

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:
Estate of Prince Rogers Nelson,

Decedent.

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

**ALFRED JACKSON'S REPLY
MEMORANDUM IN SUPPORT OF
OMARR BAKER'S AND ALFRED
JACKSON'S REQUEST TO ALLOW
WALKER TO REVIEW FINANCIAL
VALUATION DOCUMENTATION**

Gregg Walker ("Walker") as the court approved entertainment and financial advisor to Omarr Baker, Tyka Nelson, Alfred Jackson and the other three heirs to the to the Estate of Prince Rogers Nelson, submits this Memorandum in Support of his Motion to join Omarr Baker, Tyka Nelson, and Alfred Jackson's ("Heirs") request that Comerica Bank & Trust, N.A., as the Personal Representative of the Estate of Prince Rogers Nelson (the "Personal Representative or Comerica"), provide certain financial information to Walker.

The purpose of the joinder, as stated in the motion, is to obtain information that Walker, a graduate of Yale Law School and former senior executive with Board of Directors service for two music publishing companies and one Hollywood studio, can use to perform his duties as the Heirs advisor. Walker requires the requested information in order to evaluate and communicate to the Heirs on the many aspects of the Estate of Prince Rogers Nelson ("Estate"), and which the Heirs are reasonably entitled to receive under the prior orders of this court. The court has previously stated a number of times that the Heirs should receive information so that they will be able to understand the reasons for the financial and music-related transactions of the Estate.

The reasons that Walker requests this information are threefold.

First, as stated, the entire history of this court supervised Estate has been based upon the sharing of information between first, the Special Administrator and then the Personal Representative to the Heirs for the reasons set forth in numerous prior briefs, orders and this is the first time with no apparent explanation that the requests have been outright refused; second, Walker needs this particular information to evaluate the contracts and associated financial projections presented to the court by the Personal Representative; and third, the reasons that Comerica has set forth in its objection for not providing the information have no legal support or merit.

For example, Comerica claims, for no apparent reason, that the Advisors have been lenders to Heirs. This is untrue even if it were relevant to this issue, which it is not. The advisors have loaned no money to the Heirs. In their role as Advisor, they have supported the Heirs to secure or arrange their own financing, which raises no issues as to their qualifications to obtain the information requested in this motion. Currently, there is no potential lender or Heir seeking this information for the purpose of making loans or obtaining loans and Walker is not seeking this information for this purpose. Comerica has been advised that the Heirs are seeing this information so they can follow the Court's instructions and create a transition plan for the estate.

The Personal Representative claims that it is not withholding financial information or other records from the Heirs. This is untrue. Both the Personal Representative and Dunn admit that they are withholding the Dunn cash flow model used to create the report submitted by Dunn to the court also known as the Shot Tower report. The Personal Representative sets forth in detail a number of meetings that were held to discuss the Dunn report and the cash flow model used to create the report, including, a meeting with Justice Gilbert and the Heirs and so claims that it does not have to provide the numeric tables or graphic charts presented in the report. A meeting where various redacted key sections of the report are flashed on a screen is not providing the report to the Heirs advisors.

However, the first point that the Personal Representative uses as an explanation for not providing the Dunn report is that the Personal Representative and Dunn have agreed to not provide the information to anyone else, and the second concern is that it might be used for some untoward purpose, which is undisclosed.

The Personal Representative should not have signed such an agreement as it violates its duty to the Heirs under the law of this Probate proceeding. There should not be any agreement between Dunn and Comerica that prevents Comerica from providing this information to Walker or the Heirs under a proper court order, and if there is a concern by Dunn or Comerica that this report will be used for some untoward purpose or somehow utilize Dunn's trade secrets or proprietary information, a court order regarding its production with a limitation that the information will only be provided to Walker under an "eyes only" provision or any other reasonable protection on further production would fully protect Dunn.

In the response by Comerica of April 16, 2018, Mr. Cassioppi filed under seal a document from Dunn in which he states in part:

"from a practical perspective, valuation professionals, investment banks and other financial services firms such as auditors do not provide copies of their work papers and proprietary data in a non- controlled setting... this is a function of protecting and maintaining control over internal processes, proprietary methods and data, maintaining control of how information is conveyed to third parties and assuring information is used only for its intended purpose...We are not going to deviate from standard industry practice by emailing our model and the underlying files supporting our presentation which contain analysis and methods we have developed based on internal composite data. ... Finally, the line item expense and profit assumptions we used are a composite based upon Prince's legacy JV statements as well as a common size analysis of line items costs and expenses developed from third party labels and artists. We obviously cannot share a good part of this data, but want to explain our approach and walk Gregg and Michael through how the analysis was compiled and applied to our modelling" (citing Joseph Cassioppi affidavit attaching an email from Dunn-. The exhibit was attached to the Reply in support of Comerica Bank& Trust. N.A's motion approve entertainment transaction).

