

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
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 AMENDED
MEMORANDUM IN SUPPORT OF ITS
MOTION TO LIFT THE STAY OF
DISCHARGE AND APPROVE PAYMENT
OF ATTORNEYS' FEES AND COSTS**

INTRODUCTION

When the Court stayed its discharge of the former Special Administrator of the Estate of Prince Rogers Nelson (“Estate”), Bremer Trust, N.A. (“Bremer Trust”), it did so due to concerns about potential future litigation relating to the Universal Music Group (“UMG”) Agreement. Any concerns with respect to that issue—or the Tribute Concert-related issues—now, however, may be dispensed with following the Second Special Administrator’s issuance of his two Reports and Recommendations. Specifically, those Reports and Recommendations confirm that there is no reasonable basis for the Estate to pursue any UMG-related or Tribute Concert-related claims against Bremer Trust; correspondingly, there is no reason for the stay to remain in place. Therefore, Bremer Trust respectfully requests that the Court lift its stay.

In addition, Bremer Trust respectfully requests that the Court approve payment by the Estate of the remaining attorneys’ fees and costs it has incurred since February 1, 2017.

BACKGROUND

Bremer Trust served as the initial Special Administrator of the Estate from April 27, 2016 through January 31, 2017. On March 27, 2017, following Bremer Trust’s petition seeking

approval of its final accounts and discharge, this Court issued an 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 ("Discharge Order"). In Paragraph 7 of the Discharge Order, the Court ordered that "Bremer Trust and its agents are hereby discharged for any and all liability associated with its Special Administration of the Estate" pending the Personal Representative for the Estate, Comerica Bank & Trust, N.A. ("Comerica"), filing a receipt of the assets shown on the Final Accounts. (Discharge Order at 5.)¹

In reaching its decision to discharge Bremer Trust, the Court reviewed and considered numerous documents regarding the inventory, final accounts, and the Special Administrator's fees and attorney's fees. (*See id.* at 1-3.) In addition, on January 12, 2017, the Court conducted a hearing on the Original Inventory and the Final Accounts and gave all parties a full opportunity to be heard on those subjects. (*Id.* at 3.) When certain parties objected to having insufficient time to review certain documents, the Court twice extended the time allotted for that review and submission to the Court of any objections to the relief sought by Bremer Trust, establishing a final deadline of March 8, 2017. (*Id.* at 3-4.)

On April 11, 2017, in its Order Staying Discharge of Special Administrator ("Stay Order"), the Court stayed the discharge of the Special Administrator because the Court "learned that litigation may be forthcoming which may relate to actions taken by the Special

¹ 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." (Discharge Order at 5, ¶ 7.) Due to the timing of Court's April 11, 2017 Order staying the discharge of Bremer Trust as Special Administrator of the Estate, Comerica did not immediately file receipt of the assets shown on the Final Accounts, but rather filed its Receipt for Assets by Distributee on January 31, 2018.

Administrator.” (Stay Order at 1.) The potential litigation related to Bremer Trust’s involvement with the UMG Agreement.

On August 18, 2017, the Court issued its Order Appointing Second Special Administrator (“2017 SSA Order”), and assigned certain tasks to the Second Special Administrator, Peter Gleekel and Larson King, LLP, including conducting an independent examination of the facts surrounding the rescission of the UMG Agreement and potential claims relating to the same against Bremer and its professional advisors. (2017 SSA Order at 1-2.) Then, on December 15, 2017, Mr. Gleekel issued his Report and Recommendation Concerning the Rescission of the Universal Music Group Agreement (“2017 Gleekel R & R”).

In conducting his examination, Mr. Gleekel reviewed a significant body of documents and conducted numerous interviews. (See 2017 Gleekel R & R at 2-5.) Mr. Gleekel concluded in his Report and Recommendation that there was no reasonable basis for any lawsuit against Bremer Trust with respect to the UMG Agreement:

There has been nothing revealed by the investigation that [Bremer Trust] acted unreasonably in retaining experts and agents to assist in monetizing the assets of the Estate and specifically with respect to the UMG Agreement. Given the complexity of the issues and the specialized nature of the entertainment industry, there does not appear to be a reasonable basis for a claim against [Bremer Trust]. [Bremer Trust] acted prudently and reasonably in retaining SLS, the Advisors, and the Meister Seelig firm to advise and assist with respect to the UMG Agreement.

