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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF CARVER **FIRST JUDICIAL DISTRICT**
PROBATE DIVISION

In re: Estate of Prince Rogers Nelson, Decedent.	Court File No. 10-PR-16-46 Honorable Kevin W. Eide **BREMER TRUST'S MEMORANDUM IN OPPOSITION TO ALFRED JACKSON'S EMERGENCY MOTION FOR RELIEF AND TO STAY THE COURTS [SIC] OCTOBER 17, 2017 ORDER FOR PAYMENT OF FEES, AND IN RESPONSE AND OPPOSITION TO ALFRED JACKSON'S OBJECTION TO AND MOTION FOR CLARIFICATION OF THE COURT'S OCTOBER 17, 2018 ORDER**

INTRODUCTION AND BACKGROUND

On November 6, 2018, Alfred Jackson, joined by Omarr Baker and Tyka Nelson, filed an Emergency Motion for Relief and to Stay the Courts [sic] October 17, 2017[1] Order for Payment of Fees, allegedly due to Mr. Jackson's decision to retain new legal counsel. Two days later, on November 8, 2018, Mr. Jackson, Mr. Baker, and Ms. Nelson also filed, through Mr. Jackson's new counsel, a self-styled Objection to and Motion for Clarification of the Court's 2018 Discharge Order, which rehashes allegations and arguments previously considered and rejected by the Court relating to Bremer Trust's discharge as Special Administrator of the Estate. In that 2018 Discharge Order, this Court lifted its stay of Bremer Trust's discharge (originally granted

[1] It is believed that Messrs. Jackson and Baker, and Ms. Nelson intended to move to stay the Court's October 17, *2018* Order, and this response will proceed based on that understanding. That October 17, 2018 Amended Order & Memorandum Granting Bremer Trust, N.A.'s Motion to Lift the Stay of Discharge and Approve Payment of Attorneys' Fees and Costs will be referred to herein as the "2018 Discharge Order."

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back on March 27, 2017), approved the invoices for legal work performed by Maslon LLP ("Maslon") and Stinson Leonard Street LLP ("Stinson") on Bremer Trust's behalf, and ordered that the Estate pay Maslon and Stinson, and reimburse Bremer Trust, accordingly. The Court should deny both Motions and order the Estate to proceed with making the payments as provided in the 2018 Discharge Order.[2]

Despite the title of Mr. Jackson's November 6 Motion, there is no "emergency" here. Mr. Jackson has successfully delayed enforcement of the Court's 2018 Discharge Order for weeks. In spite of his counsel's repeated threats over the past several weeks to challenge the order, and corresponding requests that the Personal Representative not make payment of the fees awarded on that basis, Mr. Jackson has not appealed the 2018 Discharge Order. And, as detailed below, the only potential challenge that has been identified by Mr. Jackson in his motion papers is to Bremer's discharge on legal grounds that were previously argued to and rejected by the Court. Mr. Jackson unconvincingly now argues that a further delay of the Order's enforcement should be granted to allow his new legal counsel to get up to speed on this case, and evaluate information to which his previous counsel has had access to for months. Regardless of its purported justification, Mr. Jackson's "emergency" motion is legally and factually insupportable, and it should be denied.

Mr. Jackson's November 8 Motion is similarly baseless. Although styled as a request for "clarification" regarding the relief granted by the Court in the 2018 Discharge Order, it is, in fact, a poorly disguised and procedurally improper request for reconsideration of Bremer's

[2] When the Court discharged Bremer Trust, it indicated that the discharge was stayed "until Comerica Bank & Trust has filed a receipt of the assets shown on the Final Accounts." (March 27, 2017 Discharge Order at 5, ¶ 7.) Bremer Trust identified all of the assets of the Estate and delivered them to Comerica. Comerica filed a receipt of the assets shown on the Final Accounts and acknowledged it has received all assets.

