STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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

Case No. 2013-CP-02-1337

Adele J. Pope, Appellant

v.

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

AMENDED INIITIAL REPLY BRIEF OF APPELLANT

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South Carolina Rules of Appellate Procedure, Rule 208 1

Appellant respectfully submits the following reply to the brief of Respondents. In addition to the response set out below, Appellant incorporates in its entirety the brief of Appellant filed herein. Appellant objects to all statements in Respondents' brief unless specifically agreed to herein and notes herein certain specific issues.

I. Respondents' Counter-Statement of the Case is Inadequate and Incomplete

Respondents' counter-statement of the case, in violation of 208 SCACR, is argumentative and fails to advise the Court of the parties; the amount in question; the allegations in the pleadings; and other material developments in the case. Appellant respectfully submits that this failure to meet minimum standards for a counter-statement of the case should be considered an adoption of the Statement of the Case of Appellant.

II. Opposition to the AG's Settlement Was Not "Ill-Informed or Self-Interested"

The brief of Respondents overlooks the importance of the May 29, 2013 announced plan of Tommie Rae Hynie Brown (Tommie Rae) and most acknowledged relatives of James Brown to ignore the Supreme Court's decision in *Wilson v. Dallas* and reinstate the 2008 settlement deal brokered by the AG which threatened to shift about $2 million of income a year and more than half of Brown's assets from his "I Feel Good" Charity to will contestants. *See* R. 309; 767; 790; 847; 977; 1041; 1098; 1169; 1259. On pages 31-32 Respondents assert that Buchanan 's and Pope's appeal of the AG's 2008 settlement was "ill-informed" and "self-interested." The record refutes this claim.

The AG's August 10, 2008 settlement provides:

1. The AG takes control of the assets of entertainer James Brown; selects and effectively controls the fiduciary, but shares 75% management control with Tommie Rae; incorrectly "stipulates" Brown's heirs under State law and the U. S. Copyright

Act; stops the Estate's official heirs determination process and DNA testing of all settling parties; gives about $1 million a year and a quarter of Brown's assets to Tommie Rae; gives another $1 million and quarter of Brown's assets to five clients of Louis Levenson, Esq.; and dismembers Brown's education trust for seven specific grandchildren [then 1/42 of Respondent 2000 Trust].

2. In exchange, the AG gets half of the Termination Interests[1] for his new charity, but gives the first $2 million to a trust for family members.

3. The AG and Legacy Trust use James Brown's $4 million annual royalty income and the Termination Interests the settling parties put in the Legacy Trust in January 2009, to defeat the claims of known DNA-proven heirs under the Copyright Act and anyone challenging the AG's 2008 settlement. [R. 1752; 1753; 1763; 1764 (Tr. Pp. 304, 305, 315, 316)]

Buchanan and Pope were well-informed when they rejected the settlement which was made for the AG by a senior assistant AG who had no understanding of the Copyright Act, Termination Interests, the value of James Brown's estate and 2000 Trust or the lack of strength of the challenges to Brown's estate plan. [R. 1800-01; 3099-3109 (Tr. Pp. 517, 519; 1st Rept. And Rec. of SAs)]

The Supreme Court's May 2013 rejection of the AG's 2008 settlement as a dismembering of the James Brown's estate plan in *Wilson v. Dallas* was likewise well informed.

III. Respondents' Argument that Appellant Delayed this Matter is Unsupported

Pope, Respondents' expert Provence and the Probate Code all agree that claims must be timely processed. This claim was ready to be heard in 2009 and a motion had been filed to hear it. [R. 302; 356; 533; 2752; 2813 (Mot. Dtd. 6/24/09)] Instead, Respondents delayed

1 Termination Interests refers to the right of heirs, as determined in the Copyright Act, to elect certain U.S. royalty proceeds under Sections 304 and 203 of the Act, and those proceeds.

for 10 years, causing interest to double both the PR and partial SA fees. Appellant filed this case only when forced to do so by Respondents' May 29, 2013 service of the Notice of Disallowance of Appellant's entire claim (including her judgment for unpaid SA commissions). [R. 1423; 1440; Tr. P. 566]

