

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

In Re:

Court File No. 10-PR-16-46
Judge: Kevin W. Eide

Estate of Prince Rogers Nelson,
Decedent.

**LOMMEN ABDO, P.A.'S REPLY
MEMORANDUM IN SUPPORT OF
APPLICATION FOR DETERMINATION
AND ESTABLISHMENT OF
ATTORNEY'S LIEN AND ENTRY OF
JUDGMENT FOR SAID LIEN AGAINST
SHARON NELSON, NORRINE NELSON,
AND JOHN NELSON PURSUANT TO
MINN. STAT. SEC. 481.13**

INTRODUCTION

This Reply Memorandum is submitted by Lommen Abdo, P.A. ("Lommen Abdo") in support of its application for determination of its attorney's lien and entry of judgment on its lien pursuant to Minn. Stat. § 481.13, subd. 1(c) and in reply to the Objections and Supplemental Objections of Sharon L. Nelson, Norrine P. Nelson, and John R. Nelson (the "Nelsons") filed on January 17, 2019 and February 15, 2019. The Objections and Supplemental Objections offered by the Nelsons to Lommen Abdo's Application are misconceived and provide no factual or legal basis to deny or reduce the amount of Lommen Abdo's attorney's lien. The Nelsons received the benefit of a substantial amount of legal services and advanced costs for which Lommen Abdo has not been compensated. Professionals at Lommen Abdo faithfully provided legal services to the Nelsons, and through those efforts, the Nelsons have been recognized and adjudged as Heirs of the Prince Rogers Nelson Estate. Lommen Abdo should be paid the fees and costs to which it is entitled under the terms of its Engagement Agreement with the Nelsons. Accordingly, Lommen Abdo requests that the Court establish its attorney's lien in the amount of \$214,652.11

upon the Nelsons' interests in the above-captioned Estate and enter judgment in the amount of \$214,652.11 against the Nelsons and in favor of Lommen Abdo pursuant to Minn. Stat. § 481.13. The Court should also allow Lommen Abdo to recover the costs incurred in seeking this determination, and the Court's order should find that Lommen Abdo's lien has priority over any other attorney's liens that are established as to the Nelsons' interest in the Prince Estate or any other assets available to satisfy a judgment in favor of Lommen Abdo.

FACTUAL BACKGROUND¹

The Nelsons' Objections and Supplemental Objections contain factual misstatements that are unsubstantiated and inconsistent with the record. Specifically, contrary to the Nelsons' assertion, Lommen Abdo is not seeking an attorney's lien for the "same work" for which it has been paid. In fact, the billings provided to the Court on this Application have been reduced by the payments made by the Estate for the amounts that were approved by the Court as benefitting the Estate as a whole pursuant to Minn. Stat. § 524.3-720. When it sought the Court's approval for payment of attorneys' fees and costs by the Estate in December 2016, Lommen Abdo did not seek payment of attorneys' fees and costs that were incurred to benefit the interests of the Nelsons alone. (Declaration of Kenneth J. Abdo at ¶ 6.) The attorney's lien sought by Lommen Abdo is for the balance of the fees and costs owing under its Engagement Agreement with the Nelsons. (Exhibit 1.)

Additionally, the scope of Lommen Abdo's engagement as their legal counsel was not narrowly limited as the Nelsons currently contend. Instead, Lommen Abdo's representation of the Nelsons was broad as reflected in the terms of the Engagement Agreement, which stated: "You are retaining us as your attorneys to represent you in the above-referenced matter and all

¹The Exhibits referenced in this Memorandum were submitted with the Affidavit of Barry A. O'Neil that was filed with Lommen Abdo's Application on December 21, 2018.

other transactions or business relating thereto.” (Exhibit 1 and Abdo Declaration at ¶ 2.)

Consistent with the broad scope of the engagement, numerous professionals at Lommen Abdo provided legal services to the Nelsons commensurate with their legal expertise as noted in the Affidavit of Kenneth Abdo that was filed in this matter on January 26, 2017. (Abdo Declaration at ¶ 3.)

