trust and described its ownership and control as follows:

² Respondent James Brown Legacy Trust (Legacy Trust) was not created by James Brown. It was created by the AG and individual Respondents in 2008.

The Charitable Trust is diagrammed as follows:



The six 4.79% Legacy Trust owners were Respondents Terry, Venisha, Daryl, Larry, Yamma and Brown-Thomas.

In January 2011 Terry transferred his 4.79% to his son Forlando.³

In 2011 the AG, with others, began accusing Buchanan and Pope of a federal felony in Supreme Court filings. The false felony claim was based on a purported \$4.7 million "appraisal" of Brown's worldwide music empire secured by Russell Bauknight, trustee of the Legacy Trust, from Peter Afterman. The AG did not review the Afterman valuation.

³ Since January 2008 Forlando had been pursuing S.C. District Court Case No. 3:08-00014-WOB to help reinstate David Cannon and Albert Dallas as trustees of James Brown's 2000 Trust. Cannon had taken \$17 million from Brown. In 2011 Forlando planted the false Grammy © noted by the Supreme Court in its 2013 *Wilson v. Dallas* decision. A motion to add Forlando as a real-party-in-interest has been pending in this case since April 16, 2013 [ROA, pp. 776-777]

In 2011 the AG and Bauknight began a 9-year effort to disrupt and prevent FOIA compliance which continues in Richland 4900 today.

The Supreme Court's Opinion in *Wilson v. Dallas*

In February 2013 the Supreme Court issued its first *Wilson v. Dallas* decision.

In March 2013 Appellant met personally with the AG, the Solicitor General and the Chief Deputy AG to review the damage to Brown's charity of the \$4.7 million valuation.

In March 2013 the AG told the Supreme Court he was getting out of Richland 4900 and hoped to conclude the FOIA cases shortly.

Footnote 30 of the Supreme Court's final, May 8, 2013, opinion in *Wilson v. Dallas*, states:

We note that the AG and/or Bauknight have allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellants on behalf of the State, Bauknight and others while also representing private plaintiffs in the suit. We are aware that a suit has been filed in Richland County seeking damages to Brown's estate allegedly arising during Appellant's service as fiduciaries. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this reported arrangement. However the AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now withdrawing as a party in that lawsuit and his office will maintain a monitoring role.

The AG Supports the May 29, 2013 Plan to Disregard *Wilson v. Dallas*

The AG did not withdraw. Today he is still declining to comply with the 2011 FOIA requests. In 2020 he filed briefs to support the 7-year-old plan to disregard *Wilson*. The AG's support for disregarding *Wilson* began immediately after the decision, and Richland 4900 had been its main vehicle.

By May 10, 2013 the AG, with other Richland 4900 Plaintiffs, had reinstated Bauknight as Brown's fiduciary in Aiken County. The AG, through SWB, asked the Richland

County Court to stay both Richland 4900 and the FOIA suits indefinitely. This was followed by a written motion for stay.

On May 29, 2013 Tommie Rae and all Richland 4900 Plaintiffs except Terry Brown, through counsel, announced to the Honorable Doyet A. Early, III in open court their plan to disregard the *Wilson v. Dallas* decision and reinstate the AG's 2008 settlement. After the plan was announced, Sr. Asst. AG Havird "Sonny" Jones advised the Aiken Court of the AG's pleasure that Bauknight had been reinstated.

On June 13, 2013 at the request of Bauknight, Tommie Rae and the Levenson clients, the Aiken Court ordered that Buchanan and Pope not participate in any James Brown hearing except their own fee claims. The clerk of court was directed to return any attempted filing by either in another case.

By August 2013 Peter Afterman was helping Tommie Rae and her son James file public notices with the U.S. Copyright Office seeking to siphon off termination rights proceeds under Sections 304 and 203 of the Copyright Act to more than 90 songs. She and Bauknight had told this Court in 2010 that her termination rights proceeds, like those of all individual Respondents, were owned by the Legacy Trust.

That month, Bauknight defended the AG's 2008 settlement in a deposition, and claimed that Appellant [and presumably Buchanan] had "raped" James Brown's estate.

In October 2013 the Aiken Court conducted a *Wilson v. Dallas* remand hearing for Buchanan; approved all of his actions; praised his service, all of which was joint with Appellant; and confirmed that no disgorgement was necessary. The Court left open the possibility of Buchanan's re-entry into Richland 4900 pursuant to a 2012 motion to pursue counterclaims against parties other than Brown's Estate/2000 Trust.

In January 2015 the Aiken Court declared Tommie Rae to be Brown's spouse. That ruling is currently under appeal by Respondents Brown-Thomas, Yamma and Venisha.

On May 8, 2015 the Aiken Court filed a status report with the Supreme Court. The report praised Bauknight; denigrated Buchanan and Appellant; and failed to advise the Supreme Court of the May 29, 2013 announced plan of Tommie Rae and the Levenson clients to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. The Aiken Court stated, in part:

The Order requesting this status report inquired whether any proposed settlement agreement has been submitted for Court approval. The answer is an unequivocal no. *No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or "courthouse talk" of any proposed settlement.* Status Report, p. 4[emphasis supplied]⁴

The Supreme Court Assigns Richland 4900 to the Honorable Doyet A. Early, III

On March 24, 2016 the Honorable Donald W. Beatty, then Acting Chief Justice, assigned Richland 4900 and two FOIA cases to the Honorable Doyet A. Early, III.

On April 11, 2016 the AG and others moved to consolidate discovery in this case with discovery in Aiken County Case 2013-CP-02-1337 ("Aiken 1337").

On May 17, 2016 the AG and other Richland 4900 Plaintiffs moved for summary judgment as to Buchanan's/Appellant's counterclaims, based solely on *Wilson v. Dallas*

In July 2016 the Aiken Court dismissed the two FOIA suits and ruled that Respondent Legacy Trust does not exist. Appeals followed which were resolved in 2019 and 2020.

On August 11, 2016 the AG filed a notice of special appearance and motion to be dropped as a party in Richland 4900 based on Rule 21 misjoinder.

⁴ Buchanan and Pope were not asked by the Court to respond to the status report, and did not. Others, however, advised the court of other inaccuracies contained in the status report.

At the August 2016 hearings the AG and Legacy Trust took the following positions:

1. The Legacy Trust claimed it did not exist but sought partial summary judgment as to the Buchanan/Pope counterclaims.
2. The AG claimed it was misjoined under Rule 21 and should never have been a party, but also sought partial summary judgment.
3. Both the AG and Bauknight sought certain discovery relief, and both continued to participate in discovery.

Appellant opposed the Rule 21 dismissal and summary judgment motions on various grounds, including that the AG had been active in the case for six years; discovery was ongoing; Respondents had been uncooperative in discovery; and motions to correct the parties to add Forlando and Buchanan were pending, along with other motions.

In 2016 and 2017 SWB was allowed to attend depositions of Governor McMaster, AG Wilson, Chief Deputy AG John McIntosh; Solicitor General Robert Cook; Sr. Asst. AG Creighton Waters; Sr. Asst. AG Havird "Sonny" Jones; Asst. AG Mary Frances Jowers; and AG auditor Sandra Matthews in Aiken 1337 to protect the AG, SWB's client in Richland 4900. Appellant also deposed 7 experts SWB and Respondent Estate/2000 Trust had jointly designated in Richland 4900 and Aiken 1337.

On March 1, 2017 the Honorable Jean H. Toal heard and denied motions of SWB partners Kenneth Wingate, Esq., and Everett Kendall, Esq., to prevent their depositions in Aiken 1337. Both were deposed in Aiken 1337, and refused to answer most questions. Their depositions were, however, very important.

In his 2016 deposition Governor McMaster testified emphatically that he did not authorize SWB to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act "on behalf of" the AG in Richland 4900; and did not even know he was a named Plaintiff in Richland 4900 until after he left office in January 2011.

The Solicitor General testified that he, also, did not and could not have authorized Richland 4900. He also testified that in a March 2013 meeting he believed Appellant to be competent, concerned about Brown's "I Feel Good" charity and not the greedy felon she had been characterized to be in filings by SWB, the AG and Bauknight.

AG Wilson, who had secured an order not to be deposed in Richland 4900, was deposed in Aiken 1337. He did not recall, but did not challenge, Appellant's account of the March 2013 meeting where Appellant raised concerns about the millions of dollars damage the Bauknight/Afterman claimed \$4.7 million valuation had done to Brown's charity, and how it might be quietly corrected. [It was not corrected.]

The Aiken Court granted the AG's motion to be dropped as a party in orders that became final on August 14, 2017.

Respondents Oppose Lifting the Automatic Stay Despite Changes in Parties

On September 12, 2017 Appellant filed Court of Appeals Case No. 2017-001899. In 2017-001899 Appellant seeks to reverse circuit court orders granting the AG's motion to be dropped under Rule 21; declining to disqualify SWB from representing the office of the AG; declining to enjoin Bauknight from purporting to speak for the office of the AG; and setting aside entry of default of all Respondents.

On December 6, 2017, the circuit court, at the request of Respondents, denied Appellant's motion to lift the automatic stay imposed by the filing of 2017-001899.

On January 12, 2018 Respondents Tonya, Yamma, Venisha and Deanna Brown-Thomas, with others, sued Respondents Bauknight, Tommie Rae, James and others in California District Court over the termination rights proceeds which all had told this Court

in 2010 were owned by the Legacy Trust and held by Bauknight as its trustee. [ROA, pp. 1345- 56]

On February 28, 2018 Bauknight admitted in the California Suit that tens of millions of dollars in litigation costs had been spent from James Brown's charity since Brown's death, all to be paid from funds Brown gave his "I Feel Good" Charity. Tommie Rae and James asserted that they are residents of London, U.K.

In 2018 Respondents' experts Roger Miller and Bradley Sharp testified in Aiken 1337 that termination rights proceeds of *all* heirs had a value of \$8.8 million.

By May 2018 the testimony of Governor McMaster, AG Wilson, Chief Deputy AG John McIntosh; Solicitor General Robert Cook; Sr. Asst. AG Creighton Waters; Sr. Asst. AG Havird "Sonny" Jones; Asst. AG Mary Frances Jowers; and AG auditor were presented by Appellant in Aiken 1337. Respondents have admitted that this testimony covers the same facts and issues in Richland 4900, but are now attempting to prevent Court review of this testimony and the related documents.

On September 19, 2018 Respondent Venisha died intestate, a resident of Aiken County. She owned own a *vested* interest in U.S. royalty termination rights proceeds to at least 246 songs, payable between 2018 and 2026, either in the Legacy Trust or as a successor. Appellant's counterclaims against Venisha are a subject of both appeals from Richland 4900.

On October 10, 2018 John Donsbach moved to be relieved as counsel to Terry in this case. Although the motion is pending and Forlando advised SWB years ago that he had terminated SWB, SWB continues to act for Terry in Richland 4900.

On October 30, 2018 Appellant moved to lift the automatic stay. [ROA, pp. 1325 - 1369] She incorporates herein, and supplements, the reasons and arguments to lift the stay.

In November 2018 Respondent Brown-Thomas filed sworn documents with the Aiken Probate Court asserting Venisha had little or no assets at her death.

Both Appellant and Louis Levenson, Esq., Venisha's former attorney, filed claims in Venisha's estate in the manner prescribed by the Probate Code where no PR has been appointed.

On November 25, 2018, during the pendency of the stay imposed by the first pretrial appeal, the circuit court issued its final ruling granting summary judgment to all Respondents as to the Buchanan/Pope counterclaims. Discovery was still pending, as were motions to correct the parties.

In January 2019 Judge Early issued an order in Aiken 1337 which faulted Buchanan and Pope for appealing the AG's 2008 settlement. The order overlooked material testimony and documents of the Governor, the AG, the Solicitor General, Wallace Lightsey, Jr., Esq., SA/ST David Sojourner, Esq; Rita Caughman, Esq; Graham Foundation Trustee Stephen Lambert; Philanthropist Judge (Retired) Walter Williams; and other expert and fact witnesses.⁵

In 2019 Brown-Thomas served Appellant with a petition for formal probate. Appellant responded properly seeking appointment of herself or someone else with termination rights knowledge to protect the creditors of Venisha's estate.

⁵ The January 2019 order praised Bauknight even though, with the \$4.7 million claimed value, he had shifted about \$1 million a year and nearly 1/3 (31%) of Brown's "I Feel Good" Charity from the charity to family members for up to 20 years, causing serious tax and charitable problems; overstated the TIAA debt by \$3+ million; allowed James Brown's critical tax files to be destroyed; never properly accounted for the tens of millions of dollars he has spent since 2009; and did not have any idea of the value of Brown's Estate/2000 Trust at trial. The order is now subject to appeal in Case No. 2019-000362,

On February 26, 2019 Judge Early issued an order denying Appellant's October 30, 2018 motion to lift the stay to correct the parties.

In its final decision of May 22, 2019 in Court of Appeals in Opinion No. 5651, Terry took the position that he never opposed the estate plan and that Respondent Bauknight shirked his duties by not imposing the no contest clauses in Brown's Will/2000 Trust against Respondents Venisha, Yamma, Brown-Thomas and others. SWB, however, continues to take the exact opposite position for Terry in filings, including by seeking sanctions for Terry against Appellant, one of the few people who defended the estate plan.

On October 18, 2019, after Appellant answered the petition served on her by Brown-Thomas, Brown-Thomas sought sanctions against her in Venisha's estate, Aiken Case 2019-CP-02-00320. Then SWB, purportedly speaking for the AG, the claimed nonexistent Legacy Trust and others, joined in the request for sanctions. Both seek to deprive this Court of jurisdiction it has had over Venisha's termination rights proceeds since 2010.

On October 28, 2019 Respondent Tommie Rae filed a petition in a S. C. Supreme Court case that advised the Court that she was retaining 35% of the termination rights proceeds she had advised this Court in 2010 she had put in the Legacy Trust. [Mot., p. 2]

An affidavit of Peter Afterman was attached to the motion which asserted that termination rights are worth tens of millions of dollars. Afterman had previously valued the entire music empire at only \$4.7 million. Afterman's claimed \$4.7 million valuation was the source for the AG's false felony claim.

On November 19, 2019 Respondents Yamma and others asserted that Tommie Rae's motion was improper and "inaccurate and highly misleading," but did not inform the Court

that Tommie Rae's - and their - termination rights proceeds had been placed in the Legacy Trust in 2009.

On December 27, 2019 in a filing in the South Carolina Supreme Court in Appellate Case No. 2018-001990, Respondent Tommie Rae filed additional information about the 35% of termination rights proceeds she is retaining. Because of her relocation to the U.K. jurisdiction over these assets formerly represented to be in the Legacy Trust may be lost.

On April 1, 2020 the Supreme Court denied certiorari in Appellate Case No. 2019-001581, leaving in place a 2016 order that confirms that Richland 4900 is now being pursued *solely for private, individual* Respondents and Forlando as the owners and/or successors to the Legacy Trust, namely:

Tommie Rae: about 46%

Venisha's Estate, Daryl, Larry, Yamma, Forlando and Brown-Thomas: about 9% each

Due Process Requires that the Parties be Corrected

Since 2010 Appellant has been sued for tens of millions of dollars by the State/Attorney General who now says he was never a party to Richland 4900. The State/AG's claims against Appellant in this 10-year-old civil suit have included a claim that Appellant and Buchanan committed a federal felony. The claims are so strong, and so incorrect, that the AG has asserted that he has prosecutorial immunity for his actions.

In 2020 the Attorney General continues to claim he was never a proper party while filing briefs which actively support the announced May 29, 2013 plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which gave about \$2 million a year and half of Brown's charity to Tommie Rae and six former Levenson clients. In addition, the AG is taking

action through SWB to sanction Appellant without reason; deprive the court of jurisdiction; and render issues in this appeal moot.

Rule 17 SCRCF requires that every action shall be prosecuted in the name of the real party in interest. Due Process and Equal Protection prohibit the State/AG from singling out citizens to attack. Due Process requires that a private law firm not legally authorized to act not seek sanctions on behalf of the State/AG. Due Process requires that SWB not continue to act for a Trust which has secured a ruling that it does not exist. For these reasons, alone, the stay should be lifted; the parties corrected; and the efforts of the AG, SWB and Respondents to render contested issues moot and deprive the Court of jurisdiction over the parties and property which is the subject of this action.

The Court is in Jeopardy of Losing Jurisdiction over Legacy Trust Assets

In 2020 it became irrefutable that the AG has given up any claim for any charity to the Legacy Trust assets. Appellant, however, has not given up her claim to the Legacy Trust assets, and Buchanan's position as to them has been in limbo since 2012.

Now the AG, SWB and Bauknight are working with, or allowing, Afterman and others to siphon off portions the Legacy Trust's valuable termination rights proceeds.

Bauknight's Explanation for the Disappearance of the Legacy Trust

Bauknight's January 31, 2017 deposition testimony about the alleged disappearance of the Legacy Trust and its assets is inadequate. It is also directly contrary to the sworn 2016 and 2017 testimony of both Governor McMaster and AG Wilson. Neither knew anything about its operation.

Asked about the Richland 4900 caption, Bauknight stated, in part:

Q. Well, it says "Russell L. Bauknight as Trustee of

11 **the James Brown 2000" --**

12 A. Ah, okay. Well, I can explain this caption to
13 you, I believe. "Russell Bauknight," that's me,
14 "Trustee of the James Brown 2000 Irrevocable Trust
15 and the James Brown Legacy Trust" -- which existed
16 at the time was filed -- "and as Personal
17 Representative of the Estate of James Brown."

...

6 The reason that the Legacy Trust was listed
7 there and the reason that Henry McMaster is
8 listed there is that though Judge Early had
9 approved the settlement agreement, we knew you
10 were going to appeal it and everyone in this
11 case that was a party to the settlement
12 agreement was in fear that you would somehow
13 come back into power, Ms. Pope, and they knew
14 that the first thing you would do is drop the
15 lawsuit against yourself and if you did that,
16 if we didn't have Henry McMaster there
17 protecting the charity, there'd be no one to
18 prevent you from coming back. So that's the
19 reason he was listed here as part of that
20 charity. And it ultimately was reversed when
21 the Supreme Court sent that back down to Jack
22 Early or Judge Early to take more testimony,
23 the Legacy Trust ceased to exist. . .

...

8 ... And Henry McMaster has
9 looked at what's going on in the estate and
10 trust for the benefit of the charity -- not
11 Henry McMaster, but the Attorney General has
12 looked at that. They're very satisfied.
13 They've clearly said they're very satisfied
14 with what I'm doing it by administration.

...

18 **Q. So who gave them --**

19 A. But I'm not their agent.

20 **Q. -- permission to bring a suit on behalf of Henry**
21 **Dargan McMaster?**

22 A. I don't know the legalities, but you're well aware
23 of how all of that came about. You've had these
24 discussions. I'm not a lawyer.

This suit was brought for the benefit of the Legacy Trust. Bauknight represented to the Court in 2010 that he was administering the Legacy Trust in Richland County. Now the Legacy Trust seeks to deprive the Court of jurisdiction by disappearing into thin air. The stay should be lifted to stop this by making the successors parties under Rule 19.

Attempts of the AG and SWB to Suppress Testimony of the Governor and Others

In his sworn testimony Governor McMaster stated emphatically that he did not authorize SWB bring Richland 4900 in the name of the State/AG; that he did not authorize Bauknight to speak for the AG; and that he did not know that, as AG, he was a named Plaintiff in Richland 4900 until after leaving office as AG in January 2011. SWB is currently actively seeking to suppress and render moot this material testimony, and that of the Solicitor General.

Attempts to Suppress the Testimony and Documents of Wingate and Kendall

SWB and the AG are both working to render the issue of whether Richland 4900 was unconstitutional from its inception moot, even though it is a critical issue in this pretrial appeal and will be at trial.

On March 1, 2017 the Honorable Jean H. Toal directed Kenneth Wingate, Esq., and his partner Everett Kendall to testify about their bringing and continuation of Richland 4900. Wingate insisted that Richland 4900 was authorized by the now-Governor. This is in direct conflict with the testimony of the Governor and other evidence. The two also testified they were unaware of any change in parties since Richland 4900 was filed.

This important testimony is critical to the issues in controversy in this case and appeal.

Violations of Appellant's FOIA and Other Rights

Among the actions to render matters in controversy moot are SWB's continued action, purportedly on behalf of all Respondents, to prevent release under FOIA or discovery of the long-public Wingate contract.

In the FOIA remand in Richland 4900, the AG is continuing to violate both Appellant's FOIA rights and her First Amendment and Due Process rights by asking the Court to strike affidavits of members of the general public from the period 2011; 2012 which were part of the ROA in the FOIA appeals. This attempt to whitewash the consolidated record in this case and render moot the issue of the AG's 9-year FOIA noncompliance for the benefit of the Legacy Trust and support for an unconstitutional lawsuit should be checked.

This suppression of the public records, if not checked, will rewrite the facts in a way which leaves the Court without jurisdiction, renders contested matters moot, or both.

Violations of the Stay to Deprive the Court of Jurisdiction and Render Contested Matters Moot

While actively working to prevent lifting of the stay, Respondents, through SWB, served Appellant with discovery in 2020. Appellant's responses are found in Exhibit A.

Discovery should take place. SWB, however, should not be allowed to continue to act for the nonexistent Legacy Trust, the AG, the deceased Venisha, and Terry. The stay needs to be lifted to strike these violations of the automatic stay; correct the parties; and conclude with all discovery that can be completed while the appeals are pending.

CONCLUSION

For the reasons stated herein and for the reasons stated in Response and Objection to Discovery Requests attached hereto; and the reasons stated in Appellant's October 30, 2018 motion to lift stay, the automatic stay in this matter should be lifted; the actions taken by SWB during the automatic stay voided; and the parties corrected under Rule 19 as stated herein and found within pending motions. Discovery in this 10-year-old case should proceed.

Respectfully submitted,

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April 27, 2020

Counsel for Appellant 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 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., Carrington L., and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

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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.; 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., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

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Plaintiffs.

)

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v.

)

Adele J. Pope,

)

Defendant.

)

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

Defendant Adele J. Pope, subject to her motion to void Plaintiffs' attempt to issue

discovery during the pendency of the automatic stay imposed in this case, and subject also to all objections stated below, responds as follows the Plaintiffs' Supplemental Request to Admit, Interrogatory and Request to Produce:

GENERAL OBJECTION

Defendant objects to all requests issued by Sweeny, Wingate & Barrow, P.A. ("Wingate"), because this action is currently before the Court of Appeals as Appellate Case. Nos. 2017-1899 and 2018-2229. These discovery documents should be voided, as should all other actions of Wingate inconsistent with the stay. Defendant also objects to the attempted discovery for each of the following additional reasons:

1. Wingate lacks jurisdiction to act in this unconstitutional lawsuit for the Attorney General of South Carolina (AG), and Russell Bauknight lacks the authority to act "on behalf of" the AG.
2. Wingate lacks the authority to act for the James Brown Legacy Trust (Legacy Trust), which claims it does not exist.
3. Wingate lacks the authority to act for Terry Brown, who terminated Wingate.
4. Wingate and Bauknight cannot act "on behalf of" Plaintiffs Deanna Brown-Thomas; Yamma Brown or Tonya Brown, all of whom are suing Bauknight over termination rights proceeds which are subject to the jurisdiction of the court in this action.
5. Wingate and Bauknight cannot act "on behalf of" Venisha Brown, deceased, where that failed to take any proper action to assure that she secured a proper PR.
6. Wingate and Bauknight cannot act "on behalf of" any former minor not made a party to this proceeding as an adult, and who has not ratified the actions of Wingate.

REQUEST TO ADMIT

1. Please admit that at no point during this litigation have the Plaintiffs accused the Defendant, Adele J. Pope, of committing a felony.

Response: Denied.

INTERROGATORY

1. If the answer to the above request to admit is anything other than an unqualified "admitted," please explain what specific felony, including citations to specific code

Response: Plaintiffs allege in Paragraph 18(u) of the Complaint herein, filed on May 19, 2010, that Defendant and Robert L. Buchanan, Jr. "artificially inflate[ed] the reported value of the estate . . . for the purpose of justifying their claim for approximately \$5 million in fees." [emphasis supplied]. Defendant and Buchanan reported the value of the estate to the Internal Revenue Service in the Estate Tax Return filed in September of 2008. Pursuant to 18 U.S. Code § 1001, 26 U.S. Code § 7206 and potentially other laws, it is a federal felony to willfully make false statements in a tax filing.

REQUEST TO PRODUCE

1. Please produce every document, deposition transcript page, pleading, discovery devise [sic], or any other item that includes the alleged accusation of a felony directed at the Defendant by the Plaintiffs, as described in your interrogatory response(s) above. This request seeks only the page on which the alleged accusation(s) occur. If this production is too excessive, please list the citation for each and the parties will then work out specific production of any items not already in possession.

Objection: Defendant objects to this request as overbroad, unduly burdensome and intended to harass. In the near-decade since Plaintiff's initially accused Defendant and Buchanan of a federal felony in the Complaint herein,

Plaintiffs have republished their allegation in filings too numerous to list or produce. Plaintiffs and their counsel, having generated these documents and statements, are already in possession of all.

Response: Subject to her objection and as set out in the response to Plaintiffs' interrogatory, Defendant identifies the original allegation in Paragraph 18(u) of the Complaint herein, which is already in possession of Plaintiffs.

Respectfully submitted,

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SC Bar No. 6121

s/Adam T. Silvernail
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April 27, 2020

Attorneys for Defendant Adele J. Pope

Exhibit C – Petition to Lift Automatic Stay

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Tommie Rae Brown, Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, Michael Deon Brown, and Daryl Brown, Defendants,

Of whom Deanna Brown-Thomas, Yamma Brown, and Venisha Brown are the Petitioners.

Appellate Case No. 2018-001990

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 27982
Heard October 16, 2019 – Filed June 17, 2020

REVERSED AND REMANDED

Robert C. Byrd and Alyson Smith Podris, both of Parker Poe Adams & Bernstein, LLP, of Charleston, and Marc

Exhibit D – Petition to Lift Automatic Stay

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

vs.

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

Defendants.

IN THE CIRCUIT COURT

Case No. 2013-CP-02-1337

**AMENDED ORDER GRANTING
DEFENDANTS' MOTION TO DEPOSIT
FUNDS INTO THE COURT**

This equitable matter came before the Court on the motion of the Defendant to deposit funds and prevent accrual of interest. A hearing was held on January 31, 2020 at 10:00 AM at the Aiken County Courthouse. On February 26, 2020 the Court issued an Order Granting Defendant's Motion To Deposit Funds and Prevent Accrual of Interest. Plaintiff subsequently filed a Motion To Alter, Amend and/or Vacate [Defendant's] Order Granting Motion To Deposit Funds and Prevent Accrual of Interest. A hearing on this Motion was held on May 12, 2020 at 10:00 AM via Zoom, and The Honorable Clifton Newman presided.

After considering the arguments, filings, and other matters of record, the Court finds and orders as follows:

1. This equitable matter deals with Mrs. Pope's claim for prior fiduciary services. This court has broad discretion to make findings consistent with equity and fairness.
2. Separate litigation against Plaintiff exists in companion case CA No: 2010-CP-40-4900 due to her alleged breaches of fiduciary duties as PR/Trustee.
3. Plaintiff previously stated to Defendants that all monies due in this matter should be held in Escrow pending resolution of the companion case.



Aiken Common Pleas

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

So Ordered

s/ Clifton B. Newman, 2127

Exhibit E – Petition to Lift Automatic Stay



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
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June 19, 2020

Mark V. Gende, Esquire
P.O. Box 12129
Columbia, SC 29211

Dear Mr. Gende:

The Court is in receipt of your letter dated February 12, 2020, to the Honorable Clifton Newman regarding your position that Adele Pope, Esquire, may be in contempt for violating this Court's order dated June 10, 2015.

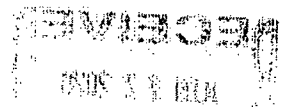
In order for this Court to issue a rule to show cause for contempt, the rule to show cause must be supported by an affidavit or verified petition. *See Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994) (stating charges of constructive contempt are brought by a rule to show cause which must be based upon an affidavit or verified petition and the failure to support the rule to show cause by an affidavit or verified petition is a fatal defect).

