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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, Defendants

**APPELLANT’S MOTION TO SUPPLEMENT THE RECORD OR TAKE JUDICIAL
NOTICE**

Appellant respectfully moves this Honorable Court for an order supplementing the record on appeal or taking judicial notice of the following:

1. Sisario, Ben and Knopper, Steve, “After Years of Infighting, James Brown’s Estate is Sold,” *New York Times*, December 13, 2021¹, a news article reporting the sale of the James Brown music empire and other assets to Primary Wave for \$90 million (attached hereto).
2. The record in this Court of *Adele J. Pope vs. Estate of James Brown and the James Brown 2000 Irrevocable Trust*, Case No. 2020–000967 (on file in this Court).

Appellant respectfully submits that this, and other public information of which this Honorable Court may elect to take notice, make clear the lower court’s erroneous

¹ <https://www.nytimes.com/2021/12/13/arts/music/james-brown-estate-primary-wave.html> (last accessed June 9, 2022).

support since the filing of this case in 2013 for the announced May 29, 2013 plan of Tommie Rae Hynie and Louis Levenson, Esq., to disregard the May 8, 2013 decision of the Supreme Court in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) and reinstate the 2008 settlement deal brokered by the Attorney General of South Carolina (“AG”) which dismembered the estate plan and \$80 million “I Feel Good” charity of iconic entertainer James Brown.

From 2013 until 2019 Respondents, speaking for James Brown’s Estate and Brown’s “I Feel Good” charity, but working with Hynie and Levenson on the May 29, 2013 announced plan to disregard the Supreme Court’s mandate, used the incorrect claim that Brown’s worldwide music empire was worth less than \$4.7 million when he died, and his charity worth less than \$4 million, to falsely accuse Robert Buchanan, Jr. and Appellant a federal felony.

Concealing the claimed \$4.7 million valuation, Hynie, Levenson and Brown’s Estate continued the outrageous claims they had made to the Supreme Court in 2011: that Brown’s Estate and Trust had no corpus to speak of; that the Federal Termination rights which Hynie and her son controlled may be worth more than James Brown’s music empire; and that the hidden claimed \$4.7 million valuation “proved” that Buchanan and Appellant were greedy felons.

In this unnecessary lawsuit which could have been ended for \$47,972 and \$1,473,550, plus interest, since 2009 – and \$2.1 million in 2017 – Respondents continued to push the Hynie/Levenson May 29 agenda, even hiring 9 new experts in 2016 to push their plan to reinstate the AG’s 2008 settlement.

In 2014, when she first sought summary judgment, which the lower court was

persuaded to deny, Appellant said that but for these false claims:

...TODAY James Brown's "I Feel Good" private foundation would have a \$90 million corpus; would be managed by three non-conflicted private trustees; and would be distributing \$3 million or more each year in scholarships. [R. 972]

That did not happen. To advance the Hynie/Levenson plan, Respondents continued this fee claim for 8 additional years, while their fiduciary claimed that Appellant had "raped" James Brown's estate by appealing the AG's 2008 settlement.

At trial in 2017 and 2018 Respondents' fiduciary said he had no idea of the value of the assets, or the income, of James Brown's Estate, but he was sure the hidden value of less-than \$4.7 million was correct. However, according to the *New York Times* article Appellant asks this Court to consider, "[t]he deal with Primary Wave ha[d] been in the works for nearly four years" in December 2021.

In 2019, one year before the \$90 million sale, Respondents sent to the lower court an order which stated that the only credible evidence at the non-jury trial of this case was that Brown's Estate – which was earning \$5+ million a year when the AG's settlement was announced – was that Brown's music empire was worth less than \$4.7 million.

The lower court adopted that erroneous claim and used it to endorse the Hynie/Levenson announced plan to disregard the Supreme Court and blame the damage on Buchanan and Appellant.

The documents of which the Court is asked to take judicial notice show that Respondents, to support Hynie and Levenson, have prolonged this case for 9 years. It should have ended in 2013 for \$2.1 million or less, before it started.

Respectfully submitted,

s/Adam T. Silvernail

Adam T. Silvernail (Bar No. 80219)
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernaillawfirm.com

Counsel for Appellant

June 9, 2022

After 15 Years of Infighting, James Brown's Estate Is Sold

The sale to Primary Wave Music, for an estimated \$90 million, provides resources to ultimately realize the musician's wish to fund scholarships for needy children.

Dec. 13, 2021



The Primary Wave deal is being described as a major step toward underwriting scholarships for children that Brown had outlined in his will. Meyer Liebowitz/The New York Times

Since [James Brown's death](#) 15 years ago, a plan by the soul and funk music icon to leave the bulk of his estate to scholarships for needy children has been delayed by torrents of litigation. But the mission of financing those scholarships has taken a major step forward under the terms of a new business deal.

Primary Wave Music, a New York company that specializes in marketing estates and song catalogs, is buying the assets of the Brown estate, including music rights, real estate and the control over Brown's name and likeness.

Larry Mestel, the founder of Primary Wave — which did a [similar deal](#) for half of Whitney Houston's estate, and owns [the largest interest](#) in Prince's — envisions an array of new projects to honor Brown's legacy and promote his music to new generations of fans. Those may include a Broadway musical, television shows and the creation of a Graceland-like museum attraction at Brown's mansion in South Carolina, he said.

"James Brown was one of the greatest musical entertainers of all time, and one of the greatest legends of the music business," Mr. Mestel said in an interview. "That fits what we do like a glove."