During Lommen Abdo’s representation of the Nelsons, Kenneth Abdo and Adam Gislason were in communication with the Nelsons on a more than daily basis to keep them informed about the status of the probate litigation, the communications with the other parties and counsel involved with the Estate and the work that they and other professionals were providing to the Nelsons. (Abdo Declaration at ¶ 4.) The communications included updates on any negotiations relating to potential entertainment and business deals that were being proposed in connection with the Estate and the interests of the Nelsons in the Estate. (Abdo Declaration at ¶ 4.) This work frequently involved meetings among the heirs, their counsel and other representatives of the Estate, as well as public hearings and confidential appearances in court, to which the Nelsons (specifically Sharon Nelson and Norrine Nelson) were typically invited and usually attended in person or by phone. (Abdo Declaration at ¶ 4.) Contrary to the Nelsons’ objections, at no time did Mr. Abdo, Mr. Gislason or any other professional at Lommen Abdo act inconsistently with the interests of the Nelsons or their instructions during the course of Lommen Abdo’s engagement as their attorneys and legal representatives. (Abdo Declaration at ¶ 5.)

Mr. Abdo, Mr. Gislason, and other Lommen Abdo professionals in fact played the lead role in the negotiations and drafting of the Consultant Agreements that were entered into by the Nelsons with Paisley Park Facility, LLC (“Paisley Park”) in and around September 2016. (Abdo Declaration at ¶ 7.) The aim of the consulting agreements was to allow the Nelsons to receive

some form of income and compensation relating to their interests and status as heirs of the Estate during the pendency of the probate proceeding. (Abdo Declaration at ¶ 7.) This work was performed pursuant to the specific instructions of the Nelsons and with their participation at that time. (Abdo Declaration at ¶ 7.)

Additionally, from the outset of Lommen Abdo's engagement, the Firm's understanding with the Nelsons was that they would not be billed for any legal services or expenses until they received income from either the Estate or business deals that were arranged to allow them to receive income relating to their status as heirs of the Estate. (Abdo Declaration at ¶ 8.) This arrangement was an accommodation to, and specifically requested by, the Nelsons because Mr. Abdo understood that they did not have significant income and assets to be able to pay for the substantial amount of legal services and expenses that would be necessary to protect and pursue their interest as heirs of the Estate on a monthly basis. (Abdo Declaration at ¶ 8.) An additional benefit to the Nelsons resulting from the delay in billing was that they would not be subject to any late fee charges under the terms of the Engagement Agreement. (Abdo Declaration at ¶ 8.) This accommodation also meant that Lommen Abdo incurred significant out-of-pocket costs that were not paid by the Nelsons during the representation, in addition to the substantial investment of professional time for which it has not been paid. (Abdo Declaration at ¶ 8.) Accordingly, although the Engagement Agreement noted that Lommen Abdo "typically" billed on a monthly basis, Lommen Abdo did not have monthly billings issued to the Nelsons before they terminated the attorney-client relationship in November 2016. (Abdo Declaration at ¶ 8.) Prior to that time, the Nelsons never requested that Lommen Abdo provide any bill or invoice for any of the work performed by Lommen Abdo commencing April 2016. (Abdo Declaration at ¶ 8.)

After the Nelsons terminated Lommen Abdo's representation of them in November 2016, Mr. Abdo sent the bills for the legal services and expenses that were incurred to the Nelsons directly and also sent copies of the bills to their successor attorneys at the Hansen Dordell law firm on or about December 9, 2016. (Abdo Declaration at ¶ 9.) Additional copies of the bills for legal services reflecting the reduction in the outstanding balance after the payments were made by the Estate were provided to Randy Sayers of Hansen Dordell. (O'Neil Affidavit at ¶ 9.) Copies of the bills were also provided to the Nelsons when Lommen Abdo filed this Application on December 21, 2018.

ARGUMENT

THE COURT SHOULD ESTABLISH AND DETERMINE THAT THE AMOUNT OF LOMMEN ABDO'S ATTORNEY'S LIEN IS \$214,652.11 PURSUANT TO MINN. STAT. § 481.13.

