

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,  
Decedent.

Case Type: Special Administration  
Court File No.: 10-PR-16-46  
Judge: Kevin W. Eide

**REDACTED**

**OMARR BAKER AND ALFRED  
JACKSON'S SUPPLEMENTAL  
OBJECTIONS TO BREMER TRUST,  
NATIONAL ASSOCIATION'S  
FINAL ACCOUNTS THROUGH  
JANUARY 31, 2017**

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**INTRODUCTION**

Omarr Baker ("Baker") and Alfred Jackson ("Jackson"), by and through counsel, submit these supplemental objections to Bremer Trust, National Association's ("Bremer" or "Special Administrator") final accounts through January 31, 2017 and discharge. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In light of this revelation, at the very least, Bremer's discharge must be delayed.

On April 5, 2017, the Court held that Bremer "and its agents are hereby discharged from any and all liability associated with its Special Administration of the Estate. This portion of the Order is stayed<sup>1</sup> until Comerica Bank & Trust has filed a receipt of the assets shown on the Final Accounts." (*See Order Granting Special Administrator's Request to Approve Payment of Special*

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<sup>1</sup> Baker and Jackson rely on the stayed nature of this discharge order to file these supplemental objections. If the Court interprets the stay as not holding the record open for this issue—and that a request to bring a motion for reconsideration based on the new evidence pursuant to MINN. GEN. R. PRAC. 115.11 is the appropriate procedure—Baker and Jackson will do so.

Administrator's and Attorneys' Fees and Costs through January 31, 2017 and Final Accounts and Inventory, filed April 5, 2017, p. 5.)

Howe [REDACTED]

[REDACTED] (See Affidavit of Steven H. Silton ("Silton Aff."), Ex. G.) [REDACTED]

[REDACTED] While the facts surrounding [REDACTED] are still developing, this severely impedes the Court's ability to approve Bremer's accounting and discharge Bremer. Until the Court, the Estate, and the Non-Excluded Heirs<sup>2</sup> understand the extent of Bremer's role in [REDACTED] [REDACTED]—a discharge should not occur.

This demand is supplemented by documents received by the Non-Excluded Heirs less than a week ago including correspondence among the Personal Representative, [REDACTED] [REDACTED] (See Silton Aff., Exs. A-F.) The correspondence indicates [REDACTED] [REDACTED] during its term as Special Administrator. (*Id.*)

<sup>2</sup> Pursuant to the Court's July 29, 2016 *Order Regarding Genetic Testing Protocol and Heirship Claims following the June 27, 2016 Hearing and Judgment* and subsequent orders, the Non-Excluded Heirs are defined in this proceeding as Omarr Baker, Alfred Jackson, John Nelson, Norrine Nelson, Sharon Nelson, and Tyka Nelson.

[REDACTED]

[REDACTED]

[REDACTED] Not only may [REDACTED]

[REDACTED] could cause harm to the Estate on several levels, [REDACTED]

Moreover, the Estate could lose assets because of Bremer's mismanagement. If [REDACTED]

[REDACTED] are true, Bremer should, and indeed cannot, be discharged.

As Baker has stated on multiple occasions,<sup>4</sup> the parties have not had sufficient time to gather information prior to discharge, and the Special Administrator has failed to disclose crucial information. [REDACTED] evidences what has been feared all along—among other things, a serious lack of disclosure by the Special Administrator, a failure to perform due diligence,<sup>5</sup> and a failure to monitor the conduct of its entertainment advisors.

If [REDACTED] are true, [REDACTED] could be a significant breach of Bremer's fiduciary obligations to the Estate and could cost the Estate significant amounts and significant future opportunities. This is brand new information. Since this only came to light

<sup>3</sup> As the Court is aware, [REDACTED]

<sup>4</sup> Baker and Jackson respectfully direct the Court to the objections filed on January 11, 2017, the supplemental objections filed on January 19, 2017, the reply in support of the objections filed on January 30, 2017, and the objections filed on March 8, 2017.

<sup>5</sup> [REDACTED]

now—and nothing about [REDACTED] was disclosed in Bremer’s accounting—the Court did not have the proper opportunity to consider whether Bremer should be discharged with respect [REDACTED]. The Court should reconsider the discharge of Bremer at a minimum until it is determined whether [REDACTED] was a breach of its fiduciary obligations to the Estate

The Court should also grant time for discovery to closely review every deal and every transaction the Special Administrator negotiated or made on behalf of the Estate. This procedure is typical in any estate, and is crucial in an estate of this size and complexity. There are questions here that remain unanswered. Baker and Jackson urge the Court carefully consider these issues, and not discharge Bremer without discovery and a full hearing into the matter. It is possible that previously undisclosed breaches of fiduciary duty may similarly come to light after a sufficient period for discovery.