Accordingly, within ten (10) days of the date of this letter, I ask that you please provide this Court with an affidavit fully setting forth the facts and grounds upon which you believe Ms. Pope has violated this Court's order dated June 10, 2015.

Very truly yours,

CLERK

cc: Adele Pope, Esquire



ELECTRONICALLY FILED - 2020 Jun 29 10:05 PM - AIKEN - COMMON PLEAS - CASE#2019CP0200320

Exhibit F – Petition to Lift Automatic Stay

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; 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 children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown,

and

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 children SYDNEY L. and CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs,

v.

Adele J. Pope,

Defendant.

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-04900

**PLAINTIFF'S MEMORANDUM OF
LAW IN RESPONSE TO
DEFENDANT'S MOTION TO LIFT
STAY AND FOR RELATED RELIEF**

Procedural Background

This case was originally filed on May 19, 2010. On September 12, 2017 a Rule 241, SCACR stay went into effect due to Appellate Case 2017-001899. Shortly thereafter, appellate

where did this accusation come from nor are any issues on appeal mooted by the fact that discovery was served.

3. **Contrary to the Defendant's assertion, Sweeny, Wingate, & Barrow P.A does not still act on behalf of the Attorney General, and does not act for the Legacy Trust because the Legacy Trust does not exist by order of the Court.**

The Defendant asserts that the AG continues to file motions in the 4900 case and that SWB continues to act on behalf of the AG and on behalf of the Legacy Trust. Def. Mot. for Order to Lift Stay at 14, 17. These assertions are false. While it is true that the Attorney General continues to make filings that populate the 4900 case on the public index, the Attorney General is only making filings in the former Newberry County Case No. 2011-CP-36-379 which has been combined under the 4900 heading, but not consolidated (because Defendant objected to consolidation) into the 4900 breach of fiduciary duty case against Defendant. This is evident in the fact that the recent filings of the Attorney General generally show the following caption (highlighting added):

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Adelle J. Pope,

Plaintiff,

3.

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

Defendant

IN THE COURT OF COMMON PLEAS

Case No. 2010CP-4084900

100-443887-100

SECOND SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR JUDGMENT ON THE
PLEADINGS

Second Supp. Mem. in Support of Mot. for Judgment on the Pleadings at 1, *Pope v. Wilson* (No. 2010-CP-40-4900, formerly Newberry Co. Case No. 2011-CP-36-379).

The Attorney General has every right to continue to mount a defense in the former 379 case which was not affected by the alternatively captioned order of the Court on May 31, 2017 allowing the Attorney General to withdraw from the 4900 Breach of Fiduciary Duty case which

Defendant's caption is an out-of-date caption that includes the AG as a party, even after Plaintiffs purposefully and deliberately avoided sending discovery on the AG's behalf.

As to the Defendant's assertion that Plaintiffs are acting on behalf of the Legacy Trust, the claim is false. The Legacy Trust does not exist. In a related case, Case No. 12-CP-40-350 between the Attorney General and Adele J. Pope, The Honorable Doyet A. Early ruled that, "In *Wilson v. Dallas*, the Supreme Court invalidated the compromise agreement that created the Legacy Trust...As such, the Legacy Trust does not exist..." Order Granting James Brown Legacy Trust's Mot. to Dismiss, Case. No. 12-CP-40-350. (Attached as Exhibit B) The repeated references to the Legacy Trust by Defendant is an attempt to confuse the court and create a fictional narrative wholly unrelated to the facts of case 4900. There is nothing the Plaintiffs can do on behalf of or to an entity that does not exist.

4. **Contrary to the Defendant's assertion, the Circuit Court is not in jeopardy of losing jurisdiction over Legacy Trust Assets because there is no Legacy Trust and are no assets in the never-funded, non-existent Trust.**

At the outset, it is important to note that the fact that the caption should be amended to reflect the fact that the Legacy Trust does not exist is a very minor procedural matter that the Court can resolve at any time.

Plaintiff asserts that "the AG, SWB and Bauknight are working with, or allowing, Afterman and others to siphon off portions [of] [sic.] the Legacy Trust's valuable termination rights proceeds." Def. Mot. for Order to Lift Stay at 14. This allegation is pure fiction. 17 U.S.C. § 203 states:

where an author is dead, his or her termination interest is owned, and may be exercised, as follows: the widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

Because the structure which would have funded the Legacy Trust was struck by the South Carolina Supreme Court in the *Wilson v. Dallas* decision (which disposed of the settlement agreement reached among the family members of James Brown), nothing flows into or ever entered the non-existent Legacy Trust. Therefore, there is no trust and no assets that the Circuit Court could possibly lose jurisdiction over and the Defendant's argument is facially incorrect.

5. **A joinder of the Estate of Venisha Brown as a party to this lawsuit under Rule 19, SCRCP, is unnecessary, because as soon as a personal representative is named to oversee Venisha Brown's estate, that individual will assume control of Venisha's Estate's interests in Case 4900.**

Defendant argues that the Estate of Venisha Brown should be joined as a party to this lawsuit according to Rule 19. Joinder at this time is unnecessary. First, Venisha Brown is already a named Plaintiff in this lawsuit and her interests are already accounted for as a named defendant. Second, Venisha Brown's estate does not have a personal representative overseeing the estate, in large part due to the fact that Defendant has argued that she should be named personal representative of Venisha Brown's estate (thereby, making Defendant by extension, a plaintiff and defendant in this lawsuit) (see Attached as Exhibit C: Plaintiff's letter to Judge Newman re: appointment of personal representative of Venisha Brown's estate). As soon as Venisha Brown's estate has a personal representative appointed, that individual will assume control of the interests of the Estate of Venisha Brown in Case 4900. The argument by Defendant that joinder of the Estate of Venisha Brown is necessary at this time is yet another attempt for Defendant to attempt to return to some position of power over the affairs of the James Brown estate.

6. **Pope's Motion to Lift the Stay Represents a Successive Motion Based on the Same Grounds as Her Prior Motions to Lift the Stay.**

Our Supreme Court has already addressed and cautioned against filing successive motion such as the one in this case. In *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004),

the Supreme Court decided whether an appeal was timely after the Department of Transportation had filed successive written motions. In deciding this issue, both the majority and dissent agreed that successive motions for reconsideration on the same grounds are improper because a “losing litigant is not entitled to return to trial court indefinitely hoping for a change of heart or a more sympathetic judge, or string out arguments one at a time over months because ‘[t]here must be finality, a time when the case in the trial court is really over and the loser must appeal or give up.’” *Id.* at 20; 602 S.E.2d 777-78 (citations omitted).

What makes Pope’s current motion so improper is because it is based upon exactly the same grounds as that previously alleged, previously heard, and previously denied Order decreeing the Stay will not be lifted. While Pope may cite new evidence necessitating additional discovery, she withholds the important information that discovery has been conducted for years, speculating that there is new evidence available. Pope has no respect for this Court’s prior rulings, and instead, she needlessly burdens an already overworked judicial system with a successive motion that has been previously denied in two separate instances. As such, Pope’s Motion to Lift the Stay should be denied as a successive motion on the same ground as her prior filings.

CONCLUSION

Because the automatic stay of Rule 241, SCACR, exists to preserve matters on appeal and because all matters that may be “affected” by the appeal are required to be stayed, it is inappropriate for the stay to be lifted in light of the very broad scope of substantive matters wrapped up in the orders that Defendant has appealed. For the reasons stated herein, the Defendant’s motion to lift the automatic stay and all related relief should be DENIED.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Mark V. Gende

Kenneth B. Wingate, SC Bar No. 8004

Mark V. Gende, SC Bar No. 72835

Griff Doolittle, SC Bar No. 104118

Sweeny, Wingate & Barrow, P.A.

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ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

June 24, 2020

Exhibit G – Petition to Lift Automatic Stay

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

Appellate Case Nos.: 2018-002229 and 2017-001899

Richland County Circuit Court 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 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.

**APPELLANT'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO MOTION
TO LIFT STAY AND FOR OTHER RELIEF**

On June 24, 2020 Respondents filed a Memorandum in Opposition to Appellant's Motion to Lift Stay. The memorandum contained an altered caption which omitted both Russell Bauknight "on behalf of" the Attorney General of South Carolina (AG) and the AG himself. Appellant submits this reply to the memorandum, using the caption as contained in the Court of Appeals, where two appeals to this case are pending. Appellant incorporates herein her motion to lift stay and previous memoranda.

I. There is much for the Circuit Court to hear.

Respondents assert on pages 2 – 4, and again in subsections B and C on pages 5 – 7 that there would be nothing for the Circuit Court to address if the stay were lifted. This is incorrect. The pending appeals will not resolve the claims of Respondents Tommie Rae, James Brown Legacy Trust, James II, Tonya and others against Appellant and Robert Buchanan, Jr., if he is added as a party. The Court can, and should, hear the motion to rejoin Buchanan as to all parties except James Brown's Estate/2000 Trust. A motion to that effect has been pending since 2012, as has a motion to join Forlando Brown as a party. Both should be heard.

This Court can also preserve, with efficiency and judicial economy, the testimony and admissions of the AG and all 9 expert witnesses designated by Respondents in this case. This testimony and these admissions are already on file or part of the transcript of the trial in Aiken County Case 2013-CP-02-1337. Just the preservation of the expert witness testimony and testimony of the Governor, the AG and five AG staff members will prevent the Court from losing jurisdiction over the parties and rendering critical issues of the role of the AG in Richland County 4900 moot. The AG's role in Richland 4900 will be a material issue

regardless of the outcome of the pending appeals.

This Court can also resolve issues now decided by the Supreme Court, including that Tommie Rae was never James Brown's spouse. From this the Court may conclude that she never had a valid claim against Buchanan and Pope because she was not an heir or devisee of James Brown.

A. Appeal of the Denial of a Previous Motion Does Not Prevent Lifting the Stay

Respondents assert on pages 4 and 5 that the appeal of the denial of a previous motion to lift stay prevents the Court's granting this motion to lift stay. This is not the case. There is no impediment to the Court's lifting the stay as a result of Venisha's death; the ruling that the Legacy Trust does not exist; the Supreme Court decision that Tommie Rae was not Brown's spouse; or SWB's recent revelation that it does not represent the Legacy Trust.

2. Respondents' Discovery Attempt Related to the False Felony Claim is Very Broad

Respondents assert that discovery related to the civil conspiracy hatched by Tommie Rae and Bauknight, and carried out by Peter Afterman, to value Brown's worldwide music empire at \$4.7 million to damage "Bobadele" and the resulting false felony claim which the AG and other Respondents have lodged against Buchanan and Pope since 2011 is "circumscribed" and limited. This is not the case. It is central to Respondents' claim that Buchanan and Appellant damaged the Legacy Trust by tens of millions of dollars. Further, lifting the stay is critical because Peter Afterman, in a 2019 sworn filing in the Supreme Court, has recanted his \$4.7 million claim. Afterman and Tommie Rae now claim that termination rights – which will never apply to anything in Brown's estate except the U.S. copyright royalties – about half of the \$4 million annual royalty stream – are worth tens of

millions of dollars.

3. Respondents' Counsel, Not Appellant, Has Altered the Correct Caption

On pages 8 – 10 Respondents assert that the AG should not be in the caption of this case. This is incorrect. Until the stay is lifted and a ruling is made either by the Circuit Court or this Court, the AG is both a Plaintiff and a counterclaim Defendant. The same is true of Russell Bauknight "on behalf of" the AG.

It is noteworthy that the AG informed the Circuit Court some time ago that he does not take a position on the lifting of the stay.

Respondents also state that former Newberry Case No. 2011-CP-36-379 was not consolidated with Richland 4900. This is simply incorrect, and inconsistent with the consolidation order.

4. SWB's Position as to the Legacy Trust Differs From its Position in Other Courts

On page 10 SWB take the position that the Legacy Trust does not exist, and that SWB does not represent the Legacy Trust. SWB states: "There is nothing the Plaintiffs can do on behalf of or to an entity that does not exist." This position is entirely inconsistent with the positions taken for the Legacy Trust by SWB and Russell Bauknight both before and since the first (2016) ruling that it does not exist, to include:

1. Bauknight signed the Legacy Trust contract with SWB in 2010 and concealed it until 2019 while acting for the Legacy Trust.
2. In 2012 the Legacy Trust "settled" with Buchanan and allowed James Brown's charity to advance \$500,000 to the Legacy Trust for a release from Buchanan's claims.
3. In 2015 Bauknight and the Legacy Trust were relieved from default as to the 2010 counterclaims of Buchanan and Pope, and Tommie Rae's lawyer told the Court Bauknight should be "knighted" for his work for the Legacy Trust beneficiaries.

4. In 2016 Bauknight asked the Circuit Court to grant summary judgment to the Legacy Trust as to the counterclaims of Buchanan and Appellant

5. In 2017 the Circuit Court granted the Legacy Trust summary judgment.

6. In 2017 both Kenneth Wingate, Esq., and his partner Everett Kendall, Esq. testified under oath as directed by the Honorable Jean Toal, Acting Circuit Judge. Both stated that they believe SWB represented the same parties who filed Richland 4900 in 2010, including the Legacy Trust and Bauknight as its trustee.

7. Between 2018 and 2020 SWB filed briefs and numerous motions on behalf of the Legacy Trust (and its owner-successors) in two Richland 4900 appeals, and never informed the Court of Appeals that it did not exist – except in the FOIA appeal.

8. In 2020 SWB, acting on behalf of the Richland 4900 Plaintiffs, asked both the Circuit Court in the Venisha Brown Estate and the Supreme Court to hold Pope in contempt of the Supreme Court. SWB did not inform either Court that it was not acting for the Legacy Trust – for which ALL damages against Buchanan and Pope in Richland 4900 have been sought for 10 years.

4. Remedies for the Wrongdoing of the Legacy Trust Support Lifting the Stay

On page 10 SWB asserts that resolving the nonexistence of the Legacy Trust which has been suing Buchanan and Pope for ten years “is a very minor procedural matter.” Nothing could be further from the truth.

In 2009 the Legacy Trust obtained a lifting of the stay in *Wilson v. Dallas*. During four years it took in more than \$16 million dollars. It hired and paid a dozen Nexsen Pruet lawyers. It hired SWB to stop the *Wilson v. Dallas* appeal and seek tens of millions of dollars from Buchanan and Pope. Its trustee, Bauknight, filed affidavits assuring the Circuit Court that the Legacy Trust was operated in Richland County, not Aiken County.

Its trustee, acting under a VOID appointment as trustee for Brown's 2000 Trust and as Brown's PR, advanced funds James Brown gave to educate needy students to pay for the

4-year effort to dismember Brown's estate plan. Since May 29, 2013 Bauknight has continued the plan to damage Buchanan and Appellant for Legacy Trust owner-successors.

Lifting the stay will allow the Court to decide whether James Brown's charity – or Bauknight, individually, and Respondents who are successors to the Legacy Trust who now hold 60% of the Termination Interests and 31% of Brown's 2000 Trust should pay that bill.

The claim that nothing can be done about the wrongdoing of the Legacy Trust should be put to rest by a lifting of the stay.

5. Respondents' Unsupported Contempt Sanction Request and Venisha's Estate

Venisha has been dead nearly two years. Yesterday the New York Times reported that Marc Toberoff, Esq., counsel to Deanna Thomas, represents Venisha's children. Venisha had no children. She died intestate a resident of Aiken County on September 19, 2018.

SWB told the Circuit Court obtaining a PR for Venisha was a simple procedural matter. It was not. Thomas, who has a 40% contract with Toberoff, 25% of which will go to Louis Levenson, Esq., claimed that Venisha had "little or not assets," She did so with knowledge that Venisha's vested Termination Interest in 246 royalties unrelated to her biological father's estate were worth hundreds of thousands of dollars.

Then SWB, Levenson, and Thomas all asked the Honorable Clifton Newman to hold Pope in contempt of a 2015 order of the Supreme Court. This was no simple procedural matter.

SWB attaches its letter seeking contempt, but not the response of the Clerk of the Supreme Court which was sent five days before the memorandum was filed.

5. The Response of the Supreme Court to SWB's Contempt Sanction Request

On June 17, 2020 the Supreme Court issued its ruling that Tommie Rae, the SWB client who seeks 23.75% of the damages the Legacy Trust seeks from Buchanan and Pope in the Richland 4900 complaint is not Brown's spouse. The Supreme Court noted that a petition for the appointment of a PR was ongoing in Venisha's estate.

The following day, the Honorable Michelle Childs dismissed Tommie Rae's counterclaims in the federal suit, finding that she had no ownership of the Termination Interests to James Brown's song copyrights.

On June 19, 2020 the Clerk of the Supreme Court advised Mark Gende, Esq., the Wingate Attorney who had requested contempt sanctions, that the request failed to contain a verified affidavit or petition, and cited a case finding that this deficiency can be fatal to a contempt request. He advised the SWB attorney to file a petition or affidavit within 10 days. SWB failed to note this in its memorandum.

Lifting of the stay will allow this Court to follow the actions of SWB with respect to the claimed contempt which they reference in their memorandum.

CONCLUSION

The errors and omissions in the Memorandum of Respondents provide further support for a lifting of the stay; correction of the parties; and preparation of this case for the trial which the two pending appeals will not resolve.

Respectfully submitted,

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June 26, 2020

Counsel for Appellant Adele J. Pope

Exhibit H – Petition to Lift Automatic Stay

1 State of South Carolina) Court of General Sessions
2 County of Aiken) Second Judicial Circuit
3
4 Adele Jeffords Pope,) Transcript of Record
et al.,)
5) 2013-CP-02-01337
Plaintiff,)
6 vs.)
7 Estate of James Brown,)
et al.,)
8
Defendant.)

10 June 26, 2020
Via Zoom Videoconferencing

11 B E F O R E:

12 The Honorable Clifton Newman, Judge

13
14 A P P E A R A N C E S:

15 Adam T. Silvernail, Esquire
On behalf of the Plaintiff

16 Mark Gende, Esquire
17 Kenneth B. Wingate, Esquire
Charles Griffith Doolittle, Esquire
18 On behalf of Plaintiffs in Richland 4900

19 Emory Smith, Esquire
On behalf of SC Attorney General

20
21 Stacy S. Johnson
22 Circuit Court Reporter
23
24
25

1 (The following proceedings were held June 26, 2020,
2 at 12:02 PM.).

3 THE COURT: Good morning.

4 UNIDENTIFIED PARTICIPANTS: Good morning.

5 THE COURT: All right. If we can have everyone
6 identify themselves for the record.

7 MR. WILLIAM SMITH: This is William Smith.

8 THE COURT: And why are you here, Mr. Smith?

9 MR. WILLIAM SMITH: I'm one of the attorneys for
10 Adele Pope.

11 THE COURT: If you'll -- if after you speak, then
12 mute your line. Thank you.

13 MR. WILLIAM SMITH: Yes, sir.

14 MR. SILVERNAIL: And I'm Adam Silvernail, also here
15 on behalf of Adele Pope.

16 THE COURT: I'm sorry. Again, Mr. Smith represents?

17 MR. SILVERNAIL: He represents Mrs. Pope as well.

18 MR. EMORY SMITH: Your Honor, this is Emory Smith.
19 I am, subject to my objections, representing the Attorney
20 General. However, the Attorney General is dropped as a
21 party from case 4900. That order is on appeal, so I'm --
22 I'm not waiving that position that we are dropped as a
23 party and -- and so, therefore, I'm not taking a position
24 on the motion for stay that is to be considered today.

25 So I'm -- I'm really doubtful that I have any role

1 was noted on the contact or participant list, but for
2 some reason while we could hear you-all very well,
3 you-all weren't able to hear us. We remedied that by
4 going with computer audio.

5 THE COURT: Okay.

6 MR. GENDE: I am Mark Gende, G-E-N-D-E. With me
7 is Ken Wingate and with us also is Griff Doolittle and
8 we represent the remaining plaintiffs in case 4900.

9 Our screen, well, says Mark Barrow. That's
10 only because the account has his name. He's not
11 associated with this case.

12 THE COURT: All right. And we have a motion by
13 Mr. Silvernail.

14 MR. SILVERNAIL: Yes, Your Honor. May it please
15 the Court?

16 We have moved to lift the automatic stay imposed
17 under the appellate court rules so that this case can
18 proceed with discovery, correction of the parties and
19 other important issues.

20 THE COURT: Is that an issue that Judge Early ruled
21 on already?

22 MR. SILVERNAIL: Your Honor, there were two
23 previous motions for stay in -- after the filing of the
24 appeals in this case and they were denied. We brought
25 this motion after a number of 2019 and 2020 filings and

1 stay as we requested.

2 THE COURT: Anything else from anyone else
3 concerning this issue?

4 MR. GENDE: No, Your Honor. Just to request that
5 we be allowed fifteen days to file a supplemental
6 memorandum in response to the memoranda we received from
7 Ms. Pope's counsel yesterday and -- and just shortly
8 before this hearing if -- if -- if the Court needs that.

9 THE COURT: All right. The motion to lift stay
10 is denied based on the fact it has previously been
11 considered and ruled upon by Judge Early. There's no
12 right to successive requests for reconsideration or
13 repetitious repetition of motions previously made and
14 ruled upon. In addition, I accept and agree with the
15 arguments by the defense that this matter should not be
16 stayed, so the motion is denied.

17 MR. GENDE: Thank you, Your Honor. I would only
18 correct one thing. I think you meant the arguments by
19 the plaintiffs. This one's is a little backwards, so.

20 THE COURT: I did flip based on as if the plaintiff
21 -- as if the defense is arguing as if the defense is the
22 plaintiff and that's probably based on the counterclaim.
23 I meant to say the arguments of the plaintiff, not the
24 defense.

25 MR. GENDE: Thank you, Your Honor.

1 THE COURT: Anything further on this case at this
2 time?

3 MR. SILVERNAIL: No, Your Honor.

4 THE COURT: All right. Well, thank you very much
5 and if you'll draft me an order, Counsel.

6 MR. GENDE: I will. Thank you.

7 MR. SILVERNAIL: Thank you, Your Honor.

8 THE COURT: Thank you-all.

9 (Whereupon, the proceedings were concluded at
10 12:36 PM.)

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Exhibit I – Petition to Lift Automatic Stay

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**AFFIDAVIT OF
MARK V. GENDE**

PERSONALLY APPEARED BEFORE ME, the undersigned, Mark V. Gende, who after being duly sworn, deposes and says:

1. My name is Mark V. Gende, Esquire, I am a partner with the law firm of Sweeny Wingate & Barrow, P.A., 1515 Lady Street, Columbia, South Carolina. I am over 18 years of age and competent to testify concerning matters in this Affidavit.

2. Sweeny Wingate & Barrow, P.A. represents the Estate of James Brown in Richland County Case No. 2010-CP-40-04900 ("Richland Case 4900"), having been retained by Mr. Russell K. Bauknight ("Bauknight"), the personal representative and trustee of the Estate.

3. Sweeny Wingate & Barrow also represents the late Venisha Brown in Richland Case 4900. Venisha Brown is an heir and named beneficiary in the Will of James Brown. I am counsel of record in Richland Case 4900 and make this Affidavit upon my personal knowledge in that capacity.

4. Subsequent to the passing of Venisha Brown in September 2018, Sweeny Wingate & Barrow became aware that Mrs. Adele Pope ("Pope") filed to be appointed personal representative of the Estate of Venisha Brown in Aiken Case 2019-CP-02-00320 ("Aiken Case 320").

5. As counsel for Venisha Brown and the Estate of James Brown in Richland Case 4900, Pope's effort to be appointed personal representative of the Estate of Venisha Brown is an unacceptable development because of Pope's long-standing legal conflicts with Venisha Brown, because the appointment of Pope as personal representative of the Estate of Venisha Brown would make Pope both a Plaintiff and Defendant in Richland Case 4900, and because it appears foreseeable that Pope would become involved in the affairs of the Estate of James Brown through her appointment as personal representative of the Estate of Venisha Brown and interfere with the affairs of the Estate of James Brown.

6. Pope's contentious relationship with the Estate of James Brown and the Brown family members (including Venisha Brown) is a matter of public record, having been noted by the Supreme Court of South Carolina as one of the grounds for her dismissal as the personal representative and trustee of the Estate of James Brown. ("These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interest of the estate." *Wilson v. Dallas*, 743 S.E.2d 746, 767 (S.C. 2013)).

7. Because of these concerns and after consultation with the Estate of James Brown, I attended the January 31, 2020 hearing on Pope's request to be named PR of the Estate of Venisha Brown in Aiken Case 320.

8. At the January 31, 2020 hearing, the initial motion heard was one made by Mrs. Joyce Cheeks, Esquire ("Cheeks"), counsel for Deanna Brown-Thomas. Brown-Thomas is a

sister of Venisha Brown who is also seeking to be appointed as personal representative of Venisha's Estate. Cheeks moved to hold Pope in contempt of the South Carolina Supreme Court's June 10, 2015 Order barring Pope from any involvement in the matters relating to the Estate of James Brown where she clearly has no standing. (See the transcript of hearing provided to this Court by the Honorable Clifton Newman.)

9. On the record, Cheeks made the argument that Pope's seeking to be appointed personal representative of the Estate of Venisha Brown, which would make her both the sole Defendant and a Plaintiff in Richland Case 4900, constituted grounds for holding Pope in violation of the Supreme Court's Order. (*Id.*)

10. Upon request, I was recognized by Judge Newman and indicated that as counsel in Richland Case 4900, my concern was the same as Cheeks' and that if the Court allowed, I would send a letter outlining the extent of these concerns. The Court indicated that although it would not decide Cheeks' motion, it would send the motion, a transcript of the hearing, and any letter I may provide to the South Carolina Supreme Court, which would decide whether Pope is in violation of the June 10, 2015 Order.

11. I provided the attached letter to Judge Newman ("The Letter"). (Exhibit 1). I incorporate The Letter into this Affidavit by attachment and by reference. The assertions made in The Letter are made upon my personal knowledge as counsel in Richland Case 4900.

12. The Letter states that the Estate of James Brown has reason to be concerned that Pope's action may be in contempt of the Supreme Court's June 10, 2015 Order. It does not draw a conclusion. That conclusion is solely in the discretion of the South Carolina Supreme Court, which issued the Order.

13. On June 19, 2020, I received a letter from the Clerk of the South Carolina Supreme Court asking me to provide the substance of The Letter in an affidavit form. (Exhibit 2). I am providing this document in compliance with that request.

14. In addition to The Letter, and in further support of the Estate of James Brown's reasonable concern that Pope's attempt to become the personal representative of the Estate of Venisha Brown may be the manifestation of a long-held and strategic plan to insert herself into the affairs of the Estate of James Brown and interfere in its operation, I also draw the Court's attention to the following:

- a. In Aiken Case 320, Pope asks the Court for an order, "Directing that the PR [of the Estate of Venisha Brown] have *all of the powers and duties* of a general personal representative . . ."

Motion and Memorandum of Defendant Pope to Dismiss; to Void Ex Parte Order for Publication; and for Summary Judgment Appointing Personal Representatives (filed February 26, 2019 in Aiken Case 320) at p. 2 (Exhibit 3)(emphasis added).

- b. Pope asks that these powers be granted in an "immediate appointment."

(*Id.* at p. 2).

c. The powers of a personal representative are set out in the South Carolina Probate Code, § 62-3-621, et seq. These duties include,

- "... prepar[ing] an inventory of the property owned by the decedent at the time of his death, together with such other information as may be required by the South Carolina Department of Revenue, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item" (SC Code Ann. § 62-3-706).
- "If any property not including in original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court, and furnish copies thereof or information thereof to persons who receive the original inventory, and to persons interested in the new information." (SC Code Ann. § 62-3-708).
- The Probate Code further states, the transactions authorized for the personal representatives in § 62-3-715 and those include:

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the restrictions imposed in Section 62-3-711(b) and to the priorities stated in Section 62-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) receive assets from fiduciaries or other sources;
- (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. . . .

* * *

- (8) satisfy and settle claims and distribute the estate as provided in this Code;

* * *

(15) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, lien, or other security interest upon property of another persons, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(16) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

* * *

(18) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(19) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(20) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

* * *

15. It is reasonable to infer from Pope's request for these powers that she also intends to act on those powers, and other powers granted under the probate code.