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motion to lift stay of discharge. It for the most part rehashes a series of allegations and arguments previously raised by Charles Koppelman and CAK Entertainment, Inc. (collectively, "CAK") in opposition to Bremer's motion to lift stay of discharge—arguments that were squarely rejected by the Court. Furthermore, Mr. Jackson's November 8 Motion is the first time that he or any other heir has made the legal argument that Bremer Trust's discharge as Special Administrator is precluded by Minnesota law after its service has ended. To the contrary, the heirs' original objections to Bremer Trust's petition for discharge acknowledged that discharge can be appropriate, but argued that it was inappropriate in this instance. (*See* Omarr Baker and Tyka Nelson's Supplemental Objections to Final Account Through 11/30/16, Final Account From 12/1/16 Through 12/31/16, and Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator at p. 3, 7-8); Omarr Baker's Reply in Support of Objections to Final Account Through 11/30/16, Final Account From 12/1/16 Through 12/31/16, and Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator at p. 3, 5.) Not only has Mr. Jackson waived this argument by his failure to raise it previously, but, as the Court has already recognized, the argument is legally unsupportable. Simply put, there is nothing new presented by way of Mr. Jackson's motions that should cause the Court to revisit the relief it has granted Bremer.

ARGUMENT

I. The 2018 Discharge Order Should Not Be Stayed.

A. *Alfred Jackson is Not Entitled to Use Minnesota Rule of Civil Procedure 60.02 to Secure a Stay of the 2018 Discharge Order.*

In his November 6 "emergency" motion for relief, Alfred Jackson seeks a stay of the Court's 2018 Discharge Order in express reliance upon Minnesota Rule of Civil Procedure 60.02. But Rule 60.02 does not offer the relief that he seeks. Instead, it provides that "the court may relieve a party … from a final judgment, order, or proceeding" for reasons including, "any

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other reason justifying relief from the operation of the judgment." *See* Minn. R. Civ. P. 60.02(f). Rule 60.02(f) affords relief from a judgment "only under exceptional circumstances not addressed" in Minn. R. Civ. P. 60.02(a-e). *See City of Barnum v. Sabri*, 657 N.W.2d 201, 207 (Minn. Ct. App. 2003). Moreover, "a Rule 60.02 motion *does not* affect the finality of a judgment o*r suspend its operation*." Minn. R. Civ. P. 60.02 (emphasis added).

But that is, of course, precisely what Mr. Jackson is attempting to accomplish by way of his current motion. Not only has Mr. Jackson failed to identify any "exceptional circumstances" requiring application of Rule 60.02(f), but even if he could, he cites no authority standing for the proposition that the rule, in spite of its plain wording, authorizes the Court to stay an order's enforcement.[3] That should come as no surprise. As explained below, Rule 62 provides the exclusive mechanism by which a dissatisfied litigant can bring a motion to stay an order's enforcement. Mr. Jackson is, therefore, not entitled to the stay that he seeks by way of his reliance on Rule 60.02(f).[4]

[3] Mr. Jackson cites two cases, *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990) and *Sand v. School Service Employees Union Local 284*, 402 N.W.2d 183, 186 (Minn. Ct. App. 1987), in support of his argument that the Court has discretion to grant any just relief under Rule 60.02, "such as the short stay requested herein." But *Chapman* makes no mention of a stay of enforcement as an available form of relief under Rule 60.02, and does not discuss the court's discretion to award any "relief as may be just" or any similar language. *See Chapman*, 454 N.W.2d at 924. Likewise, *Sand* discusses the Court's discretion in "vacating a judgment," but offers nothing about whether Rule 60.02(f) authorizes the stay of an order's enforcement.

[4] While, in relying on Rule 60.02(f) as the basis for his motion, Mr. Jackson does not appear to ask the Court to vacate the 2018 Discharge Order, Bremer Trust strongly opposes any suggestion that such relief would be appropriate here. No "exceptional" circumstances exist that would warrant setting aside the Court's well-reasoned and supported decision to grant Bremer Trust's motion to lift the stay of discharge.