### **PROCEDURAL HISTORY**

Baker and Jackson direct the Court to the “Procedural History” incorporated in his Memorandum in Support of Objections to Bremer Trust, National Association’s Final Accounts through January 31, 2017, filed with the Court on March 8, 2017. On March 17, 2017, Bremer filed a response to Baker’s objections. (*See* Bremer Trust’s Response to Omarr Baker’s Objections to Bremer Trust’s Accounting through January 31, 2017, filed March 17, 2017.) On March 18, 2017, the accounting issue “shall be considered for approval on or after March 18, 2017.” (*See* Scheduling Order Relating to Approval of Attorneys’ Fees, Final Accounting and Extension of Powers, filed Feb. 22, 2017, p. 2.)

The Court will discharge Bremer “upon the final approval of the final accounts and the fee statements and the submission to the Court of a receipt of the assets shown on the final accounting

signed and filed by Comerica Bank & Trust.” (*See* Second Order Relating to the Transition from Special Administrator to Personal Representative, filed Jan. 31, 2017, p. 3.) On March 22, 2017, two weeks after the deadline to submit objections to Bremer’s accounting and discharge, the Personal Representative uploaded documents relating to [REDACTED] to a data room for the Non-Excluded Heirs. (*See* Silton Aff., Exs. A-F).<sup>6</sup> On April 5, the Personal Representative provided counsel to the Non-Excluded Heirs with a copy of [REDACTED]

[REDACTED] (*Id.*, Ex. G.) [REDACTED]

(*See* Silton Aff., Ex. G, p. 2.)

The same day the Non-Excluded Heirs received a copy of [REDACTED] the Court discharged Bremer and its agents “from any and all liability associated with its Special

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<sup>6</sup> Select of these documents were addressed to the Special Administrator. *See* Silton Aff., Exs. A, D. It is possible the Special Administrator responded to these letters. The response was not provided to the Non-Excluded Heirs via the Personal Representative’s data room.

Administration of the Estate. This portion of the Order is stayed until Comerica Bank & Trust has filed a receipt of the assets shown on the Final Accounts.” (See Order Granting Special Administrator’s Request to Approve Payment of Special Administrator’s and Attorneys’ Fees and Costs through January 31, 2017 and Final Accounts and Inventory, filed April 5, 2017, p. 5.)

The documents, [REDACTED] implicate the Special Administrator’s discharge, the [REDACTED] [REDACTED] and the financial assets of the Estate. These issues must be fully understood before the Court discharges the Special Administrator.

### ARGUMENT

The purpose of this submission is not to repeat prior objections. Rather, Baker and Jackson respectfully refer the Court to the prior objections to Bremer’s final accounts and discharge (filed on January 11, January 19, January 30, and March 8, 2017). Baker and Jackson reference in the below section only new objections to Bremer’s final accounts and discharge based on the correspondence among the Personal Representative, UMG, and WB.

**A. The Special Administrator Cannot Be Discharged Without a Full Understanding of the Scope of Its Involvement in [REDACTED] at a Formal Evidentiary Hearing.**

Considering the breadth of issues involved in the Estate, approval of Bremer’s final accounts and its discharge should not be taken lightly. An evidentiary hearing would serve to clarify outstanding issues relating to Bremer’s accounting and discharge, including, but not limited to, the scope of its involvement with [REDACTED] This is imperative in light of [REDACTED]

The Estate's [REDACTED]  
[REDACTED] (See Order for Amended Letters, filed Jan. 31, 2017, p. 1.) However, the Non-Excluded Heirs only became aware of [REDACTED] last week. The facts of this dispute are evolving and warrant further review, as evidenced by [REDACTED]  
[REDACTED] (See Siltan Aff., Ex. G.)