(2017 Gleekel R & R at 23-24.)

At that time, Mr. Gleekel opined that there may exist a reasonable basis for claims against *agents* of the Special Administrator in connection with the UMG Agreement, any such claims do not involve any actions “taken” by the Special Administrator.² (See Stay Order at 1;

² Bremer Trust denies that any such claims would be meritorious, or factually or legally supportable, as detailed in Stinson’s December 20, 2017 Letter to the Court.

2017 Gleekel R & R at 23-24, 30.) Mr. Gleekel's Report and Recommendation concludes that Bremer Trust's retention of those agents for their services was prudent and reasonable. (2017 Gleekel R & R at 23-24.)

Then, on February 2, 2018, in response to Omarr Baker's motion to expand the Second Special Administrator's investigation to include potential claims relating to the October 2016 Tribute Concert ("Tribute Concert"), the Court issued another Order, this one expanding the authority of the Second Special Administrator, Peter Gleekel and Larson King, LLP. (*See, generally*, 2018 SSA Order.) In doing so, the Court instructed Mr. Gleekel to conduct an independent examination of the facts surrounding the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents; and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement. On May 15, 2018, Mr. Gleekel issued his Report and Recommendation of the Second Special Administrator Concerning the Jobu Presents Agreement ("2018 Gleekel R & R").

Once again, in conducting his examination, Mr. Gleekel reviewed a significant body of documents and conducted numerous interviews. (*See* 2018 Gleekel R & R at 2-4.) In that report, Mr. Gleekel analyzed, among other issues, whether a potential legal claim could exist against Bremer Trust for a breach of duty under Minnesota law, including, but not limited to, for any potential liability with respect to Bremer Trust's delegation and employment of agents with specialized skills in conjunction with the Jobu Presents agreement. (*See id.* at 22-25.) In Mr. Gleekel's Report and Recommendation, he stated that "[o]ur investigation has not revealed any facts to lead to a belief that there exists a reasonable basis for a claim against the Special Administrator, Bremer Trust," (*id.* at 23) and, further, "[t]here would be no alleged wrongdoing

or transgressions that any putative defendant addressed herein could credibly claim against the Estate or its Special Administrator.” (*Id.* at 48.)

ARGUMENT

I. THE COURT’S STAY OF BREMER TRUST’S DISCHARGE SHOULD BE LIFTED BECAUSE THERE IS NO REASONABLE BASIS FOR ANY CLAIMS AGAINST BREMER TRUST REGARDING THE UMG AND JOBU PRESENTS AGREEMENTS.

The Court stayed the discharge of Bremer Trust, on April 11, 2017, in order to review the “actions taken by the Special Administrator” with respect to the UMG Agreement. (*See* 2017 Stay Order at 1.) The resulting UMG investigation undertaken in 2017 by the Second Special Administrator found no evidence that Bremer Trust had acted in any manner other than prudently and reasonably in all respects regarding the UMG Agreement. (*See* 2017 Gleekel R & R at 23-24.) Mr. Gleekel further found that there were no reasonable bases for any claims against Bremer Trust for actions it took or did not take with respect to the UMG Agreement. (*See id.*)

The Court then expanded the authority of the Second Special Administrator to investigate potential claims surrounding the Tribute Concert and Jobu Presents Agreement. (*See* 2018 SSA Order at 1.) The second investigation undertaken in 2018 by the Second Special Administrator then found no “credib[le] claim[s]” could be brought against Bremer Trust with respect to the Jobu Presents Agreement. (*See* 2018 Gleekel R & R at 48.)

Because the sole purpose for the stay has been fulfilled, and all potential claims against Bremer Bank have been thoroughly investigated—and ultimately rejected—by the independent Second Special Administrator, this Court should lift the stay, and proceed to discharge Bremer Trust from any and all liability associated with its Special Administration of the Estate as it originally ordered back in March 2017.