IV. Actions of the Aiken Court After the May 29, 2013 Announcement are Relevant

On page 3 and in footnote 3 of their Brief, Respondents assert that factual allegations of Appellant's brief are unsupported or improperly supported, and some are not relevant. On pages 33 through 36 Respondents identify the testimony and documents of a dozen rebuttal witnesses, asserting they were not properly before the court or relevant. All documents were properly before the court, and the concerns voiced by many were voiced by Pope in the 63-page complaint filed in this case in June 2013. [R. 666-729 (Complaint, pp. 1 – 63)] All provide evidence that the orders under appeal should be reversed. They further show that the Aiken Court's orders, taken together, demonstrate an increasing retaliation against Buchanan and Pope for their successful appeal of the AG's 2008 settlement which the Aiken Court had approved, but which the Supreme Court voided. [*Wilson v. Dallas*, 403 S.C. 411 743 S.E.2d 746 (2013); R. 162-206]

V. The Aiken Court's Challenge to Pope's Credibility Over the May 29 Announcement

Bauknight's Legacy Trust counsel began their vitriolic attacks on Buchanan and Pope in 2009 [R. 403]. At the time Judge Early had consistently praised Buchanan and Pope in more than twenty unappealed James Brown orders. [R. 23; 66; 90; 96 (Orders dtd. 1/8/08, 2/1/08, 3/7/08, 4/1/08, 4/8/08)] The May 26, 2009 order replacing Buchanan and Pope had specifically stated the replacement was without a finding of cause for removal. [R. 1765 (Tr. P. 317)]

At trial, and in its subsequent order, the circuit court challenged Pope's credibility, something the court had not done to Buchanan or Pope for a decade. This included the circuit court's challenge over its May 2015 status report where the court failed to advise the Supreme Court of the May 29, 2013 announced plan of Tommie Rae and a dozen Levenson clients to defy *Wilson* and reinstate the AG's 2008 settlement. Pope, politely and correctly, testified to the court's error. [R. 2113-15; 2131-32 (Tr., pp. 2296-2301; 2383-2384)]

It is significant that William Newsome, Esq., trial counsel for Respondents, was present when the May 29, 2013 plan to reinstate the AG's 2008 settlement was announced, as was one of his partners. Neither – despite years of attacks on Buchanan and Pope – challenged her recollection of the May 29 hearing, which was reported in the media and noted in Pope's filings. [R. 2116 (Tr., P. 2302)].

VI. The Record Shows Challenges to Pope's Credibility and Actions Were Unfounded

Respondents' brief relies almost entirely on the statements of the circuit court about Pope and her actions and credibility. The trial record, however, with 100 pages of contemporaneous time records, other documentation and numerous orders, makes clear that Appellant's recollection of events was fully supported by the record, while the circuit court's recollection was often inconsistent with its own unopposed and unappealed findings between 2007 and 2009. [R. 489-582] Especially noteworthy are Respondents' incorrect characterizations of the Christie's sale on pages 25-28, which conflicts with the Complaint and orders of February 20, April 1 and July 14, 2008. [R. 53; 90; 146 (Ords. 2/20/08, 4/1/08; 7/14/08)] Respondents' distortion of the First Semi-Annual Report, including confusing the actions Buchanan and Pope took as non-fiduciary SAs with those they took as PR/Trustees, is in direct conflict with the report itself [R. 2667-74 (Rept.)];

contemporaneous time records [Timesheets]; orders of the Aiken Court [R. 53; 96 (Ords. 2/20/08; 4/8/08)] Buchanan's and Pope's affidavit supporting their claim [R. 2750 (Jt. Affidavit)]; undisputed trial testimony [R. 1479-1795 (Tr. Pp. 31-347)] and the Complaint in this case. [R. 666-729 (Compl.)]

VII. Rulings After the May 29 Announcement Favor the AG's 2008 Settlement

On pages 45-47 Respondents assert that there is no evidence of bias or retaliation against Appellant. That is incorrect.

