Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF CARVER **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 REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO LIFT THE STAY OF DISCHARGE AND APPROVE PAYMENT OF ATTORNEYS' FEES AND COSTS**

INTRODUCTION

Bremer Trust, N.A. ("Bremer Trust") concluded its 9-month service as Special Administrator to this Estate on February 1, 2017, nearly 18 months ago. After a full evidentiary hearing and multiple rounds of briefing, the Court discharged Bremer Trust and released it from all liability related to its service. That discharge was stayed in April 2017, in order to allow for further development of the record relating to the UMG Agreement and the Jobu Presents engagement. The Second Special Administrator ("SSA") then developed that record as part of his eight-month independent investigation on both of those topics and absolved Bremer Trust of any wrongdoing. It is time to allow Bremer Trust to close the book on its service to the Estate and no longer have the cloud of further potential litigation hanging over it.

Only three parties—Alfred Jackson; Omarr Baker; and CAK Entertainment, Inc. and Charles Koppelman (together "CAK")—objected to discharging Bremer Trust, including only two of the six Heirs.[1] The thrust of those objections are the parties' desire not to foreclose

[1] Shortly before Bremer Trust filed this Reply Memorandum, Alfred Jackson belatedly filed a separate Objection to Bremer Trust's requests for payment of its attorney's fees and costs

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

hypothetical, undefined future third-party claims against Bremer Trust. However, Bremer Trust should not continue under the cloud of threatened litigation due to mere speculation. Indeed, the SSA has already considered and rejected any claims the Advisors could have against Bremer Trust. Without any definition of valid claims that could be made against Bremer Trust, as opposed to the Estate itself, this Motion should be granted.

Thus, for the reasons stated below, and the reasons identified in Bremer Trust's Amended Memorandum in Support of its Motion to Lift the Stay of Discharge and Approve Payment of Attorneys' Fees and Costs ("Memorandum in Support"), Bremer Trust respectfully requests that the Court grant its requested relief in its entirety.[2]

ARGUMENT

I. THE SSA'S TWO INVESTIGATIONS INTO BREMER TRUST'S POTENTIAL LIABILITY DETERMINED THAT NO CLAIMS SHOULD BE BROUGHT AGAINST BREMER TRUST.

Not only has the SSA concluded that there is no basis for the Estate to make claims against Bremer Trust, but he has also concluded that at least with respect to Jobu Presents ("Jobu"), there is no basis for Jobu or the Advisors to make cross-claims or third-party claims against Bremer Trust. Based on that independent investigation, commissioned by the Court, there

---

from the Estate. Bremer Trust does not concede the issues raised by that untimely submission and intends to address them at the Motion hearing if the Court so desires.

[2] CAK points out in their Objection that Bremer Trust's Proposed Order Granting Bremer Trust's Motion to Lift Stay of Discharge quotes a passage from the Court's March 27, 2017 Order regarding the discharge from liability of Bremer Trust *as well as* its agents. (CAK Entertainment and Charles Koppelman Objection ("CAK-Koppelman Objection") at 1.) While the Court's language in its March 27, 2017 Order does refer to a discharge of both Bremer Trust *and* its agents, Bremer Trust's Memorandum in Support makes it clear that the relief Bremer Trust is seeking is solely that the Court lift the stay of discharge with respect to Bremer Trust itself.

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

is no basis to believe that discharging Bremer Trust now would inappropriately foreclose valid claims.

With respect to the UMG Agreement, the SSA concluded that "there does not appear to be a reasonable basis for a claim against [Bremer Trust]" and that "[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.) The SSA noted that under Minnesota law, when a Special Administrator acts reasonably in retaining experts, it cannot be liable to the Estate for the errors or malfeasance of those agents. (*Id.*)

With respect to the Jobu relationship, the SSA concluded that its "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." (May 15, 2018 Report and Recommendation of the Second Special Administrator Concerning the Jobu Presents Agreement ("2018 Gleekel R & R") at 23.) In addition, the SSA specifically considered "any other adverse impact on the Estate" stemming from pursuing claims against Jobu and the Advisors. (*Id.* at 47.) The SSA concluded "[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, emphasis added).