16. Based on statements Pope makes in a 2018 affidavit filed by her in Richland Case 4900, among other statements in other places, it is reasonable to conclude that Pope would use these powers to act in such a way that would significantly interfere with the Estate of James Brown.

"I also believe Mr. Bauknight, who continues to act on behalf of Venisha Brown and other Legacy Trust beneficiaries, should account for the tens of millions of dollars he admitted in a 2018 Federal Court filing that he has spent from what he claims is a \$6.5 Million Estate and Trust. This is especially important because he has not accounted since 2016; has never listed the fair market value of Mr. Brown's assets on an accounting; and allowed the James Brown 2007 - May 2009 tax records, including Estate tax records, held by Court-appointed CPA William Sellers to be destroyed."

Pope's Affidavit in Support of Supplemental Motion to Lift Stay for Limited Purposes, at p. 3 (filed December 17, 2018 in Richland Case 4900 (incorrectly styled as Appellate Case No. 2017-001899)). (Exhibit 4).

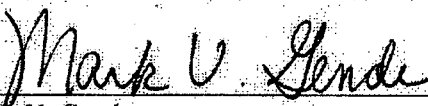
17. These are Pope's own words and reasonably appear to evidence a mindset to challenge approximately a decade of professional valuations, spending, and accountings that Bauknight has overseen during his administration as personal representative and trustee of the Estate of James Brown. These words reasonably appear to evidence that Pope would seek to involve herself with the affairs of the administration of the Estate, should she gain Venisha's Estates' personal representative powers.

18. It is a serious concern of the Estate of James Brown and Bauknight that Pope's effort to be immediately named the personal representative of the Estate of Venisha Brown and be granted the powers of a personal representative is a manifestation of her intention to involve herself in the control and functions of the Estate of James Brown, something she has been twice prohibited by this Court from doing: first, by this Court upholding her removal as personal representative and trustee of the Estate of James Brown in *Wilson v. Dallas*, and second, by the Court's June 10, 2015 Order directing her not to involve herself in the affairs of the Estate of James Brown, in which she clearly has no standing.

19. The paragraphs above constitute evidence indicating that Pope's action in Aiken 320 constitute a substantial step toward her involvement in the affairs of the Estate of James Brown under the guise of protecting an alleged creditor's claim regarding her counterclaims in Richland Case 4900, which have been dismissed on summary judgment (although her appeal of the dismissal is currently pending).

20. I am informed by the Estate of James Brown that should Pope be allowed to involve herself in the affairs of the Estate of James Brown, as discussed above, her interference will delay the Estate's ability to resolve creditor's claims and fund scholarships.

FURTHER AFFIANT SAYETH NOT.


Mark V. Gende

SWORN TO and subscribed before me
this 29th day of June, 2020.


Notary Public for South Carolina
My Commission Expires: 4/24/2022



SWEENEY WINGATE & BARROW P.A.

February 12, 2020.

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

VIA E-MAIL: cnewmansc@sccourts.org

The Honorable Clifton Newman
P. O. Box 516
Kingstree, SC 29556-0516

Re: *Deanna Thomas v. Estate of Venisha Brown, et. al.*
Civil Action No. 2019-CP-02-00320

Dear Judge Newman:

On Friday, January 31, 2020, you presided over a motion in Aiken County Case 2019-CP-02-00320 ("Aiken Case 320") seeking to find Ms. Adele Pope, Esq. ("Pope") in contempt of the South Carolina Supreme Court's Order of June 10, 2015. The motion stems from Pope's effort to assert a claim against the Estate of Venisha Brown and to be appointed Personal Representative of Venisha's estate.

At the hearing, I requested permission to provide the court a letter outlining the position of counsel for the plaintiffs in Richland County Case No. 2010-CP-40-4900 ("Case 4900") concerning Pope's efforts to assert a creditor claim against the estate of Venisha Brown and become her personal representative. You graciously granted that request, indicating I am to provide this letter to you and that you will forward this letter to the Supreme Court. I am also copying Pope and Ms. Joyce Cheeks, Esq. with this letter.

Venisha Brown passed away approximately one-and-a-half years ago. Venisha has been a Case 4900 plaintiff since its filing in 2010 and a client of my firm, Sweeney, Wingate, and Barrow, PA ("SWB"). SWB represents all current plaintiffs in Case 4900, including Venisha. SWB has no reason to doubt that it will continue to represent Venisha's estate once her personal representative is appointed. Case 4900 is a breach of fiduciary duty action against Pope, alleging Pope violated her fiduciary duties to the Estate of James Brown, resulting in millions of dollars in damages. Pope is the only defendant in Case 4900.

For the following reasons, counsel for the Plaintiffs in Case 4900 have reasonable basis to believe that Pope's effort to assert a claim against Venisha Brown and become the personal representative of Venisha's estate may contravene the Supreme Court's June 2015 Order, because even if Pope has a legitimate creditor's claim against Venisha's estate, Pope's effort to

be appointed personal representative appears to be a significant conflict of interest that raises the question of whether Pope is contriving a method to circumvent the June 2015 Order and insert herself into the affairs of the Estate of James Brown, in which she clearly has no standing, because no reasonable attorney would seek to become both the sole defendant and a personal representative/plaintiff in the same action, which would be the effective result in Case 4900 of Pope's request to be both a creditor and the personal representative of the Estate of Venisha Brown.

I. Pope's Apparent Conflict of Interest

First, Pope's effort to become the personal representative of Venisha's estate appears to be fraught with obvious conflicts. If successful in being named personal representative, Pope would effectively become both the sole defendant and a plaintiff in Case 4900. In Case 4900 Pope has been adverse to Venisha Brown for ten years. In Case 4900 Pope has accused Venisha Brown of abuse of process, intentional interference with contract, civil conspiracy, and fraud. In Case 4900 Pope has demanded, via the terms of an offer of judgment, that:

2. VENISHA dismiss with prejudice all claims against ADELE as set out in the [Case 4900] Complaint,

3. VENISHA agree[] that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE,

4. ... brought this suit so that VENISHA could keep \$5 Million her father did not want her to have ...

5. VENISHA acknowledges she did not authorize WINGATE to intervene in her behalf or seek sanctions against ADELE in a FOIA suit.

Offer of Judgment of Adele J. Pope to Venisha Brown, Recitals Section at p. 2, *Bauknight et. al. v. Pope*, No. 2010-CP-40-04900 (S.C. Com. Pl. August 3, 2012)(emphasis in original). (Exhibit 1)

Pope further accuses Venisha of participating in Case 4900 "... so that VENISHA could keep \$5 Million her father did not want her to have" (Id.)

Furthermore, in Pope's February 10, 2020 affidavit filed in the matter in which she seeks appointment as personal representative for Venisha's estate, Pope continues her acrimonious attack on Venisha Brown:

23. Venisha Brown's 7-year FOIA disruption ... increased the damages to ... me [Pope] substantially.

54. Just some of the damages Venisha Brown has caused me [Pope] in her decade-long pursuit of Richland 4900 are loss of my professional negligence insurance, payment of tens of thousands of dollars for my defense, and costs in the *Wilson v. Dallas* appeal; inability to serve effectively as an expert witness for almost a decade; loss of professional standing

57. Venisha Brown has damaged me [Pope] in numerous ways by Richland 4900

58. ... my [Pope's] counterclaims against Venisha Brown are strong and they have improved since she sued me

Affidavit Opposing Request of Plaintiff Deanna Brown Thomas for Contempt Sanctions Against Defendant Adele J. Pope, *Thomas v. Estate of Venisha Brown*, No. 2019-CP-02-00320 (S.C. Com. Pl. February 10, 2010 (provided by email to the court but not filed)). (Exhibit 2)

Rule 1.7 of The South Carolina Rules of Professional Conduct (Conflict of Interest: Current Clients) prohibits exactly the type of relationship that would exist if Pope were to be appointed Venisha's personal representative. Rule 1.7 states,

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Rule 1.7, SCRPC, (emphasis added). *See also, In Matter of Rogers*, 421 S.C. 292, 805 S.E.2d 763 (2017)(attorney subject to public reprimand for violating the rule prohibiting concurrent conflicts of interests).

That Pope would maintain positions so critical of and contrary to Venisha Brown and then move to be appointed Venisha's personal representative is breathtaking in the scope of its apparent conflict of interest and raises legitimate questions about Pope's motivation to seek the appointment.

II. James Brown Estate Interference Concerns

Second, there is no apparent need for Pope to seek appointment as personal representative of Venisha's estate other than ultimately to involve herself in the affairs of the James Brown Estate. As a creditor, Pope is a lower priority potential personal representative than Deanna Brown-Thomas, Venisha's sister, who is also seeking appointment as Venisha's personal representative. If Pope's only concern is her alleged creditor's claim, she would be adequately protected by asserting the claim. If Pope, in due course, believed that her claim was not properly handled by the personal representative, she would have legal recourse. Thus, since Pope's alleged creditor's claim is protected, and in light of the apparent conflict of interest noted above, why would Pope seek the appointment? Pope's filings, in Aiken 320 and Case 4900 give some insight into that question.

Pope asks for the personal representative appointment, among other things, to, "...void the Wingate ... contract[] as to Venisha." Def.'s Resp. to Pl.'s Mot. for Summ. J. at 9, *Thomas v. Estate of Venisha Brown, et. al.*, 2019-CP-02-00320 (S.C. Com. Pl. November 13, 2019). What Pope calls the "Wingate Contract" is the agreement under which Venisha became a client of SWB and a party in Case 4900, along with the James Brown Estate. That Pope states voiding the agreement to be one of her objectives is evidence that she would take actions as personal representative that Venisha would not *and did not take* during her lifetime. SWB would strongly oppose Pope's effort, and SWB believes it would prevail over Pope's attempt to void Venisha's agreement.

Serious questions about Pope's motivation to seek appointment as Venisha's personal representative include: What other steps might Pope take that are contrary to anything Venisha did or did not do during her lifetime? Or what steps might Pope take within Case 4900 to interfere with the Estate of James Brown, another plaintiff in Case 4900, during the pendency of her effort to void Venisha's agreement? And if Pope's effort to avoid Venisha's agreement fails, what efforts might Pope make to interfere with the Estate of James Brown both inside and outside of Case 4900 as Venisha's personal representative? Pope's Offer of Judgment is instructive here also, because in it Pope demands:

4. VENISHA agree[] that Russell Bauknight [the current personal representative and trustee of the James Brown Estate] has breached his fiduciary duty to the Estate of James Brown and the James Brown 2000 Irrevocable Trust in at least the following ways:

- a. By falsely asserting that Tommie Rae Hynie was the wife of Brown;
- b. By valuing James Brown's worldwide music empire at less than \$4.7 million at his death;
- c. By failing to seek restitution for the \$12+ Million taken by David Cannon.
- d. By failing in 3 years to recover anything from David Cannon in Case 322.
- e. By engaging WINGATE to bring this suit for the improper purpose of stopping ADELE's and Robert Buchanan's appeal of the destruction of James Brown's dream - the "I Feel Good" Foundation.
- f. By asserting to the S.C. Supreme Court that there were no offers to purchase Brown's assets while suing ADELE for not accepting a \$100 Million offer to buy his music empire.
- g. By misrepresenting to the S.C. Supreme Court and others the heirs of James Brown under the Federal Copyright Act Termination Provisions and their rights.

Offer of Judgment of Adele J. Pope, Terms of Settlement Section, at p. 4 (*see* Exhibit 1).

Therefore, it is reasonable for counsel in Case 4900 to anticipate that Pope may improperly attempt to use her personal representative powers to try to remove Mr. Bauknight from his position or, at the very least, oppose his administration, thus interfering in the Brown Estate.

III. An Opening for Greater Interference

Finally, in Pope's Offer of Judgment to Venisha, *Bauknight et. al. v. Pope*, No. 2010-CP-40-04900 (S.C. Com. Pl. August 3, 2012), Pope writes,

6. "If the McMaster Settlement is overturned *and* ADELE returned as PR/Trustee [of the Estate of James Brown]"

and

7. "If the McMaster Settlement is overturned *and* ADELE returned as PR/Trustee"

(*Id.*, emphasis added.)

At the time Pope propounded this Offer of Judgment, she had already been removed for cause as personal representative and trustee of the Estate of James Brown, although she was contesting her removal. However, these two statements reveal that at least in 2012, Pope

The Honorable Clifton Newman
February 12, 2020
Page 6 of 6

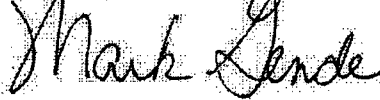
harbored the idea that she may be returned as personal representative and trustee of the James Brown Estate. Pope has given no indication that she has abandoned the objective of a return to a fiduciary role in the Brown's Estate.

May Pope be seeking to create an opening to return to a fiduciary role in James Brown's Estate? Pope regularly attacks the work of Mr. Russell Bauknight, the current personal representative and trustee. She has attacked Bauknight's reappointment after the 2013 *Wilson v. Dallas* opinion. She has asked Venisha to admit that Bauknight has breached his fiduciary duties to the Estate. Therefore, it is reasonable to be concerned that should Pope gain a position of influence in Mr. Brown's Estate by becoming Venisha's personal representative, she may attempt far greater interference, which foreseeably may include an effort to disrupt Bauknight's administration, which Pope's believes is deficient, an effort to replace Bauknight with someone sympathetic to Pope's positions, or possibly an effort (as misguided as it may be) to mount her own return to the position of personal representative and trustee. Any of these options is clearly interfering in the affairs of the James Brown Estate. Each of these potential scenarios is no more fanciful than the current scenario of Pope seeking to be appointed personal representative of Venisha Brown's estate.

For the foregoing reasons, Case 4900 plaintiffs' counsel believes that Pope's attempt to become the personal representative of Venisha Brown's estate may be a Trojan Horse that contravenes the Supreme Court's Order.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/cgd

cc: Adele Pope, Esquire
Joyce Cheeks, Esquire

ELECTRONICALLY FILED - 2020 Jun 29 10:05 PM - AIKEN - COMMON PLEAS - CASE#2019CP0200320

Exhibit 1

ELECTRONICALLY FILED - 2020 Jun 29 10:05 PM - AIKEN - COMMON PLEAS - CASE#2019CP0200320

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)
)
)

RUSSELL L. Bauknight, as Trustee,
and others

Case No.: 2010-CP-40-4900

and

) Offer of Judgment of
) Adele J. Pope to Venisha Brown
)
)
)

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

TO: PLAINTIFF VENISHA BROWN AND SWEENEY, WINGATE AND BARROW PA
("WINGATE") HER ATTORNEYS :

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina
Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope
("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Venisha
Brown ("VENISHA") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the
judgment against said Defendant Pope is less than the above proffer, said
Defendant/Counterclaim Plaintiff shall seek from VENISHA all expenses and costs,
including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South
Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other
applicable law, and interest under Rule 68.

RECITALS

1. VENISHA has often honored her famous father James Brown with public

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JEANETTE W. BRIDGEMAN
C.C.P. & C.

RICHLAND COUNTY
FILED

statements and performances, but disgraced him by making a deal with former Attorney General Henry McMaster to take for herself about \$5 Million Brown gave to needy and deserving children through The James Brown "I Feel Good" Trust, Brown's private foundation.

2. McMaster, to accomplish the takeover of Brown's private property for his personal/political use, also appointed VENISHA as an advisor to the "Legacy Trust" McMaster created – using James Brown's name while destroying his dream.

3. On May 19, 2010 Robert Buchanan, Jr. and ADELE were the only two people still vigorously defending James Brown's dream, as directed in his valid Estate Plan, in the S. C. Courts.

4. WINGATE brought this suit so that VENISHA could keep \$5 Million her father did not want her to have and McMaster, through Russell Bauknight who served at his pleasure, could keep control of a \$100 Million music empire James Brown did not want McMaster to have.

5. In November, 2010 VENISHA, through WINGATE defaulted on ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

a. Abuse of Process;

b. Interference with Contract – Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/8/08 Order which VENISHA approved and did not appeal.

c. Civil Conspiracy; and

d. Fraud under § 62-1-106 of the S.C. Code.

6. Because many acts taken in VENISHA's name have been through an invalid springing Power of Attorney held by VENISHA's sister, Deanna Brown Thomas;

VENISHA has been incarcerated during critical periods of the James Brown proceedings; and WINGATE has refused to allow VENISHA or any other Plaintiff/Counterclaim Defendant to be deposed. ADELE does not know how much VENISHA actually participated, if at all, in the following and other actions taken on her behalf by WINGATE, Bauknight and/or Louis Levenson, Esq.:

a. The August 10, 2008 deal with Henry McMaster to put McMaster in control of James Brown's \$100 Million private fortune and pay VENISHA about \$5 Million – rather than the 1/6 personal effects Brown gave her.

b. The May 2011 false representation to the S.C. Supreme Court that James Brown's worldwide music empire was worth less than \$4.7 Million when James Brown died.

c. The failure to seek recovery in Case 322 or restitution in the criminal proceeding against felon David Cannon.

8. ADELE makes the Offer set out herein to VENISHA.

Terms of Settlement

a. The above recitals will not be made part of the settlement unless agreed by VENISHA

b. VENISHA and ADELE agree that the Court should enter an Order dismissing VENISHA as a party in substantially the following form:

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, VENISHA and ADELE have resolved their differences in this action, and VENISHA is hereby dismissed as a party.

2. VENISHA dismisses with prejudice all claims against ADELE as set out in the

Complaint.

3. As to the Counterclaims, VENISHA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan, Jr. and forcing them to abandon their appeal in Case 1647.

4. VENISHA agrees that Russell Bauknight has breached his fiduciary duty to the Estate of James Brown and the James Brown 2000 Irrevocable Trust in at least the following ways:

- a. By falsely asserting the Tommie Rae Hynie was the wife of Brown;
- b. By valuing James Brown's worldwide music empire at less than \$4.7 Million at his death;
- c. By failing to seek restitution for the \$12+ Million taken by David Cannon.
- d. By failing in 3 years to recover anything from David Cannon in Case 322.
- e. By engaging WINGATE to bring this suit for the improper purpose of stopping ADELE's and Robert Buchanan's appeal of the destruction of James Brown's dream - the "I Feel Good" Foundation.
- f. By asserting to the S.C. Supreme Court that there were no offers to purchase Brown's assets while suing ADELE for not accepting a \$100 Million offer to buy his music empire.
- g. By misrepresenting to the S.C. Supreme Court and others the heirs of James Brown under the Federal Copyright Act Termination Provisions and their rights.

5. VENISHA acknowledges she did not authorize WINGATE to intervene in her behalf or seek sanctions against ADELE in a FOIA suit.

6. If the McMaster Settlement is overturned and ADELE returned as PR/Trustee, VENISHA, in full settlement and dismissal of all claims and suits against

the Estate of James Brown and the James Brown 2000 Irrevocable Trust will accept \$230,000.00, being the approximate net value of her 1/6 of the personal and household effects.

7. If the McMaster Settlement is overturned and ADELE returned as PR/Trustee, VENISHA offers to allow, by proper assignment and/or other documentation, the "I Feel Good" Trust to receive all benefits, if any, VENISHA has as an heir of James Brown under the Federal Copyright Act, including Termination Provisions, and ADELE agrees that it is appropriate for the Estate/2000 Trust to pay VENISHA an amount, at least annually, equal to 1% of the net income of Estate/2000 Trust for VENISHA's life, to be calculated and established in a fair manner by VENISHA and ADELE, and paid by Estate/2000 Trust beginning upon ADELE's reinstatement.

8. VENISHA and ADELE agree that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

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Jeter & Williams, P.A.
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Telephone: (803) 765-0800
Facsimile: (803) 765-0619
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Adam T. Silvermail
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Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Adam@silvermaillawfirm.com

Attorneys for Defendant Adele J. Pope

August 3, 2012

Exhibit J – Petition to Lift Automatic Stay

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF AIKEN	)	
	)	Case No. 2019-CP-02- 00320
Deanna Brown Thomas,	)	Second Supplemental Memorandum
Petitioner,	)	Related to Request of Richland 4900
v.	)	Plaintiff's Counsel that Supreme Court
	)	Hold Defendant/Creditor Adele Pope in
Estate of Venisha Armaa Brown	)	Contempt of Supreme Court Order for
Respondent(s)	)	Filing Answer and Claim Seeking PR
	)	Appointment in Formal Proceeding

Defendant Adele J. Pope provides this Second Supplemental Memorandum Related to the contempt sanctions sought against Defendant Adele J. Pope by Affidavit of Mark V. Gende, Esq., filed in the Supreme Court of South Carolina on June 29, 2020 and filed in this Court shortly thereafter.

With permission of The Honorable Brenda Shealy because the affidavit was public, Defendant Adele J. Pope reports the events of June 30, 2020 to this Court.

- a. At approximately 10 a.m. today, Defendant Pope contacted the Office of the Clerk of the Supreme Court to seek guidance in responding to the incorrect, inaccurate, and misleading Affidavit filed by Mark V. Gende, Esq. with the Supreme Court yesterday, June 29, 2020, and filed in this Court shortly thereafter.
- b. Mr. Gende is counsel to Tommie Rae Hynie (Tommie Rae), Plaintiff Deanna Brown Thomas, and other "Beneficiary Plaintiffs" in Richland County Case 2010-CP-40-4900 (Richland 4900)
- c. Mr. Gende is also counsel to Russell Bauknight in the Richland 4900 complaint, which has not been amended since it was filed in 2010.
- d. In Richland 4900 Mr. Bauknight purports to act "on behalf of" the Attorney General of South Carolina (AG), the James Brown Legacy Trust ("Legacy Trust"), Venisha Brown, Plaintiff Thomas, Tommie Rae and Tommie Rae's son James Brown II (James).

e. Mr. Bauknight holds these multiple roles even though in 2018 Plaintiff and Venisha Brown sued Mr. Bauknight, Tommie Rae and James in federal court alleging that Mr. Bauknight, Tommie Rae and James had engaged in "backroom deals."

At approximately 4:30 this afternoon Respondent Pope spoke with Ms. Shealy and was advised that Pope was not required to respond to Mr. Gende's sworn filing unless a Rule to Show Cause is issued. Defendant Pope, however, was advised that that she is permitted to respond to Mr. Gende's affidavit, and it is customary for those wishing to respond to do so within ten days.

Defendant Pope intends to respond to the Supreme Court by July 9, 2020. She has already received an affidavit from Wallace Lightsey, Esq., an Intellectual Property expert who testified in Aiken County Case 2013-CP-02-1337, and expects to use or refer to the sworn 2016 testimony of the Governor; the sworn 2017 testimony of the Attorney General and the Solicitor General; and the sworn 2017 testimony of Mr. Gende's partners Everett Kendall, Esq., and Kenneth Wingate, Esq., in her response to the affidavit of Mr. Gende.

Defendant Pope has long-standing plans from July 13 - 17 to travel with her husband and 10-year-old granddaughter on a specially planned trip.

Judicial economy, justice and the level playing field required of the Due Process clause of the U. S. Constitution will be served if the hearing on the merits in this matter is held on or after July 20, 2020., so that the Court may consider Defendant Pope's Supreme Court affidavit and related filings.

By July 20, 2020 it may also be known whether the Supreme Court Petition for Rehearing of Mr. Gende's client Tommie Rae, who, with Mr. Bauknight acting on her behalf,

now appears to be seeking about 46% of the claimed damage in Richland 4900, is entitled to half of Venisha Brown's Estate's 10% of the vested Termination Interests in at least 246 song copyrights.

Waiting to receive Defendant Pope's response to the Supreme Court will not cause undue delay because, as the Court record in this case reflects, Mr. Gende's partner Kenneth Wingate, Esq., Defendant Levenson, and a third attorney for Venisha Brown, were all notified by letter of Defendant Pope on December 19, 2018 that Pope had filed her creditor's claim and answer in this case. None has sought an expedited hearing.

Conclusion

For each reason set out herein, and in her earlier memoranda, Defendant Pope asks the Court to consider her Supreme Court filings to be made in response to the Contempt Request Affidavit of Mr. Gende within ten days before considering the appointment of a PR who will protect the creditors of Venisha Brown's estate.

Respectfully submitted,

s/ Adele J. Pope

Adele J. Pope, Defendant, *pro se*
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

June 30, 2020

Exhibit K – Petition to Lift Automatic Stay

92895

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Clifton Newman, Circuit Court Judge
RECEIVED
JUN 30 2020
SC Court of Appeals

Case No. 2013-CP-02-1337

Adele J. Pope, Appellant

v.

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

NOTICE OF APPEAL

Adele J. Pope appeals the following Orders issued in this action.

1. ORDER GRANTING MOTION TO DEPOSIT FUNDS AND
PREVENT ACCRUAL OF INTEREST of the Honorable Clifton
Newman, dated February 26, 2020, a copy of which is attached as
Exhibit A.

1. AMENDED ORDER GRANTING MOTION TO DEPOSIT FUNDS
AND PREVENT ACCRUAL OF INTEREST of the Honorable Clifton
Newman, dated June 18, 2020, a copy of which is attached as Exhibit B

Respectfully submitted,


Adele J. Pope, Pro se
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: (803) 413-0753

adele@popelawfirm.com
S.C. Bar No. 4501

June 30, 2020

Other Counsel of Record:

J. David Black, Esq. (S.C. Bar No. 68499)
Kirsten E. Small, Esq. (S.C. Bar No. 75681)
NEXSEN PRUET, LLC
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Columbia, South Carolina 29201
Phone (803) 771.8900
DBlack@nexsenpruet.com
KSmall@nexsenpruet.com
Counsel for Respondent

Exhibit L – Petition to Lift Automatic Stay

STATE OF SOUTH CAROLINA)

Affidavit of Adele J. Pope in

) **Opposition to Contempt Sanctions**

COUNTY OF NEWBERRY) **Requested by Mark Gende, Esq.,**

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

Request for Court's Full Review of Mr. Gende's Contempt Sanctions Allegation

1. I am seventy-six years old and make this affidavit of my personal knowledge.
2. This affidavit is in response to the affidavit of Mark V. Gende, Plaintiffs' counsel in Richland County Case 2010-CP-40-4900 (Richland 4900), asking the Supreme Court to consider whether I am in contempt of the Supreme Court's Order of June 10, 2015.
3. I am informed and believe that Mr. Gende's contempt claim, which parallels contempt claims currently being made by Russell Bauknight, Deanna Brown Thomas, and Louis Levenson, Esq., was made for the personal benefit of the law firm of Kenneth Wingate, Esq. (the "Wingate Firm"); Mr. Bauknight and Tommie Rae Hynie in Richland 4900.
4. For more than a decade the Wingate Firm, Ms. Hynie, and other Richland 4900 plaintiffs, including the Attorney General of South Carolina and Mr. Bauknight acting "on behalf of" the Attorney General, have made false statements; threatened sanctions; made sanctions requests; and threatened and filed lawsuits against Robert Buchanan, Jr. and me to advance the Attorney General's 2008 settlement which dismembered the estate plan of entertainer James Brown and unnecessarily threatened the \$4 million annual royalty stream Mr. Brown intended to be used to educate needy students.
5. The Richland 4900 Plaintiffs have sought sanctions against Mr. Buchanan and me, or

me alone, or made claims that I am in contempt of the Supreme Court at least ten times, including in those instances indicated below, and to date no sanctions have been granted:

- a. January 2011 – Sanctions Requested for filing brief in Cannon Appeal;
- b. December 2017 – Motion for Sanctions in Aiken 1337
- c. November 2018 – Motion of Wingate Firm to Strike and for Sanctions, Richland 4900
- d. April 2020 – Motion of Wingate Firm for Sanctions, Richland 4900
- e. 2019- First Contempt Sanctions Request by Mr. Levenson;
- f. 2019 - Second Contempt Sanctions Request by Deanna Thomas;

6. I believe that the contempt claims and other false claims will continue in other courts until the Supreme Court addresses Mr. Gende's contempt claim, and respectfully request that the Supreme Court do so.

