

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:Case Type: Special Administration
Court File No: 10-PR-16-46
Judge: Kevin W. EideEstate of Prince Rogers Nelson,
Decedent.

[REDACTED]
**L. LONDELL MCMILLAN'S
MEMORANDUM OF LAW IN
RESPONSE TO COMERICA'S MOTION
TO APPROVE RESCISSION
OF EXCLUSIVE DISTRIBUTION
AND LICENSE AGREEMENT**

L. Londell McMillan ("McMillan") respectfully submits this memorandum in response to Comerica Bank & Trust, N.A.'s ("Comerica") Motion to Approve Rescission of the Exclusive Distribution and License Agreement between the Estate of Prince Rogers Nelson ("the Estate") and Universal Music Group ("UMG").

INTRODUCTION

Comerica was appointed by this Court as personal representative to succeed Bremer Trust National Association ("Bremer"), the prior special administrator, effective February 1, 2017. On February 9th, UMG announced the January 31, 2017 Exclusive Distribution and License Agreement ("the UMG contract"), a landmark multi-platform deal, which was the largest deal made by the Prince Estate with the largest music company in the world. The agreement was set to bring highly anticipated Prince music to his fans, and there were also unique allowances made for Prince fans to share in the selling of his music. Almost immediately after the contract was announced, Warner Brothers Records ("WBR") sought to undermine the UMG agreement by contacting both Comerica (new to the Prince Estate and the music business) and UMG and claiming that a April 16, 2014 agreement it had with Prince [REDACTED]

[REDACTED]

[REDACTED] This claim is simply wrong and unsupported by such agreement.

Comerica has brought this motion to rescind, even though it does not claim that there is an actual conflict between the UMG and WBR contracts, or that anyone fraudulently induced UMG to enter into the UMG contract. Rather, Comerica states that it cannot “unequivocally assure UMG or the Court” that there is not an overlap between the rights held by WBR and those granted under the UMG contract. Even if there were some potential overlap – which there is not – this would not justify walking away from the contract and compelling the Estate to return more than [REDACTED] already received, and giving up the potential to receive [REDACTED]

[REDACTED]

The claim by WBR that a conflict exists is wrong, particularly when the WBR and UMG contracts are read as a whole and with an understanding of the music industry business.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] There is no conflict between the rights granted to UMG

under the UMG contract and the rights held by WBR.

It is remarkable that Comerica is asking the Court to rescind the agreement with UMG without even providing a declaration or affidavit from any industry expert – including from its own entertainment advisor, Troy Carter. It is even more remarkable that Comerica actually signed the rescission agreement without involving the heirs or seeking prior approval of the Court. Because the alleged conflict between the WBR agreement and the UMG contract is

technical in nature – hinging substantially on the meaning and intent of [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The UMG contract was reviewed by two separate law firms with experienced entertainment lawyers retained by Bremer before the final agreement was submitted to this Court for approval. It was the job of those firms to determine if there were any conflicts between the rights granted to UMG and those retained by WBR. Neither firm raised any concerns. Moreover, Anthony “Van” Jones, the attorney for Tyka Nelson and Omar Baker, who testified that he put together the team that negotiated the WBR agreement on behalf of Prince, never claimed that the rights being granted to UMG conflicted with those owned by WBR.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] That explains why UMG has alleged fraudulent inducement (pointing at Bremer and its former advisor McMillan). [REDACTED]

[REDACTED]

Thus, Comerica’s odd statement to UMG that it could not “unequivocally” rule out a conflict is not the standard that should control. [REDACTED]

[REDACTED] Rather, the issue should be whether this Court believes that UMG can meet its heavy burden of showing that it was fraudulently induced to enter into the contract. Comerica has not affirmatively argued that Bremer, McMillan, or

Koppelman made any misrepresentations to UMG about the rights UMG would receive under its contract with the Estate, and, in fact, they did not make any misrepresentations to UMG. Since Comerica itself has not suggested that UMG is likely to prove fraudulent inducement, the Court should not allow rescission.

By asking this Court to approve rescission of the contract, Comerica is allowing WBR to sabotage the UMG deal, which is in the best interest of the Prince Estate. Upon becoming personal representative, Comerica assumed a duty to both protect and defend the assets of the Estate. Despite this, Comerica failed to obtain WBR's consent to disclose the key terms of its 2014 agreement to UMG. When WBR refused to waive confidentiality, Comerica failed to seek a court order compelling such disclosure. McMillan suggested to Comerica that it seek such an order. Without even seeing the WBR agreement, UMG is certainly not in a position to claim that it was fraudulently induced into entering into the contract with the Estate. Comerica also should have sought the advice and assistance of Bremer and McMillan, who – after all – led the negotiations of the UMG contract. Ultimately, Comerica should have protected and defended the UMG contract, not agreed to its rescission.

By caving into UMG's threat, Comerica exposes the Estate and the heirs to a potential [REDACTED] and risks the personal reputations of Bremer, McMillan, Koppelman, and the Stinson and Meister Seeger law firms who reviewed and negotiated the UMG contract. Comerica suggests that rescission of the UMG contract will save litigation costs – but the opposite is true. Rescission risks exposing the Estate and its heirs to monumental and complex litigation – for there is no shortage of parties who may try to find someone to blame if the UMG contract is set aside, particularly since Comerica has not disclosed to the Court or to the heirs that it has other purchasers in the wings who will mitigate the loss of