II. THE COURT SHOULD DIRECT THE ESTATE TO PAY BREMER TRUST'S REMAINING REASONABLE ATTORNEYS' FEES AND COSTS.

Bremer Trust also seeks Court approval for the payment of its remaining reasonable attorneys' fees and costs incurred between February 1, 2017 and July 31, 2018. Minn. Stat. §524.3-720 provides that “[a]ny personal representative or person nominated as personal representative who defends or prosecutes any proceeding in good faith, whether successful or not, ... is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred.” Minn. Stat. § 524.3-720 (2018). Minn. Stat. §525.515 provides that any attorney performing services for the estate at the behest of a personal representative or special administrator should receive “just and reasonable” compensation.

As outlined in the supplemental affidavits of Laura Halferty and Julian Zebot, Bremer Trust's as-yet-unpaid legal fees fit in the following categories:

- Monitoring ongoing court filings and assessing relevance to Bremer Trust;
- Filing the Special Administrator's accounting, discharge requests and fee requests, and responding to objections to those filings;
- Continuing to ensure a smooth transition to the personal representative, Comerica, including by producing files and responding to numerous requests for information;
- Participating in analysis and discussions regarding claims of Warner Bros. and UMG's demand for rescission, including: responding to questions from Comerica, attempting to find resolution, and attending court hearing;

- Defending Bremer Trust from claims by Brianna Nelson and Jobu Presents (not all time on those matters was submitted with Bremer Trust's October 2017 request for fees);
- Participating in discussions regarding potential appointment of a second special administrator, including researching the appropriate standard of care and authority, participating in court conferences, and drafting proposed orders;
- Defending Bremer Trust during the investigations by the Second Special Administrator, including review and production of documents, defense of witness interviews, preparation of several letters and briefs to Mr. Gleekel, and responding to the motion to expand scope of Second Special Administrator's investigation; and
- Representing Bremer Trust due to the Second Special Administrator's investigation of the UMG and Jobu Presents claims and due to Bremer Trust's motion to lift stay of discharge.

This Court has already approved payments to Bremer Trust of attorneys' fees and costs incurred by Bremer Trust that relate to its work as Special Administrator and that post-date Bremer Trust's tenure as Special Administrator, and it should do the same here. (*See* November 1, 2017 Order Granting Motion for Fees & Sealing Invoice Redactions.) In fact, in her October 20, 2017 Affidavit in Support of Bremer Trust's Request to Approve Payment of Attorney's Fees and Costs for Three Lawsuits that Have Been Dismissed with Respect to Bremer Trust ("October 20, 2017 Halferty Aff."), Laura Halferty informed the Court that Bremer Trust would be submitting additional invoices and supporting affidavits for other legal work based upon its service as Special Administrator, including work relating to pending investigations and Bremer Trust's stay of discharge, at a later date. (*See* October 20, 2017 Halferty Aff. at 4, ¶12.) Bremer

Trust is now doing that, and presently seeks the Court's approval for the payment of attorneys' fees and costs that were reasonably and necessarily incurred as a result of Bremer Trust having to remain involved in this Estate since February 2017, and defend itself from multiple suits and investigations—all of which relate to the defense of its administration of the Estate. Bremer Trusts' supporting affidavits include the Supplemental Affidavits of Julian Zebot and Laura E. Halferty, with attached Billing Statements, which meet Minnesota General Rule of Practice 119's requirements and set forth in detail the factual basis for why these fees and costs are properly payable from the Estate.

The legal expenses for which Bremer Trust seeks approval in this motion include fees and costs incurred by Maslon LLP and paid by Bremer Trust, fees and costs incurred by Maslon LLP and not yet paid by Bremer Trust, and fees and costs incurred by Stinson Leonard Street LLP ("Stinson") and not yet paid by Bremer Trust. The supporting affidavits provide documentation of legal expenses through June 30, 2018, and Bremer Trust intends to file supplemental attorneys' fees affidavits with the Court so as to capture all fees and costs incurred through the July 19, 2018 motion hearing. Accordingly, Bremer Trust respectfully requests that the Court authorize payments by the Estate directly to Bremer Trust, Maslon LLP, and Stinson, respectively, for Bremer Trust's reasonable attorneys' fees and costs incurred.

CONCLUSION

For all the reasons stated above, Bremer Trust respectfully requests that this Court grant its Motion to Lift the Stay of Discharge and Approve Payment of Attorneys' Fees and Costs.

Dated: July 5, 2018

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