7. My statements and opinions herein are supported by more than 35 depositions I have taken or attended since May 29, 2013 when I witnessed Alan Medlin, Esq., and Mr. Levenson announce in open court to the Honorable Doyet A. Early, III, their intention to disregard the Supreme Court's decision in *Wilson v. Dallas* and reinstate the Attorney General's 2008 settlement, including by the sworn testimony and documents of the Governor, the Attorney General, the Solicitor General, the former Chief Deputy Attorney General, Sr. Asst. Attorney General "Sonny" Jones, and Mr. Gende's partners Kenneth Wingate, Esq. and Everett Kendall, Esq.

My Involvement with the Estate of James Brown and its Abrupt Ending

8. Since 2008 I have personally observed the James Brown proceedings as two Attorneys General allowed Sr. Asst. Attorney General Jones, Ms. Hynie and Mr. Bauknight to dismember James Brown's estate plan; pay for the dismembering from the \$4 million annual royalty stream Mr. Brown intended to educate needy students; and try to blame the dismembering on Robert

Buchanan, Jr. and me.

9. From December 2007 until May 8, 2013 Mr. Buchanan and I defended Mr. Brown's estate plan against 7 lawsuits seeking to set aside Mr. Brown's estate plan which folded into the Attorney General's 2008 plan to give Ms. Hynie \$1 million a year and a quarter of Mr. Brown's music empire in exchange for certain U.S. royalty termination rights under the Copyright Act, and the same settlement to five Will contestants represented by Mr. Levenson.

10. Mr. Buchanan's and my appeal in *Wilson v. Dallas* was successful, and throughout that time we took the position, based on South Carolina law and the clear facts that Ms. Hynie was not the spouse of James Brown. That position has recently been confirmed by the Supreme Court in a matter in which I am not a party.

11. During this 5 ½-year period I worked with the expectation of reasonable compensation, but I have never been paid, and in 2019 the Aiken Circuit Court, at the request of Mr. Bauknight, held that I was not entitled to any pay for my service.

12. In May 2010 Alan Medlin, Esq., Mr. Levenson, and David Bell, Esq., who would keep more than \$15 million in contingency fees from the Attorney General's 2008 settlement if they stopped the appeal which became *Wilson v. Dallas*, signed the 40% contingency Wingate Contract for the individual Richland 4900 Plaintiffs.

13. The following day, the Attorney General, Ms. Hynie and Mr. Bauknight "on behalf of" the Attorney General, with others, sued Mr. Buchanan and me for tens of millions of dollars for the benefit of the James Brown Legacy Trust (Legacy Trust) and its "Beneficiary Plaintiffs."
[Exhibit A]

14. Mr. Buchanan and I asserted in 2010 counterclaims that Richland 4900 was

unconstitutional and unauthorized because the Wingate Firm was sole counsel to the Attorney General and more than a dozen private parties.

15. More than ten years later Richland 4900 has not been tried and is being pursued by the Wingate Firm primarily for the benefit of the following private parties:

a. Ms. Hynie - 46%

b. Ms. Thomas, Yamma Brown, and the Estate of Venisha Brown - 27%

16. In 2011 the Attorney General, Mr. Bauknight and other Richland 4900 plaintiffs, based on a valuation by Mr. Bauknight and Peter Afterman, began claiming that James Brown's worldwide music empire was worth only \$4.7 million when he died, and accusing Mr. Buchanan and me of the federal felony of overstating the value of the music empire in sworn IRS filings by \$79 million to get a \$5 million commission on a \$5 million estate.

17. Since 2011 Mr. Bauknight, Ms. Hynie and the Wingate Firm have attempted to characterize Mr. Buchanan and me as greedy, incompetent felons, and in 2020 the Attorney General adopted their brief in a Richland 4900 pretrial appeal.

18. In 2011, when I sought the Wingate Contract, \$4.7 million appraisal and Legacy Trust documents under FOIA, the Legacy Trust's counsel, David Black, Esq., threatened me with sanctions.

19. Thereafter Ms. Hynie, Mr. Bauknight and other Richland 4900 Plaintiffs have moved to intervene in and disrupt the two FOIA suits which I filed in Newberry County in 2011, and my FOIA rights have been denied for nine years.

20. In 2020 the Attorney General, in addition to not complying with my 2011 FOIA requests, is seeking to strike from the public record affidavits of citizens from 2011 and 2012

expressing concern about the Attorney General's refusal to comply with the FOIA requests.

21. In 2011 I listened as counsel for Mr. Bauknight, who had been coached by Mr. Medlin, made statements to the Supreme Court in *Wilson v. Dallas* that were known to be incorrect, including that Ms. Hynie's elective share claim was a "slamdunk;" that Mr. Brown's estate and 2000 Trust had no corpus to speak of; that it helped Mr. Brown's charity to make Ms. Hynie be James Brown's spouse; and that if the AG's plan to give Ms. Hynie about \$1 million a year and a quarter of the charity were not upheld, there would be nothing left in the "I Feel Good" Charity by 2023.

22. Mr. Bauknight never disclosed to the Court that termination rights would never apply to the charity's non-U.S. royalties, which make up about half of Mr. Brown's annual \$4 million royalty stream, or to his valuable right of publicity and other assets.

23. In March 2013, between the two *Wilson v. Dallas* decisions I met personally with the Attorney General, Solicitor General, and Chief Deputy Attorney General to express my concern for the damage the Bauknight/Afterman \$4.7 million valuation and incorrect IRS filings had done to Mr. Brown's charity, and how the filings could be easily corrected and help save the charity, but the Attorney General did nothing.

24. Under the "fractional share" formula provision of Mr. Brown's 2000 Trust, by the \$79 million devaluation to \$4.7 million, Mr. Bauknight shifted \$1 million a year of income and nearly 1/3 (31%) of Mr. Brown's "I Feel Good" Trust out of the charity and over to a trust for family members, where it will remain for twenty years or more.

25. On May 29, 2013 I was present when Mr. Medlin and Mr. Levenson announced to Judge Early the plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement; Mr.

Bauknight's attorney joined them in a request that Mr. Buchanan and I be banned from any participation in James Brown hearings; and Sr. Asst. Attorney General Jones expressed his pleasure that Mr. Bauknight had been reinstated.

26. From June 10, 2013, when the Aiken Circuit Court excluded Mr. Buchanan and me from participation in Aiken James Brown hearings, until the January 2019 order I watched the Aiken Court go from mere support for the second dismembering to hostility to Mr. Buchanan and me.

27. From the final *Wilson v. Dallas* decision until June 10, 2015, I had no desire to be reinstated as Mr. Brown's fiduciary, but I did repeatedly offer to work with the Attorney General, SA/ST David Sojourner, Esq., and anyone supporting the estate plan of James Brown, *pro bono publico*, to help them understand the misstatements about the Copyright Act and termination rights, and to prevent the announced second dismembering of Mr. Brown's charity.

28. By August 2013 I knew Mr. Bauknight would be spearheading and funding the second dismembering when he was deposed in Federal District Case 2008-cv-00014-WOB; refused to release the public Wingate Contract; refused to release the Afterman claimed \$4.7 million valuation; defended the Attorney General's 2008 settlement; called me dishonest; and asserted that I (and presumably Mr. Buchanan) had "raped" James Brown's estate.

29. A public letter to the Aiken Court made clear that by September 2013 Mr. Afterman, Mr. Bauknight's music manager with whom he has almost-daily contact, was helping Ms. Hynie and her son siphon off U.S. royalties from Mr. Brown's charity.

30. While Ms. Hynie's 2013 termination elections remained in the public record for two years before she was paid \$1 million, Mr. Bauknight did nothing to prevent the payment.

31. On May 8, 2015 Judge Early, isolated with Ms. Hynie and the Levenson Will/Trust contestants for two years, filed a status report with the Supreme Court which praised Mr. Bauknight; denigrated Mr. Buchanan and me, especially me; and failed to tell the Supreme Court about the announced May 29, 2013 plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement:

32. Judge Early mistakenly told the Supreme Court that he believed I was seeking a \$2 million SA fee for three months' service, and a \$5 million PR/Trustee commission. As my statements in 2009; Mr. Buchanan's and my joint 2009 filing; and my testimony at the Aiken 1337 trial make clear, I was not seeking either of these amounts.

33. When the June 10, 2015 order of the Supreme Court was released, I immediately ceased all efforts to stop the announced second dismembering of the estate plan.

34. While I believed the protection of the "I Feel Good" Charity was extremely important, it was not important enough to risk my ability to practice law.

Defending Myself in Richland 4900, FOIA Cases and Aiken 1337

35. Since the June 10, 2015 Order of the Supreme Court I have not attempted to be a part of any James Brown proceeding other than Richland 4900, filed against me; Aiken 1337, which I was forced to file; *Thomas v. Brown*, where I was served by Ms. Thomas with the summons and petition and appropriately filed my claim; my 2011 FOIA cases; and appeals related to these cases.

36. The following is a brief summary of cases in which I am currently involved because of actions by Mr. Bauknight, the Attorney General and other Richland 4900 Plaintiffs:

- a. Richland 4900 - where the Wingate Firm has acted for ten years for the claimed nonexistent Legacy Trust; Venisha Brown and others who never signed or ratified the 40% contingency-fee Wingate Contract; and which the Honorable Henry McMaster has stated

under oath that he never authorized the Wingate Firm to bring in the name of the State/AG;

b. Two pretrial appeals from Richland 4900, Ct. of Appeals Case No. 2017-001899 and 2018-002229;

c. Two 2011 FOIA cases which the Wingate Firm and Mr. Bauknight have disrupted since 2011; and in which the AG has not complied with my 9-year-old FOIA requests.

d. Aiken County Case 2013-CP-02-1337 ("Aiken 1337") - which is a 2013 suit I was required to file after Mr. Bauknight, on May 29, 2013, served me with a Notice of Disallowance with Notice of Impending Bar ("Disallowance") attached hereto as Exhibit B. The Disallowance was served on the day Ms. Hynie and the Levenson clients announced their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

e. Appellate Case 2019-000362, - this is an appeal of orders and directives of the circuit court in Aiken 1337, including the circuit court's discarding, without preserving a sealed copy for appeal, of records filed *ex parte* of tens of millions of dollars of litigation costs incurred by Mr. Bauknight since May 26, 2009, to be paid from funds devised to James Brown's charity. The records were ordered to be filed after Mr. Bauknight claimed that he and Peter Afterman, now agent for Ms. Hynie, had provided a greater benefit to James Brown's Estate/2000 Trust than Mr. Buchanan and I had provided. The records were discarded after being reviewed by the court, when my counsel objected to the *ex parte* filing. The circuit court then found that Mr. Buchanan and I had breached our fiduciary duty by challenging the AG's 2008 settlement which became the subject of *Wilson v. Dallas*; and that the music empire was worth only about \$4.8 million, less than Mr. Buchanan and I brought in in a year.

f. Appellate Case No. 2020 - This is an appeal I filed after the Honorable Clifton Newman approved Mr. Bauknight's payment into the clerk of court of my \$47,972 2007 SA fee, ordered paid to me with interest at 8 ¾% in three orders of Judge Early issued in 2008, 2017 and 2019.

The circuit court adopted Mr. Bauknight's position that Richland 4900 and Aiken 1337 are companion cases, and that I consented to the payment into the court.

g. Thomas v. Brown - In this case Ms. Thomas seeks to be PR of Venisha Brown's estate, while claiming that it has little or no assets. See my letter of December 2018. Exhibit C, informing Mr. Wingate and others of my filing of an answer; creditor's claim; and request for appointment of a PR who will protect creditors of Venisha Brown's estate.

As a result of the Supreme Court's 2020 decision related to the spousal claim of Ms. Hynie, Venisha Brown's estate is entitled to a vested Termination Interest in the U.S. half of the royalty stream of about 246 of James Brown's 900 copyrights, payable to Venisha Brown's

estate between 2018 and 2026.

In 2018 Mr. Gende's expert Roger Miller valued the Termination Interests of all heirs at \$8.8 million. [See Affidavit of W. Jeffrey Smith, Exhibit D].

Actions of the Attorney General, Wingate Firm and Wingate Clients Since 2015

37. Since the June 10, 2015 Order I have had to face increasingly vitriolic false claims of Mr. Bauknight in Aiken 1337; the Attorney General in my FOIA suits; and from the Richland 4900 Plaintiffs and signatories to the Wingate Contract in Richland 4900 and its pretrial appeals.

38. These actions have been made more difficult by the Aiken Court's increasing support for Ms. Hynie, her son, and the 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

39. The public record shows that the vitriol of Ms. Hynie and Mr. Bauknight , in addition to being directed at Mr. Buchanan and me, has in the past few years also been directed at other Richland 4900 Plaintiffs who have challenged the second dismembering of Mr. Brown's estate plan, the circuit court's ruling that Ms. Hynie was Mr. Brown's spouse, or both.

40. In 2016 Ms. Hynie testified in Richland 4900 that she had already received about \$1 million from a "sale" of termination interests, even though her status as a spouse was under challenge.

41. In 2016, without objection by Mr. Bauknight, Ms. Hynie's son was awarded GAL and attorneys' fee of \$700,000.00 even though he was not a presumed child; had refused a \$300 paid-for DNA test in 2008; and his lawyer also has a contingency-fee contract with Ms. Hynie.

42. In 2016 Mr. Sojourner testified that as SA/ST he had spent about \$1.4 million to defend the estate plan, but asserted he had no duty to protect the 900 copyrights from claims of Ms. Hynie

and her son.

43. In 2016 the Honorable Henry McMaster testified under oath, and emphatically, that he did not sue me in Richland 4900; that he did not authorize the Wingate Firm to name the State/AG as a Plaintiff; that he did not authorize Mr. Bauknight to act "on behalf of" the AG in Richland 4900; and that he did not know he was a named Plaintiff until after leaving office as AG in January 2011. But Richland 4900 continued.

44. In his 2017 deposition the Attorney General testified he knew nothing about Richland 4900 or the Legacy Trust; did not disagree with me, but did not remember, the content of our March 2013 meeting; and knew of nothing either Mr. Buchanan or I might have done wrong. He testified he had authorized Richland 4900 to continue in order to maintain the *status quo*, but knew nothing about the suit.

45. In his 2017 deposition the Solicitor General confirmed that he did not agree with the claim that Mr. Buchanan and I were greedy and incompetent; acknowledged the seriousness of the false felony claim; knew nothing about the Legacy Trust; and testified that he believed I was sincerely concerned about Mr. Brown's charity in the meeting we had in 2013.

46. In 2017 the Honorable Jean Toal, Acting Circuit Judge, denied a motion for protective order by Mr. Wingate and his partner Mr. Kendall, and directed them to answer deposition questions about the commencement and continuation of Richland 4900. Both testified that they did not know of any change in their Richland 4900 clients since 2010, but refused to answer many questions.

47. In 2016, however, the Legacy Trust, a named Plaintiff in Richland 4900, had secured a ruling from the Aiken Court in a FOIA case that it does not exist. In 2017, however, the Aiken

Court granted summary judgment to the Legacy Trust as to my Richland 4900 counterclaims.

48. In 2017 the Aiken Court dismissed the Attorney General as a party to Richland 4900 under Rule 21 SCRPC, then granted the Attorney General summary judgment as to my counterclaims.

49. In 2017 the Aiken Court also granted summary judgment as to my counterclaims to Ms. Hynie, her son, and Tonya Brown, to whom Mr. Buchanan and I never owed any duty; and to others, including the incarcerated Venisha Brown.

50. By 2017 Mr. Bauknight was using 9 experts, including two from New York and two from California, to prevent payment of my fee claim, and testified he had spent a million dollars to defeat my fee claim. Mr. Buchanan's part of our joint 2009 claim had been addressed and "double approved" in a short *Wilson v. Dallas* remand hearing in 2013.

51. Ignoring my offer to settle Aiken 1337 for \$2.1 million both before and during trial, Mr. Bauknight claimed that I was seeking \$19 million from Mr. Brown's estate, and the January 2019 order adopted this incorrect claim.

52. At the Aiken 1337 trial Mr. Bauknight's counsel accused me of perjury, even though it was clear that Mr. Bauknight and his spouse/CPA had not filed proper tax returns; had abandoned James Brown's tax file, allowing it to be destroyed; and that Mr. Bauknight had overstated Mr. Brown's debts and deduction in the estate tax proceeding by about \$5 million, then used the "refund" to support the incorrect claim to the Supreme Court that the Attorney General's 2008 settlement saved taxes.

53. By January 2019, the Richland 4900 Plaintiffs had secured from the Aiken Court what they wanted: an Aiken Court order which blamed Mr. Buchanan and me both for the first

dismembering of Mr. Brown's estate plan, and their almost-complete second dismembering and plan to reinstate the AG's 2008 settlement as announced on May 29, 2013.

54. In January 2019, ignoring forty of his own contemporaneous orders, his 2013 approval of Mr. Buchanan's work, and the testimony of the Governor, the Attorney General, Wallace Lightsey, Esq., Mr. Sojourner, the Solicitor General, AG Jones, and numerous others, the Aiken Court ruled that neither Mr. Buchanan nor I was entitled to any pay for our service to Mr. Brown's Estate/2000 Trust between November 2007 and May 2013; that the only credible evidence at the Aiken 1337 trial was that Mr. Brown's music empire was worth about \$4.8 million at his death; and that Mr. Buchanan and I had breached our fiduciary duty by opposing and appealing the AG's 2008 settlement which proposed to give Ms. Hynie \$1 million a year and a quarter of Mr. Brown's assets in exchange for half of the termination rights she did not have.

55. Since the January 2019 order in Aiken 1337, the Wingate Firm, Ms. Hynie, Mr. Bauknight and Ms. Thomas have touted the January 2019 order, now on appeal; increased their claims for contempt sanctions; continued to secrete the Wingate Contract and the claimed \$4.7 million Afterman appraisal; and continued to conceal documents which account for \$16 million controlled by Mr. Bauknight and the Legacy Trust before it disappeared.

56. In addition, the Wingate Firm has bitterly refused to lift the stay imposed in Richland 4900 since 2017, assisting Ms. Hynie and her son, now living in London, U.K., in their effort to deprive the Court of Appeals -- and the trial court after the appeal -- of jurisdiction over Ms. Hynie.

57. By 2020 Mr. Bauknight had paid my \$47,972 2007 SA fee, with 8 ¾% interest, into the court, and secured an order stating that it will be there until the conclusion of Richland 4900 because I agreed to it, and because Richland 4900 and Aiken 1337 are companion cases. I did not agree, and the two cases are not companion cases.

58. On July 1, 2020 Ms. Thomas successfully used Mr. Gende's June 29 affidavit, along with testimony of Mr. Gende, Mr. Wingate and Mr. Levenson, to accuse me of unethical behavior and being in contempt of the Supreme Court; advance her position in Richland 4900; and allow the Wingate Firm to claim 40% of assets coming to Venisha's Estate in Richland 4900 even though Venisha Brown never signed the Wingate Contract.

59. I am informed and believe that the current frenzy of attacks on me, including career-threatening contempt sanctions, will not abate unless addressed by this Court, and respectfully ask to present a full record.

60. I have a long-planned 10th birthday trip with a grandchild and my husband from July 10 – 18, for which I request the Court's indulgence, but am otherwise ready and willing to provide whatever is necessary to the Court.

61. I have provided short affidavits of Daniel Speights, Esq. [Exhibit E], Wallace Lightsey, Esq., [Exhibit F] and W. Jeffrey Smith, Esq., but respectfully request to provide excerpts from the sworn testimony and documents of the Governor, the Solicitor General, the Wingate Firm clients, Mr. Wingate, Mr. Kendall and others referenced herein.

62. While Mr. Buchanan and I were vigorous in representing Mr. Brown's estate plan from 2007 until 2013, I place a high value on my integrity and professional reputation, and ask that this Court deny Mr. Gende's request for contempt sanctions.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
Adele J. Pope

SWORN TO BEFORE ME THIS

7th day of July, 2020

[Signature] (L.S.)

Notary Public for South Carolina

My commission expires: 7/27/2027

Exhibit A

201 CCP4004900

**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. 2006-400007

SUMMONS

FILED
10 MAY 19 PM 1:08
CLERK OF COURT
RICHLAND COUNTY, S.C.

FILED
2010 JUL 26 AM 11:47
JEANNE M. McBRIDE
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)

10 MAY 19 PM 1:05
2010 JUN 26 AM 11:47
FILED
JANET L. MCBRIDE
CLERK
PROBATE COURT
RICHLAND COUNTY, S.C.
C.C.P. & G.S.

FILED

FILED

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;

Complaint

- 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

Complaint

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;

Complaint

- 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

Complaint

- 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

Exhibit B

Exhibit 2

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF AIKEN

NOTICE OF DISALLOWANCE OF CLAIM

IN THE MATTER OF: JAMES BROWN

CASE NUMBER: 2007 ES02 0056

TO:

Name: Adela J. Pope
Address: 1020 Walnut St
Newberry, SC 29108-3584

The undersigned, as the Special Administrator, appointed to administer this estate, disallows all of your claim for \$4,993,151, plus any requests for attorney's fees, costs or other ancillary costs associated with your claim presented on July 17, 2009.

Your claim was disallowed for the following reason(s):

This claim was filed jointly with Robert L. Buchanan, Jr. who has settled his claim against the estate. You only served as Co-Personal Representative and Co-Trustee of the James Brown 2000 Irrevocable Trust for a relatively short period of time. During the period of approximately 18 months that you served as Co-Personal Representative and Co-Trustee, there is no way that \$4,993,151.00 in fees and commissions could have been legitimately earned. The affidavits you submitted to substantiate your claim describing the hours you spent in these roles confirm this. Further, your claim is based on an overinflated, unsubstantiated and self-serving valuation of the probate estate as of the date of Mr. Brown's death.

You petitioned the court and obtained an Order dated January 8, 2008 allowing payment to yourself and Mr. Buchanan toward your commissions for service as Special Administrators in the amount of \$377,000, plus costs. This payment may now be subject to disgorgement pursuant to the Supreme Court's opinion in this matter dated May 8, 2013, in which the Court found that you were properly removed as Co-Personal Representative and Co-Trustee for cause.

This claim is disallowed on the basis that the requested fees and commissions were not earned and therefore are not due and owing, and further that the Estate is entitled to an offset for any damages suffered as a result of any maladministration during your service as Co-Personal Representative and Co-Trustee.

Failure to protest this disallowance of your claim, (that is, failing to file your petition for its allowance (form 6373PC) in the Probate Court and failing to commence a proceeding on the claim within thirty days after the service of this Notice of Disallowance of Claim), shall result in your claim or the disallowed portion of your claim being forever barred.

Executed this 29th day of May, 2013.

Signature: [Signature]
Name: Russell L. Boulton
Address: 1517 Gervais St.
Columbia, SC 28201

E-mail: rboulton@scprobate.com
Telephone (O): 803.771.8843
Telephone (H): _____

Exhibit C

Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
adele@popelawfirm.com
(803) 413-0753

December 19, 2018

Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, GA 30303

Robert C. Byrd
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301 (29401)
Post Office Box 160
Charleston, SC 29402

Kenneth B. Wingate, Esq.
Sweeney, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201

Re: Thomas vs. Estate of Venisha Armaa Brown
Date of Death: September 19, 2018
Aiken County Probate File No. 2018-ES-02-1137

Dear Louis, Bobby and Ken:

Since each of you represented Venisha Brown in some matter prior to her death, as a courtesy I want you to be aware of the Creditor's Claim and Answer to Petition which I filed yesterday in the Probate Court.

The Answer points out certain deficiencies in the Petition filed by Deanna Thomas on November 6, 2019, including that Ms. Thomas failed to name heirs on the side of Yvonne Fair, Venisha Brown's mother.

By copy of this letter, I will let Mr. Moulton, Petitioner's attorney, and the Probate Court know of this communication.

Best wishes to all for a safe and happy holiday.

Sincerely,

51

Adele J. Pope

cc:

The Honorable Tonya L. Marchant (for the file)
Zachary J. Moulton, Esq.

Exhibit D

STATE OF SOUTH CAROLINA) Affidavit of
) W. Jeffrey Smith Related to
COUNTY OF NEWBERRY) Contempt Request of Mark Gende, Esq.

PERSONALLY APPEARED BEFORE ME, W. JEFFREY SMITH, who,
being duly sworn, deposes and says:

1. I am over eighteen years of age and this affidavit is based on my personal knowledge.

2. I am an attorney authorized to practice in the State of South Carolina and am also authorized to file patents with the U.S. Patent Office.

3. For approximately 18 months I have served as one of the appellate attorneys for Adele J. Pope in appeals related to Richland County Case 2010-CP-40-4900 (Richland 4900), and have also worked with Ms. Pope during that time on certain related matters.

4. I am a graduate of Clemson University with a B.S degree in electrical engineering, and of the Georgetown University Law Center with a J.D. Degree.

5. While my J.D. degree is not a specialty degree, as a student I had a special interest in intellectual property (IP) and took all available IP courses offered while I was a student.

6. Because Georgetown is located in Washington, D.C., I believe it had as many, or more, IP courses than most law schools.

7. I have had a lifelong interest in music of all genres, and served as a
deejay for the Clemson University radio station while a student. In addition, I

have attended many concerts over the years, including the 1969 Woodstock Festival.

8. For 6 ½ years I served as a patent examiner in the U.S. Patent and Trademark Office.

9. For many years I was the proprietor of an electronic business, but maintained a small IP practice, representing the S.C. Inventors' Group and others.

10. In June 2008 I was engaged by Ms. Pope and Robert Buchanan, Jr., to assist the Estate of James Brown with the development of a plan to protect the copyrights and royalties Mr. Brown devised to his 2000 Trust and "I Feel Good" charity.

11. That month I began to work with Ms. Pope to review the royalty income and sources of income with the general plan of preparing for attempts of Mr. Brown's heirs and claimed heirs to exercise termination rights under Sections 304 and 203 of the U.S. Copyright Act after 35 or 56 years.

12. Even if Mr. Brown's heirs, by proper majority, exercised their first available termination rights elections, the elections would not begin to diminish the royalty stream Mr. Brown wanted for needy students until at least 2012, giving the Estate a reasonable time to prepare for what would later be called the "coming storm" of termination rights.

13. A "Family Circle" created by an Augusta, Georgia media outlet about a year after Mr. Brown's death, provided information about the complexity of

determining who might be Mr. Brown's heirs under the Copyright Act.

14. At the time I was engaged, Tommie Rae Hynie Brown (Tommie Rae) was seeking to be declared the spouse of James Brown, which would have given her a favored position with respect to termination rights under the Copyright Act.

15. The Estate, at the time, took the position that Tommie Rae was not Mr. Brown's spouse, but our project would have addressed termination rights whether or not Mr. Brown was determined to have a surviving spouse.

16. In 2009 Mr Brown's potential heirs, and claimed heirs, under the Copyright Act included:

- a. Three biological daughters (Jeanette, LaRhonda, & Nicole), who had passed the Estate's official DNA protocol;
- b. James Brown II, not born of any marriage, who had declined to be tested under the Estate's official DNA protocol;
- c. Michael Deon Brown, then incarcerated in California and seeking DNA testing;
- d. At least two children acknowledged by Mr. Brown in his Will, but whose status as children was challenged by other heirs: (Daryl and Larry);
- e. A daughter born during Mr. Brown's first marriage; acknowledged in his first divorce; but claimed by some heirs not to be a child: (Lisa);
- f. A claimed biological child of Mr. Brown's deceased son Teddy Brown: (Tonya);
- g. At least three other living children born of marriages: (Terry, Deanna, Yamma); and
- h. Possible additional children, including children in Europe.

17. Shortly after we began the project the Attorney General, Tommie Rae, and some of the above-claimed children reached a settlement by which the Attorney General attempted to decide who would be Mr. Brown's heirs under the Copyright Act and stopped the use of the Estate's official DNA protocol.

18. The Attorney General's August 2008 settlement brought an end to the authorized heirs-determination proceeding Mr. Buchanan and Ms. Pope had begun under an order of Judge Doyet Early, and effectively ended our ability to develop a plan to protect the charity's copyrights.

19. As someone who had been involved in IP issues for forty years, I continued to research termination rights issues, and in April 2011 Ms. Pope and I co-wrote a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*

20. In our April 2011 draft of *Private Foundations*, which was circulated to professionals and the Attorney General, we addressed not only the termination rights issues in Mr. Brown's estate, but a filing by the Attorney General in 2010 which suggested that Mr. Brown's assets were going to be valued at \$12 million or less.