The price of the deal was not disclosed, but is estimated at about \$90 million. The money from the transaction will be

used to endow the Brown scholarship trust “in perpetuity,” said Russell L. Bauknight, a public accountant who has served as the estate’s personal representative, or executor, since 2009. He said that once the estate is closed, he will continue to work with Primary Wave as a member of a board handling some of Brown’s assets.

“It’s time to bring in someone of Larry’s expertise to take it to the next level,” Mr. Bauknight said. “We’re looking at this as more of a partnership moving forward.”

The deal includes a provision for Primary Wave to contribute what Mr. Mestel called a “small percentage” of some future deals to the scholarships, which are for underprivileged children in South Carolina, where Brown was born, and Georgia, where he grew up.

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The Primary Wave deal is a major move toward realizing Mr. Brown’s dream of financing the scholarships, a dream delayed by one of the longest and most contentious estate conflicts in entertainment. The infighting has encompassed numerous lawsuits in state and federal courts, costing millions of dollars in legal fees and leaving a convoluted public record.

“As big a tangle as you’ve ever seen,” Henry McMaster, now South Carolina’s governor, [told The New York Times in 2014](#), seven years after he became involved in the Brown estate as the state’s attorney general.

One part of that tangle involved Tommie Rae Hynie, a singer whom Brown wed in 2001 but later learned was already married to another man. Even with her spousal status unclear, Ms. Hynie, along with five of Brown’s children, tried after Brown’s death to set aside his will and negotiate a settlement to give themselves significant shares of the estate.

They found a sympathetic attorney general in Mr. McMaster and a state judge who approved their agreement in 2009 — until South Carolina’s Supreme Court struck their settlement down four years later, calling it a “dismemberment of Brown’s carefully crafted estate plan.” (In 2020, that court [ruled unanimously](#) that Ms. Hynie was not Brown’s wife.)

For more than a decade, Brown’s heirs and estate administrators, including Mr. Bauknight and Adele Pope, a former executor, have battled in court over the value of his estate. Mr. Bauknight estimated it at about \$5 million, but Ms. Pope, who was removed from her position in 2009, put it at \$84 million. Asked if the recent sale had not supported Ms. Pope’s valuation, Mr. Bauknight defended it as accurate at the time of Brown’s death. He added that the value of the

estate had grown over the years, and he cited the efforts of industry professionals he had hired to advise him.

The deal with Primary Wave has been in the works for nearly four years, and Mr. Bauknight said he had discussions with "a number of players." Terms of the settlement are confidential, but Mr. Bauknight said the only beneficiaries of the estate are two trusts for education — one for Brown's grandchildren, limited at about \$2 million, and the other for needy children in South Carolina and Georgia, which was to receive the bulk of Brown's estate — and the estate is not a party to Brown's "termination rights," or reclaimed songwriting copyrights.

To negotiate the acquisition of Brown's estate, Mr. Mestel enlisted one of music's legal heavyweights, John Branca, who was Michael Jackson's longtime lawyer and is one of the executors of Jackson's estate.

"It was complicated," Mr. Branca said of the deal, "because James Brown was complicated."

Primary Wave's transaction leaves unresolved a longstanding legal fight between Mr. Bauknight and Ms. Pope, who have each accused the other of trying to profit from the estate.

Their outstanding cases — one by Ms. Pope against the

estate, the other filed against her by Mr. Bauknight and others — are under appeal. Until they are decided or settled, the scholarships cannot be paid, Mr. Bauknight said.

Dylan Malagrino, a professor at the Charleston School of Law in South Carolina, said that any claim against the estate “has to be resolved before you can start distributing money. It freezes everything.”

Mr. Bauknight said he hoped that the first scholarships would be awarded by the end of next year. A lawyer for Ms. Pope declined to comment.

For Primary Wave, the deal is the latest in what has become a highly competitive market for hit music catalogs and artist estates. Its competitors include [Hipgnosis Songs Fund](#), which has bought rights in music by Neil Young, Fleetwood Mac and others, as well as the major music conglomerates — which have acquired [Bob Dylan's](#) and [Paul Simon's](#) catalogs — and a new wave of [private equity giants](#) that are pouring billions of dollars into new deals.

Mr. Mestel said that Primary Wave's advantage is expertise in marketing and branding. For the Houston estate, for example, the company is involved in a hologram tour, a [cosmetics line](#), a biopic and a Broadway show.

The company, he said, has about \$1.8 billion in assets and a

“war chest” of \$1 billion in cash to announce new deals. Lately, it has been announcing transactions almost weekly, including deals with the estates of Bing Crosby, Luther Vandross and Teddy Pendergrass, and for the music of Jeff Porcaro of Toto.

“While other investment firms have announced billions they’ve raised,” Mr. Mestel said, “we’re announcing billions of deals we’re closing.”

Ben Sisario covers the music industry. He has been writing for The Times since 1998. [@sisario](#)

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PROOF OF SERVICE

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

1. Petition for Rehearing and Suggestion for Rehearing *en Banc* and
2. Motion to Supplement Record or for Judicial Notice

on all Respondents on the date shown below, by email, addressed as follows:

J. David Black (Bar No. 68499)
Kirsten E. Small (Bar No. 75681)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
dblack@nexsenpruet.com
ksmall@nexsenpruet.com

Counsel for Respondents

s/Adam T. Silvernail
Adam T. Silvernail

June 9, 2022