The first act of the Aiken Court after the May 29, 2013 announced intention to disregard *Wilson* and reinstate the AG's 2008 settlement was to issue administrative orders which excluded Buchanan and Pope from Brown proceedings and directed the clerk to return any attempted filings in cases other than their own claims. [R. 216 (Ords. 6/13/13)] For the next six years the circuit court would remain in a bell jar, increasingly hearing and repeating the negative claims about Buchanan and Pope which were necessary to justify the second dismembering of Brown's carefully-crafted estate plan. [R. 993-999; 249; 260; 267; 274; 2406-2442; 2164-2234; 2329-2365; 2113-2119 (Status Report; Confidentiality Orders; Protective Orders; Depos. Wingate, Cook, Wilson; Tr. Pp. 2299-2305)]

In 2015, the Aiken Court issued a Status Report to the Supreme Court, making a number of incorrect assertions. [R. 993 (Status Report)] Although many of these inaccuracies (addressed in Appellant's brief herein) painted Appellant in a bad light, Appellant worked under the assumption that the report was based on misinformation in cases from which she and Buchanan had been barred, rather than bias. She spent the next 3 years attempting to get the correct information before the Aiken Court.

Unfortunately, the Aiken Court issued a number of discovery and confidentiality orders in this case, which had the effect of limiting Appellant's access to information or declaring public documents to be confidential. [R. 265; 267; 268;272; 274 (Ords., 2/7/17; 3/1/17; 6/9/17(2); 6/15/17)] Appellant's expectation that this case would be heard by a jury – at least on the issue of valuation – left open the possibility that even confidential documents would be presented to a neutral factfinder. [R. 1161-72]

The depth of the Aiken Court's bias was not clear until it issued its final, scathing order in this case on January 16, 2019. The clearest evidence of bias is the lengths to which the Aiken Court went to recast Appellant's and Buchanan's services to the Estate/2000 Trust as categorical failures despite the numerous orders of *the same court* having approved most of Appellant's actions (after notice and hearing to interested persons, and without any party having appealed the prior orders).[2]

The Aiken Court further spends 4 pages criticizing Buchanan's and Appellant's opposition to the 2008 settlement (later found by the Supreme Court to be an unjust and unreasonable dismembering of James Brown's estate plan), despite the lengthy opinion in *Wilson v. Dallas,* in which the Supreme Court not only agreed with Appellant and Buchanan, but took it upon itself to

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2 The Aiken Court goes so far as to blame Appellant for the orders it issued *directing her*, with Buchanan, to conduct the Christie's sale. "While this Court approved the Christie's Sale, it did so based upon the recommendation of Mrs. Pope." [R. 329 (Ord. 1/16/19, p. 38)] "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

extensively criticize the settlement, the actions of the AG and the flimsy claims giving rise to the settlement. The Aiken Court found, without citing justification, that it was "not required to turn a blind eye" to Respondents' argument that the 2008 settlement would have allegedly ended some litigation. [R. 330-334 (Ord. 1/16/19, pp. 39-43)]

The Aiken Court found that the Supreme Court "did not have the benefit of" the expert testimony presented in 2017 and 2018 in this case, but disregards the fact that the Aiken Court heard 7 days of testimony (including expert testimony) prior to approving the now-voided 2008 settlement.

The Aiken Court's 2019 findings are even more startling given that in 2013 it "double approved" all amounts paid to Buchanan; praised Buchanan's work, all of which was joint with Pope; and left open the possibility of Buchanan's re-entry into Richland 4900 to seek damages from parties other than Respondents. This praise would stop by 2015, and by 2019 the Aiken Court would rule that Buchanan, like Pope, was not entitled to any commission. [R. 993; R. 292 (Status Report; Ord. 1/16/19)]

Appellant further notes that the Aiken Court specifically requested that Respondents add material to the proposed final order which the Aiken Court characterized as "personal attacks" allegedly made by Appellant. *See* Appellant's brief at 47-48.

Finally, the Aiken Court's receiving, then discarding of Bauknight's *ex parte* filing of what he had admitted to the federal court was tens of millions of dollars of litigation costs without preserving a copy deprived Pope of her Due Process rights to a fair trial and appeal. *See* Appellant's Brief at 33.