21. Our article addressed the damage to Mr. Brown's "I Feel Good" charity by the combined devaluation and incorrect determination of heirs which had been made by the Attorney General in his 2008 settlement.

22. *Private Foundations* also proposed a method we called "splitting heirs" by which charities could work with the most cooperative heirs holding termination

rights in order to minimize the impact of termination rights on the charity's royalty stream.

23. Our article emphasized the importance of a charity's having independent advisors who might work well with heirs, but who would be sure to protect the interest of the charity.

24. In 2011 and 2012 interest in termination rights was increasing because in 2013 many songwriters, and heirs of deceased songwriters, whose songs were published in 1978 would have the opportunity to benefit from the exercise of termination rights, and many elections to terminate require two years' notice.

25. Two articles issued in 2012, *Nine Ways to Avoid Copyright Termination*, Part I and Part II, suggest strategies for publishers, charities and others to avoid the diminution of their U.S. royalty streams through termination right elections by heirs.

26. Shortly after we circulated our draft article in 2011, we learned that the Attorney General and others were actually claiming that Mr. Brown's music empire was worth about \$4.7 million, causing even greater damage to the charity than our article indicated.

27. After the \$4.7 million claimed value of Mr. Brown's music empire was announced, I became interested in FOIA cases in which Ms. Pope and a local journalist were both seeking this important document.

28. At oral argument in *Wilson v. Dallas* in November 2011 it is my

understanding that counsel for Russell Bauknight claimed that termination rights were all that the estate of James Brown was about; that nobody was trying to buy James Brown's music empire; that Tommie Rae's elective share claim was a slamdunk; that Tommie Rae and her son controlled the copyright terminations; and that there would be little left in James Brown's charity by 2023 if the Attorney General's 2008 settlement were not approved.

29. These representations were incorrect for a number of reasons, including:

- a. The termination rights of the heirs of James Brown apply only to the U.S. royalties, so that about \$2 million of the \$4 million annual royalty stream, the non-U.S. royalties, will not be affected by termination rights.
- b. Brown's valuable right of publicity, the right to exploit his famous image and persona, is not subject to termination rights elections;
- c. In testimony in 2018 – years after Mr. Brown's death – expert Brad Sharp, relying on expert testimony of Roger Miller, valued the termination rights of all heirs of James Brown at only \$8.8 million.

30. I have not seen anything to refute Mr. Miller's testimony that the copyrights Mr. Brown devised to his "I Feel Good" Charity are worth 15 – 20 times annual royalties, less the termination rights.

31. Using Mr. Miller's formula, this would mean that the copyrights alone are worth \$60 million to \$80 million, reduced by the \$8.8 million for termination rights.

32. Prior to becoming involved as one of Ms. Pope's attorneys, I was designated as an expert in Richland County Case 2010-CP-40-4900 and in Aiken

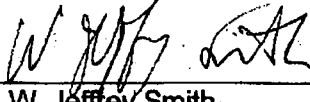
County Case 2013-CP-02-1337, and gave my deposition in the latter case.

33. On July 14, 2017, after reviewing documents and depositions of a number of persons, including Richland 4900 Termination Rights experts Roger Miller and Jonas Herbsman, Esq., and Russell Bauknight (2 depositions), I issued various opinions within my area of expertise to a reasonable degree of professional certainty in an Affidavit/Opinion which can be found in the supplemental record on appeal in Appellate Case No. 2018-2229 at pages 749 859, and I incorporate those opinions in this affidavit.

34. In the trial of Case No. 2013-CP-02-1337 Mr. Bauknight's counsel asserted that neither R.B. Alexander, who valued Mr. Brown's publicity rights, nor I, was qualified as an expert, and Judge Early declined to qualify either of us.

35. Mr. Alexander placed the value of James Brown's music empire at Mr. Brown's death at about \$90 million.

FURTHER DEPONENT SAYETH NOT.


W. Jeffrey Smith

SWORN TO BEFORE ME THIS

7th day of July, 2020

 (L.S.)

Notary Public for South Carolina

My commission expires:

My commission expires November 19, 2028

Exhibit E

STATE OF SOUTH CAROLINA)

) AFFIDAVIT OF DANIEL A. SPEIGHTS

COUNTY OF HAMPTON)

Personally appeared before me Daniel A. Speights, who being duly sworn,
deposes and says:

1. I am an attorney engaged in the practice of law in Hampton, South Carolina. I graduated from Clemson University in 1967, where I served as student body president my senior year. Following my graduation from Clemson, I served as an officer in the United States Navy for three years. I graduated from the University of South Carolina Law School in 1973, where I was a member of the South Carolina Law Review. During law school, I clerked for the Honorable W.L. Rhodes, Jr., then a South Carolina Circuit Court Judge and later Associate Justice of the Supreme Court.

2. I was admitted to the bar in 1973. From 1973 through 1975, I practiced with Glenn, Porter & Sullivan in Columbia, South Carolina. In 1976, I opened my own law office in Hampton, South Carolina. Since my admission to the bar, I have devoted the majority of my professional time to the representation of plaintiffs in complex civil litigation. I have been admitted to practice before the United States Supreme Court and seven United States Courts of Appeal. I have also been admitted for purposes of specific cases in federal and state trial Courts in more than twenty states. I previously served as a member of the South Carolina Commission on Grievances and Discipline under an appointment from the Supreme Court.

3. I submit this Affidavit of unqualified support of Attorney Adele J. Pope. I have known Mrs. Pope since the early 1970's, when we were in law school together. Since we were admitted to the Bar, I have from time to time consulted with Mrs. Pope with respect to those matters within her expertise. I have also recommended her to clients (including my own Mother, for whom she did the estate work). I did so not only because I knew that she was highly qualified, but I also knew that she was a lawyer with the highest ethical standards. I would not have done so if there was any question in my mind regarding her ethics or competency.

4. I have no information about the particular issues involved in this dispute other than apparently opposing counsel is seeking sanctions against Mrs. Pope.

Based upon my professional association with Mrs. Pope for over forty years, I find such an assertion to be unfathomable. While I have no knowledge about the facts in this matter, my experience is that filing sanctions against an opposing counsel is a last resort.



DANIEL A. SPEIGHTS

SWORN TO before me this

6th day of July, 2020

Rhonda L. Bowers (L.S.)

Notary Public for South Carolina

My Commission Expires: 3/1/2029

Exhibit F

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF
WALLACE K. LIGHTSEY

The affiant, Wallace K. Lightsey, after being duly sworn, states as follows:

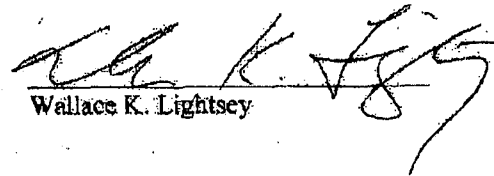
1. I am a member of the law firm Wyche P.A. (the "Wyche Firm"), and practice law in Greenville, South Carolina. I am a 1979 graduate of Duke University and a 1983 graduate of Harvard Law School. I clerked from 1983 to 1984 for Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, and from 1984 to 1985 for Chief Justice Warren E. Burger of the United States Supreme Court. I was admitted to the South Carolina Bar in 1986 and have been in private practice with the Wyche Firm from my admission to the bar to the present.

2. My law practice has been and continues to be primarily in the area of complex civil litigation, in which I have participated in many different types of cases involving novel issues of law, shareholder and minority owner oppression, intellectual property disputes, media and First Amendment litigation, and general business, corporate, and commercial litigation. A significant part of my practice has been disputes over intellectual property, primarily copyright, trademark, and trade secrets litigation. Within that area, over the course of my career, I have handled hundreds of copyright cases in federal courts in South Carolina, North Carolina, Georgia, Tennessee, Virginia, West Virginia, Texas, Arkansas, Massachusetts, and Ohio.

3. In 2016, I was asked by Adele Pope if I would act as an expert witness on copyright termination and recapture rights in connection with *Pope v. Estate of James Brown et al.*, Case No. 2013-CP-02-1337 (Aiken Cty Cir. Ct.) ("Aiken 1337"). I was glad to do so, and did so without charging either party. My understanding is that that Aiken 1337 concerns Ms. Pope's service and compensation related to the Estate and Trust of James Brown.

4. After being identified as an expert for Ms. Pope, I received a subpoena from Everett Kendall of the firm of Sweeney, Wingate & Barrow for my file on the matter, in connection with the case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland Cty Cir. Ct.). I supplied Mr. Kendall a copy of all of my file materials in response to the subpoena.

5. On or around April 10, 2017, I gave my deposition in Aiken 1337, which was attended by Adele Pope, as *pro se* counsel, and by Burl Williams, an attorney for the Estate of James Brown and the James Brown 2000 Irrevocable Trust. My statements of fact in the deposition were true and correct to the best of my ability and recollection, and my opinions expressed therein were held by me in good faith and based upon my experience with copyright litigation and study of the law relating to copyright termination and recapture rights. As best I recall, my file for the matter was made an exhibit to the deposition.


Wallace K. Lightsey

Sworn to me this 30th
day of June, 2020


Notary Public for South Carolina

My Commission Expires: 12/10/2023

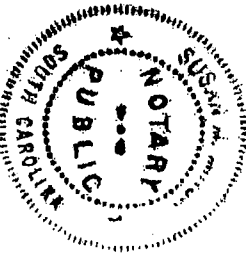


Exhibit M – Petition to Lift Automatic Stay

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Jul 10 2020

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)

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

Tommie Rae Brown Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and Venisha Brown
are the Petitioners.

**PETITIONERS' RETURN TO RESPONDENT'S PETITION FOR REHEARING
PURSUANT TO RULE 221(A), SCACR**

Petitioners oppose Respondent's Petition for Rehearing Pursuant to Rule 221(a), SCACR (the "Petition") of this Court's Opinion published June 17, 2020 (the "Opinion"), because it offers not a single new or compelling reason to overturn this Court's carefully considered unanimous decision.¹ Instead, Respondent's Petition (1) purports to rely upon dubious materials

¹ In re: The Estate of James Brown, Op. No. 27982 (S.C. Sup. Ct. filed June 17, 2020) (Shearouse Adv. Sh. No. 24).

correctly denied admission into the record by this Court; (2) improperly suggests, yet again, that this Court should base its ruling upon something other than the law; (3) misleadingly touts Respondent's purported settlement agreement, while continuing to conceal the true terms of her complete agreement with the Estate; (4) baselessly critiques the Court's straightforward application of well-settled bigamy law, mischaracterizing it as a "new record-clearing rule"; (5) twists this Court's obvious jurisdiction and conflates its holding regarding Respondent's facially bigamous second marriage with her first marriage; (6) continues to base her entire house of cards on the false construct that her first marriage was bigamous after stipulating below that she has no admissible evidence supporting this contrived assumption, and the only admissible evidence shows it was not bigamous; and (7) defies black-letter law regarding *in rem* orders and the preclusion doctrines. It therefore comes as no surprise that Respondent turns South Carolina's strong public policy against bigamy and well-settled due process standards upside down by rehashing arguments specifically addressed and cogently rejected by this Court.

For all of these reasons, and as more fully explained below, Respondent's Petition must be denied.

I. RESPONDENT'S PETITION DOES NOT SATISFY THE STANDARD FOR REHEARING.

It is well established that rehearing is only appropriate where the losing party can demonstrate that the Court misapprehended or overlooked their argument. *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532; 564 S.E.2d 322, 322 (2001). Respondent does not even mention this standard, much less meet it. Importantly, to the limited extent Respondent makes

new arguments in her Petition, such arguments are waived.² For these reasons alone, her Petition must be denied.

II. RESPONDENT'S PETITION BLATANTLY DISREGARDS THIS COURT'S PRIOR RULING AND RELIES UPON INCOMPLETE EXTRA-RECORD MATERIALS ALREADY REJECTED BY THIS COURT.

This Court has already considered and specifically *rejected* a request by Respondent to supplement the record to include her purported "settlement agreement" with the Estate and a largely inadmissible Afterman affidavit.³ Yet, much of Respondent's Petition is devoted to a self-serving and misleadingly incomplete description of her purported settlement in total disregard of this Court's ruling. This Court's decision is correct and requires no reconsideration. Rule 210(c), SCACR pellucidly provides that the record "shall not . . . include matter which was not presented to the lower court or tribunal." See *Williamsburg Rural Water and Sewer Co., Inc. v. Williamsburg Cnty. Water and Sewer Auth.*, 367 S.C. 566, 627 S.E.2d 690 (2006) (reversing the Court of Appeals for granting rehearing after considering documents attached to the Petition for Rehearing but not included in the Record on Appeal); *Jones v. Builders Inv. Group, LLC*, 415 S.C. 321, 330 at n. 7, 781 S.E.2d 737 (Ct. App. 2015) (noting motion to supplement record under Rule 212, SCACR, was denied when proposed supplement was not part of the record below). Neither Respondent's incomplete settlement agreement nor the Afterman affidavit was presented to or considered by the trial court, and neither document was included in the Record on Appeal before the Court of Appeals.

² See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating the familiar rule that "an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge").

³ *In re: Estate of James Brown*, Order entered December 12, 2009.

As Petitioners have noted before, *Williamsburg* is particularly instructive here, and not only because of its clear holding that after-created documents cannot be added to the appellate record.⁴ Importantly, the *Williamsburg* Court faced the same situation as this Court does now, where a party was attempting to persuade the court to rule a particular way based upon supposed factors other than applicable law.⁵ The after-created affidavit at issue in *Williamsburg* described plans and programs already underway in the context of a lawsuit determining whether development rights were exclusive, and indicated that a finding of exclusivity would compromise the expectations of others. The *Williamsburg* Court sharply rejected the Court of Appeals's inappropriate consideration of such expectations: "We know of no authority for the proposition that a court should construe a statute not by its terms, but rather by weighing competing interests."⁶

Likewise, as Petitioners argued in response to Respondent's first attempt to get these documents not in the record considered by the Court, the notion that federal copyright law is somehow applicable to the question of whether Respondent is a surviving spouse under South Carolina marital law is meritless. Instead, it highlights that Respondent attempts to pander and sway this Court's ruling with false and misleading statements regarding her supposed newfound charitable intentions and the Trust's purported "competing interests" based thereon. As Petitioners have explained before and will summarize below, Respondent's recitation of the application and effect of copyright law on the Trust is wholly inaccurate. Even if it were not, it is not relevant to the simple question before this Court: whether Respondent is the surviving spouse of James Brown, after she obtained a marriage license, engaged in a marriage ceremony

⁴ 367 S.C. 566, 627 S.E.2d 690.

⁵ *Id.* at 367 S.C. at 570-71, 627 S.E.2d at 692-93.

⁶ *Id.* at 367 S.C. at 571, 627 S.E.2d at 693.

and failed to annul (and instead, concealed) her first marriage before improperly obtaining a second marriage license and engaging in a marriage ceremony with Mr. Brown. This Court has thoroughly considered the applicable law and answered with a resounding “no”. The Court must reject Respondent’s utter disregard of its prior ruling regarding her irrelevant extra-record documents and deny Respondent’s Petition.

III. RESPONDENT INTENTIONALLY MISLEADS THE COURT REGARDING HER PURPORTED SETTLEMENT AGREEMENT.

a. Respondent Misrepresents Her Real Settlement Agreement With the Estate and Trust.

Touting her sudden charitable intentions, Respondent misrepresents to this Court the actual terms of her settlement with the Estate and Trust, just as she did to the trial court and the Court of Appeals. One cannot forget, however, that immediately after James Brown died, Respondent filed suit to set aside his will and charitable Trust, suing for an elective share or omitted spouse’s share of Brown’s entire Estate and tying up his Estate and Trust for over a decade. Represented by four law firms and eight lawyers, Respondent sought millions of dollars notwithstanding her binding pre-nuptial agreement with Brown and her express promise in the 2004 Consent Order to never even claim to be Brown’s common-law wife.⁷

In March 2017, Respondent suddenly announced and filed with the Court of Appeals what she represented to be “the Settlement Agreement” with the Estate and Trust—the same

⁷ R. pp. 349-350, Joint Stipulation Exhibit 19. Respondent also suggests that the Estate’s funds have been drained by the Children’s opposition to her surviving spouse claim, but the facts belie her attempt to deflect her own responsibility. For years, the Estate vigorously contested Respondent’s surviving spouse claim and stood adverse to her during the entirety of the lower court litigation. It was only when the surprise settlement agreement was announced, after initial briefing was complete in the Court of Appeals, that the Estate abandoned its long-fought position that Respondent was not the surviving spouse of James Brown.

purported "Settlement Agreement" she now, once again, seeks to present to this Court.⁸ That agreement was as suspect then as it is now: The cosmetically charitable provision in the agreement, so heavily leaned on by Respondent, would appear to be engineered to reverse the negative optics surrounding her case. After years of financially motivated litigation, Respondent purports to suddenly assign financial proceeds to the Estate for no discernable consideration, inasmuch as this appeal of her spousal order would continue unabated.⁹

When Respondent and the Estate were asked by James Brown's children to either (a) simply represent that this "Settlement Agreement" contained all terms of her settlement or (b) disclose any side agreements relating to their settlement, they refused to do either. Thereafter, at an October 2017 trial court hearing regarding the settlement, Respondent and the Estate even refused to answer the court's direct question as to whether any such side agreement existed, all but admitting its existence and their concealment of key settlement terms.¹⁰

James Brown's children subsequently filed suit, now pending in the District Court of South Carolina, because Respondent's evasion and tacit admissions indicated a concealed side-

⁸ Respondent's Petition for Rehearing, p. 2 n.1 and Exh. A; Respondent's Motion for Leave to Supplement Pursuant to Rules 212 and 240, SCACR, p. 3 and Exh. A; Appx. pp. 57, 190-191, Petitioners' Petition for Rehearing (to Court of Appeals) at 5, Petitioners' Reply in Support of Petition for Rehearing (to Court of Appeals) at 10-11. Respondent's continued intimations or suggestions that Petitioners have refused to engage in settlement discussions with the Estate are false and misleading. Petitioners were wholly unaware that any settlement negotiations were taking place, much less that any agreement had been reached, until the day they were served via U.S. Mail with Respondent and the Estate's Joint Motion to Stay Appeal Pending Consummation of Settlement. The fact that Petitioners were kept in the dark is yet another reason why Petitioners suspect that Respondent's full and complete agreement between with the Estate is detrimental to their interests, despite the fiduciary obligations owed to them.

⁹ Respondent repeatedly hypes the assigned amount as "tens of millions of dollars" without any citations or basis.

¹⁰ See *Deanna Brown-Thomas, et al v. Tommie Rae Hynie, et al* (Case no. 1: 18-cv-02191-JMC), DE 59, Declaration of Robert C. Byrd, Ex. 5 at 10:22-11:24 (more fully describing factual events and attaching relevant transcript) and *In re: Estate of James Brown*, Appellate Case No. 2018-000104 (same).

agreement (the "Concealed Agreement") aimed at trafficking in or diluting their federal copyright interests in exchange for significant undisclosed compensation to Respondent.¹¹ In that federal action, the defendants proceeded to stonewall disclosure of their Concealed Agreement, while never denying its existence, and argued it was a "confidential settlement agreement" that should not be produced, even under a stipulated protective order.¹² This willful concealment is all the more troubling given that in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), this Court voided Respondent's 2009 Settlement Agreement (in which the Estate gifted Respondent a net 23.75% of its assets) for lack of consideration. In fact, the cosmetically charitable language in Respondent's current Settlement Agreement, combined with her Concealed Agreement, may well be an attempted end-run around this Court's 2013 decision.

b. Respondent Misrepresents the Nature and Effect of Federal Copyright Termination Rights.

Respondent's representations as to the nature and effect of termination rights under the U.S. Copyright Act, 17 U.S.C. §§ 304(c), 203(a), continue to be false and misleading.¹³ First and

¹¹ *Deanna Brown-Thomas, et al v. Tommie Rae Hynie, et al* (Case no. 1: 18-cv-02191-JMC).

¹² See *Deanna Brown-Thomas, et al v. Tommie Rae Hynie, et al* (Case no. 1: 18-cv-02191-JMC), DE 185; Order and Opinion ("Here, the court observes that during the multiple hearings on the pending Motions to Dismiss, Defendants have never denied the existence of these alleged, secret agreements, which directly undermines any argument that Plaintiffs' claims are 'conjectural or hypothetical.' (ECF Nos. 144, 180.)") See also, e.g., DE 103 at 11-12, Defendants Tommie Rae Brown and James Brown II's Memorandum of Law in Opposition to Plaintiff's Motion for Jurisdictional Discovery; DE 104 at 11-12, Defendant Russell L. Bauknight's Memorandum for the Estate and Trust in Opposition to Expedited Jurisdictional Discovery; DE 105, Defendant David C. Sojourner Jr.'s Memorandum in Opposition to Plaintiff's Motion to Oppositional Discovery.

¹³ From the start, Respondent exhibits a willful misunderstanding of statutory termination rights. For instance, she repeatedly references the assignment of termination rights to the Estate when (a) the termination right is inalienable and persists "notwithstanding any agreement to the contrary" 17 U.S.C. §§ 304(c)(5), 203(b)(5) and (b) an advance grant to a third party of any

foremost, as Respondent must admit, James Brown long ago “assigned to music publishers” the copyrights to his musical compositions (“Composition(s)”) “as is typical in the industry.”¹⁴ Thus, these Composition copyrights were never part of James Brown’s Estate or charitable Trust to begin with and could never be. The potential future recovery of such Composition copyrights by his children under the Act cannot deprive the Estate/Trust of copyrights previously signed away by Mr. Brown to third parties.

Second, to set up her parade of horrors, Respondent has repeatedly misrepresented (again, without citation) that “all of James Brown’s ... songs will be terminable within the next 6 years,” that “[t]he rights to income from most of James Brown’s valuable songs can be terminated within six years” and that this would purportedly “redirect most of the annual royalty income” to the intestate heirs.¹⁵ This is demonstrably false.

As to such pre-1978 works and grants, the earliest U.S. copyrights can be recovered is 56 years after the copyright is secured by registration or publication, whichever is earlier. 17 U.S.C. § 304(c). The exercise of termination rights by statutory Notice of Termination can be no less than 2 years nor greater than 10 years in advance. In deceptive wordplay, Respondent conflates the 10-years-advance notice of termination with the actual date of copyright recovery in stating that most “songs will be terminable within the next six years” (emphasis added).¹⁶ In other words, in 2026, the statutory heirs could give 10-years-advance notice that copyrights will revert

interest in a terminated copyright prior to the actual date of copyright reversion is also void. *Id.*, §§ 304(c)(6)(D), 203(b)(4).

¹⁴ Resp. Pet. for Rehearing, Ex. B. Affidavit of Peter Afterman at 3 ¶ 3, also attached to Resp. Mot. to Supplement Record, Ex. B.

¹⁵ Resp. Mot. to Supplement Record at 2 and n.3; *see also* Resp. Pet. for Rehearing, Ex. B, Affidavit of Peter Afterman at 4 ¶ 6.

¹⁶ Resp. Mem. in Support of Mot. to Supplement, p. 2.

in 2036. James Brown wrote or co-wrote over 1,100 Compositions.¹⁷ To date, based on the Compositions' dates of registration/publication, only about 70 Composition copyrights (out of 1,100) are subject to recovery (the last being "How Long Darling" registered on May 20, 1964 and recovered by statutory heirs 56 years later on May 21, 2020). *Id.*

The truth about "the next 6 years" is that a total of 189 (of approximately 1,100) Composition copyrights are recoverable (the last is "I'm Not Demanding" registered on June 1, 1970 and recoverable on June 2, 2026). *Id.* Of these, only a handful could be considered James Brown's valuable songs. For instance, the Composition copyrights to hits like "Sex Machine", "Make It Funky" "Get Up", and "Soul Power" first published in the mid-to-late 1970s, are not recoverable under the Copyright Act until mid-to-late 2036, and so on until mid-2043. *Id.* Respondent's desperate mischaracterizations of immediacy are belied by the facts and law.

Respondent makes many other misstatements, but a correct understanding of the law undermines her conclusory arguments. Given that none of Respondent's incorrect arguments are at all relevant to the legal determination of whether Respondent is or is not the surviving spouse of James Brown, a thorough discussion of her mistakes is unnecessary. Nevertheless, a few examples may be helpful to demonstrate to the Court that Respondent's arguments are wholly unfounded.

First, as the Copyright Act has no extra-territorial application, statutory termination has no effect on the Compositions' foreign copyrights and the Estate's substantial foreign revenues in the form of royalties from these copyrights. *Update Art, Inc. v. Modiin Pub., Ltd.*, 843 F.2d 67, 72 (2d Cir. 1988; 3 Melville Nimmer and David Nimmer, *Nimmer on Copyright* § 11.02[B][2] at 11-19.). As a second example, Respondent vaguely refers to "songs", however, the statutory

¹⁷ https://www.discogs.com/artist/12596-JamesBrown?limit=500&filter_anv=0&subtype=WritingArrangement&type=Credits&page=1.

terminations she refers to cover the copyrights to James Brown's Compositions, not his master recordings, or the revenues therefrom which notwithstanding such terminations remain the property of his Estate/Trust or his/their grantees. Because the copyrights to James Brown's Compositions were long ago signed away by him (*see above*), he received and his Estate continues to receive U.S. publishing royalties, which the Estate maintains are wholly unaffected by statutory termination, and notwithstanding the notices of termination, the Estate continues to be paid all its royalties by the leading collection agencies, BMI and ASCAP. Statutory termination also does not prevent the exploitation by the Estate/Trust of prior derivative works (e.g., James Brown's recorded songs) under what is known as the "derivative works exception", because such music recordings were created long before any statutory termination. *See* 17 U.S.C. §§ 304 (c)(6)(a), 203(b)(1).

Due to the way terminations legally function under the Copyright Act, Respondent's unsupported, transparently manipulative argument that the federal termination rights of James Brown's children will prevent Trust scholarships if she is not crowned his surviving spouse is completely spurious.

**IV. THIS COURT CORRECTLY APPLIED PRECEDENT TO AFFIRM
SOUTH CAROLINA'S LONG-STANDING PUBLIC POLICY AGAINST
BIGAMY.**

Setting aside Respondent's utter disregard of this Court's prior order that her purported settlement agreement and Afterman affidavit may not be introduced into the appellate record, all that remains is Respondent's rehashing of unavailing arguments premised upon her convenient assumption that her first marriage was bigamous—an assertion for which she has zero admissible evidence. Because Respondent stipulated to this in the trial court, her arguments construct

say no such thing.²³ Respondent's circular mantra that bigamous marriages are void *ab initio* is unpersuasive and legally irrelevant, as all annulled marriages are declared "void ab initio." *Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993) (holding that there is "no legal distinction between a marriage which is annulled and one terminated by reason of bigamy. Legally, they are both void *ab initio*.").

It is thus no surprise that this Court, in *Lukich* and the present Opinion, affirmatively "rejected" attempts to distinguish between void and voidable marriages, particularly given the practical policy considerations driving the timing requirement central to its construction of the bigamy statute.²⁴ Instead, this Court has reaffirmed that a void/voidable distinction would foster a "legal fiction" and lead to "inconsistent" results²⁵ and reaffirmed that the statutory language makes no such distinctions.²⁶

Respondent's disingenuous plea describes a mess of her own making and does not override settled South Carolina law. Respondent is not specially exempted from the bigamy

²³ *State v. Sellars*, 140 S.C. 66, 134 S.E. 87, does not aid Respondent. There, Marriage 1 was not void, and if voidable, was never annulled, so Wife 1's attempted marriage to Husband 2 was invalid, leaving Husband 2 not criminally liable for bigamy. Thus, any discussion in *Sellars* as to a void/voidable distinction cited by Respondent is pure *dicta*. Nor is *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950), helpful, as it merely denied a putative spouse death-benefits due to bigamy. *Day* has nothing to say about when and how someone in an allegedly bigamous marriage can lawfully marry again.