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B. ***Alfred Jackson Has Failed to Satisfy the Conditions for a Stay of Appeal Under the Minnesota Rules of Civil Procedure and Appellate Procedure, and No Appeal Has Been Filed.***

To the extent that Mr. Jackson actually intended to move for a stay under Minnesota Rule Civil Procedure 62 and Minnesota Rule of Appellate Procedure 108, he has failed to demonstrate his entitlement to any such relief. First, such relief is only available under Rule 62 when either a post-trial motion or an appeal has been filed; Mr. Jackson has filed neither. *See* Minn. R. Civ. P. 62.01 and 62.03. Even if this condition were met, under Rule 108, the party seeking the stay must also provide security, such as cash or a bond, in a form and amount that is adequate under the circumstances as determined by the Court. *See* Minn. R. App. P. 108.02. Again, Mr. Jackson has neither offered security nor provided other assurances in support of his requested stay. Finally, the Court is required to analyze the factors identified in *Webster v. Hennepin County*, 891 N.W.2d. 290, 293 (Minn. 2017), before granting stay of an order's enforcement under Rule 62. Mr. Jackson's motion makes no effort to analyze, let alone demonstrate why such factors support his requested stay. That is because the factors do not support a stay.

In considering whether to grant a motion to stay an order's enforcement, the Court must weigh "whether the appeal raises substantial issues; injury to one or more parties absent a stay; and the public interest, which includes the effective administration of justice." *See Webster,* 891 N.W.2d at 293. Additionally, the Court "must balance the appealing party's interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interests of the public or the prevailing party in enforcing the decision and ensuring that they remain "secure in victory" while the appeal is pending. *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007) (citation omitted).

Mr. Jackson has failed to address any of these factors in his "emergency" motion. Even his subsequent motion for "clarification" fails to offer any facts that would support the

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application of these factors in his favor, thereby supporting a stay of the 2018 Discharge Order's enforcement. While Mr. Jackson has recently selected new legal counsel to represent him, he has had the benefit of legal representation at all relevant times. Indeed, Mr. Jackson's prior counsel filed two separate objections to Bremer's motion to lift the stay on his behalf. Simply put, there is absolutely no need for a stay in order to allow his new counsel to "adequately review" that motion, and evaluate the "appropriateness and scope" of Bremer Trust's discharge as Special Administrator of the Estate, as well as the payment of its attorney's fees and costs. (*See* Emergency Motion at 1.) If Mr. Jackson's previous legal counsel needs to get his new legal counsel up to speed regarding the history of these proceedings, doing so should not come at the cost of an additional delay in enforcement of the 2018 Discharge Order.

More significantly, Mr. Jackson's request for "emergency" relief does not raise "substantial issues" relating to Bremer's discharge or the award of its attorneys' fees. As described in greater detail below, none of the grounds cited in Mr. Jackson's November 8 motion for "clarification" furnish a legitimate basis for staying the order's enforcement, much less reconsidering the relief unequivocally granted by the Court.

Additionally, Mr. Jackson describes no injury that he would suffer if his emergency stay is not granted. Nor is there any reason to believe that any injury exists, especially since monetary harms generally do not rise to the level of "irreparable harm." *See Miller v. Foley*, 317 N.W.2d 710, 713 (Minn. 1982) (holding that where injuries are economic, no matter how substantial, they can be adequately compensated with monetary damages, and are thus generally insufficient to establish irreparable harm); *see also Hanson v. Hanson*, No. A11-842, 2012 WL 426597, *4 (Minn. Ct. App. Feb. 13, 2012) (Declaration of Leora Maccabee, Exhibit A) (district court did not abuse its discretion by denying wife's motion to stay auction and liquidation of

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property where only potential injury was monetary, so wife could pursue monetary damages against her husband if she later demonstrated that the court ordered the auction in error). In contrast, allowing Mr. Jackson to continue to re-litigate, through his new counsel, issues that have already been considered and decided by the Court would cause continued harm not only to Bremer—which has been waiting over 22 months for its final discharge—but ultimately to the Estate itself in the form of needless additional legal expense.

Finally, Mr. Jackson is unable to identify any public interest that supports staying enforcement of the 2018 Discharge Order. That is because the public interest, and the "effective administration of justice," favor discharging Bremer Trust and enforcing the Court's 2018 Discharge Order.

Mr. Jackson has not demonstrated, and cannot hope to demonstrate, any entitlement to a stay of the 2018 Discharge Order's enforcement pursuant to Minn. R. Civ. P. 62. His November 6 motion must, therefore, be denied.