As the above quote indicates, the information that Comerica will not produce is normal material that Dunn does not want to produce which is often produced in litigation and can be protected by an appropriate court order. There is nothing in the above quote that suggests that there is anything that cannot be protected by an adequate court order.

Comerica states that it is responsible for preparing an inventory and, in certain instances, an accounting, both of which have been provided to the Heirs in this Estate citing Stat. §§ 524.3-706, 524.3-1001. The argument that the Personal Representative has provided information that is not normally produced in many estates has no merit. As discussed by this court and the Court of Appeals in a number of opinions, this is a unique estate.

Comerica, when it was soliciting the business represented to the Heirs on September 28, 2016, in its Response to the Request for Proposal (“RRFP”) that it understood the uniqueness of the Estate and that it had a fiduciary duty to the Heirs when it said in the RRFP:

If appointed Executor, Comerica realizes that one of its main fiduciary duties is to preserve and protect the estate assets *on behalf of and for the benefit of* the heirs. To do so, Comerica must understand the needs and desires of the heirs. Comerica further realizes that Prince's estate is an extraordinarily unique estate with a legacy value that cannot be measured in dollars. Preserving and growing that legacy requires the personal insight of the heirs. Cite RRFP which has been provided to the court in prior submissions. Emphasis in original.

Comerica stated it would preserve the estate assets for the benefit of the Heirs in the documents that was the basis for the appointment of Comerica as the Personal Representative.

Walker is requesting a specific cash flow model and there is ample authority for providing this model with adequate protections to address all the concerns raised by Dunn and Comerica, unless there is some reason for not disclosing it that has not been disclosed, which we certainly hope is not the case. Dunn has stated the reason in the below quote why he is not producing it and unless there

is a different reason from the quote from Dunn there is no reason that this cannot be produced to Walker.

Comerica claims that with only limited exceptions, where the Estate itself does not have a right to the information or it is barred from sharing the information by contract, the Personal Representative has promptly provided it. And providing the Dunn or Shot Tower financial cash flow model to the Heirs should fall into that category of produced information as all of the issues raised by Comerica and Dunn will have been addressed by a protective order.

Comerica has stated that there is no need for the Heirs to utilize estate resources to “confirm” the information provided by the Personal Representative, and that, if the advisors for certain Heirs want to create their own financial models for purposes of their loans to the Heirs or otherwise, they can pay for that work themselves. That statement by Comerica is disingenuous.

The Heirs do not have the financial flexibility to recreate work created with the Estate assets by Comerica and Comerica’s representatives, and the Heirs do not need to confirm the information in the Dunn report if it is provided to them.

Based on the information provided to the Heirs, Comerica has already spent approximately Four Hundred Thousand Dollars (\$400,000.00) and has spent three months to create the Shot Tower Financial cash flow model and the output of this cash flow model was provided to the Court by Comerica and Dunn as the factual basis for approving the Sony Deal. In addition, the Shot Tower financial model was used to calculate the length of the term of the Sony deal. Based upon the information provided by Dunn, the Sony deal could last between as few as seven and as long as fifteen years.

Given Dunn’s projected length of the Sony Deal, the only method the Heirs or the Court has to monitor and eventually manage the Sony Deal is to have its own advisors to make sure that the contract with Sony continues to perform as predicted by Dunn and Comerica. A clear understanding

of the possible amount and eventual timing of the next financial advance that may be obtained by the heirs after the Sony deal is fully recouped either 2025 or 2033 is critical information the advisors need, especially given the Heirs' age. As such, this financial model is very important when designing any reasonable transition plan from the Personal Representative to the Heirs. This is a key document in the transition of the Estate from Comerica to Heirs and being deprived of this cash flow model places the Heirs and their Court appointed advisors at a significant and unnecessary disadvantage.

What's more the Sony deal now provides for the Heirs advisors to directly interact with Sony on behalf of the Heirs and the Heirs and their advisors have requested from Comerica, and now the Court, access to the same Estate resources as the Personal Representative used to negotiate with Sony. Any productive discussion with Sony or the Personal Representative about the use of the "Vault" will require the Heirs and Advisors to regularly review the Dunn financial and cash flow models.

Comerica claims that "to the extent that Mr. Jackson, Mr. Baker, and Ms. Nelson intend to create appraisals of Estate assets, the Personal Representative has previously prepared appraisals and submitted them to the IRS. Duplicative appraisals would potentially be detrimental and conflicting and may be discoverable in the event of litigation involving the estate tax return." This argument has no basis because the Heirs are not seeking "duplicate appraisals" but are present and future cash flow estimates.