The Court-appointed investigation by the SSA, therefore, has concluded that there are not valid claims by the Estate against Bremer Trust, and that there are not valid claims by the Advisors or Jobu that could be made against Bremer Trust. That explains why the alleged future claims raised by Alfred Jackson, Omarr Baker[3] and CAK are so amorphous; those parties could

[3] Alfred Jackson and Omarr Baker Objection to Bremer Trust's Motion to Lift Stay of Discharge ("Jackson-Baker Objection") at 2. The Jackson-Baker Objection also seems to raise a concern with future litigation leading to subpoenas of Bremer Trust. However, Bremer Trust's

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

not identify any valid claims against Bremer Trust to present to the Court. Those putative claims are ones that have already been considered, analyzed, and rejected by the SSA as part of its Court-ordered investigations.

The Jackson-Baker Objection also disparages the SSA's analysis and investigation, implying that what it "uncovered" about Bremer Trust's potential liability was paltry in comparison to what could be discovered by way of a more "formal discovery process." (Jackson-Baker Objection at 2.) However, as was noted in Bremer Trust's Memorandum in Support, the SSA's two investigations of Bremer Trust's conduct were thorough, with thousands of pages of documents reviewed and numerous interviews of individuals with relevant knowledge taken by the SSA. (*See* Memorandum in Support at 3-4.)

II. THE OBJECTORS FAIL TO DESCRIBE POTENTIAL CLAIMS THAT COULD BE BROUGHT AGAINST BREMER TRUST, BECAUSE NO SUCH VALID CLAIMS EXIST.

The two filed objections fail to describe any actual claims that could potentially be brought against Bremer Trust, and that failure is not surprising given the SSA's determination that there is no merit to any potential claims against Bremer Trust, including possible claims by Bremer Trust's agents.[4]

A. Bremer Trust Is Not Responsible for the Alleged Wrongdoing of its Agents

---

possible future status as a subpoenaed party should not prevent its discharge. Bremer Trust would continue to comply with any reasonable subpoenas even after discharge.

[4] Messrs. Jackson and Baker also allege in their Objection that lifting the stay of discharge might result in the dismissal of the SSA's claims against the Advisors because Bremer Trust is "potentially" an "indispensable" party to such claims. (Jackson-Baker Objection at 2.) No explanation is offered for this assertion. For the reasons set forth in the SSA's reports and this memorandum, however, Bremer Trust should not be made a party, must less considered an indispensable party, to any such litigation. Certainly, its non-joinder will not prejudice any of the other parties such that the litigation as a whole should be dismissed as a matter of "equity and good conscience" under the factors set forth in Minn. R. Civ. P. 19.02.

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

It is difficult, if not impossible, to envision what such possible claims might even look like under the circumstances presented here. For example, the 2018 Gleekel R & R recommends that the Estate pursue certain claims against Mr. Koppelman arising out of his own relationship and conduct with respect to Jobu. There is no non-frivolous claim that Mr. Koppelman could make against Bremer Trust for Mr. Koppelman's own wrongdoing.[5] Nor is there any non-frivolous claim by Messrs. Koppelman and McMillan alleging that Bremer Trust is liable *in any way* for the Advisors' alleged fraudulent inducement of Jobu. Similarly, the 2017 Gleekel R & R envisions a claim against the Advisors and Bremer Trust's counsel for not conducting additional due diligence on the 2014 WB Agreement's interpretation. (2017 Gleekel R & R at 30.) Given Bremer Trust's statutory authority to hire experts to negotiate the business and legal terms of the UMG Agreement, and its contracts delegating authority for those tasks to its agents,[6] there is no non-frivolous claim that those agents could make against Bremer Trust for their alleged failure to conduct their work with reasonable care.

Other potential third-party claims – none of which, of course, have been actually identified by the Objectors to this Motion – are similarly meritless. Simply put, there is no basis for indemnification, contribution, or any other claim under which Bremer Trust could be liable to the Advisors for all or part of the Estate's claims against them. The Objectors' speculative and conclusory references to potential claims or third-party claims that could be brought against

[5] Minnesota law strongly disfavors having a negligent party be indemnified for its own negligence. *See Dewitt v. London Road Rental Center, Inc.*, 901 N.W.2d 412, 417 (Minn. 2018).

