

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 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 such concerns now, however, may be dispensed with following the Second Special Administrator's issuance of his recent Report and Recommendation. Specifically, that Report and Recommendation confirms that there is no reasonable basis for the Estate to pursue any UMG-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 incurred since February 1, 2017.

BACKGROUND

Bremer Trust served as the initial Special Administrator 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 that 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 Administrator." (Stay Order at 1.) The potential litigation related to Bremer Trust's involvement with the UMG Agreement.

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 file receipt of the assets shown on the Final Accounts, but it intends to do so contemporaneously with this Court's anticipated discharge of Bremer Trust. Comerica has acknowledged it has received all assets.

On August 18, 2017, the Court issued its Order Appointing Second Special Administrator (“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. (SSA Order at 1-2.) Mr. Gleekel recently issued his Report and Recommendation Concerning the Rescission of the Universal Music Group Agreement (“Gleekel R & R”).

In conducting his examination, Mr. Gleekel reviewed a significant body of documents and conducted numerous interviews. (*See* Gleekel R & R at 2-5.) Mr. Gleekel concluded in his Report and Recommendation that Bremer Trust could not reasonably be the subject on any lawsuit against it 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.

(Gleekel R & R at 23-24.)

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

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

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 AGREEMENT.

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 Stay Order at 1.*) The resulting investigation undertaken 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 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.*)

Because the sole purpose for the stay has been fulfilled, 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 in March 2017.³

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 December 31, 2017. Minn. Stat. § 524.3-720 provides that “[a]ny personal representative or person nominated as personal

³ To the extent any interested person contends that Bremer Trust’s interactions with Jobu Presents provide a basis to extend the stay of discharge, such a contention would be wrong. As established by Bremer Trust in its Memorandum in Opposition to Omarr Baker’s Motion to Expand the Authority of the Second Special Administrator (“Bremer Mem.”), the Court was aware of the relevant facts regarding Bremer Trust’s decision to return an advance to Jobu under a full reservation of rights when it discharged Bremer Trust as special administrator. The Court’s instruction in the Discharge Order that Comerica investigate whether any action should be pursued with respect to the return of such funds can only refer to potential claims by the Estate against *Jobu*, not Bremer Trust. (*See Bremer Mem. at 4-5.*) In addition, the litigation that Jobu filed against a number of defendants—including Bremer Trust—provides no basis to keep the stay in place, as this Court has dismissed with prejudice Bremer Trust from that lawsuit.

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 January 30, 2018, 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 investigation by the Second Special Administrator, including review and production of documents, defense of witness

interviews, preparation of letter brief to Mr. Gleekel, and responding to 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 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, and defend itself from multiple suits and an investigation—all of which relate to the defense of its administration of the Estate. Bremer Trusts' supporting affidavits include the January 30, 2018 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 and not yet paid by Bremer Trust. Although its supporting affidavits provide good-faith estimates of anticipated legal expenses through the date of the motion hearing, Bremer Trust intends to file supplemental attorneys' fees affidavits with the Court so as to capture all fees and costs incurred with respect to the motion. 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: January 30, 2018

STINSON LEONARD STREET LLP

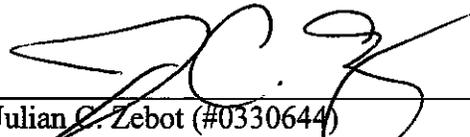
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Dated: January 30, 2018

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