Taken together, these orders and rulings demonstrate a clear bias against Buchanan and Appellant, and the resulting final order herein demonstrates that Appellant did not receive a fair trial.

VIII. The Rebuttal Testimony and Documents Are Properly Before the Court

At trial, before calling Pope as a live rebuttal witness, counsel introduced rebuttal deposition designations of the Solicitor General, the Governor, the AG and a number of other rebuttal witnesses. [Tr. pp. 2005-7] The designations had been presented to Respondents, who made no counter-designations. [R., p. 2005] Counsel explained that at the bottom of each designation were the documents to be admitted with the deposition, and used the designations for Solicitor General Cook as an example. Counsel advised that he wished to have the documents introduced before Pope testified in rebuttal. A discussion followed which included:

> THE COURT: Well, I'm not going -- if you're objecting to them, I'm not going to go through and read a thousand pages then make a determination Whether they're relevant or not. You're objecting to the whole thing or ---
>
> MR. NEWSOME: Yes, Your Honor
> ... [Further discussion]
>
> THE COURT: All right. Here's what I'm going to do. I'm going to allow him to offer it, but I'm not going to rule on it one way or the other presently until I've had a chance to see what it is. [R. 1945 (Tr. p. 2007)]

Pope discussed the testimony of some of the witnesses, and it was included in the motion for directed verdict. [R. 1258-1309] Expert W. Steve Johnson acknowledged having read several of the offered depositions during his testimony on rebuttal. [Tr. Pp. 2541-2] When the circuit court's order overlooked the testimony of these critical witnesses, they were called to the Court's attention in a lengthy motion to alter or amend, but the Aiken Court failed to address the issue in its short denial order [R. 1312-1444 (Motion Alt./Amend)]

The testimony of these witnesses was properly before the Aiken Court both at the second partial summary judgment hearing and at trial. Testimony of the Governor , Solicitor General and AG, along with others, supports Appellant's position that the $4.7 million valuation was fabricated without basis to damage Buchanan and Pope and did, in fact, make their defense of the estate plan extraordinarily difficult; that Richland 4900 was improper and illegal; and that the Aiken Court has retaliated against Buchanan and Appellant since Wilson. [*See* R. 2165-2234 (Sol. Cook, pp. 5-8, 12-26, 29-75-77-81); R. 2235-2237; 2239; 2251; 2252-2277 (Gov. McM., pp. 1, 3, 5, 9, 21, 23-25, 30-42, 44-48, 52, 53, 55-57); R. 1386] They also show that the AG supported or joined in known incorrect statements to the Supreme Court by Bauknight, including:

1. Tommie Rae's elective share claim was a "slam dunk;"

2. James Brown's worldwide music empire was worth only $4.7 million;

3. Tommie Rae and James Brown II (James) control the Termination Interests under Sections 304 and 203 of the U.S. Copyright Act;

4. It was good for Brown's "I Feel Good" Charity to give Tommie Rae about $1 million of income a year and a quarter of Brown's assets for her Termination Interests;

5. Nobody was trying to buy the Estate/2000 Trust assets;

6. Brown's Estate/2000 Trust had no corpus to speak of;

7. Termination Rights are all this Estate is about.

8. If the Supreme Court did not approve the AG's 2008 settlement, there would be nothing left in Brown's "I Feel Good" Charity by 2023.

IX. Tommie Rae's Post- *Wilson* Marital Status is Not Relevant to This Case or Appeal

Respondents note on page 3, footnote 3, the post- May 29, 2013 rulings of the circuit court and Court of Appeals related to the spousal status of Tommie Rae. This is not relevant to Buchanan's and Pope's fee claim. What is relevant with respect to Tommie Rae is that Buchanan and Pope, with all of the authority and responsibility as if appointed by James Brown, challenged the AG's plan to give her spousal status; about $1 million a year; and a quarter of Brown's assets.

The fact that Tommie Rae's marital status remains undecided 7 years later, Appellant submits, is clear indication that the AG's gift of a quarter of James Brown's assets to Tommie Rae prior to any meaningful discovery on her claim was premature, unjust and unreasonable. The Supreme Court agreed with Appellant and Buchanan on that matter, and Respondents should not be allowed to relitigate, based on subsequent occurrences, Appellant's and Buchanan's reasonable actions.