²⁴ Op. at 16. Shearouse Adv. Sh. No. 24 at 30; *Lukich*, 379 S.C. at 593, 666 S.E.2d at 907 ("[a]ny other construction of [] § 20-1-80 would lead to uncertainty and chaos").

²⁵ *Lukich*, 379 S.C. at 592-93, 666 S.E.2d at 907 (citing *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (Ct. App. 2004)).

²⁶ Op. at 16; Shearouse Adv. Sh. No. 24 at 30. Similarly, and as previously noted, in *Scarboro v. Morgan*, 233 N.C. 449, 452 64 S.E.2d 422, 424 (1951), where a "void" marriage to a minor was annulled after a bigamous-second marriage, the North Carolina Supreme Court held, as this Court did here and in *Lukich*, that the subsequent annulment order "would be effective only from [its] date [] and would not ... give retroactive validity to a bigamous [second] marriage." 233 N.C. at 452, 64 S.E.2d at 424 (1951) Pet. Br. p. 41, *see also* pp. 40-44.

C. The Court Is Not Discriminatory In Its Application of South Carolina's Bigamy Statute to Respondent.

Despite Respondent's protestations to the contrary, the Court's Opinion does not apply *Lukich* any differently to Respondent's attempted marriage to James Brown marriage than to her first marriage. This is true whether the accusation is considered from the perspective of South Carolina's marital law or the Equal Protection Clause. As an initial matter, Respondent has never before premised her arguments on the federal Constitution, and all such arguments are waived. Should this Court nonetheless entertain them, they are devoid of merit.³⁰ Simply put, the issue before this Court was not whether Respondent's first husband or James Brown could remarry. Indeed, bigamy by its definition cannot exist unless and until a previously married party attempts a second marriage, and there's no evidence that her first husband or James Brown attempted to remarry. Instead, the question is whether Respondent's putative second marriage is bigamous under S.C. Code Ann. § 20-1-80 due to her concerted failure to terminate her first marriage by the sentence of a court before attempting to remarry.

In this regard, it is also worth noting that all of Respondent's arguments, like in all her briefs, are falsely premised on the unproven assumption that her first marriage was bigamous when, in fact, she stipulated below that she has no evidence of this and the unlitigated findings in her post-hoc *in rem* annulment order are not binding on Petitioners. Even worse for Respondent, the only admissible evidence in the record indicates that her first marriage was not bigamous.³¹

D. The Court Correctly Applied Its Holding to Respondent.

Respondent inexplicably asserts, for the first time, that the simple application of a nearly 150-year-old statute and public policy against bigamy should only apply prospectively.

³⁰ Respondent makes no citations to any authority in these sections of her Petition.

³¹ See n. 18 above.

world as to its dissolution of Respondent's first marriage on April 15, 2004. As noted in the Opinion, Petitioners have no interest in "revivifying" that marriage, and none of the relief requested by Petitioners would have that effect.³⁹

Respondent's straw-man "re-litigation" argument keeps reappearing because her spousal claim hinges on improperly binding Petitioners to the Order's purported fact findings, even though Petitioners (like Brown) were not and could not have been parties to her annulment action.⁴⁰

Respondent's do-or-die position on the preclusive effect of the *in rem* Order's "findings" is absolutely contrary to law. As this Court correctly pointed out, the issue is well settled.⁴¹ The United States Supreme Court has held that "[e]stablishing a fact and giving a specific effect to it by judgment are quite distinct. A judgment in rem binds all the world, but the facts on which it necessarily proceeds are not established against all the world" *Becher v. Contoure Labs.*, 279 U.S. 388, 391, 49 S. Ct. 356, 357, (1929) (citation omitted); *see also Gratiot County State Bank v. Johnson*, 249 U.S. 246, 39 S. Ct. 263, (1919) ("judgments in rem [are] not res judicata as to the facts or as to the subsidiary questions of law on which it is based, except as between parties to the proceeding or privies thereto") (citations omitted). As a judgment *in rem*, the Annulment Order is "not conclusive as to a fact upon which the judgment is based in any subsequent action . . . except as to persons who have appeared and actually litigated the question of the existence of the fact." Restatement (First) of Judgments § 73 (1942), cmt. c.⁴²

³⁹ Op. at 8; Shearouse Adv. Sh. No. 24 at 22.

⁴⁰ Indeed, Respondent admits that Brown "had no standing" to participate in Respondent's annulment action of her first marriage. Pet. for Rehearing p. 12, Resp. Br. p.7.

⁴¹ Op. at 9-10; Shearouse Adv. Sh. No. 24 at 23-24.

⁴² The Restatement is "consistently followed" in South Carolina. *Kunst v. Loree*, 404 S.C. 649, 656, 746 S.E.2d 360, 363 (Ct. App. 2013).

Renewal, Inc. v. SC Dep't of Transp., 385 S.C. 550, 554 684 S.E.2d 779, 782 (Ct. App. 2009);
Palm v. Gen. Painting Co., 302 S.C. 372, 396 S.E.2d 361 (1990).

CONCLUSION

Perhaps in an attempt to garner sympathy, Respondent repeatedly and rhetorically asks when she could marry with confidence again. The question, however, is not rhetorical. This Court's thorough, well-reasoned Opinion is consistent with South Carolina marital law and constitutional due process and is easy to comply with. A person in South Carolina who previously obtained a marriage license and engaged in a marriage ceremony may legally marry again after obtaining an annulment or divorce of his or her prior marriage. To be fair, a decade of convoluted litigation could have been avoided if Respondent had simply annulled her first marriage (instead of concealing it) before attempting to marry James Brown in 2001, or, alternatively, if Respondent and Brown had opted to marry after she secured the 2004 annulment of her first marriage. Of course, neither happened.

Instead, by 2004, James Brown had filed his own action against Respondent, based upon her bigamy, which was resolved with her promise to never even claim to be his common-law wife. And by the time of Brown's death in 2006, the two were already living apart in opposite ends of the country. As such, Respondent is excluded from James Brown's will. All of Respondent's unsupported and self-serving claims regarding Mr. Brown's supposed intentions as to her thus ring hollow.

For all of the foregoing reasons, Petitioners respectfully request that the Court deny Respondent's Petition for Rehearing, and preserve its well-reasoned unanimous Opinion, affirming South Carolina's long-standing public policy against bigamy, and in favor of the sanctity of marriage and essential due process.

Respectfully submitted,

s/ Robert C. Byrd

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Subject: In re Estate of James Brown. Tommie Rae Brown's Petition for Rehearing App. Case No. 2018-001990
Date: Wednesday, July 1, 2020 6:29:02 PM
Attachments: Tommie Rae Brown's Petition for Rehearing #2018-001990 7-1-20 .pdf
Proof of Service - Petition for Rehearing App. Case No. 2018-001990.pdf

Dear Mr. Shearouse,

Attached for filing is Respondent Tommie Rae Brown's Petition for Rehearing Pursuant to Rule 221(a), SCACR, together with the Proof of Service.

Thank you for your assistance with this matter.

Sincerely,

Robert N. Rosen

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Jul 01 2020

S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Jul 10 2020

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)

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

Tommie Rae Brown Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and Venisha Brown
are the Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on July 10, 2020, s/he has caused a copy of
PETITIONERS' RETURN TO RESPONDENT'S PETITION FOR REHEARING
PURSUANT TO RULE 221(A), SCACR, to be served upon all parties of record by email
and/or mailing a copy of same addressed as follows:

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July 10, 2020

Exhibit N – Petition to Lift Automatic Stay

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Deanna Brown-Thomas, an individual, and in her)
capacity as Personal Representative of the Estate)
of Venisha Brown; Yamma Brown; Michael D.)
Brown, an individual; Nicole C. Brown, an)
individual; Jeanette Mitchell Bellinger, an)
individual; Sarah LaTonya Fegan, an individual;)
Ciara Petit, an individual; and Cherquarius)
Williams, an individual,)

Plaintiffs,)

v.)

Tommie Rae Hynie, a.k.a Tommie Rae Brown, an)
individual; James J. Brown, II, an individual;)
Russell L. Bauknight, as the Personal)
Representative of the Estate of James Brown and)
Trustee of The James Brown "I Feel Good" Trust;)
David C. Sojourner, Jr., as the Limited Special)
Administrator of the Estate of James Brown and)
Limited Special Trustee of The James Brown "I)
Feel Good" Trust; and Does 1 through 10,)
inclusive,)

Defendants.)

Civil Action No. 1:18-cv-02191-JMC

**PLAINTIFFS' OPPOSITION TO
DEFENDANT TOMMIE RAE HYNIE'S
MOTION TO DISMISS, OR IN THE
ALTERNATIVE, MOTION TO
REINSTATE COUNTERCLAIMS AND
STAY**

INTRODUCTION

In this action, Defendant Tommie Rae Hynie (“Hynie”) filed (1) serial motions to dismiss Plaintiffs’ Complaint under Rules 12(b)(1), 12(b)(2) and 12(b)(5) and 12(b)(6), each of which were denied by this Court, (2) a motion to stay this action in its entirety pending Plaintiffs’ appeal of Hynie’s spousal status to the South Carolina Supreme Court, which was also largely denied, and (3) motions for reconsideration which were also denied. Now that Defendants will soon be compelled to disclose their concealed agreement(s), which, along with numerous other *prior acts* by Hynie and her co-Defendants, are alleged to have violated the Copyright Act, Hynie brings yet another unwarranted motion to dismiss (apparently under Rule 12(b)(1), although this is not stated) or alternatively, a motion to reinstate her counterclaims and the stay of dispositive motions in this case.

Hynie’s largely duplicative motion is based solely on the June 17, 2020 decision of the South Carolina Supreme Court that she is “not the surviving spouse of James Brown.” *In re Estate of Brown*, No. 2018-001990, 2020 WL 3263381, at *12 (S.C. June 17, 2020) (the “Opinion”). According to Hynie (who continues to refer to herself as “Mrs. Brown”), the Opinion entirely moots Plaintiffs’ claims under the Copyright Act, resulting in an immediate loss of subject matter jurisdiction and this Court’s pendent jurisdiction over Plaintiffs’ state-law claims. On July 1, 2020, Hynie filed a Petition for Rehearing in the South Carolina Supreme Court seeking reversal of its Opinion.

As a threshold matter, Hynie admits that the Opinion is subject to her recently filed Petition for Rehearing—rendering her motion to dismiss premature on its own terms. In addition, her motion to dismiss is without merit and rehashes many of the same arguments considered and rejected by this Court in deciding Hynie’s prior motion to dismiss and motion to stay, the latter of which was based on the same erroneous assumption that if the South Carolina Supreme Court decided that Hynie was not Brown’s spouse, this case would be moot.

First, even if Hynie is not James Brown's spouse, the Court would still need to construe the termination provisions of the Copyright Act to conclude that Hynie does not qualify as a *statutory heir* with termination rights under the Act, and that in purporting to exercise and traffic in such termination rights, as alleged in the Complaint, Hynie violated the Act. A binding decision that Hynie is not Brown's spouse in many ways *supports* Plaintiffs' ultimate claim that she *violated* the Act. The fact it reduces Plaintiffs' evidentiary burden and streamlines the process of arriving at that legal conclusion in no way deprives this Court of subject matter jurisdiction.¹ *Second*, the Complaint, as previously shown, raises issues under the Copyright Act that persist independent of Hynie's spousal status, alleging, for instance, that in Defendants' concealed agreement(s), Defendant James J. Brown, II pre-assigned his termination interests in violation of the Act, 17 U.S.C. §§ 304(c)(6)(D), 203(b)(4), when he was a minor under Hynie's control. (ECF No. 1 ¶¶ 61-62, 70, 75-76.)

For all of these reasons, an ongoing actual controversy grounds Plaintiffs' claim for declaratory relief under the Copyright Act and pendent state-law claims, in a case on which the parties and this Court have already expended considerable resources. The parties' ongoing disputes are no better exemplified than by Defendants' continued evasion and refusal to produce their concealed agreement(s). Plaintiffs are not required to accept the blank denials or unsworn "testimony" of Defendants' counsel and are entitled to resolve their ongoing disputes via discovery, judgment or settlement via a stipulated judgment.

¹ In this regard, as indicated in Plaintiffs' portion of the parties Joint Status Report: once Hynie's Petition for Rehearing is decided, Plaintiffs will seek leave of Court to amend their Complaint to streamline it consistent with the South Carolina Supreme Court's Opinion. (ECF No. 237 at 2.) In addition, given the Opinion, Plaintiffs are considering bringing a motion for partial summary adjudication in this case.

RELEVANT PROCEDURAL BACKGROUND

A. State Court Probate Litigation

James J. Brown (“Brown”) was a legendary music artist, who died on December 25, 2006. (ECF No. 1 at 3 ¶ 7.) His will omitted both Defendants Hynie and her son, Defendant James J. Brown, II (“JBII”). (*Id.* at 11 ¶ 41.) In 2007, Defendants Hynie and JBII challenged Brown’s will and trust in the state courts of South Carolina. (*Id.* at 11 ¶ 42.) Defendant Hynie filed for spousal rights under South Carolina law, namely a statutory elective share and a one-half omitted spouse’s share, while JBII asserted his state statutory child share. (ECF No. 185 at 3.) The case was eventually transferred from the Probate Court of Aiken County, South Carolina to the Aiken County Court of Common Pleas. (*id.*; ECF No. 1 at 11 ¶ 43.)

In 2015, the Aiken County Court of Common Pleas ruled that Hynie was the surviving spouse of James Brown. (ECF No. 185 at 3.) The same year, that court held that JBII was Brown’s biological son. (ECF No. 101-4.) In 2016, Hynie’s spousal order was appealed to the South Carolina Court of Appeals, which in 2018 affirmed the lower court ruling that Hynie was the surviving spouse of James Brown. *See In re Estate of Brown*, 818 S.E.2d 770, 776 (S.C. Ct. App. 2018). Thereafter, certain Plaintiffs herein filed a Petition for a Writ of Certiorari with the South Carolina Supreme Court, which was granted on February 1, 2019. (ECF No. 154 at 4.) On June 17, 2020 the South Carolina Supreme Court rendered a unanimous decision that Hynie is “not the surviving spouse of James Brown.” *In re Estate of Brown*, No. 2018-001990, 2020 WL 3263381, at *12 (S.C. June 17, 2020) (the “Opinion”). On July 1, 2020, Hynie filed a Petition for Rehearing with the South Carolina Supreme Court seeking a reversal of the Opinion. (ECF No. 239-1 at 2.)

B. The Current Action

By this action, Plaintiffs seek declaratory judgment under the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201, declaring that agreement(s) between the Defendants trafficking in federal termination rights are invalid

and violate the termination provisions of the Copyright Act, 17 U.S.C. §§ 304(c), 203(a). With respect to Plaintiffs' termination interests under the Act, they further assert closely-related state claims for an accounting, conversion, unjust enrichment, intentional/negligent interference with prospective economic advantage, and violation of unfair competition law, over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

On September 10 and 11, 2018, respectively, motions to dismiss under Fed. R. Civ. P. 12(b) ("MTDs") were filed by Defendants Russell L. Bauknight (ECF No. 80) and Hynie (ECF No. 81). Plaintiffs filed Responses to the MTDs on October 4 and 8, 2018, respectively. (ECF Nos. 96, 97). After the briefing on the MTDs, a new MTD was filed on October 10, 2018, in the name of JBII, who was then a minor (ECF No. 101), to which Plaintiffs filed a Response on November 19, 2018. (ECF No. 120.)

On November 5, 2018, Defendants Hynie and JBII filed a Motion to Stay this case in its entirety (ECF No. 114), including a stay of all "discovery, the deadlines, and the entry of scheduling orders" until the South Carolina Supreme Court formally rules upon Hynie's marital status to James Brown (*Id.* at 1, 3, 5-8), which was joined in by Defendants Bauknight (ECF No. 115) and Sojourner. (ECF Nos. 116, 117.) Plaintiffs filed a Response on November 19, 2018. (ECF No. 120.)

On March 5, 2019, this Court rendered an Order denying Defendants' Motion to Stay except to the extent of granting a partial stay as to the filing or resolving of future dispositive motions. (ECF No. 120.) On August 21, 2019, the Court rendered an Order (ECF No. 183), denying Defendants Bauknight's, Hynie's, and Brown's Motions to Dismiss (ECF Nos. 80, 81, 101) under Fed. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(5). Thereafter, on September 12, 2019, the Court rendered a companion Order (ECF No. 183), denying Defendants' Motions to Dismiss (ECF Nos. 80, 81, 101) under Fed. R. Civ. P. 12(b)(6).

LEGAL STANDARD

A. Constitutional Standing

To have standing under Article III of the Constitution a complaint must allege: (1) that plaintiff has suffered a “concrete particularized, and actual injury in fact; (2) ‘a causal connection between the injury and the conduct complained of’; and (3) that ‘a favorable decision will likely redress that injury.’” *Ray Charles Found. v. Robinson*, 795 F.3d 1109, 1116 (9th Cir. 2015) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555 at 560–61). See ECF No. 183 at 22-26 (Order denying Defendants’ Rule 12(b)(6) motion) for a more fulsome analysis of Constitutional standing.

B. Rule 12(b)(6)

A Rule 12(b)(6) motion to dismiss for failure to state a claim for relief “challenges the legal sufficiency of a complaint.” *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). To be legally sufficient, a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (2012).

“A motion to dismiss under Rule 12(b)(6) . . . does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). A court should not grant a Rule 12(b)(6) motion unless it appears certain that the plaintiff can prove no set of facts that would support her claim and would entitle her to relief. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). When considering a Rule 12(b)(6) motion, the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff. *Id.*; *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (4th Cir. 1999).

C. Declaratory Judgment Action

Under the Declaratory Judgment Act, a district court, in a case or controversy within its jurisdiction, “may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). “[T]he

question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941) (citing *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239–42 (1937)). “[T]he dispute [must] be ‘definite and concrete,’ touching the legal relations of parties having adverse legal interests.” *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007) (quoting *Haworth*, 300 U.S. at 240–41). “[A] declaratory judgment action is appropriate ‘when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and ... when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.’” *Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 256 (4th Cir. 1996) (quoting *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 325 (4th Cir. 1937)).

In general, “a motion to dismiss ‘is rarely appropriate in a declaratory judgment action’” unless the complaint fails to allege a justiciable controversy. *Palmer v. Audi of Am., Inc.*, No. GJH-14-03189, 2015 WL 222127, at *2 (D. Md. Jan. 13, 2015) (quoting *Broadwater v. State*, 494 A2s. 934, 936 (Md.1985)) (cited in ECF No. 185 at 8 (Order denying Defendants’ motion to dismiss)).

D. Subject Matter Jurisdiction Under the Copyright Act

Subject matter jurisdiction “involves a court’s power to hear a case” and it may never be “forfeited or waived.” *United States v. Cotton*, 535 U.S. 625, 630 (2002). In general, 28 U.S.C. § 1338, “which is specific to copyright claims,” confers subject matter jurisdiction upon federal courts when a copyright claim is at issue. *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 164–65 (2010). 28 U.S.C. § 1338 provides:

“The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights, and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.”

In *T.B. Harms, Harms Co. v. Eliscu*, Judge Friendly developed a three-part test for determining whether “an action ‘arises under’ the Copyright Act,” namely the complaint: (1)

asks “for a remedy expressly granted by the Act, e.g., a suit for infringement or for [] statutory royalties”; (2) “asserts a claim requiring construction of the Act”; or (3) “presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim.” 339 F.2d 823, 828 (2d Cir. 1964). As this Court pointed out “[The *T.B. Harms*] test is essentially a reiteration of the well-pleaded complaint rule that federal jurisdiction exists only when a federal question is presented on the face of a properly pleaded complaint.” ECF No. 183 at 20, quoting *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1051 (10th Cir. 2006) (internal quotation marks and citation omitted). As this Court further noted, the Fourth Circuit has fully adopted the three-part *T.B. Harms* test for subject matter jurisdiction under the Copyright Act. ECF No. 183 at 20-21, citing *Arthur Young & Co. v. City of Richmond*, 895 F.2d 967, 970 (4th Cir. 1990).

ARGUMENT

I. THIS COURT CONTINUES TO HAVE FEDERAL SUBJECT MATTER JURISDICTION

A. Hynie’s Motion is Premature Because She Has Petitioned for Rehearing of the South Carolina Supreme Court’s Decision and Will Likely Petition the United States Supreme Court for Certiorari.

Hynie bases her argument that Plaintiffs’ First Claim for Declaratory Relief under the Copyright Act is purportedly moot on the recent June 17, 2020 decision of the South Carolina Supreme Court that she is “not the surviving spouse of James Brown.” *In re Estate of Brown*, No. 2018-001990, 2020 WL 3263381, at *12 (S.C. June 17, 2020) (the “Opinion”). But as Hynie’s own motion admits, her filing of a Petition for Rehearing with the South Carolina Supreme Court on July 1, 2020, effectively delays it. ECF No. 239-1 at 2. Thus, by Hynie’s own acts and admission, the Opinion—the sole purported ground for dismissal of Plaintiffs’ federal claim—remains subject to a decision on her pending Petition.

Furthermore, it is apparent from Hynie’s repeated *new* arguments throughout her Petition, regarding the purported deprivation of her right to *federal* due process, her

“constitutional right to marry,” the Equal Protection Clause and “rights protected by the United States Constitution,” that she is teeing up a petition for certiorari to the United States Supreme Court if and when her Petition for Rehearing is denied. Respondent’s Petition for Rehearing, *In re: Estate of James Brown*, Appellate Case No. 2018-001990; pp. 16-22.² It therefore would appear that we are in this for the long haul, and during that time Hynie’s sole purported ground for her current motion to dismiss is premature. Due to this alone, Hynie’s motion to dismiss must be denied.

B. The South Carolina Supreme Court’s Opinion That Hynie Is Not James Brown’s Surviving Spouse Does Not Render Plaintiffs’ Federal Claim Moot In Any Event.

As set forth in Plaintiffs’ Complaint “[t]he U.S. Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the “Copyright Act” or “Act”), provides an author and certain statutorily defined heirs of the author . . . with the inalienable right to recapture the copyright to the author’s creative material, after a lengthy waiting period, by statutorily terminating without cause prior transfer(s) of such copyright”. ECF No. 1 at 8 ¶ 30. Plaintiffs’ First Claim seeks declaratory relief “under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* to establish the parties’ respective rights and obligations with respect to their copyright termination rights and interests in the Compositions.” *Id.* at 21 ¶ 76. Under the Declaratory Judgment Act, a district court, in a case otherwise within its jurisdiction, “may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

The Complaint also alleges that Defendants have engaged in “Improper Agreements That Traffic in Statutory Termination Rights” (ECF No. 1 at 17-18 ¶¶ 60-65); that “[a]ll of HYNIE’S aforementioned agreements are void *ab initio* and unenforceable” under the Act (*id.*

² In Hynie’s portion of the Joint Status Report she states that she “intends to file a Motion to Dismiss, subject to a rehearing by the Supreme Court *or further appeals.*” ECF No. 237 at 4 (emphasis added).

at 20 ¶ 73); and seeks a declaratory judgment that any such agreements “are void, unenforceable, and prohibited as a matter of law and public policy” under the Act, 17 U.S.C. §§ 304(c), 203(a). *Id.* at 21-22 ¶ 76. The Complaint also seeks “a permanent injunction, enjoining Defendants, their officers, agents and employees, and all persons acting in concert with them, from entering into or performing any agreement which directly or indirectly settles, waives, conveys or encumbers the termination rights and interests with respect to the Compositions.” *Id.* at 22 ¶ 77.

A final ruling that Hynie is not James Brown’s surviving spouse does not moot Plaintiffs’ federal claim under the Act. In many respects, the decision that Hynie was not Brown’s surviving spouse but purported to act in such capacity in serving and filing termination notices under the Act regarding the Compositions and in entering into agreements with third parties regarding federal termination interests that did not belong to her, *strengthens* Plaintiffs’ claims under the Act rather than mooted them.

This Court continues to have subject matter jurisdiction over this case, despite Hynie’s incessant challenges to the contrary, because the case obviously still entails interpretation of the Copyright Act. In response to Defendants’ prior challenges to this Court’s subject matter jurisdiction, it noted:

As Plaintiffs astutely observe . . . “a federal court has subject matter jurisdiction if any one of three conditions exists: the complaint (1) ‘is for a remedy expressly granted by the Act,’ (2) ‘asserts a claim requiring construction of the Act,’ or (3) ‘presents a case where a distinctive policy of the Act requires that federal principles control disposition of the claim.’” *Arthur Young & Co.*, 895 F.2d at 969-970 (quoting *T.B. Harms Co.*, 339 F.2d at 828). “If any one ground is satisfied, the federal courts have jurisdiction.” *Vestron, Inc. v. Home Box Office, Inc.*, 839 F.2d 1380, 1381 (9th Cir. 1988).” (ECF No. 215 at 12.)

ECF No. 226 at 11. This Court ruled that an independent basis for jurisdiction under the Copyright Act and 28 U.S.C. § 1338(a) exists because “Plaintiffs’ Complaint requires a construction of the Copyright Act and because distinctive federal policies control the

disposition of the action.” ECF No. 183 at 36-39. *See T.B. Harms Co. v. Elsicu*, 339 F.2d 823, at 828 (2d Circuit 1964) (Judge Friendly) (explaining that a court’s review of the exercise of statutory termination rights assumes subject matter jurisdiction under the Copyright Act); *Arthur Young Co. v. City of Richmond*, 895 F.2d 967, 969 (4th Cir. 1990) (explicitly adopting the standard in *T.B. Harms Co.*). Whereas a final ruling on Hynie’s spousal status may streamline this case involving distinctly federal issues—termination rights to the copyrights in Brown’s Compositions—it will not render it moot by any means. For instance, even if Hynie is not Brown’s surviving spouse, this Court would still need to interpret the Act to find that Hynie does not qualify as a *statutory* heir with termination rights in the Compositions under 17 U.S.C. §§ 304(c) and 203(a), and declare void her agreements that traded on her putative termination rights. Just because this presents a more straightforward legal analysis does not render it moot or mean it doesn’t “requir[e] construction of the Act.” *Arthur Young Co.*, 895 F.2d at 970 (quoting *T.B. Harms Co.*, 339 F.2d at 828).³

The underlying assumption of Defendant Hynie’s largely unsuccessful motion to stay this case (ECF No. 114, joined in by the other Defendants (ECF Nos. 115-117)) pending the outcome of the appeal to the South Carolina Supreme Court was that *if Hynie were ruled not to be James Brown’s surviving spouse* this case would be moot, just as Hynie now re-argues.⁴ Plaintiffs’ vigorously disagreed (ECF No. 120), and this Court ultimately denied

³ Contrary to Hynie’s implied argument (ECF No. 239-1 at 3), it does not follow from the mere fact that the Complaint did not challenge Hynie’s spousal status, so as not to “re-litigate” what was already before the South Carolina courts (ECF No. 1 ¶ 10), that this Court loses subject matter jurisdiction regarding the parties’ termination rights under the Copyright Act, if Hynie is held in the state action not to be Brown’s surviving spouse.

⁴ In the parties Joint Status Report, Defendants Russel L. Bauknight and David C. Soujourner both now indicate that the South Carolina Supreme Court’s Opinion that Hynie is not James Brown’s surviving spouse has *no impact* on them in this case. (ECF No. 237 at 5 (Bauknight: “The South Carolina Supreme Court’s determination has no effect on [our] position, involvement, or defenses in this case.”; Soujourner: “This determination has no effect on the LSA’s position, involvement, or defenses in this case.”))

Defendants' motion for a complete stay, granting solely "a partial stay as it relates to filing or resolving *future dispositive motions*." (ECF No. 154 at 2, 16 (emphasis in original).)

Plaintiffs successfully argued then and reiterate now that "regardless of Hynie's ultimate spousal status, Hynie's conduct as Brown's putative spouse has caused a current dispute and ongoing injuries that survive any future reversal of her status." (ECF No. 120 at 13; *see also* ECF No. 154 at 6.) Plaintiffs' claims are based in part on Hynie's conduct as *Brown's putative spouse* over a lengthy period from at least 2013 until now – both before the 2015 trial court ruling that she was Brown's spouse and the 2017 affirmance of that ruling by the South Carolina Court of Appeals.