The record in this matter demonstrates that Lommen Abdo's lien should be established and determined to be \$214,652.11, the amount of the remaining fees and costs due and owing under its Engagement Agreement with the Nelsons. Contrary to the Nelsons' objections, the services provided by Mr. Abdo, Mr. Gislason and the other professionals, including those characterized as "entertainment services," were within the scope of Lommen Abdo's Engagement Agreement and were performed to advance the Nelsons' interests as heirs to the Estate and to otherwise further their legal, business and personal interests. Lommen Abdo has not been paid for any of the services or expenses that are included in this Application as the previous payments made by the Estate were limited to those that the Court approved for payment as benefitting the Estate as a whole pursuant to Minn. Stat. § 524.3-720. Lommen Abdo's professionals did not act inconsistently with the instructions of the Nelsons at any time, and the current assertions that any Lommen Abdo professional took actions inconsistent with his or her

client's instructions or contrary to the Nelsons' interests are entirely unsubstantiated and appear slanted to aggrandize the contributions of Mr. McMillan, who has sought to pry himself into a variety of roles during the course of this proceeding and who is apparently advising the Nelsons at this time.

As detailed in the supporting papers that were submitted with its Motion for Approval in January 2017 and the supporting papers with this Application, Lommen Abdo's professionals provided substantial services and expertise that benefitted the interests of its former clients for which it has received no compensation. The efforts of the Lommen Abdo professionals secured the Nelsons' position as heirs of the Estate and provided legal counsel and advice relating during the critical initial stages of this proceeding. The detail of the legal services that were provided by Lommen Abdo and the costs that were incurred is outlined in the invoices that were submitted to the Court in connection with the January 2017 Motion for Approval and the additional invoices that have been submitted with this Application. (O'Neil Affidavit, Exhibits 2 & 3.) The hourly rates that were billed for the various Lommen Abdo attorneys and support professionals were consistent with the rates charged by law firms in and around the Twin Cities with the experience and sophistication sufficient to provide legal services on complex probate and entertainment matters. (O'Neil Affidavit at ¶ 7.)

The Court's review of the time entries will demonstrate that the time spent by the Lommen Abdo professionals was reasonable given: (1) the time and labor required; (2) the complexity of the problems and issues involved; and (3) the extent of the responsibilities assumed and the results obtained. Accordingly, the Court should issue an order establishing and determining that the amount of Lommen Abdo's lien for attorneys' fees is \$214,652.11. As provided in section 481.13, the Court should also direct that judgment be entered against the

Nelsons and in favor of Lommen Abdo in the amount of \$214,652.11. Additionally, since the attorney's lien of Lommen Abdo has priority over the liens of third parties under Article 9 of the Minnesota Uniform Commercial Code (Minn. Stat. § 336.9-322) and *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 869 N.W.2d 332, 337-38 (Minn. Ct. App. 2015) (*aff'd*, *Oronoco*, 883 N.W.2d 592), the Court's Order establishing and determining Lommen Abdo's lien should include a finding that Lommen Abdo's lien has priority over any other attorney's liens that are established as to the Nelsons' interests in the Prince Estate or any other assets available to satisfy a judgment in favor of Lommen Abdo.

CONCLUSION

Lommen Abdo is entitled to an attorney's lien in the amount of \$214,652.11 pursuant to Minn. Stat. § 481.13, subd. 1(c) upon the Nelsons' interests in the above-captioned Estate, and all costs incurred in seeking the Court's determination in the above-captioned Estate. The Court accordingly should enter judgment in the amount of \$214,652.11 against the Nelsons and in favor of Lommen Abdo and allow Lommen Abdo to recover the costs incurred in seeking this determination pursuant to Minn. Stat. § 481.13, subd. 1(c). The Court's Order should additionally find that Lommen Abdo's lien has priority over any other attorney's liens that are established as to the Nelsons' interests in the Prince Estate or any other assets available to satisfy a judgment in favor of Lommen Abdo.

Dated: February 28, 2019

Respectfully submitted,

LOMMEN ABDO, P.A.

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