X. The Appointment and Service of Buchanan and Pope was Joint

On virtually every page of their brief,[3] Respondents refer to joint acts of Buchanan and Pope as the acts of Pope. This pervasive inaccuracy is explained in footnote 6 on page 5 by the statement that in 2012 Mr. Buchanan settled all disputes and "renounced any claim to compensation for his work as PR/Trustee." This is incorrect.

Everything Buchanan and Pope did from March 2007 until at least July 2012 was joint, and they remained together in the Forlando Suit until it ended in 2015. Everything they did was joint, including their joint motion asking to be paid for the earned portion of their fee in June 2009.

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3 See p. 2, 3,4, 5, 6, 7, 8, 9,10,.11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,23,24, 25, 26, 27, 28, 29, 30, 31, 32, 41, 42 and p. 47.

[Mot. 6/24/09] By July 2012, however, Buchanan faced financial difficulty from his service to Brown's Estate/2000 Trust and agreed to accept $500,000 for the $500,300 he was owed. He agreed to waive both interest and the discretionary request. [R. 2131(Tr. P. 2383)]

Without telling the Supreme Court, the AG required Buchanan not to file a petition for rehearing in *Wilson v. Dallas.* A motion to declare this a violation of the AG's statutory duty has been pending since 2012 and not heard. [R. 1792 (Tr. P. 344)]

XI. Respondents' Characterization of the First Semi-Annual Report is Inaccurate

On pages 5 through 7 Respondents misdescribe Buchanan's and Pope's May 2008 First Semi-Annual Report to the AG and Beneficiaries as an invitation to the AG to dismember James Brown's estate plan behind their backs. See pp. 5 – 7 of Respondents' brief. A reading of the report, however, makes clear this is not correct. The report accurately outlines the many beneficial things Buchanan and Pope were doing between November 2007 and May 2008. [R. 2667 (First Semi-Annual Rept.)]

XII. Buchanan and Pope Understood the TIAA (Pullman) Debt as SA's

On pages 21-22, Respondents assert that Buchanan and Pope would have saved money if they had engaged an expert to read the TIAA (Pullman) contract for them. The record shows that before they became PR/Trustees Buchanan and Pope had read, understood and negotiated an agreement with TIAA over an event of default related to TIAA funds Cannon took in 2006. [R. 440-441; 1274; 1517-1524] By contrast, Bauknight and his "experts" misread and overvalued the TIAA debt by at least $3 million, causing tax and other problems. This dramatic overstatement, part of the $79 million devaluation, helped shift $1 million a year and nearly 1/3 (31%) of the "I Feel Good" Charity over to family members, where some will remain for another 20 years. [R.

1278; 1383; 1429; 1668; 2592] It will then return, depleted by millions of dollars of unnecessary income tax, to the charity.

The TIAA debt was not $19 million when Brown died. It was not over $18 million, as Bauknight told expert Bradley Sharp. [R. 1306-1308 (Mot. Directed Verdict)] It was approximately $15 million after a $2 million escrow. [*Id.;* R. 2636-2639] Despite this, in 2015 the Aiken Court said in the status report that Bauknight had reduced the TIAA debt from $14 million to zero, nine years ahead of schedule. [R. 996] This was incorrect. Buchanan and Pope had reduced the TIAA debt to about $11.3 million, with a $2 million escrow to be applied to the final payment. Bauknight had only about $9.3 million to pay off by 2011. [R. 3024 (Pl. Ex. 15)].

XIII. Testimony of the Governor, AG, Solicitor General and Others is Proper

Respondents' brief, without basis, asks this Court on pages 36 to 38, and elsewhere, to overlook the relevant, material, sworn testimony and documents of the Governor, the Attorney General, the Solicitor General and others which fully support Appellant's position. [R. 2165-2234 (Sol. Cook, pp. 5-8, 12-26, 29-75-77-81); R. 2235-2237; 2239; 2251; 2252-2277 (Gov. McM., pp. 1, 3, 5, 9, 21, 23-25, 30-42, 44-48, 52, 53, 55-57); R. 2329-2365 (AG Wilson, pp. 11-17, 21-23, 33-35, 39, 41, 49)] This evidence is proper and material.

