

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
Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS COUSINS LAW,
APA'S PETITION FOR ALLOWANCE OF
PREVIOUSLY DISALLOWED CLAIM**

INTRODUCTION

In September 2016, Cousins Law, APA (“Cousins Law”) submitted a claim against the Estate of Prince Rogers Nelson (the “Estate”) to collect amounts allegedly due for legal services rendered to Prince Roger Nelson (the “Decedent”) in connection with his divorce ten years ago. In October 2016, Cousins Law was notified that its claim was disallowed and that it had only two months in which to submit a petition for allowance. Now, more than three months later, Cousins Law has filed a Petition for Allowance of its Previously Disallowed Claim (“Petition”). Because the Petition was not filed within two months of the disallowance of the claim and because the underlying claim is barred by the six-year statute of limitations, the Petition must be dismissed.

BACKGROUND

On August 4, 2016, Bremer Trust, N.A. (“Bremer”), then acting as Special Administrator of the Estate, mailed Cousins Law an Amended Notice of Formal Appointment of Special Administrator and Notice to Creditors. (Petition Ex. B.)

On September 2, 2016, Cousins Law mailed Bremer a claim against the Estate. (*Id.* Ex. A.) In a letter setting forth the claim, Cousins Law alleged that it has an outstanding account with the Decedent for legal services rendered in the amount of \$599,735.63. (*Id.*) In support of the claim, Cousins Law submitted a single-page invoice dated September 2, 2016, stating that the “Previous Balance” for the Decedent’s account with Cousins Law is \$599,735.63. (*Id.*) The invoice does not contain any further information regarding the amount due or the basis for the charges. (*Id.*) It does not itemize any costs or fees billed to the Decedent. (*Id.*) It does not contain any description of legal services rendered, including the dates rendered, the attorneys or other timekeepers who billed time, or their billing rates. (*Id.*)

In the claim, Cousins Law asserts that legal services rendered were for “representing Prince in a contested divorce, including responding to the complaint, attending hearings and depositions, extensive discovery, negotiations, travel to and from Minnesota and other parts of the world, preparing legal documents, etc.” (*Id.*) The Decedent’s most recent divorce was commenced in May 2006 and concluded on October 2, 2007. (*See* Cassioppi Decl. Ex. A at 3 (Aug. 15, 2016 Memorandum and Order by Judge Fraser of Hennepin County District Court).)

On October 18, 2016, Bremer’s counsel served Cousins Law with a Notice of Disallowance of its Claim. (Petition Ex. B.) The Notice provided: “Your claim will be barred unless you file a petition for allowance with the Court or commence a proceeding against the Special Administrator not later than two months after the mailing of this notice to you.” (*Id.*)

On December 6, 2016, Cousins Law filed a Written Statement of Claim in this action, asserting the same claim that the Decedent “has an outstanding account stated, a running account stated, with Cousins Law, APA f/k/a Cousins Law Firm, PA (Cousins) for legal services rendered” and again asserted that the amount of the claim is \$599,735.63. (*Id.* Ex. C.) Bremer

notified Cousins Law that it had already disallowed the claim on October 18, 2016. (Dec. 20, 2016 Notice of Disallowance of Claim.)

On February 8, 2017, more than three months after Bremer's October 18 Notice of Disallowance of Claim, Cousins Law filed the present Petition for Allowance of Claim Previously Disallowed and Petition for Hearing. In the Petition, Cousins Law restates its claim and alleges "[t]he claim is proper and should be allowed because: Claimant represented the Decedent for legal matters and services. Claimant is entitled to payment on its Claim because Decedent has an outstanding balance due Claimant as described in [Cousins Law's September 2, 2016 letter and claim]." (Petition ¶ 7.) Cousins Law made no additional factual allegations in support of its claim and submitted no additional documentation of the claim.

Comerica Bank & Trust, N.A. ("Comerica"), as personal representative of the Estate, now moves to dismiss Cousins Law's Petition because the Petition is untimely and because the claim is barred by the applicable statute of limitations.

ARGUMENT

I. COUSINS LAW'S PETITION MUST BE DISMISSED AS UNTIMELY.

A claim against an estate may be presented either by delivering a written statement of the claim to the personal representative or by filing it with the court. Minn. Stat. § 524.3-804(1). A claim "is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court." *Id.* Once such a claim is presented, "no proceeding thereon may be commenced more than two months after the personal representative has mailed a notice of disallowance." Minn. Stat. § 524.3-804(3). Thus, under the Minnesota Probate Code, a petition for the allowance of a previously disallowed claim is barred unless filed within two months after the notice of disallowance.

Here, Cousins Law's Petition must be dismissed as untimely because it was filed more than two months after Cousins Law received Bremer's Notice of Disallowance of Claim. Cousins Law's claim was deemed submitted upon Bremer's receipt of its September 2, 2016 written statement of a claim. (*See* Petition Ex. A.) Bremer responded to the claim on October 18, 2016, by sending Cousins Law a Notice of Disallowance of Claim. In that Notice, Bremer notified Cousins Law that its claim "will be barred unless [it] file[s] a petition for allowance with the Court or commence a proceeding against the Special Administrator not later than two months after the mailing of this notice to you." (*Id.* Ex. B (emphasis added).) Thus, Cousins Law was on notice that it was required to file a petition for allowance of its claim by December 18, 2016, at the latest. Instead, Cousins Law filed the Petition nearly four months later on February 8, 2017. Because Cousins Law filed the present Petition more than two months after receiving notice of the disallowance of its claim, the Petition is barred by Minn. Stat. § 524.3-804(3) and must be dismissed.

II. COUSINS LAW'S CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

The application of a statute of limitations is a question of law. *Jacobson v. Bd. of Trustees of the Teachers Ret. Ass'n*, 627 N.W.2d 106, 109 (Minn. Ct. App. 2001). "Courts have no authority to extend or modify statutory limitations periods." *Id.* (internal quotation omitted). The court may dismiss a pleading where it appears from the face of the pleading that the statute of limitations has run on the claim asserted. *Id.*

Here, Cousins Law's Petition must also be dismissed because the statute of limitations has run on its claim. In the Petition, Cousins Law seeks to collect on the Decedent's alleged obligation to pay for legal services rendered in connection with the Decedent's divorce. Under Minnesota law, an action upon a contractual or similar obligation "shall be commenced within six years." Minn. Stat. § 541.05, subd. 1(1). Because the Decedent's most recent divorce was

finalized on October 18, 2007, the six-year statute of limitations on Cousins Law's claim had run by October 2013—more than two years before the Decedent's death. Because the only factual allegations in Cousins Law's Petition indicate that it seeks to collect payment for legal services rendered more than six years ago, it is apparent from the face of the Petition that the statute of limitations has run on its claim and the Petition must be dismissed.

CONCLUSION

Because both Cousins Law's Petition and claim are untimely under Minnesota law, Comerica respectfully requests that the Court dismiss Cousins Law's Petition for Allowance of Previously Disallowed Claim.

Respectfully submitted,

Dated: February 28, 2017

/s/ Joseph J. Cassioppi

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