What is more, [REDACTED] has not—to Baker or Jackson's knowledge—ever been part of the Court's record. Bremer has consistently failed to provide support for its argument that any disclosure that is not part of the court record (like documents on HighQ) is sufficient for a fiduciary accounting—because no authority supports this. Documents that are not part of the record cannot be incorporated into the formal accounting submitted to the Court.<sup>8</sup> And yet, the January 31 accounting that Bremer submitted to the Court was a summary accounting at best, with virtually no detail. The January 31 accounting also failed to provide anything beyond sparse details about the Estate's interactions [REDACTED]

The documents detailing [REDACTED] are clearly relevant to Bremer's discharge. And yet, they have never been filed in the district court. At the very least, Bremer should have been forthcoming and disclosed the details of [REDACTED] to the Court in a timely manner. Bremer should not be discharged for anything it did not disclose as part of the

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7 [REDACTED]

<sup>8</sup> As stated in the January 30 Objections, in conducting their review, appellate courts review only the information that was presented in that tribunal. See MINN. R. CIV. APP. P. 110.01 (“The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases”); see also Jeffrey C. Robbins, *New Evidence on Appeal*, 96 MINN. L. REV. 2017 (2016) (“An appellate court can properly consider only the record and facts before the district court and thus *only those papers and exhibits filed in the district court can constitute the record* on appeal”) (emphasis added).

accounting and put into the record. The Court should not grant Bremer a full discharge without ensuring they disclosed everything relevant to the discharge.

1. *Bremer's Involvement in [REDACTED] May Rise to the Level of a Breach of Fiduciary Duty.*

The Special Administrator's involvement in negotiating [REDACTED] [REDACTED] [REDACTED]—may rise to the level of a breach of fiduciary duty. A special administrator is a fiduciary who must observe a reasonable standard of care when dealing with the estate assets of another. *See* Minn. Stat. § 524.3-703(a). The Special Administrator has the duty to settle and distribute the Estate in compliance with the terms of applicable law “as expeditiously and efficiently as is consistent with the best interests of the estate.” *Id.* In performing such duties, the Special Administrator must exercise its authority in “the best interests of successors to the estate.” *Id.*; *see also In re Estate of Allard*, A15-0296, 2015 Minn. App. Unpub. LEXIS 1165, at \*4 (Minn. Ct. App. Dec. 21, 2015); *Estate of Gile*, C7-96-124, 1996 Minn. App. LEXIS 987 (Minn. Ct. App. Aug. 20, 1996). Where the Special Administrator exercises his or her power over the Estate improperly, it may be held liable for any loss or damage that results from a breach of fiduciary duty. *See* Minn. Stat. § 524.3-712. In this case, [REDACTED] suggests Special Administrator may have asserted its power over the estate improperly, and is liable for the damage that resulted from this breach of fiduciary duty. *Id.*

The Special Administrator indisputably owes a fiduciary duty to the Estate. *See* Minn. Stat. § 524.3-703(a); *In re Estate of Neuman*, 819 N.W.2d 211, 216 (Minn. Ct. App. 2012). As such, the Special Administrator must manage the Estate's assets under the level of care of “a prudent person dealing with the property of another.” *Id.* This requires the Special Administrator to settle and distribute the Estate in the best interests of the Estate. *Id.* A “[f]iduciary duty is the highest



Furthermore, this is not the first instance that a party has [REDACTED] [REDACTED] during Bremer's special administration. As Baker has previously noted for the Court, [REDACTED] [REDACTED] (See Omarr Baker's Supplemental Objections to Bremer's Accounting and Discharge, filed Jan. 19, 2017, pp. 8-15.) If this is part of a pattern of how the Special Administrator [REDACTED] these issues should be thoroughly reviewed before a discharge is granted.

The Estate and the Non-Excluded Heirs—not to mention the Court—deserve to understand what exactly occurred between [REDACTED] and how the Special Administrator's negotiation of the contracts had an impact on [REDACTED]. Before Bremer can be discharged, a full understanding of what occurred is necessary. This is necessary not only to hold Bremer accountable, but also to provide the Personal Representative with a clear understanding of the rights and responsibilities of the Estate. The only way to ensure this takes place is a period for discovery and an evidentiary hearing.<sup>9</sup>

2. *Baker and Jackson Are Entitled to Bring these Supplemental Objections Based on Newly Discovered Evidence.*

While it is past the deadline set forth in the Court's scheduling order to submit objections, the Court should consider this new information before deciding as to Bremer's accounting and discharge. For Minnesota courts to grant relief on the basis of newly discovered evidence, "the