XIV. Respondents' and Excluded Experts Support $99 Million Value and Actions

The testimony of Respondents' experts Roger Miller and Laura Woolley, with TPP and copyrights at as much as $80 million, when taken with the testimony of experts the Aiken Court overlooked or declined to accepts, fully support Buchanan's and Pope's $99 million value of Brown's music empire; their extraordinary service; their good return with $7.83 million despite

interference; and the wisdom of the challenge to the AG's 2008 settlement. [R. 960-968 (Def. Interrog. Answers); R. 1395-96 (Mot. Alter or Amend, pp. 84-84)]

The Aiken Court, without basis, declined to allow Termination Interest testimony from either Pope or Smith, authors of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* The Court either ignored, discounted, or rejected the testimony of branding expert R. B. Alexander [Tr. Pp. 989-992] Steve Johnson, Esq, [Ct. 2]; IP expert Wallace Lightsey, Esq. [R. 2366-99]; tax and estate planning expert , James Hardin III [R. 2446-84]; Kenneth Wingate, Esq., [R. 2406-42]; Graham Foundation trustee Stephen Lambert; "adverse expert" SA/ST David Sojourner; expert Rita Caughman; [pp. 3, 4, 10, 17, 19-22, 25, 28, 29, 34] and others [R. 2400-05]. The Aiken Court then found that there was no credible testimony that the value of Brown's music empire was $99 million, and found that Buchanan's and Pope's service was deficient. [R. 292 (Ord. 1/16/19)] The inescapable conclusion from these rulings is that the circuit court denied Appellant a level playing field as to her claim.

Respondents misuse a general statement by expert Roger Miller that settlements can be good and the Semi-Annual Report to justify the AG's dismembering of Brown's estate plan.

XV. Buchanan and Pope Properly Dealt with Insurance

In footnote 3 on page 18 Respondents assert that Buchanan and Pope's insurance for the Beech Island Mansion was $1 million higher than the appraised value. No evidence was presented of the claimed cheaper insurance, and Bauknight has never accounted properly.

XVI. Buchanan's and Pope's Proper Management of Brown's Beech Island Mansion

Respondents statements about the Beech Island mansion, like the remainder of the statements between pages 14 and 37, were made by experts hired in late 2016 or later who did not

review time records, the complaint, or Judge Early's April 8, 2008 order and other contemporaneous orders. The facts about the Beech Island mansion are that Buchanan and Pope, with the Aiken Court's blessing were seeking a museum purchaser, and hoping to have family involved. [R. 1649 (Tr. p. 201)] Beech Island was offered to Brown's acknowledged children and Deanna accepted, but Levenson rejected it. [R. 1650 (Tr. P. 202)] When the AG took over Bauknight spent half a million dollars from Brown's charity fixing up something the AG agreed to sell to the family at a reduced price. [Tr. P. 998]

Buchanan and Pope also placed thousands of Brown's 10,000 items of TPP in four museums for safekeeping and insurance and oversaw the packing and delivery of 45 boxes of music items to a Nashville sound storage facility. [R. 2667; 1614 (First Semi-Annual Rept., Tr. P. 166)]

XVII. The Copyrights Were Catalogued in 2007

On pages 15 through 18 Respondents make statements wholly refuted by the record which shows that Buchanan and Pope obtained a catalogue of the copyrights in 2007 and kept – and made available to all – the quarterly royalty statements. [R. 2081 (Tr. P. 2143)] Respondents' statement that "Ms. Pope never bothered to catalogue the copyrights" should be corrected to say that Bauknight never bothered to look at the documents he was handed in May and June of 2009. See Receipt signed by Bauknight [R. 2794 (Custody Receipt) R. 2097-8]

Buchanan's and Pope's focus on preventing the AG from giving away $2 million a year and half of Brown's 900 copyrights necessarily became their major focus in August 2008. [R. 2048-9; 1750 (Tr. Pp. 302, 449-51, 487, 2110-11, 2182-3, 2229-30, 2295, 2247-48)]