II. The 2018 Discharge Order Needs No Clarification as to Bremer Trust's Discharge and Should be Enforced by the Court.

In reality, Mr. Jackson's November 8, 2018 motion to "clarify" the 2018 Discharge Order asks the Court to reverse both its March 27, 2017 Order and its 2018 Discharge Order, which granted Bremer Trust a full and complete release and discharge of liability with respect to its special administration of the Estate. Mr. Jackson's request for "clarification" is, therefore, a request for reconsideration of the Court's prior rulings as to Bremer Trust's discharge. But "[m]otions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances." Minn. R. Gen. Pract. 115.11.

Here, Mr. Jackson has made no such showing, nor can he—since the arguments upon which he relies in support of his requested "clarification" were, in fact, previously briefed and

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argued to the Court on Bremer Trust's motion to lift stay of discharge. Specifically, CAK filed a Response to Bremer Trust's Motion to Lift the Stay of Discharge and Approve Payment of Attorneys' Fees on July 12, 2018. Within that response, which opposed Bremer Trust's full discharge, CAK relied upon the same authority that Mr. Jackson now cites (Minn. Stat. § 524.3-608 and the *Estate of Stewart* decision) to argue that the Court lacked authority under Minnesota law to discharge Bremer Trust as to any liability it may owe to third parties, as opposed to the Estate itself.[5] (CAK Resp. at 4 & n.5.) In turn, within its reply memorandum filed on July 16, 2018, Bremer Trust responded to this argument, directly rebutting it:

> For a similar reason, CAK's citation (in footnote 5) to the unpublished *In re Estate of Stewart* case is inapposite. In that case, the personal representative was not "discharged" from liability by the court, but instead resigned and then raised an issue about her entitlement to reimbursement. No. A04-808, 2005 WL 44462, at *1 (Minn. Ct. App. Jan. 11, 2005). The court analyzed and rejected her argument that her termination/resignation as the personal representative somehow automatically extinguished the heir's claims for wrongful expenditures. *Id.* at *4. The court's analysis actually supports Bremer Trust's argument that once the duties of personal representative or special administrator conclude, discharge is appropriate: "The statute simply requires that the district court, in the course of ending court-supervised administration of an estate, refrain from discharging the personal representative before his or her duties are fully discharged and all property has been distributed." *Id.*

(Bremer Reply Mem. at 6 n.7.) Additional argument about the scope of the Court's authority under Minnesota law to grant Bremer Trust a full discharge of liability was then made at the July

[5] In correspondence filed with the Court on November 9, 2018, CAK reasserts the same legal arguments without providing the Court with any compelling reason to reconsider its decision to grant Bremer Trust a full and complete discharge by way of its 2018 Discharge Order. For this reason, CAK's correspondence should be deemed an improper motion for reconsideration and disregarded. Similarly, Londell McMillan's correspondence of the same date, which makes a number of arguments in opposition to the discharge granted to Bremer Trust, should similarly be considered an improper motion for reconsideration. The Court should not countenance these transparent and self-interested attempts to re-litigate issues and arguments that the Court has already decided (and did not invite discussion of by way of its Order for Submissions, which was limited to the narrow question raised by the Second Special Administrator).

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19, 2018 hearing on Bremer Trust's motion. Ultimately, the Court issued its 2018 Discharge Order, which granted Bremer Trust's requested relief in full. Even if he has not already waived this argument (by his failure to previously assert it), by raising it now, Mr. Jackson is attempting to re-argue an issue that the Court has already considered and rejected by way of its 2018 Discharge Order. Nothing new, much less compelling, is presented by way of Mr. Jackson's motion for "clarification" that should cause the Court to reconsider its well-supported decision granting Bremer Trust a full discharge of liability.

Not only is Mr. Jackson's motion procedurally improper, but it misstates applicable Minnesota law. As explained in Bremer Trust's original reply memorandum, Mr. Jackson's attempted rehashing of CAK's argument confuses and conflates the distinct concepts of termination and discharge. Minn. Stat. § 524.3-608 provides that termination in and of itself does not discharge a personal representative or special administrator from liability for transactions or omissions occurring before its termination. Minn. Stat. § 524.3-608. Rather, in exercising its *in rem* jurisdiction (by which it can bind all persons with an interest with respect to the estate), the Court must explicitly—as it clearly did in this case—discharge a special administrator from liability based upon its review and consideration of the relevant facts and circumstances surrounding the administrator's conduct of the estate's administration, including review and approval of the administrator's final account.

