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SC Court of Appeals

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

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

Appellate Case No. 2019-000362

Adele J. Pope, Appellant,

v.

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

**SUPPLEMENT TO AMENDED RECORD ON APPEAL
(Pages 3099 – 3109)**

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	
)	CIVIL ACTION NO. 2007-CP-02-0122
)	
IN RE:)	FIRST REPORT OF SPECIAL
)	ADMINISTRATORS TO PERSONAL
)	REPRESENTATIVES
)	(June 22, 2007)
THE ESTATE OF JAMES BROWN)	
A/K/A JAMES JOSEPH BROWN)	
_____)	

INTRODUCTION

The undersigned were appointed Special Administrators (SAs) of the Estate of James Brown on March 7, 2007 by Order of the Honorable Doyet A. Early, III. The Order requires that certain actions of the Personal Representatives (PRs) may be taken only with the consent of the SAs. The Order further provides for the SAs to work with the PRs to seek consensus prior to seeking court guidance on issues.

During the first 3 months of their service, the SAs have identified a number of areas in which the PRs and SAs will need to work to achieve the goal of consensus. They are primarily in the areas of preservation and management of the James Brown royalties and songs, and the preservation and protection of Mr. Brown's image and persona. This report is intended to identify issues raised to date which are expected to occupy the PRs and the SAs in the coming months. The intention is to explore issues of concern early in the process of deliberation in the hope that differences can be resolved by PRs, Trustees and SAs without court intervention.

SUMMARY OF FIRST QUARTER

James Brown died on December 25, 2006. The appointment of the SAs was on March 7, 2007. The primary challenge to the PRs during the first quarter was obtaining information

6/22/07
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necessary to oversee the preservation and protection of assets belonging to, or claimed by, the Estate.

The year in which the TIAA-CREF \$26 Million Royalty-Backed Note, dated June 4 and 11, 1999 was executed, appears to be a reasonable starting point for tracking most assets. Another milestone is 2000, the year the Will of James Brown and the 2000 Irrevocable Trust were executed.

Indirect requests for information proved burdensome to the SAs and PRs and their counsel. An anticipated Court Order and the PRs' cooperation with direct requests for documents, records and information are expected to resolve many access issues.

The SAs also recommended to the Court that new counsel be obtained in the New York (Pullman) litigation. Based on the Court's direction, new counsel was obtained on June 22, 2007.

Although an Elective Share Claim has been filed, no proceeding has been filed to contest the validity of the August 1, 2000 Will and Irrevocable Trust into which it pours.

ONGOING ISSUES RELATED TO THE ESTATE

The PRs and SAs have identified a number of issues which will continue to be of importance. They are categorized under the following headings:

1. NO KNOWN CHALLENGES TO THE ESTATE PLAN/THE KNOWN ESTATE PLAN OF JAMES BROWN
 - A. Tangible Personal Property
 - B. The Brown Family Education Trust
 - C. The James Brown "I Feel Good Trust"

2. IDENTIFYING THE ASSETS OF THE ESTATE, IRREVOCABLE TRUST AND ENTITIES
 - A. Personal & Household Effects
 - B. James Brown Enterprises, Inc.
 - C. Other assets which may/may not be estate assets

3. CLAIMS AND POTENTIAL CLAIMS AGAINST THE ESTATE
4. CHALLENGES FOR THE NEXT THREE MONTHS
5. PRESERVATION OF THE ROYALTIES OF JAMES BROWN
6. PRESERVATION OF THE IMAGE, PERSONA AND LIKENESS OF JAMES BROWN

The SAs' current understanding of the status of some of the above issues, which are interrelated and overlapping, is discussed below.

CAVEAT

The assumptions and projections of the SAs in this report are based on documents, records and information available on June 22, 2007. This Report is intended solely for the SAs and PRs to use as a working document, and expresses no final opinions or positions.

1. NO KNOWN CHALLENGES TO THE ESTATE PLAN/ THE KNOWN ESTATE PLAN OF JAMES BROWN

As of today (June 22, 2007), there have been challenges to the appointment and service of the PRs of the James Brown Estate and the Trustees of the 2000 Irrevocable Trust and its subtrusts, the Brown Family Education Trust and the James Brown "I Feel Good" Trust. The SAs are not aware, however, of any challenge to the validity of the August 1, 2000 estate plan as embodied in the August 1, 2000 Will and 2000 Irrevocable Trust.¹

The disposition of the Estate/Trust, after payment of administration expenses, taxes and valid debts, now appears to be:

¹ See separate discussion of the home and acreage, the only asset that appears to have actually been transferred to 2000 Irrevocable Trust.

1. Personal and household effects - to children (as defined in the documents)
2. Approximately \$2 Million to the Family Education Trust
3. Remainder (as much as \$50 Million or more) to the "I Feel Good" Charitable Trust.