XVIII. "Found No Evidence" Means Respondents and Experts Ignored the Records

In sworn depositions as early as 2013 Bauknight had virtually no memory of actions within the estate. [R. 2885-88] Yet he complained about Buchanan and Pope, finding no evidence, for example, of filing of Brown's 2006 income tax returns which were filed both with the IRS and in the Aiken Court in 2007. [R. 2054 (Tr. P. 2116)] He didn't tell experts he had failed to pick up the James Brown tax files from William Sellars, allowing them to be destroyed. [R. 1404 (Mot. Alter or Amend, p. 93] He blamed the failures of his spouse/CPA to file tax returns on Buchanan and Pope.

"Found no evidence" and "did not see" became the hallmarks of Respondents and their experts. [R. 319; 320; 321; 1834; 346] The complaint, contemporaneous records, and undisputed testimony of Pope, the Solicitor General and others confirms the competent and beneficial work of Buchanan and Pope. [*See* R. 2022; 2186-88]

XIX. Tommie Rae's Three Suits and the Four Will/Trust Challenges

On page 16 and 17 Respondents assert that Buchanan and Pope were trigger-happy litigators with a "myopic focus on litigation" and, but for one, filed "the first lawsuit related to the estate." The record is otherwise. Within six weeks of Brown's death Tommie Rae and James had filed three defective lawsuits. By a year and a day after his death all except one of the acknowledged children and Tommie Rae had filed four more lawsuits. And Forlando, the following week, began his four-year federal suit seeking to reinstate Cannon and Dallas as Brown's trustees. [R. 1363]

Buchanan's and Pope's declaratory judgment suit asking for emergency relief to correct the theft of Cannon and other wrongdoing of Cannon and Dallas was not a suit against the

family, and was appropriate. It produced at least five beneficial orders. [R. 33; 23; 90; 96 (Ords. dtd. 1/16/08, 1/8/08, 2/1/08, 4/1/08, 4/8/08)]

XXIX. The $99 Million Value is Supported by the RBS Appraisal and Other Evidence.

Expert James Hardin III, testified that the factors used by Buchanan and Pope to arrive at the $99 million (less $15 million TIAA debt) value were those typically used in a professional appraisal. [R. 1348-50; 2450-51] As shown in Exhibit D8 to the Hardin Deposition, Buchanan's and Pope's valuation was fully supported by voluminous documentation not secreted by Respondents, including the term sheet for the $42 million 2006 RBS appraisal of about 850 of the 900 copyrights. [R. 1205-07 (Depos. Hardin, Ex. D8)]

The formula presented by Buchanan and Pope was accepted by the IRS in the Estate of Harlan Howard in 2002, but none of the experts, including Bradley Sharp, was aware of that decision. [R. 2079; Tr. Pp. 1892, 1902, 2141, 2532-3, 2541] *In re Estate of Howard*, M2008-00540-COA-R3-CV (Tn.App. 2009) correctly states that the purpose of a tax valuation is to get the figure right – not see what you can get away with. [R. 2079 (Tr. P. 2141)]

The $79 million devaluation endorsed by the AG without review, like the unconstitutional and unauthorized Richland 4900 and the FOIA interference, made the work of Buchanan and Pope more difficult. The same was true of their having to conduct *Wilson v. Dallas* at their own expense. The result, however, allowed the Supreme Court to issue a decision to save $50 million in assets and $2 million a year in income the AG tried to give away for Termination Interests worth $5 million or less. [R. 1732-3; 1743; 1798-99; 2083]

Conclusion

The circuit court committed various errors in arriving at the January 16, 2019 Order, along with the appealed pre- and post-trial Orders. Respondents have not overcome any argument addressed in Appellant's brief, and this Court should grant the relief set out therein.

Respectfully submitted,

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October 9, 2020

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

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SC Court of Appeals

Adele J. Pope, Appellant,

v.

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

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of the following:

1. Motion to File Amended Reply Brief Out of Time;
2. Amended Initial Reply Brief
3. Final Brief; and
4. Final Reply Brief

on all Respondents on the date shown below, by emailing a copy to their counsel, addressed as follows:

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October 9, 2020