Hynie purported to act as Brown's spouse under the Copyright Act *before* the trial court's spousal order by serving in 2013 three copyright termination notices regarding 138 of Brown's Compositions (ECF No. 1 22-23 ¶¶ 50, 51), and she and her co-Defendants freely acted upon her putative spousal status in entering into their concealed agreement(s), *despite the pending appeals of her spousal order*. (ECF No. 1 ¶¶ 46, 47, 58.) It makes no sense that Defendants' prior conduct, resulting in damage to Plaintiff's federal copyright termination interests, is not actionable simply because it is determined that Hynie is not James Brown's surviving spouse under South Carolina law.

Hynie has engaged in prior and ongoing conduct damaging to Plaintiffs, including entering into agreements with third parties that violate the Copyright Act. (ECF No. 120 at 14-17.) In granting only a partial stay, this Court appropriately noted that "the South Carolina Supreme Court's decision cannot and will not concern any of the intricacies of the Copyright Act, [s]ee 28 U.S.C. § 1338(a)" "(No [s]tate court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.)" (ECF No. 154 at 11.) This Court concluded, based on Defendants' alleged prior and ongoing violations of the Act that "a complete stay would substantially harm Plaintiffs." (ECF No. 154

at 14.) *See also id* at 13 (“[T]here would be potential prejudice to Plaintiffs if the court granted a stay of ‘all proceedings’ (See ECF No. 120 at 15.)”). In refusing to stay discovery in this case, this Court forcefully reiterated:

As explained earlier, the South Carolina Supreme Court’s ruling will only implicate whether Defendant Hynie is James Brown’s “widow” under the Copyright Act. *See supra* Part III.A. Notwithstanding that issue and its relationship to the Copyright Act, the South Carolina Supreme Court’s ruling will have no bearing on the substance of the Copyright Act, including the Act’s provisions regarding renewal rights, termination rights, and other procedures. *See* 28 U.S.C. § 1338(a). ... Accordingly, the court declines to stay discovery, deadlines, or scheduling orders for these proceedings.

If the South Carolina Supreme Court decision that Hynie is not Brown’s surviving spouse mooted Hynie’s claims under the Copyright Act, this Court would have stayed this case entirely pending that decision, rather than decline to do so. This Court’s ruling on this issue is the law of the case and applies with equal force today because an ultimate decision that Hynie is not Brown’s surviving spouse will not by itself undo her prior conduct and agreements regarding federal termination rights, nor remedy the damages caused by such conduct.

Plaintiffs allege that Hynie, acting as Brown’s surviving spouse, has—on her own and in conjunction with the other Defendants pursuant to their unlawful agreements—secretly solicited transactions with music publishers involving the Composition copyrights and the termination interests at issue (ECF No. 1 ¶¶ 52, 58) and diverted proceeds from the termination interests to herself and the other Defendants in violation of Plaintiffs’ entitlement (*id.* ¶¶ 79-91). In so doing, she also damaged Plaintiffs’ relationships with music publishers who are the most likely buyers of the Compositions recovered via statutory termination (*id.* ¶¶ 93-104).

For example, Plaintiffs discovered in early September 2018 that an investment firm, Shot Tower Capital LLC (“Shot Tower”), was *actively soliciting* major music publishers in Los Angeles and New York on behalf of Defendants, offering to sell the rights to the Compositions at issue. *See* ECF No. 96-1 (Declaration of Marc Toberoff) ¶ 2.

In short, Hynie has likely consummated deals involving the Composition copyrights

and termination interests at issue with music publishers and have diverted and will continue to divert the proceeds to Defendants in violation of Plaintiffs' termination interests. *See* ECF No. 1 ¶¶ 52, 58, 81. These events and harms will not be so easily unwound even when the South Carolina Supreme Court decides her pending Petition and issues its remitter to the trial court.⁵

C. The Complaint Raises Additional Federal Issues That Are Independent of Hynie's Spousal Status and Continue to Confer Federal Subject Matter Jurisdiction on this Court.

Plaintiffs' Complaint alleged that in Defendants' "Concealed Terms," Hynie's son James Brown II ("JBII") unlawfully pre-assigned his termination interests in numerous Compositions in violation of the Copyright Act, 17 U.S.C. §§ 304(c)(6)(D), 203(b)(4). ECF No. 1 ¶¶ 61-62, 70, 75-76. Because JBII's status as a child and statutory heir of James Brown under the Act is not dependent on Hynie's spousal status, Plaintiffs' claim regarding the Concealed Terms requires adjudication and construction of the Act's termination provisions irrespective of whether Hynie is James Brown's surviving spouse. Moreover, because JBII until only recently was a minor, Hynie controlled his actions as his mother and may be held liable for them, including as to improper agreements with the Estate or with music publishers regarding JBII's termination rights and interests in the Compositions under the Act. *See* ECF No. 1 ¶ 24.

D. An Actual Controversy Persists Warranting Declaratory Relief.

For all of the above reasons, Hynie did not and cannot argue that if Hynie is not James Brown's surviving spouse this case would lack a case or controversy required for declaratory relief. As this Court previously noted:

⁵ For example, music publishers, having obtained rights in the Compositions from Hynie, may argue that at the time they entered in these agreements they relied on decisions by both the South Carolina Circuit Court and the South Carolina Court of Appeals that Hynie is James Brown's surviving spouse, and Plaintiffs would need to prosecute this action to be compensated for: (i) the consequent diminution of Plaintiffs' termination interests, (ii) funds diverted to Hynie that are owed to Plaintiffs, and (iii) the harm to Plaintiffs' economic relationships with such music publishers. *See id.* ¶¶ 93-98, 100-104.

The Fourth Circuit has identified three elements to determine whether a plaintiff has stated a claim under the Declaratory Judgment Act. First, the complaint must allege “an actual controversy” between the parties’ ‘of sufficient reality to warrant issuance of a declaratory judgment.’” *Volvo Const. Equip. North America, Inc. v. CLM Equip. Co.*, 386 F.3d 581, 592 (4th Cir. 2004) (citing 28 U.S.C. § 2201); see also *MedImmune, Inc.*, 549 U.S. at 127 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). Second, there must be an independent basis for jurisdiction. *Volvo*, 386 F.3d at 592. Third, the court cannot abuse its discretion in exercising jurisdiction. *Id.*

ECF No. 185 at 12. As shown in Section I B. and C. above, the second element of “an independent basis for jurisdiction under the Copyright Act and 28 U.S.C. § 1338(a) exists,” even if Hynie is not Brown’s surviving spouse, “because Plaintiffs’ Complaint will [still] ‘require construction of the Copyright Act and because distinctive federal policies control the disposition of the action.’” ECF No. 185 (Order denying Hynie’s prior Rule 12(b)(6) Motion) quoting ECF No. 183 (Order denying Hynie’s Rule 12(b)(1) Motion) at 36-39. Therefore what remains for discussion is the first prong of the *Volvo* test (an actual controversy under sections 203 and 304 of the Copyright Act) and third prong (abuse of discretion).

1. An Actual Controversy Persists Notwithstanding the South Carolina Supreme Court’s Opinion

“To state a case or controversy, a plaintiff must establish a dispute that is ‘definite and concrete, touching the legal relations of parties with adverse interests.’” ECF No. 185 at 7, quoting *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007). As this Court correctly noted: “Plaintiffs’ Complaint alleges that Defendants *have already* engaged in unlawful agreements under the Copyright Act and Defendant Hynie has already engaged in statutory terminations, which may have deprived them of proceeds. (See [ECF No. 1] at 18–22 ¶¶ 66–77).” ECF No. 185 at 8, citing *Cottrell v. Alcon Labs.*, 874 F.3d 154, 168 (3d Cir. 2017) (holding that an injury was actual and imminent when the “claimed financial harm . . . *already* occurred”). “Both federal law and state law—including state statutes—‘can create [legally cognizable] interests.’” *Id.* at 164 (quoting *Cantrell v. City of Long Beach*, 241 F.3d 674, 684 (9th Cir. 2001)).

As shown above in Section I.B., a final decision that Hynie is not James Brown's surviving spouse does not erase or undo the parties' disputes as to her prior conduct regarding copyright termination interests, including Hynie's prior conduct as Brown's putative spouse. As just one of many examples of the parties' ongoing controversy, Defendants *still* persist in evading disclosure their concealed agreement(s) regarding the termination interests (in violation of Fed. R. Civ. Proc. 26(a)(1) and soon, Fed. R. Civ. Proc. 34), even though as aptly observed by this Court: "during the multiple hearings on the pending Motions to Dismiss, Defendants have *never denied* the existence of these alleged, secret agreements which directly undermines any argument that Plaintiffs' claims are 'conjectural or hypothetical.' (ECF Nos. 144, 180.)"); ECF No. 185 at 15 (emphasis in original).⁶

As further shown in Section I.B. above, there are continuing federal legal issues and disputes in this case that are completely independent of Hynie's spousal status, including controversies involving the disposition of JBII's termination rights and interests.

Finally, Plaintiffs should not be required to accept the unsworn statements of Defendants' counsel in their briefs, but should be entitled to resolve these ongoing disputes via federal discovery, a declaratory judgment or settlement and a stipulated judgment.

2. Exercising Continued Jurisdiction Entails No Abuse of Discretion

In deciding whether its discretion is being appropriately exercised under *Volvo's* third prong the court balances a number of factors.⁷ *Volvo*, 386 F.3d at 592. As this Court ruled:

Plaintiffs' action for a declaratory judgment clearly serves a 'useful purpose in clarifying legal relations in issue.' *Id.* Plaintiffs allege ... that they have been deprived of possible proceeds, and a declaration would return those proceeds to them and clarify the allocation of their termination rights. (See ECF No. 1.)

⁶ See also, e.g., ECF No. 103 at 11-12; ECF No. 104 at 11-12, and ECF No. 105.

⁷ The factors are whether the judgment will "(1) will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co.*, 139 F.3d 419, 422-23 (4th Cir. 1998)(internal quotation marks and citations omitted).

Likewise, Plaintiffs' Complaint requests a declaration invalidating the alleged, secret agreements that impact their termination interests or any proceeds therefrom. (*See Id.* at 21–22 ¶¶ 76–77.) Such a declaration would provide clarity surrounding questions related to the proceeds of which they are, or were, allegedly deprived. This would also allow for efficient litigation.

ECF 185 at 16–17. For the reasons set forth above, the Court's ruling remains as correct today as on September 12, 2019 when it was rendered. *Id.*

III. THERE IS NO BASIS TO DISMISS PLAINTIFFS' PENDENT STATE-LAW CLAIMS

As this Court retains federal jurisdiction during the pendency of any petition by Hynie regarding the Opinion and ultimately, as shown above, notwithstanding its conclusion that Hynie is not Brown's spouse, this Court retains supplemental jurisdiction over Plaintiffs' related state-law claims pursuant to 28 U.S.C. § 1367(a) in that these pendent claims form part of the same continuing case and controversy as the federal claims herein. *See* ECF No. 1 at 22–30 ¶¶ 78–112.

Furthermore, even where in the course of litigation a Plaintiffs' federal claim becomes moot (which is not the case here), the United States Supreme Court has long “shunned th[e] view” that a federal court loses its power to retain jurisdiction, at its discretion, over pendent state-law claims, so as to conserve judicial resources and avoid duplicative litigation. *Rosado v. Wyman*, 397 U.S. 397, 405 (1970) (concluding that the district court properly exercised its pendent jurisdiction over state law claims *after* Plaintiffs' federal claim had become moot), citing *Moore v. New York Cotton Exch.*, 270 U.S. 593 (1926) and *Hurn v. Oursler*, 289 U.S. 238 (1933) (dictum).

As the *Rosado* Court reasoned:

We are not willing to defeat the commonsense policy of pendent jurisdiction — the conservation of judicial energy and the avoidance of multiplicity of litigation—by a conceptual approach that would require jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim.

397 U.S. at 405 (analogizing in fn. 6 to the “well-settled rule that a federal court does not lose jurisdiction over a diversity action ... even though one of the parties may later change domicile”). Thus, in exercising its discretion, a district court “balances the policy considerations that spawned the doctrine of pendency” in the first place, including “its investment of judicial energy and the character of the claim.” *Id.* at 403-4. Here, not only has there been very substantial motion practice, arguments and hearings requiring this Court to familiarize itself with the Copyright Act provisions and federal case law governing the novel termination interests at issue, but, as in *Rosado*, the statutory questions are so intertwined with the state-law claims and “so essentially one ‘of federal policy that the argument for exercise of pendent jurisdiction is particularly strong.’” *Id.* at 404 quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 727 (1966).

IV. IF THE COURT REINSTATES HYNIE’S COUNTERCLAIMS, IT SHOULD, REINSTATE AND DECIDE PLAINTIFFS’ SPECIAL MOTION TO STRIKE THOSE COUNTERCLAIMS ON ITS MERITS

A. As An Initial Matter, Hynie Failed To Meet and Confer Regarding Her Motion To Reinstate Her Counterclaims As Required By L.R. 7.02.

Consistent with Defendant Hynie’s documented history in this case of flouting the Federal Rules of Civil Procedure and this Court’s Local Civil Rules (*see* prior summary, ECF No. 215 at pp. 3-5), Hynie’s counsel once again failed to meet and confer with Plaintiffs’ counsel, this time regarding Hynie’s “Alternative [] Motion to Reinstate [her] Counterclaims and Stay” (ECF No. 239, 240). Declaration of Marc Toberoff in Opposition to Tommie Rae Hynie’s Motion to Reinstate Counterclaims and Stay (“Toberoff Decl.”), ¶¶ 2-6. Although the parties’ spoke briefly on June 30, 2020, regarding the filing of a Joint Status Report and Hynie’s portion of the Joint Status Report (furnished to Plaintiffs right before it was filed on July 1, 2020) notes that it planned to file a motion to dismiss, Hynie’s counsel did not meet and confer with Plaintiffs’ counsel pursuant to L.R. 7.02 contrary to the rote statement in her Notice of Motion, filed just two days later on July 3, 2020.

Whereas Local Civil 7.02 excludes a motion to dismiss from its “meet and confer” requirement it does not exclude Hynie’s motion to reinstate her counterclaims and stay. L.R. 7.02 (A)-(F). As this Court has previously stated in denying another of Hynie’s motions for failure to abide by Rule 7.02: “A party’s failure to comply with the Local Civil Rules is sufficient to deny his or her motion.” ECF No. 140, *citing CresCom Bank v. Terry*, 269 F. Supp. 3d 708, 715 (D.S.C. 2017).

B. If Hynie’s Counterclaims Are Reinstated, Plaintiffs’ Motion to Strike Such Counterclaims Should Also Be Reinstated and Decided.

On June 18, 2020 the Court issued *sua sponte* a text order stating in part the following:

On June 17, 2020, the South Carolina Supreme Court determined that Defendant/Counter-Plaintiff is “not the surviving spouse of James Brown.” In re Estate of Brown, No. 2018-001990, 2020 WL 3263381, at *12 (S.C. June 17, 2020). Upon review of the counterclaims and in consideration of the South Carolina Supreme Court’s determination that Defendant/Counter-Plaintiff is not Brown’s surviving spouse, this court determines that it no longer has subject matter jurisdiction over the state law counterclaims because Defendant/Counter-Plaintiff has no interests in Brown’s Copyrights, and thus no standing to bring any causes of actions predicated on such interests. As such, the court DISMISSES Defendant/Counter-Plaintiff’s state law counterclaims contained within her Answer (ECF No.191) because she lacks standing to bring such counterclaims. . . . Therefore, because there is no longer a live case and controversy as to Defendant/Counter-Plaintiff’s state law counterclaims, Plaintiff/Counter-Defendants’ Special Motion to Strike the counterclaims (ECF No. [214]) is DENIED AS MOOT.

ECF No. 234.

Defendant Hynie now argues that her state-law counterclaims should be reinstated due to her recently filed Petition for Rehearing of the South Carolina Supreme Court’s Opinion that she is not Brown’s surviving spouse on which this Court based its June 18, 2020 order dismissing her Counterclaims (ECF No. 234.) (ECF No. 239-1 at 2.) If the Court were to reinstate Hynie’s counterclaims, then, by the same logic, it should reinstate and decide Plaintiffs’ Special Motion to Strike the counterclaims (ECF No. 214) which it “denied as moot” based on its dismissal of the counterclaims. (ECF No. 234.)

Once reinstated, this Court can readily *grant* Plaintiffs’ Special Motion to Strike the

counterclaims pursuant to the applicable anti-SLAPP statute, Cal. Code of Civil Procedure § 425.16. The hallmark of [such SLAPP claims] is that [they] lacks merit and [are] brought with the goals of obtaining an economic advantage over a citizen party by increasing the cost of litigation.” *United States v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 970-71 (9th Cir. 1999). A special motion to strike pursuant to an anti-SLAPP statute is therefore designed nip such claims in the bud to at the outset *before* they effectively achieve their goal. A great deal of thought and effort therefore went into the Special Motion to Strike, filed on November 25, 2019, and Plaintiffs, with great respect, request that it be decided on its merits if at all possible. “Given the unanimous Opinion of the South Carolina Supreme Court that Hynie is “not the surviving spouse of James Brown,” *In re Estate of Brown*, No. 2018-001990, 2020 WL 3263381, at *12 (S.C. June 17, 2020) and the original rationale of the Court’s June 18, 2020 order dismissing those counterclaims (ECF No. 234), the touchstone of Plaintiffs’ Special Motion to Strike—that Hynie cannot show “a reasonable likelihood of success” on her Counterclaims (ECF No. 214 at 2, 7, 19-22)—is now undeniable.

CONCLUSION

For all the foregoing reasons, Hynie’s motion (ECF Nos. 239 and 239-1) should be denied in its entirety. If Hynie’s counterclaims are reinstated during the pendency of her Petition for Rehearing to the South Carolina Supreme Court or a further appeal by her of its Opinion, then by the same token Plaintiff’s Special Motion to Strike Hynie’s counterclaims (ECF No. 214) should be reinstated and granted.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

Respectfully submitted,

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July 17, 2020

Exhibit O – Petition to Lift Automatic Stay

Subject Re: Propose Order Thomas v. Brown and others

Sender Joyce Cheeks Add contact

Recipient(s) Adele Pope Add contact

Cc E. Eddy Add contact, adele@popelawfirm.com Add contact, adele@popelawfirm.com Add contact, Adam Silvernail Add contact, Charles Carpenter Add contact, Jeff Smith Add contact, Daryl Williams Add contact, Leon Green Add contact

Date Jul 20, 2020

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Good afternoon, Adele,

We will be submitting the proposed order later today; no previous version has been submitted.

With all due respect, I am not clear about your offer to work with us regarding Ms. Brown's appointment since the judge has already ruled on the issue in favor of Ms. Thomas. Therefore, we must reject your offer at this time.

Kind regards,

Joyce Cheeks

On Mon, Jul 20, 2020 at 11:49 AM <adele@popelawfirm.com> wrote: Dear Joyce and Eddy,

I have just returned from being away for a week where I had almost no phone service and very little email.

Just wanted to make sure I did not miss a copy of your proposed order for appointment of a PR in Brown v. Thomas and others, formerly Aiken County Case No. 2018-ES-02-1137, but removed sua sponte by the Probate Judge to Circuit Court.

Am not rushing you at all, but since Judge Newman suggested it might be waiting for me when I returned, I just wanted to check.

As you know, my only goal in Brown v. Thomas is, and has always been, to assure that the vested termination rights proceeds to 246 Copyrights which will come to the Estate of Venisha Brown between her death in September 2018 and and 2026, as shown in the public records of the U.S Copyright Office filed by Venisha Brown and others in 2016, are reviewed by a South Court with proper jurisdiction to determine the priority of the following potential claims to the share of the Estate of Venisha Brown to those funds:

1. Louis Levenson's claim to 30% and some of \$150,000, timely filed by his answer seeking appointment of PR and creditor's claim in this case, (pursuant to Mr. Levenson's January 2007 contract with Venisha Brown).
2. Louis Levenson's unliquidated claims for prior representation of Venisha Brown, contract terms, if any, unknown, as per the above, timely-filed creditor's claim and answer seeking appointment.
3. The \$2.4 million Georgia judgment of Hope Campbell, filed as a judgment in South Carolina, but, in my opinion invalid as to anything other than the Georgia real estate owned by Venisha Brown at her death. My position, and I hope the Estate's, is that Ms. Campbell failed to timely (within 1 year) preserve her judgment except as to real estate by failing to file a creditor's claim WITH REQUEST FOR APPOINTMENT OF A PR, as required by the SC CODE. [She did file a creditor's claim.]
4. The Wingate Firm's claim to 40% of certain assets and 4.79% of the costs of Richland County Case 2010-CP-40-4900 ("Richland 4900") sought from

the Estate of Venisha Brown pursuant to a claimed May 18, 2010 contract signed only by Louis Levenson, Esq., in violation of ethical rules related to contingency-fee contracts. NOTE: The Wingate Firm never filed a timely creditor's claim within one year of Venisha Brown's death. Nor did the Estate of James Brown file a claim for reimbursement for the 4.79% or greater share of the Wingate Firm's Richland 4900 costs which it advanced to Venisha Brown between May 2010 and her death in 2018.

5. The claim of the law firm of Marc Toberoff, Esq. to 40% of the vested termination rights to certain U.S. royalties from 246 copyrights, 25% of which Mr. Toberoff proposed to pay to Mr. Levenson, under a claimed 2013 contract which may provide for arbitration in the State of California, but which Venisha Brown never signed.

6. My claim as to my unliquidated counterclaims in Richland 4900 pursuant to the timely-filed Answer to Petition and Request for Appointment of Personal Representative to Protect Creditors (Subject to Motion to Dismiss), with Exhibit A, Statement of Creditor's Claim, filed in this case on December 12, 2018, after I was served with the complaint by Ms. Thomas' then-counsel of record, Zachary J. Moulton, Esq.. I served my answer and creditors' claim on Mr. Moulton and a dozen claimed heirs of Venisha Brown, as shown on my Proof of Service filed with the Answer and Creditor's claim. This claim was timely filed and preserved in the manner required by the South Carolina Probate Code for estate's which have no PR.

I would very much like to work with you, and anyone involved, to see if we can get Ms. Thomas appointed in a way that assures this appropriate review by the Aiken Court, by retained jurisdiction, negotiation, or any appropriate means.

Because I am extremely sensitive to claims that I have acted unethically or in violation of the July 10, 2015 Order of the South Carolina Supreme Court, and do not want to be accused to attempting to negotiate my position in Richland 4900 with you, rather than Mr. Wingate and Mr. Gende, I am copying this communication to Mr. Wingate, Mr. Gende and my counsel in Richland 4900. I am also sending it to Mr. Green, the GAL.

If there is any way we can provide for the appointment of Ms. Thomas as PR while preserving Venisha's Estate's now-approximately 10% vested interest in termination rights proceeds to 246 copyrights under Section 203 and 304 of the Copyright Act for this future determination, please let me know, and I will look forward to working with you.

Thanks in advance for anything you can do to help both of us avoid unnecessary litigation. And please do resend the proposed order if you have sent it earlier and I lost or overlooked it.

Thank you.

Best,

Adele Pope

July 20, 2020

cc: Ken Wingate, Esq.; Mark Gende, Esq.; Charles Carpenter, Esq; Daryl Williams, Esq.; Wm Jeffrey Smith, Esq.; Adam Silvernail, Esq.; Leon Green, Esq.--

Law Office of Joyce Farr Cheeks, P.C.

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

DEANNA BROWN THOMAS,

PETITIONER/PLAINTIFF,

v.

**ESTATE OF VENISHA ARMAA
BROWN**

RESPONDENT/DEFENDANT.

IN THE COURT OF COMMON PLEAS

CASE NO: 2019-CP-02-00320

**ORDER APPOINTING
PETITIONER/PLAINTIFF DEANNA
BROWN THOMAS AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF VENISHA ARMAA BROWN**

PRESIDING JUDGE: The Honorable Clifton Newman

**PETITIONER/PLAINTIFF'S COUNSEL: Eddye L. Lane, Esq. and Joyce Farr
Cheeks, Esq.**

RESPONDENTS: Adele Pope, Esq., *pro se* and Louis Levinson, Esq., *pro se*

DATE OF HEARING: July 1, 2020

COURT REPORTER: Katherine Spires

THIS MATTER CAME BEFORE THIS COURT, on July 1, 2020 for a merits hearing on the Petition for Formal Appointment of Petitioner/Plaintiff Deanna Brown Thomas ("Plaintiff") as the Personal Representative of the Estate of Venisha Armaa Brown ("decendent"). The court held the hearing by way of video conferencing with all attendees in remote locations amid the COVID-19 pandemic, and out of concern for the health and safety of all involved.

Attendees included: Plaintiff Deanna Brown Thomas, Eddye L. Lane of Eddye L. Lane, P.A. and Joyce Farr Cheeks of the Law Office of Joyce Farr Cheeks, P.C. as co-counsel for Plaintiff. Attorneys Adele Pope (Pope) and Louis Levinson (Levinson) appeared *pro se*, both having previously filed Responses and Motions in this action.

- IX. Accordingly, I hereby overrule Pope's objection to Plaintiff's appointment as PR of the Estate of Venisha Brown and approve and appoint Plaintiff Deanna Brown Thomas as PR of the Estate of Venisha Armaa Brown.
- X. Pope's Motion to modify the caption naming herself and Respondent Louis Levinson as Defendants is also overruled. Pope and Levinson are not required to be named as "defendants" in this matter and the caption shall remain as currently fashioned.
- XI. This court makes no finding whether Respondent Pope is in contempt of the Supreme Court by her participation in this current matter, as it is not within the province of this court to do so.
- XII. Pope voluntarily withdrew her objection to the order of publication for service upon decedent's unknown heirs. There is no impediment to Plaintiff publishing notice to unknown heirs if determined necessary.
- XIII. Respondent Louis Levinson withdrew his objection to Petitioner/Plaintiff serving as Personal Representative of the Estate of Venisha Armaa Brown. To the extent that any claims remain in this matter that this court should set conditions or restrictions beyond Plaintiff's statutory or fiduciary duties as Personal Representative of the Estate of Venisha Brown, the same are hereby overruled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner/Plaintiff Deanna Brown Thomas is hereby appointed to serve as Personal Representative of the Estate of Venisha Brown Thomas in the above-captioned matter.

AND IT IS SO ORDERED.

The Honorable Clifton Newman
Judge, Aiken County Circuit Court

_____, 2020

Exhibit P – Petition to Lift Automatic Stay

Subject Re: Deanna Brown Thomas v Estate of Venisha Armaa Brown, Case No. 2019CP0200320
Sender Joyce Cheeks Add contact
Recipient(s) adele@popelawfirm.com Add contact, Eddy L. Lane Add contact
Cc E. Eddy Add contact, Louis Levenson Add contact, Judge Clifton Newman (Law Clerk) Add contact, Newman, Clifton Add contact, Judge Clifton Newman (Assistant) Add contact, Leon Green Add contact
Date Wed 13:50
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All,

I received an email from Judge Newman's law clerk this morning directing me to e-file a copy of the proposed order for his review. For your information, I made a few minor changes based upon my review and the feedback I received. Those changes were:

1. Corrected the spelling of Mr. Levenson's name;
2. Corrected the names of the two organizations founded by Ms. Thomas;
3. Corrected the typo of the date Ms. Thomas filed the Formal Petition from Nov. 16 to Nov. 6; and,
4. Single-spaced Paragraph XIII, page 16.

As requested by the law clerk's email, I will e-file the proposed order as submitted to you (except for the above changes) and any further changes will have to be pursuant to Judge Newman's direction. Accordingly, please address any requests for further changes to Judge Newman's attention and I will gladly make any changes he directs.

Kind regards,
Joyce Cheeks

On Tue, Jul 21, 2020 at 1:08 PM <adele@popelawfirm.com> wrote:
Dear Eddy and Joyce:

While I do not agree with the findings and conclusions in the proposed order, and reserve all rights as to those, I make the following comments about the 17-page proposed order in the hope that you will include some of my positions in the proposed order so that the record will be clearer.

The name of Louis Levenson is incorrectly spelled throughout. [I think this came from an error in the early transcripts].

