

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:Court File No. 10-PR-16-46
Honorable Kevin W. Eide

Estate of Prince Rogers Nelson,

Deceased.

**CAK ENTERTAINMENT, INC. AND CHARLES KOPPELMAN'S
RESPONSE TO BREMER TRUST, N.A.'S MOTION TO LIFT THE STAY OF
DISCHARGE AND APPROVE PAYMENT OF ATTORNEYS' FEES AND COSTS**

CAK Entertainment, Inc. ("CAK Entertainment") and Charles Koppelman (together, "CAK"), by and through its undersigned counsel,¹ as an Interested Observer to this matter, hereby submits its Response to the July 5, 2018 Motion to Lift the Stay of Discharge and Approve Payment of Attorney's Fees and Costs² (the "Motion"), filed by Bremer Trust, N.A. ("Bremer" or the "Special Administrator") in its role as Special Administrator of the Estate of Prince Rogers Nelson (the "Estate"). As set forth more fully herein, there is no legal or factual basis to discharge Bremer and/or its agents³ from "any and all liability" to any individual or

¹ CAK files this Response for the purpose of responding to the Motion only. Nothing in this filing should be construed as a submission to the general jurisdiction of the Minnesota courts or a waiver of any rights or defenses that CAK Entertainment or Mr. Koppelman might have, including but not limited to defenses to this Court's exercise of personal jurisdiction over CAK Entertainment or Mr. Koppelman in connection with any claims or proceedings.

² To be clear, CAK takes no position as to whether the Court should grant that portion of the Motion seeking an order directing the Estate to pay Bremer's attorneys' fees and costs.

³ It is unclear whether the relief Bremer seeks in the Motion is intended to discharge from liability only Bremer itself, or Bremer and its agents. While the Amended Proposed Order Bremer filed along with its Motion requests that the Court discharge from liability "Bremer Trust and its agents," the Motion itself only asks that the Court "lift the stay, and proceed to discharge Bremer Trust from any and all liability associated with its Special Administration of the Estate,"

entity, other than the Estate, concerning Bremer's special administration of the Estate.

Accordingly, the Court should deny the Motion to the extent it may limit or otherwise impact CAK's rights to bring claims against Bremer and/or its agents.

I. FACTUAL BACKGROUND

On April 12, 2017, the Court entered an Order staying a previously-entered order discharging Bremer and its agents from any and all liability associated with Bremer's special administration of the Estate (the "Stay Order"). In the Stay Order, the Court noted that it was staying the discharge of Bremer from liability because the Court had "learned that litigation may be forthcoming which may relate to actions taken by the Special Administrator." Stay Order at 1.

On August 21, 2017, the Court entered an Order Appointing Second Special Administrator (the "SSA Order"). In the SSA Order, the Court appointed Peter J. Gleekel and the law firm Larson King, LLP as the Second Special Administrator (the "SSA") to the Estate and granted the SSA the authority to "[c]onduct[] an independent examination of the facts, circumstances and events relating to the rescission of the UMG Agreement . . . and determining whether *the Estate* has a reasonable basis for a claim(s) against any person or entity in connection with the rescission." SSA Order ¶ 1.a (emphasis added).

On December 15, 2017, the SSA issued its Report and Recommendation Concerning the Rescission of the Universal Music Group Agreement (the "UMG Report"). In the UMG Report, the SSA reported its finding that "there does not appear to be a reasonable basis for a claim [by the Estate] against the Special Administrator." UMG Report at 23. The UMG Report also

Motion at 5. In any event, the Court should not discharge either Bremer or its agents from liability to CAK for the reasons set forth herein.

includes the SSA's findings that "there exists a reasonable basis for a claim against SLS, Meister Seelig, and the Advisors in connection with the UMG rescission." UMG Report at 30.

On February 2, 2018, the Court entered an order (the "SSA Expansion Order") expanding the authority of the SSA to "determin[e] whether *the Estate* has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement." SSA Expansion Order at ¶ 1.a (emphasis added). On May 15, 2018, the SSA issued its Report and Recommendation Concerning the Jobu Presents Agreement (the "Jobu Report" and, together with the UMG Report, the "SSA Reports"). In the Jobu Report, the SSA reported its finding that its "investigation has not revealed any facts to lead to a belief that there exists a reasonable basis for a claim [by the Estate] against [Bremer]." Jobu Report at 22-25. The Jobu Report also includes the SSA's findings that the Estate has a reasonable basis to bring claims against Jobu, CAK, Northstar Enterprises Worldwide, Inc., and Londell McMillan concerning the Jobu Presents agreement. *See* Jobu Report at 25-44.