Second, the Personal representative has already provided many of these projections to the Court, but not all, and:

Third, unless the appraisals do not have a factual basis which suggests that there should be more communication between the Heirs and Comerica as to the values so that there is no unnecessary disclosures that might jeopardize the argument of Comerica as to what is the true value of the estate using cash flow analysis.

Fourth, the Heirs and Walker are not duplicating anything regarding what has already been paid for they are just requesting the cash flows for the assets.

The main point in response to Comerica's argument that this information may jeopardize the position of the Personal Representative with the IRS is that, the IRS evaluates the value of the Estate at the time of death, while the Heirs are most concerned with the current value of Estate assets and the anticipated cash flows resulting from Estate assets in the future. There is no conflict between the work the Heirs must undertake to understand the current value of the Estate and its future cash flows and the work already accomplished by Comerica in establishing the value of the Estate at the time of death.

Comerica has not cited any case law for its broad sweeping statements suggesting that the Heirs are not entitled to receive the financial information prepared by Comerica and its representatives.

As Comerica has argued many times and as the court is aware, the Probate court is court of equity and has been since the beginning of the state (Minnesota Constitution Art. VI , Sec 11 re: Probate Jurisdiction, "original jurisdiction in law and *equity* for the administration of the estates of deceased persons and all guardianship and incompetency proceeding, including the administration of trust estates and for the determination of taxes contingent upon death, shall be provided by law (emphases added. *See also In re Estate of Simon 246 N. W. 31(Minn 1932)*). The request by Walker and the Heirs is equitable. The court should order that the Dunn or Shot Tower cash flow projection financial model be provided to the Heirs. If the Dunn or Shot Tower report is not provided to the Heirs, then the court should fashion an equitable remedy so that Walker and the Heirs are not left out in the cold, unable to address the issues raised by Comerica when Comerica uses the Shot Tower Report to support Comerica's arguments as Comerica did in the opposition to brief by SNJ regarding the Sony deal.

One of the simple equitable remedies is for the court to order that Walker execute an NDA that is satisfactory to Dunn and Comerica. This is what has been used from the beginning of this Estate to protect the Estate for the disclosure of confidential information by third parties and if it is good enough for the Estate it should be good enough for Dunn.

Comerica has used the Shot Tower report offensively in its briefs and therefore has waived any claim that it is protected. Comerica in its objection to Sharon, Noreen and John's objection to the certain transactions cited the Dunn report as the primary reason the Sony deal should be approved, which puts the Heirs in an awkward situation, as now the document may be publicly known, and the IRS and anyone else can ask to see it, but Comerica claims it has no right to provide the financial model used to make those statements to the Heirs. There has been no explanation by Comerica as to the reason that the disclosure to Dunn that is requested by Baker and Jackson is any different from the disclosure of the existence of the report in the briefs filed by Comerica.

In the April 16th reply brief of Comerica cites the Dunn report when it states in part:

“the Estate prepared a financial analysis to determine what economic terms it could expect to obtain as part of a deal. Specifically, the Estate utilized Shot Tower, which both the Personal Representative and Bremer Trust, N.A had previously hired to assist with the valuation of the Estate's entertainment assets for estate- tax purposes and to reconcile pre- death earnings from publishing recorded music, and name and likeness rights ...Based on Shot Tower's analysis, the parties now know why UMG acted so aggressively to rescind the UMG Agreement after learning it would not be obtaining rights to the Reverting Master until 2021 – with the revenues from those masters from 2018 through the end of 2020, UMG would have lost approximately \$2 million on the transaction ...(citing the brief of April 16th in opposition to the motion of SNJ objecting to the Sony transaction).

As set forth above Comerica is using affirmatively the Shot Tower financial cash flow model in the brief but it is not producing it. It is common sense that if Comerica uses it affirmatively as it has, then the document must be produced.

In conclusion, as the court has determined, Walker is an entertainment and financial expert, different from and probably more qualified in more areas such as music and finance than any expert

advising Comerica. As stated in his petition, Walker has significant expertise in managing large corporations, serving as a member of the Board of Directors of multiple major music industry companies and a Hollywood studio as well as providing strategic vision and financial expertise to a console gaming company and many other entertainment companies.

From this expertise, the Shot Tower cash flow model is the only way to support Walker to create a transition plan for the Estate and to address a number of concerns the heirs have about the financial management of this Estate.

Walker requests that he be provided the Dunn report or an equitable remedy he will execute a court approved NDA Dunn to address the non-production of the cash flow projections.

Dated: July 3, 2018.

Respectfully submitted,

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