Page 2: Says that Mr. Gende and Mr. Wingate appeared at the hearing "as counsel for the personal representative and trustee of the Estate of James Brown and trust, respectively, and on behalf of the children of James Brown." This is not correct.

In Richland County Case 2010-CP-40-4900 (Richland 4900) Mr. Wingate's law firm, including Mr. Gende (collectively "Wingate") represent the following persons:

Tommie Rae Hynie, and Russell Bauknight "on behalf of" Ms. Hynie, both of whom are beings sued by Venisha in Federal Court;

Ms. Hynie's son James Brown II, a resident of London, U.K., whom Venisha Brown has asserted is not James Brown's child and is suing in Federal Court;

The Legacy Trust/Settlement Entity, and Russell Bauknight as its trustee and "on behalf of" its beneficiary-successors.

Venisha Brown (although she never signed the 40% contingency fee contract and was incarcerated or missing from the time Richland 4900 was filed until her death)

Larry Brown and Daryl Brown, whom Venisha Brown claims are not children of James Brown

Russell Bauknight "on behalf of" the Attorney General of South Carolina

I believe a correct statement regarding Wingate would be:

"Attorneys Mark Gende and Kenneth B. Wingate, counsel for the Plaintiffs in Richland County Case 2010-CP-40-4900, appeared at the hearing and testified."

p. 2 Background:

I believe the correct statement of the BACKGROUND is that

"This action was commenced on November 16, 2018 with the filing and service on Levenson and Pope of a Summons and Complaint seeking formal appointment of Deanna Brown-Thomas as Personal Representative of the Estate of Venisha Armaa Brown.

p. 3 The answers of Pope and Levenson to the summons and complaint were both made in accordance with the procedure required in the South Carolina Probate Code (SCPC) for the proper presentation of a creditors' claim where there is no PR. Both requested the appointment of a personal representative in a formal proceeding and both submitted the creditor's claim with the request for appointment. Each requested that either he, she or someone who would protect creditors should be appointed.

p. 4 See below

p. 5 and 6 See below. Request to admonish was not in form required by the Court for sanctions requests, and was not presented to the Supreme Court.

p. 6 and 7 - Fails to include the actions of non-party Wingate Firm; the Gende letter to Judge Newman; and the details of the sanctions requests and Pope's responses, including on the day before the hearing. Also see below.

p. 7. Does not discuss testimony of Thomas, including that she said she did not know anything about assets of Venisha's estate or their value. Does not include the allowed testimony of non-parties Wingate and Gende, who represent the interests of Hynie, Bauknight and James Brown II, whom Venisha Brown is suing. Does not include multiple efforts to resolve with joint appointment; consent to appoint outside independent PR; and/or Part V

administration. Also see below.

p. 9 Fails to give the undisputed factual information about the size of Venisha Brown's assets which serve as the basis for the Court to act "on petition of creditors" under Section (b) (1), and the fact that because Levenson waived his right to act, Pope is the appropriate creditor to act. Also see below.

p. 10 - Opposition to Plaintiff's service is unknown because due diligence to find the heirs of LeRoy Fair was not conducted, and known brother Terry Brown and others who have criticized Plaintiff's actions as frivolous in Court of Appeals cases were named as heirs of Venisha's father, but not joined as parties.

p. 10 James Brown II, named by Plaintiff as an heirs, was represented by the GAL until he reached majority in 2019, lives in London, U.K., and was not served. He is directly adverse to Plaintiff in pending legal proceedings.

p. 10 Pope testified that she is an attorney who has substantial knowledge of termination rights under sections 203 and 304 of the U.S. Copyright Act; their relationship to probate proceedings; and the ability to deal with the Estate's largest threat, the \$2.4 million claim of Hope Campbell, efficiently and inexpensively. She testified that her appointment, or that of someone who will work compatibly with the creditors to reduce the costs to the estate of resolving the Campbell claim and securing the Estate's Termination rights proceeds without paying 40% to Toberoff, 25% of which will go to Levenson, would benefit the creditors AND perhaps save assets for heirs. Pope raised concerns about Plaintiff's known incorrect claim that Venisha Brown's estate had little or no assets, and the Court's failure to allow questioning about Richland 4900. See below

p.11 The POA prepared by Levenson in 2008 is a springing POA, invalid unless Venisha Brown was declared incapacitated. There is no evidence of that determination. See below

p. 12 While Plaintiff asserted that she retains experts for advice and counsel, Pope asserted that the tens of millions of dollars which Bauknight admitted in 2018 that had been spent in James Brown litigation; Plaintiff's alliance with Hynie and Bauknight in Richland 4900; the 40% Toberoff contract; and the 40% Wingate contract which had been concealed for 9 years, all indicate that the creditors themselves should best decide who will efficiently protect the interest of the creditors of Venisha's estate. Pope argued that a S.C. lawyer who is working for Venisha's estate -- and not for Plaintiff's family -- is the appropriate person to be PR until creditors' claims are resolved and provided for.

p. 12 Richland 4900 was brought, and is being continued, primarily for the benefit of Hynie, Bauknight "on behalf of" Hynie, and other who were seeking to dismember James Brown's valid estate plan, which Venisha acknowledged as valid in 2016. It was the duty of Buchanan and Pope to prevent Hynie from being stipulated to be Brown's spouse and given a quarter of Brown's charity, as it was their duty not to allow Plaintiff and other Levenson clients to dismember James Brown's estate plan. Richland 4900 was not necessary to preserve Venisha Brown's approximately 10% of the termination rights under sections 304 and 203 of the U.S. Copyright Act..

The Court takes judicial notice that in July 2020 the Court of Appeal remanded Richland 4900 to the circuit court to determine whether Hynie and others should have been relieved from default when Wingate failed to timely respond to the counterclaims made by Buchanan and Pope in Richland 4900 in 2010. It would be premature for this Court to prejudge in this case, which involves only the Estate of Venisha Brown, whether Hynie, Bauknight "on behalf of" Hynie and others should have been relieved from their default as to Buchanan's and Pope's Richland 4900 counterclaims. This is a matter this Court must consider based on the facts in that case. Also see below.

p. 12 Pope called to the Court's attention the generous settlement offers which had been made by Buchanan and Pope to Venisha Brown since 2009, including one made by Pope to Venisha in 2012 in Richland 4900. The offer would have ended litigation with Venisha; provided her funds during her lifetime; and preserved her termination rights proceeds. It was rejected and filed by the Wingate Firm and never presented to Venisha by Wingate or Levenson.

p. 13 Pope called to the Court's attention that the January 2019 Aiken 1337 Order of Judge Early is now on appeal, along with other rulings of the circuit court. They challenged rulings include the circuit court's discarding of tens of millions of dollars of litigation records filed ex parte by Bauknight, and rescinding of the order that they be produced. Pope also challenges the circuit court's finding that there were only three rebuttal witnesses, where there was significant sworn rebuttal testimony, with documents, supporting the position of Pope by Governor Henry McMaster, Attorney General Alan Wilson, "adverse expert" SA/St David Sojourner, Esq.; expert Wallace Lightsey, Esq; Advisory Board member Judge (Ret'd) Walter Williams; Graham Foundation Trustee Stephen Lambert; expert James Hardin III; Solicitor General Robert Cook; former Chief Deputy AG John McIntosh; Sr. Asst. AG Havird "Sonny" Jones; Asst. AG Mary France Jowers; and others.

Pope challenges the circuit court's finding in the January 2019 Aiken 1337 order that James Brown's worldwide music empire was worth only \$4.8 million when he died on Christmas Day 2006, a claim of Bauknight which Plaintiff and other children of James Brown have openly challenged since 2011. She challenges Bauknight's testimony that his near-daily conversations with Peter Afterman, when Afterman was helping Hynie siphon

off \$1.875 million of termination rights from James Brown's charity, helped James Brown's estate. Other family members have agreed in Court of Appeals filings.

Pope also challenges the finding in the 2019 order that she and Buchanan breached their fiduciary duty by opposing and challenging the AG's 2008 settlement which proposed to stipulate that Hynie was Brown's spouse under the Copyright Act; give Hynie \$1 million a year and a quarter of James Brown's charity in exchange for the termination rights she never had; and dismember Brown's "fractional share" education fund for seven specific grandchildren.

Pope also challenges Bauknight's claim, and the order's agreement, that he and Afterman benefitted James Brown estate and he save taxes, where Bauknight

and his spouse/CPA allowed James Brown's valuable tax records to be destroyed after being abandoned for more than six years; shifted about \$1 million a year and nearly 1/3 (31%) of Brown's charity out of the charity and over to a taxable trust where it is not needed; and failed to file proper income tax returns or accountings related to the Bauknight/Afterman \$79 million devaluation of the music empire.

Also see below:

p. 14 See above and below

p. 15 Creditors necessarily have a position adverse to estate from which they seek payment. Under the Code this is not an impediment to service under the Probate Code where the assets are adequate for administration but not for the payment of apparent unsecured creditors. In that case, as here; Pope asserts, creditors have a position ahead of heirs, no matter how caring.

Also see above and below.

p. 16 SCRCPC requires that captions set out Plaintiff and Defendants. Venisha cannot be a defendant. See above and below.

GENERALLY (for inclusion):

Pope rests her creditor's claim on her unresolved counterclaims against Venisha Brown in Richland 4900, a lawsuit filed by Venisha Brown, Tommie Rae Hynie, Plaintiff and others against Robert Buchanan, Jr. and Pope seeking tens of millions of dollars for Venisha Brown, Hynie, and Thomas, and other owner-successors to the Legacy Trust/Settlement Entity they created in 2008.

The Richland 4900 complaint, which has never been amended, seeks damages from Buchanan and Pope for conducting the appeal which became Wilson v. Dallas. Buchanan and Pope moved to dismiss the complaint and

counterclaimed. In 10 years, Richland 4900 has not been tried, and has been the subject of three pretrial appeals.

Since the death of Venisha Brown in September 2018, there have been substantial developments in Richland 4900 appeals, as well as in cases in which Venisha Brown, Hynie and Appellant are involved, but in which Buchanan and Pope have had no role since 2013. Pope asserts that these developments confirm that the assets of the Estate of Venisha Brown available for creditors are currently about \$400,000.00; that this is enough pay for administration of Venisha Brown's estate; but it is not enough to pay the currently known unsecured creditors. Those developments include:

1. On or before February 2019 the Honorable Doyet A. Early, III, issued an order in the Estate of James Brown in which Plaintiff is involved, but Pope is not involved, directing that Bauknight prepare a proposal for distribution of the assets due Venisha's Estate and others from James Brown's Estate.

2. I find that Bauknight made the proposal for distribution of Venisha Brown's 1/6 share of James Brown's personal and household effects to her Estate; that Bauknight, Plaintiff and Venisha Brown have all valued those assets at less than \$100,000; that neither Plaintiff nor anyone else has objected to the proposal; and that Venisha Brown's involvement with the Estate of James Brown had ended, or will end, when these assets and a \$37,500 settlement for the case she filed against her father's estate in December 2007, are distributed.

3. Pope asserts that she has not been involved in, or attempted to be involved in this distribution, and that neither Pope and Venisha's Estate should have any further involvement with the resolution of James Brown's Estate.

4. Pope asserts that Venisha Brown's Estate's position since her death that Hynie is not Brown's spouse and not entitled to receive \$1 million a year and a quarter of the termination rights to U.S. royalties under sections 304 and 203 of the Copyright Act in exchange for half of her termination rights is directly consistent with the position taken by Buchanan and Pope from December 2007 until the Wilson v. Dallas decision on May 8, 2013, but is directly inconsistent with the position being taken by Levenson, Wingate and Bauknight in Richland 4900 for Venisha.

5. In 2019 an unpublished Court of Appeals FOIA decision and the denial of a petition for certiorari by the Supreme Court left in place a 2016 ruling of the Aiken Circuit Court that the Legacy Trust/Settlement Entity does not exist and that the Attorney General has had no involvement in the Legacy Trust since Wilson v. Dallas. The result of this decision appears to be that the Legacy Trust has no charitable component, and has never been

charitable. Thus the Richland 4900 complaint, which has never been amended, seeks damages for the following Plaintiffs in approximately the following proportions:

a. Hynie, 46%; b. Venisha's Estate, 9% c. Plaintiff Thomas, 9% and the remainder to others.

6. In 2020 this Court directed in Richland 4900 that the Richland 4900 Plaintiffs produce the Wingate Contract, which the Attorney General and Wingate Firm have declined to produce either under discovery or FOIA since 2011. The contract shows that the hundreds of thousands of dollars Bauknight has advanced for costs to the Wingate, Firm, and the \$500,000.00 settlement with Buchanan in 2012, as well as 40% of all recovery by the Wingate Firm for private Richland 4900 Plaintiffs, should be paid to or by the following persons in the following shares: Attorney General (charity) 47.5%; Hynie 23.75%; Plaintiff, 4.79%, Venisha's Estate, 4.79%.

7. The Wingate Contract which this Court required to be produced in 2020 shows that Venisha Brown never signed the Wingate Contract, and that it was signed by Levenson for Venisha Brown and numerous others. Neither James Brown's Estate nor the Wingate Firm filed a claim against Venisha Brown's estate, and I find that neither her father's estate nor the Wingate Firm timely filed a creditor's claim within a year after Venisha's death, and there is no evidence before the Court today that she ratified the Wingate Contract..

8. In 2019, Hynie produced in federal litigation in which Venisha Brown, Plaintiff and others are suing Bauknight, Hynie, her son James Brown II, and others, an unsigned copy of a contract with the California law firm of Marc Toberoff, Esq., that appears to charge Venisha Brown a 40% contingency fee on her share of the vested termination rights proceeds to certain U.S. royalties to 246 copyrights which will become payable to her estate between 2018 and 2026. The contract calls for arbitration in California over matters in dispute.

9. The Toberoff contract provides that 1/4 of the 40% contingency fee will be paid to creditor Levenson, but neither Levenson nor the Toberoff disclosed this claimed contract within one year of Venisha Brown's death. The Toberoff firm did not file a creditor's claim within the statutory period..

10. I find that Venisha Brown was incarcerated in 2013; had no GAL; and had not given any person a valid power of attorney (POA). The sole POA found to date is a "springing" POA prepared by Levenson in 2007 which would have only been valid had she been determined to be incapacitated.

11. I find that Pope has asserted that appointment of Thomas, despite her care and concern for her sister during her lifetime, will not protect the creditors; will violate Pope's Due Process rights; will deny Pope and

even Hope Campbell, who claims \$2.4 million, equal protection of the law; will favor Levenson as a creditor; will favor creditors Toberoff and Wingate who have not filed claims; and will promote the use by Levenson, Wingate and Plaintiff of threatened sanctions and other troublesome discovery and trial.

12. In 2019 and 2020 Hynie, who has relinquished all interest in the Estate of James Brown, and Peter Afterman made filings with, and arguments in, the South Carolina Supreme Court, of which the Court has taken judicial notice, asserting that Russell Bauknight wants Hynie to be James Brown's spouse, because giving her half of the termination rights proceeds to certain U.S. royalties under Sections 304 and 203 of the U.S. Copyright Act -- and her returning 35% of the net proceeds of the termination rights -- will benefit Brown's charity.

13. On June 17, 2020 the Supreme Court ruled that Hynie is not Brown's spouse, and Plaintiff and Venisha have filed public pleadings asserting that Hynie's claims, and those of Bauknight, related to termination rights under the U.S. Copyright Act are inaccurate.

14. On June 18, 2020 the Honorable Michelle Childs held in the U.S. District Court that, in response to the Supreme Court's ruling, Hynie has no termination rights under sections 304 and 203 of the U.S. Copyright Act.

15. Beginning in 2019 Levenson, Wingate, Gende and counsel for Plaintiff have accused Pope of career-threatening contempt of a June 10, 2015 order of the Supreme Court, and this Court and Pope consider such claims to be serious.

16. Pope asserts that Levenson began threatening sanctions against anyone who opposed the Attorney General's 2008 settlement in January 2009, and the use of sanctions requests and threats has proliferated since that time.

17. In 2015 Levenson began testifying as a fact witnesses in cases involving Pope, as well as James Brown cases where others, including his former clients, disagreed with his position that James Brown's Will should be set aside and his clients should reinstate their 2008 deal to stipulate that Hynie was Brown's spouse. Pope asserts that this testimony was to justify Levenson's frivolous December 2007 challenges to James Brown's estate plan.

18. Since Venisha's death a number of former Levenson clients have disagreed with Levenson's position, which is clearly articulated in the Richland 4900 complaint, which has never been amended, but Levenson has expanded his claims to seek, without verified support, contempt sanctions against Pope.

19. In 2019 Levenson began claiming that Pope was in contempt of the Supreme Court, but failed to file such a claim with the Supreme Court.

20. In 2020 Gende and Wingate joined in the contempt claims in this Court, but did not do so either by affidavit or verified Rule to Show Cause.

Plaintiff joined in this claim.

21. On June 19, 2020 the Clerk of the Supreme Court advised Gende that his contempt claim was not in proper form, and directed him to file an affidavit or verified petition within ten days.

22. On or about June 20, 2020 Gende filed the affidavit, basing it largely on conversations he said he had with "the Estate of James Brown." He did not submit an affidavit of Levenson, Plaintiff, or Plaintiff's counsel with the affidavit.

22. Within ten days Pope asked the Supreme Court to address the contempt issue, and asserted that the Wingate Firm, Levenson and other would continue to make the claim unless the Supreme Court addressed the issue.

23. At the hearing held on July 1, 2020 this Court considered filings by Pope regarding these contempt sanctions, but did not consider her response to the Supreme Court, which was supported with Affidavits of Wm Jeffrey Smith, Esq., Daniel Speights, Esq., and Wallace Lightsey, Esq.

24. At the hearing this Court did not allow Pope to question Plaintiff about her involvement in Richland 4900

25. This Court denied Pope's request to disregard the claimed contempt sanctions, which have never been presented by either Plaintiff or Levenson to the Supreme Court, unless and until the matter was resolved

26. This Court also denied Pope's request that the Court appoint independent S.C. lawyer, qualified to protect the creditors, which; Pope asserts, are clearly adverse to Hynie, Bauknight and the Wingate Firm.

28. I find that Appellant made a diligent effort to resolve with Plaintiff, Levenson and others, either a Part V administration or another solution that would allow Plaintiff Thomas to oversee the private property of Venisha Brown while protecting the Termination Rights proceeds for the unsecured creditors of Venisha Brown's estate which now clearly exceed the value of Venisha Brown's estate.

29. Pope's position is that Venisha Brown's has a vested interest in termination rights proceeds in certain U.S. royalties to approximately 246 copyrights which will be paid out between 2018 and 2016 and which Venisha Brown, in federal court, has confirmed are not related to the estate of her

father James Brown. These termination rights were valued by Plaintiff's termination rights expert Roger Miller as having a value of \$8.8 million.

As a result of the Supreme Court's 2020 decision that Tommie Rae Hynie was not James Brown's spouse, the Estate of Venisha Brown has an interest of approximately 10% in these Termination Rights.

By contrast, Vensha's only interest in the estate of her father James Brown is a receivable of \$37,500 and 1/6 of household good she, Russell Bauknight and others valued at zero, or near zero, in IRS and Supreme Court filings since 2010. In 2019 the Honorable Doyet A. Early, III, in a proceeding in which Pope is not a party, ordered that these minimal assets be distributed to Venisha Brown and others.

30. Prior to and since the first hearing, Pope offered to serve as PR with Plaintiff, with Levenson, with Plaintiff's counsel, or either of them, or to join them in the appointment of a PR who would protect the interest of the creditors Estate of Venisha Brown. Pope testified, and the public record shows, that Venisha Brown's potential

I have provided this to you hastily, so please forgive any typos. If you have any question, please do not hesitate to call.

Best,

Adele Pope,

July 21, 2020

cc: The Honorable Clifton Newman and others as provided by Plaintiff's counsel

On Mon, 20 Jul 2020 21:40:59 -0400, Joyce Cheeks <joycecheeks@gmail.com> wrote:

- > Good evening,
- > Please find attached for your review the proposed order from the July 1, 2020 hearing in the above-referenced action.
- >
- > Kind regards, Joyce Farr Cheeks, J.D., M.B.A.

--

Law Office of Joyce Farr Cheeks, P.C.

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Exhibit Q – Petition to Lift Automatic Stay

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

DEANNA BROWN-THOMAS, an individual;)
YAMMA BROWN, an individual; VENISHA)
BROWN, an individual; MICHAEL D. BROWN, an)
Individual; NICOLE C. BROWN, an individual;)
JEANETTE MITCHELL BELLINGER, an)
Individual; SARAH LATONYA FEGAN, an)
Individual; CIARA PETIT, an individual; and)
CHERQUARIUS WILLIAMS, an individual,)

Plaintiffs,

v.

TOMMIE RAE HYNIE, a.k.a. TOMMIE RAE)
BROWN, an individual; JAMES J. BROWN, II, an)
Individual; RUSSELL L. BAUKNIGHT, as the)
Personal Representative of the Estate of James Brown)
And Trustee of The James Brown "I Feel Good" Trust;))
DAVID C. SOJOURNER, JR., as the Limited Special)
Administrator of the Estate of James Brown and)
Limited Special Trustee of The James Brown and)
Limited Special Trustee of The James Brown "I Feel)
Good" Trust; and DOES 1 through 10, inclusive,)

Defendants.

Civil Action No. 1:18-cv-02191-JMC

**DEFENDANT TOMMIE RAE
BROWN'S REPLY MEMORANDUM
IN SUPPORT OF HER MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, TO REINSTATE
COUNTERCLAIMS AND THE STAY**

TO PLAINTIFFS AND THEIR COUNSEL:

Defendant Tommie Rae Brown ("Mrs. Brown")¹ submits this Reply Memorandum in Support of her Motion to Dismiss for lack of subject matter jurisdiction, or, in the alternative, to reinstate the stay and her counterclaims, dated July 3, 2020 (ECF No. 239).

¹ Notwithstanding Plaintiffs' objection and even though the South Carolina Supreme Court found that she was not the surviving spouse of the late James J. Brown ("Mr. Brown"), Tommie Rae Hynie married Mr. Brown in a ceremony and both she and Mr. Brown considered that they were legally and properly married.

Moreover, a Petition for a Rehearing of the June 17, 2020 South Carolina Supreme Court Order is pending. Thus, there is no final decision on Mrs. Brown's status. Mrs. Brown's alternative motion to reinstate the stay and her counterclaims recognizes that, because there is no final decision of her status, the Court may prefer not to decide the motion to dismiss until after a ruling on the Rehearing

INTRODUCTION

Plaintiffs' Opposition to Mrs. Brown's motion is both conclusory and prolix. It is not, however, responsive to her principal argument for dismissal based on this Court's Text Order of June 18, 2020 (ECF No. 234). In granting Plaintiffs/Counter-Defendants' Special Motion to Strike Mrs. Brown's Counterclaims, Your Honor found that, because the Supreme Court of South Carolina determined that she was not the surviving spouse of the late Mr. Brown, there was no subject-matter jurisdiction because Mrs. Brown "has no interest in Brown's Copyrights, and thus no standing to bring any causes of action predicated on such "interests." *Id.* Plaintiffs' only federal cause of action was their First Claim for Relief under the Copyright Act, which was expressly predicated on the assumption that Mrs. Brown was the surviving spouse of Mr. Brown and that her son, James Brown II, was Mr. Brown's biological child. *Complaint* ¶ 10 (EFC No. 1). If she is not the surviving spouse, Mrs. Brown, as your Honor concluded, has no present or future interest in Mr. Brown's Copyrights, and more significantly, cannot exercise any termination interests under §§ 203 (a) or 304 (c)² of the Copyright Act.

Petition. Because it is unclear how long that decision may take, the alternative motion should be granted if the Court defers the motion to dismiss.

² As the surviving spouse based on the then-existing South Carolina Circuit Court and Court of Appeals decisions, Mrs. Brown, with her son, James Brown II, held a majority of the federal termination rights, and properly effected termination notices for numerous songs and along with Plaintiffs, entered into two transactions — one in 2016 and another in 2019 — to reassign five copyrights, resulting in substantial payments to all federal statutory heirs — Mrs. Brown 50% and Plaintiffs and James Brown II 50%. Plaintiffs participated in both re-assignments and accepted the payments for their aliquot shares, with their counsel Marc Toberoff serving as escrow agent for the non-spousal heirs' payments. Because both re-assignments occurred while Mrs. Brown had court orders confirming her status as surviving spouse, these re-assignments could not have occurred without her involvement — no third party assignee would otherwise have paid for these termination interests because Plaintiffs would have controlled less than 50 percent of the rights. Thus, Plaintiffs needed Mrs. Brown to act in her capacity as surviving spouse for them to receive any payment.

Additionally, Plaintiffs utterly failed to dispute Mrs. Brown's basic legal argument that, if she has no interest in Mr. Brown's copyrights and thus no interest in his termination rights, Plaintiffs First Claim for Relief based on her having those interests must be dismissed. Additionally, Plaintiffs do not and cannot dispute the authority militating strongly in favor of dismissing or declining jurisdiction over their supplemental claims when the basis for federal jurisdiction disappears prior to trial. *See Memorandum in Support of Mrs. Brown's Motion to Dismiss*, at 4-7 (ECF No. 239).

Plaintiffs' *Memorandum in Opposition* (ECF No. 241) (hereinafter "Plaintiffs' Mem.") raises four main arguments. All are either fundamentally unsound or based on unsupported conclusory and speculative allegations.

ARGUMENT

I. Mrs. Brown's pending motion is not "duplicative," largely or otherwise, of her prior motions to dismiss

Mrs. Brown's prior motions to dismiss for lack of copyright jurisdiction and failure to state a claim on which relief can be granted were based on three basic propositions that are not implicated by her current motion.

First, under the Copyright Act, the termination interests of the two groups of statutory heirs — surviving spouses and issue—are absolutely vested and may not be adversely impacted as Plaintiffs repeatedly and without authority alleged. Consequently, Plaintiffs' speculation regarding "secret agreements," even if they existed, could not operate as an agreement to the contrary in violation of the termination provisions of the Act.³

³ The best evidence supporting this position is that the two deals reassigning five previously terminated songs, both reached prior to the June 17th South Carolina Supreme Court decision finding that Mrs. Brown was not the surviving spouse, resulted in the Plaintiffs and James Brown II receiving their full 50% aliquot share of the proceeds, and Mrs. Brown her 50% share as the putative surviving spouse. Moreover, Plaintiffs released Mrs. Brown in the first transaction, and

argument on a 50-year-old case, plainly distinguishable from the matter before the Court,⁹ which was decided 20 years before the enactment in 1990 of the supplemental jurisdiction statute. 28 U.S.C. § 1367.

Consequently, it is well settled that a federal Court generally dismisses or refuses supplemental jurisdiction over pendent state law claims in circumstances presented here—*i.e.*, when the only federal claim in a complaint is dismissed before trial.

CONCLUSION

For all the above reasons and the reasons expressed in its opening memorandum, Mrs. Brown requests that the grant her motion to dismiss, or grant her alternative motion to reinstate the stay and her counterclaims.

Respectively Submitted,

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⁹ *Rosado v. Wyman*, 397 U.S. 397, 405 (1970). *Rosado* in turn relied on a 94 -year-old case *Moore v. New York Cotton Exch.* 270 U.S. 593 (1926), and an 87-year-old case *Hurn v. Oursler*, 289 U.S. 238 (1933) (dictum); both also plainly distinguishable.

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TOMMIE RAE BROWN

July 24, 2020

Columbia, South Carolina

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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JUL 30 2020

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.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of the Petition to Lift Automatic Stay, with exhibits, on all Respondents on the date shown below, mailing a copy of the same to their counsel, addressed as follows:

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July 29, 2020

W. Jeffrey Smith
Counsel for Appellant

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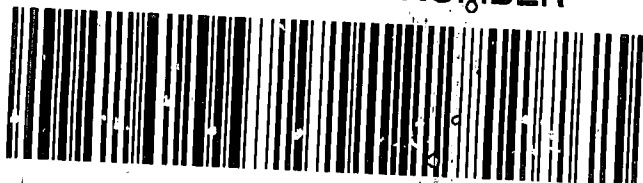
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