At this time, the only known direct challenge to this plan is an Elective Share Claim.²

2. IDENTIFYING THE ASSETS OF THE ESTATE. IRREVOCABLE TRUST AND ENTITIES

1. Personal and Household Effects.

A. Protection/Determination of Ownership of Mr. Brown's Personal and Household Effects, as described in the Will, is important because;

1. Personal and Household effects owned by the Estate will pass to his children, as defined in the Will.
2. There appears to be some uncertainty as to what is Personal and Household Effects and what is business personal property.
3. If consented to by the children/devisees, (and subject to self-dealing & conflict issues) Mr. Brown's Personal and Household Effects might participate in a general plan to exploit the assets, image and persona of Mr. Brown.
4. James Brown Enterprises, Inc. apparently claims ownership to some items of tangible personal property.

B. STATUS AS OF JUNE 22, 2007 - The SAs understand that a detailed Inventory of the personal and household effects has been made by the PRs.

2. ASSETS OF THE TRUST

As of today (June 22, 2007), it appears to the SAs that the only asset of Mr.

² The documents appear to authorize the PRs to attempt to defeat or minimize this claim.

Brown which was actually transferred to the James Brown 2000 Irrevocable Trust was the Beech Island real estate. This is based on:

1. A review of many documents, including the Trust schedules and subsequent transactions.
2. Facts indicating Mr. Brown's retention of total control until shortly before his death where, under the 2000 Irrevocable Trust, the Trustees were charged with total control (except use of home).
3. No tax returns filed by Trustees.
4. Lack of corporate formalities consistent with control by Mr. Brown rather than by fiduciaries.

3. JAMES BROWN ENTERPRISES, INC.

Clarifying ownership of James Brown Enterprises, Inc. (JBE, INC.) has been a challenge to the Estate.

There is abundant evidence, and the SAs believe, that James Brown Enterprise, Inc. was never transferred to the 2000 Irrevocable Trust. A few of the factors considered are:

1. Although Mr. Brown stated on Schedule A of the 2000 Irrevocable Trust that he intended to transfer his shares of JBE, INC., he does not appear to have done so.
2. JBE, INC. was a Subchapter S Corporation, inconsistent with ownership by an Irrevocable Trust of which Mr. Brown was solely a discretionary beneficiary.
3. The stock book indicates Mr. Brown's original 500 shares of JBE, INC., were never surrendered.
4. An assignment to the Trust of Mr. Brown's shares was apparently prepared for Mr. Brown in 2002, but he never signed it or completed the transfers.
5. Mr. Brown maintained control over JBE, INC. which was wholly inconsistent with the 2000 Irrevocable Trust terms.
6. No gift tax returns were filed indicating any transfer.
7. Income tax returns and other filings show Mr. Brown as sole owner of JBE, INC.

4. "THE NEW JAMES BROWN ENTERPRISES." This appears to be a d/b/a for Mr. Brown himself.³

These issues are important in the preparation of the Estate's Inventory and Appraisement ("I&A"), as well as in administration and allocation issues.

3. CLAIMS AND POTENTIAL CLAIMS AGAINST THE ESTATE

The SAs are unaware of any claims having been filed against the Estate other than the Elective Share. The claims period for most claims will end in the next 3 months. Certain claims and potential claims are discussed below.

a. The Greenberg Traurig ("GT") October, 2006 letter. Numerous potential claims are raised by the October, 2006 GT letter. If successful, these people/entities could have claims exceeding 40% related to certain transactions. This could deplete the Estate by more than \$20 million.

The SAs believe that the PRs should take no position as to this letter because of S.C. Code Section 62-3-713 (and other law).

The SAs hope to reach agreement with the PRs/Trustees to establish the following procedure related to the GT October, 2006 letter (and other claims):

1. Take no action which could be interpreted as ratification by the Estate/Trust or any entity of any claim until the claim and all documentation are presented.
2. In most instances the S.C. Probate Code Section 62-3-807 allows the Estate unlimited time prior to the closing of the Estate (probably in 3-4 years) to determine the validity of claims.
3. The PRs should disqualify themselves from the evaluation of claims in which they have an interest in the outcome. (This would include claims related to the GT October letter, anything related to Geronimo and any other contracts or claims)

³ Or possibly a d/b/a for James Brown Enterprises, Inc.

they have to the Estate, Trust or entity funds.) See Probate Code Section 62-3-713.

4. Each claim should be evaluated to determine whether it is timely, and whether claimant has demonstrated entitlement to all or a portion of the claim.

5. The priority of any allowed claim must be determined under Section 62-3-805.

6. At the appropriate time (which might be 1-2 years from now) the claimant will be notified of the Estate's allowance, disallowance, or partial allowance of claim, and its priority for payment when funds are available.

7. Payment of claims (some with applicable interest) will be made only after:

- a. Payment or provision for all expenses of administration under S.C. Probate Code § 62-3-805.
- b. Payment or provision for all taxes.
- c. All claims in same class can be paid.

b. The Elective Share Claim.

c. The Pullman Litigation. New counsel expects to evaluate this shortly. See separate section.

d. General Observation. The proper treatment, including inaction where appropriate, of potential claims appears to be a primary factor in the preservation of the Estate.