On June 14, 2018, the Court entered an Order & Memorandum Approving Litigation (the "Estate Litigation Order"). In the Estate Litigation Order, the Court authorized the SSA to pursue all of the claims recommended in the SSA Reports "on behalf of *the Estate*," which include claims against CAK. Estate Litigation Order at ¶ 1 (emphasis added).

II. THE SSA REPORTS CAN ONLY JUSTIFY THE DISCHARGE OF BREMER FOR LIABILITY TO THE ESTATE

The only basis set forth in the Motion for discharging Bremer and/or its agents from "any and all" liability with respect to Bremer's special administration of the Estate is the fact that "all potential claims against Bremer . . . have been thoroughly investigated -- and ultimately rejected -- by the independent [SSA]." Motion at 5. However, as set forth above, the SSA only was authorized to investigate whether there was any basis for *the Estate* to bring claims against

Bremer in connection with the UMG Agreement and the Jobu Presents agreement. The SSA did not -- and could not have given its limited authority -- conduct a “thorough investigation” as to whether any individuals or entities *other than the Estate*, including CAK, may have a reasonable basis to bring claims against Bremer.

This is particularly problematic because the SSA Reports recommend that the Estate bring claims against CAK and others in connection with the UMG Agreement and the Jobu Presents Agreement, and the Estate Litigation Order authorizes the SSA to pursue such claims.⁴ If the Estate brings claims against CAK pursuant to the Estate Litigation Order, CAK may have claims against Bremer and/or its agents that it could potentially assert. If CAK (as opposed to the Estate) has meritorious claims against Bremer and/or its agents, CAK should not, and can not lawfully, be deprived of its rights without having had a full and fair opportunity to assert those rights. Nothing in the SSA Reports -- which only considered whether *the Estate* might have such claims -- or Minnesota law provides otherwise.⁵

Given the foregoing, the SSA Reports cannot provide the basis for a discharge of Bremer and/or its agents from “any and all liability associated with its Special Administration of the

⁴ To be clear, CAK strenuously disagrees with any finding by the SSA that CAK acted improperly with respect to the UMG Agreement or the Jobu Presents agreement, and does not believe the SSA Reports set forth the basis for meritorious claims against CAK, as explained in part in CAK’s June 27, 2018 letter to the Court concerning the Estate Litigation Order.

⁵ Indeed, under Minnesota law, it is unclear that there is a basis at this time to discharge Bremer from any liability with respect to its conduct in connection with its special administration of the Estate, especially as to third parties. *See* Minn. Stat. § 524.3-608 (“Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination”); *see also In re Estate of Stewart*, No. A04-808, 2005 WL 44462, at *4 (Minn. Ct. App. Jan. 11, 2005) (“Under Minnesota law, the discharge of a personal representative terminates the representative’s authority to represent the estate in pending or future proceedings, but it does not discharge the personal representative from liability for transactions occurring before the termination.”)(Affidavit of Erin K. F. Lisle Ex. A).

Estate,” with respect to CAK.⁶ Thus, while CAK does not object to the Court granting the Motion to the extent it discharges Bremer (or its agents) from liability for any claims *belonging to the Estate*, CAK does object to any such discharge that affects or limits CAK’s rights in any way.

Accordingly, CAK respectfully requests that if the Court grants the Motion, the Court make clear that any discharge of liability for Bremer and/or its agents will not in any way limit or otherwise impact CAK’s ability to assert its rights, including but not limited to CAK’s rights to bring any claims it may have -- and chooses to assert -- against Bremer and/or its agents, or any party against.

CONCLUSION

For the reasons set forth above, CAK respectfully requests that, if the Court grants the Motion, it does so in a manner that does not deprive CAK of any rights against Bremer and/or its agents.

⁶ The SSA’s purported recommendation that “[t]here would be no alleged wrongdoing or transgressions that any putative defendant addressed herein could credibly claim against the Estate or [Bremer],” Jobu Report at 48, referenced by Bremer in the Motion, *see* Motion at 4-5, is irrelevant. The SSA was not granted authority to investigate -- and did not investigate -- whether *any* parties might have claims against Bremer. Rather, the SSA only investigated -- and thus only could provide an opinion concerning -- whether *the Estate* might have such claims. In any event, the SSA does not represent CAK’s interests and CAK cannot be bound by the SSA’s recommendations.

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