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<sup>9</sup> In its March 17 response to Baker's objections, the Special Administrator admonished Baker for requesting discovery and an evidentiary hearing regarding Bremer's accounting and discharge, stating "the Court already scheduled and held an evidentiary hearing on January 12, 2017." See Bremer Trust's Response to Omarr Baker's Objections to Bremer Trust's Accounting through January 31, 2017, filed March 17, 2017, pp. 3-4. [REDACTED] and [REDACTED] are all dated after January 12, 2017. There has been no opportunity for the Court to address Bremer's conduct as Special Administrator after January 12, even though the special administration lasted through January 31, 2017.

newly discovered evidence must be relevant and admissible” and “must not be merely collateral, impeaching, or cumulative, but rather, must be such as to have a probative effect upon the result . . .” *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 631 (Minn. 2012). The “determination of whether all named factors have been met is within the trial judge’s discretion.” *Id.* (quotation omitted).<sup>10</sup>

The newly discovered evidence was not available for Baker to include in his objections filed on March 8, 2017. The documents—[REDACTED]—are relevant to Bremer’s discharge and admissible into evidence. The Court has discretion to investigate the Special Administrator’s role in [REDACTED] and it should do so prior to any discharge. In addition, the correspondence between the Personal Representative, [REDACTED] calls into question what steps (if any) the Special Administrator took in valuing and assessing the [REDACTED]. The Special Administrator’s fiduciary duty includes managing the Estate’s assets as “a prudent person dealing with the property of another.” Minn. Stat. § 524.3-703(a). This requires the Special Administrator, as a representative, to settle and distribute the Estate in the best interests of the Estate. *Id.*

As a fiduciary, it is part of the Special Administrator’s responsibility to value *all* assets of the Estate to determine and manage their fair market value. This includes the [REDACTED]. In valuing property, the Special Administrator—through its experts or with an independent appraisal—must “value each article or description of property by itself, and at such sum or price

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<sup>10</sup> While this case law is in the context of Rule 60.02 motions for relief under the Minnesota Rules of Civil Procedure, the analogy applies here. This information was newly discovered *after* the Court took the issue of Bremer’s discharge under consideration. *See* Scheduling Order Relating to Approval of Attorneys’ Fees, Final Accounting and Extension of Powers, filed Feb. 22, 2017, p. 2; *See* Second Order Relating to the Transition from Special Administrator to Personal Representative, filed Jan. 31, 2017, p. 3.

as the assessor believes the same to be fairly worth in money.” Minn. Stat. § 273.11, subd. 1. The fair market value of property may be established by any competent evidence. *Ramsey Cnty. v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982). Market value is “the price for which property would sell upon the market at [a] private sale.” *Equitable Life Assurance Soc’y of the United States v. Cnty. of Ramsey*, 530 N.W.2d 544, 555 (Minn. 1995) (quotation omitted). It “is the compensation which a willing purchaser not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use of the property.” *Am. Express Fin. Advisors, Inc. v. Cnty. of Carver*, 573 N.W.2d 651, 659 (Minn. 1998).

At no time in the underlying proceeding has the Special Administrator explained to the Court or to the Non-Excluded Heirs how it came to the value for the [REDACTED]. Similarly, the Special Administrator has not disclosed—yet alone explained—the details surrounding [REDACTED]. Given [REDACTED] there are serious questions about how Bremer [REDACTED]. Unless the Special Administrator has a reasonable explanation for failing to conduct a formal appraisal and appropriately managing negotiations [REDACTED] it has breached its fiduciary duty. The Court should allow discovery and a formal evidentiary hearing on these issues.

The multitude of issues surrounding this newly discovered information makes it inappropriate to grant the Special Administrator a discharge from liability. As such, Baker and Jackson respectfully request the Court defer the Special Administrator’s discharge until the full extent of [REDACTED] is understood. The Court and the Estate deserve an explanation.

### CONCLUSION

In light of [REDACTED] the Court must put Bremer Trust, National Association’s accounting and discharge to an evidentiary

hearing. It would be a discredit to the Decedent's Estate to grant Bremer's accounting and allow a full discharge from liability without at least holding a hearing on these issues—especially considering [REDACTED]

For all the foregoing reasons, Omarr Baker and Alfred Jackson respectfully reiterate the objections filed on January 11, 2017, the supplemental objections filed on January 19, 2017, the reply in support of the objections filed on January 30, 2017, the objections filed on March 8, 2017, and submits these supplemental objections to Bremer's final accounts and discharge. Baker and Jackson request the Court allow a reasonable time for discovery and put the objections to a formal evidentiary hearing.

Dated: April 7, 2017

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