4. CHALLENGES FOR THE NEXT THREE MONTHS

A. The SAs look forward to receiving from the PRs, within the next three months, the following documents which will be critical to them (and to the PRs and others) in determining the status and course of the Estate:

1. The Application for Recognition of Exemption of the James Brown "I Feel Good" Trust. (The projected budget and other information in this document will be very helpful).

2. The Inventory and Appraisalment of the Estate of James Brown.

3. The Estate Tax Return of the Estate of James Brown (or the extension and drafts).

While these three documents will not provide a roadmap for the future, the SAs believe that they will create a valuable baseline for the actual status of the Estate on Mr. Brown's death - prior to any surge related to his death.

B. The Brown Family Education Trust. The SAs hope to join the PRs in a request to the Court to allow limited payments for education for grandchildren who ratify the Estate Plan if funds are available.

5. PRESERVATION RELATED TO SONGS AND ROYALTIES OF JAMES BROWN

The Estate of James Brown has a compelling interest in preserving and protecting the Estate's interest in Mr. Brown's songs. Some of the issues raised to date are discussed below.

1. The TIAA-CREF Funds. These four Royalty pools produced \$2.1 Million in the last 6 months. Interest is current on the TIAA-CREF note, and the principal has been reduced from \$20 Million in April, 2006 (as per Pullman Complaint) to less than \$17 Million.

2. Royalty Recaptures. The SAs are hopeful that the Estate will be the proper claimant for this valuable right to recapture the Publisher's share of Mr. Brown's songs prior to 1978. The SAs believe the Estate needs to protect its claim to these rights, which will begin to vest within the next few years, and will need protection between now and 2033.

3. The Corbis Litigation. The SAs and PRs are in agreement that any net recovery in this litigation should be paid to the Estate or its assignee. Mr. Gold assures no potential for counterclaims or costs to the estate unless there is a recovery.

4. The "Movie". If this projected \$800,000 is received by the Estate in July, 2007 the SAs ask that the PRs join them in determining which administrative and priority expenses of administration may be paid.

5. Geronimo Music, Inc. This entity poses certain unique challenges because it is partly owned by the PRs, individually and also by Frank Copsidas.

**6. PRESERVATION OF THE IMAGE, PERSONA AND LIKENESS
OF JAMES BROWN**

The SAs look forward to working with the PRs to preserve this asset.

THE PULLMAN LITIGATION

Pursuant to Court Order dated today (June 22, 2007) the SAs have engaged Matthew T. Ballenger and Mitch Zamoff of Hogan & Hartson LLP to represent plaintiffs in the Pullman Litigation.

Although located in D.C., Matt and Mitch have agreed to make the representation "New York Neutral" in that they will not charge for costs associated with travel/stays in New York City.

This selection was made over a very promising proposal by Jessie Beeber of Frankfurt Kurmit Klein & Selz, PC.

In order to complete the contract with Hogan & Hartson, and to be ready for discovery, if needed, the SAs have requested, and the PRs will be conducting, corporate meetings to elect officers and directors of:

1. James Brown, LLC, the Delaware, LLC (including 2 outside directors as required by the organizational documents and the TIAA-CREF indenture)
2. James Brown Royalty Venture I SPC, Inc.
3. James Brown Enterprises, Inc.

Mitch and Matt need this authorization.⁴

Hogan and Hartson will appear and effect the substitution. Within a few weeks they will review the documents. Their initial (and very preliminary) reaction is that this may be a good case for early interpretation of the contract - prior to extensive discovery.

The Estate will be able to better assess the value, if any, of Pullman's claims within the next few months.

The SAs believe that this evaluation is necessary in order to evaluate any proposal for sales or financing of Estate assets.

EXPENSES

The administrative expenses (and taxes), which may be alleviated by the Movie Payment, known to the SAs are:

1. Reasonable fees for preservation of assets.
2. The Pullman Litigation fees.
3. Payment of Counsel fees for benefit of Estate.
4. Interim Commissions for PRs (which may have to be Court approved because of Court challenges.)
5. Payment of SAs' Fees (which will have to be approved by the Court.)
6. Estate Taxes - (Possible Hardship Extensions available.)
7. Income taxes

⁴ Also needed in Illinois Litigation

SUMMARY

The SAs appreciate the opportunity to work with the PRs and counsel to preserve and protect the Estate of James Brown for Educational and Charitable purposes as provided in Mr. Brown's estate plan (or as otherwise directed by the Court.)

Respectfully submitted,

Robert L. Buchanan, Jr.

Adele J. Pope

June 22, 2007

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CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies pursuant to Rule 210(g), SCACR, that the Supplement to Amended Record on Appeal filed herewith contains all material designated by any party which was not included in the original Amended Record on Appeal and no other material.

s/Adam T. Silvernail
Adam T. Silvernail

September 28, 2020