This review is similar to that which a Court must engage in when reviewing a trustee's final accounts, and its actions and conduct during the term of those final accounts. As with its review of the accounts and actions of a trustee, once a Court has approved a special administrator's final account, under Minnesota law, that order has the legal effect of a final judgment deserving of *res judicata* effect with respect to "all matters during that accounting

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period." *See Matter of Trusts by Hormel*, 543 N.W.2d 668, 671 (Minn. Ct. App. 1996) (citation omitted); *See Matter of Trusts Created by Hormel*, 504 N.W.2d 505, 511 (Minn. Ct. App. 1993) (citation omitted); *Matter of Tr. Created by Hill on Dec. 31, 1917 for Ben. of Maud Hill Schroll*, 499 N.W.2d 475, 489 (Minn. Ct. App. 1993) (citation omitted). Special administrators, like trustees, are entitled to seek discharge from liability when their fiduciary service ends, and Minnesota law acknowledges this fact. *See, e.g., In re Trusteeship of Williams*, 591 N.W.2d 743, 752 (Minn. Ct. App. 1999) (district court did not err in relieving co-trustees of their liability by way of discharge); Minn. Stat. § 524.3-1001(a)(1) ("the court may enter an order...discharging the personal representative from further claim or demand of any interested person.")[6]; Minn. Stat. § 524.3-505 ("Interim orders...granting other relief may be issued by the court at any time during the pendency of a supervised administration") Simply put, there is no legal support for Mr. Jackson's assertion that Minn. Stat. § 524.3-608 precludes the Court from *ever* providing for a special administrator's discharge from liability, including, as explained in greater detail above, in the unpublished *Estate of Stewart* decision that he cites.[7]

No more availing is Mr. Jackson's suggestion that simply because the Minnesota Probate Code recognizes that a personal representative or special administrator *may* be liable for breach of fiduciary duty, *see* Minn. Stat. § 524.3-712, and *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 739 (Minn. Ct. App. 1995), that a court may *never* discharge a personal representative or special administrator from liability with respect to its administration. Once again, however, the authorities cited by Mr. Jackson do not recognize the sweeping legal

[6] A special administrator is treated like a personal representative under the statutes. Minn. Stat. § 524.3-616.

[7] It is worth noting that Comerica has recently also sought discharge for its first year of activity as the Personal Representative of the Estate.

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conclusion that he belatedly asks the Court to embrace. To Bremer Trust's knowledge, there is no Minnesota statutory or case law that stands for, or supports, such a dramatic conclusion—one that would have the potentially far-reaching adverse consequence of discouraging fiduciary service with respect to other Minnesota estates.

The Court's 2018 Discharge Order, as well as its March 27, 2017 Order, are well supported by the record. Among other things, that record demonstrates that the Court reviewed and approved Bremer Trust's final account, the Second Special Administrator twice determined that there are no bases for any claims against Bremer Trust, and the objectors to Bremer Trust's Motion to Lift the Stay of Discharge did not and could not identify any potential claims that could be brought against Bremer Trust. The Court, by issuing its 2018 Discharge Order, understood and acknowledged this reality, and recognized the importance of allowing Bremer Trust to close the book on its service to the Estate without the cloud of further potential legally unsupported litigation hanging over it.

Since Mr. Jackson's procedurally improper and legally incorrect arguments should be rejected by the Court, his proposed "clarification" of the 2018 Discharge Order based upon those arguments should also be disregarded. The Court should deny his Motion for Clarification, and order the prompt enforcement of the 2018 Discharge Order.

CONCLUSION

For all of the reasons stated above, Bremer respectfully requests that this Court deny the Emergency Motion for Relief and to Stay the Court's October 17, 2017 Order for Payment of Fees and the Objection to and his Motion for Clarification of the Court's October 17, 2018 Order filed by Alfred Jackson, Omarr Baker, and Tyka Nelson. Minnesota law does not support awarding the heirs any of the relief that they seek.

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Dated: November 13, 2018

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