[6] The Advisor Agreement describes Bremer Trust's interest in entering into the Agreement so as to obtain Mr. Koppelman and Londell McMillan's "expertise, management, monetization abilities, advice and services." (Advisor Agreement at 1.) It also designates the Advisors as the Estate's exclusive representatives with respect to entertainment deals during their term. (*Id.*)

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

Bremer Trust by unnamed parties for unnamed causes of action should, therefore, not prevent the Court from granting Bremer's Motion to Lift the Stay of Discharge.

B. The Advisor Agreement Forecloses Claims Against Bremer Trust

The concerns raised by CAK regarding possible third party claims it may want to make at some later date are also completely alleviated by a review of the Advisor Agreement, which was filed with the Court as Exhibit 5 to the Affidavit of Laura Halferty on September 29, 2016. That is true for two reasons.

First, any claims that CAK (or Mr. McMillan) would want to make would be related only to Bremer's service *as Special Administrator* and therefore should proceed against the Estate, not against Bremer Trust personally. For example, any contractual claims under the Advisor Agreement would now be properly be directed at the Estate (just as any monies the Advisors return under the Advisor Agreement would be to the Estate, and not Bremer Trust). CAK's objection presumes that a discharge of Bremer Trust would also discharge any CAK claims against the Estate, which is not true.[7]

Second, the Advisor Agreement does not support any third-party claims by CAK or Mr. McMillan against the Estate or Bremer Trust for the Advisors' own breaches of their fiduciary duties. The Advisor Agreement contains no provision whereby the Estate agrees to indemnify

---

[7] For a similar reason, CAK's citation (in footnote 5) to the unpublished *In re Estate of Stewart* decision is inapposite. In that case, the personal representative was not "discharged" from liability by the court, but instead resigned and then raised an issue about her entitlement to reimbursement. No. A04-808, 2005 WL 44462, at *1 (Minn. Ct. App. Jan. 11, 2005). The court analyzed and rejected her argument that her termination/resignation as the personal representative somehow automatically extinguished the heir's claims for wrongful expenditures. *Id.* at *4. The court's analysis actually supports Bremer Trust's argument that once the duties of personal representative or special administrator conclude, discharge is appropriate: "The statute simply requires that the district court, in the course of ending court-supervised administration of an estate, refrain from discharging the personal representative before his or her duties are fully discharged and all property has been distributed." *Id.*

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

the Advisors. Instead, the only indemnification provision runs from the Advisors to the Estate. (Advisor Agreement ¶ 9, p. 4.)

III. THERE IS NO OUTSTANDING OR PENDING LAWSUIT AGAINST BREMER TRUST BY ALFRED JACKSON AND OMARR BAKER THAT WOULD PREVENT THE COURT FROM GRANTING BREMER TRUST'S MOTION TO LIFT THE STAY OF DISCHARGE.

The Jackson-Baker Objection also asserts that Bremer's Motion should be denied because those two Heirs still have an "outstanding lawsuit against Bremer." (Jackson-Baker Objection at 2.) In fact, that lawsuit was supplanted by the SSA process initiated by the Court and furthermore must be deemed dismissed with prejudice as it was not filed within one year. It provides no basis to deny Bremer's Motion.

On or about June 23, 2017, counsel for Omarr Baker and Alfred Jackson, as self-appointed "limited special administrators of the Estate," attempted to file a complaint against Bremer Trust alleging breaches of fiduciary duty with respect to the Jobu and UMG Agreements and related issues relating to the Estate's administration. That same day, Mr. Baker's counsel attempted to serve that Complaint on counsel for Bremer Trust. The Court rejected the attempted filing of the purported complaint and instead proceeded with the SSA process. The SSA investigation, of course, concluded that no meritorious claims exist against Bremer Trust based on those allegations, and Omarr Baker and Alfred Jackson offer no rationale whatsoever in their Objection as to why the conclusions reached by the SSA as to Bremer Trust should be re-examined by way of a separate lawsuit brought by individuals who lack authority to act on behalf of the Estate.

Furthermore, since June 2017, counsel for Messrs. Baker and Jackson have never attempted to refile their Complaint. Even if counsel for Bremer Trust acknowledged service of the Complaint on June 23, 2017 – and counsel for Bremer Trust does not have evidence that it

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

did so – the one-year deadline to file that Complaint has passed, and as a result, that Complaint is no longer "outstanding" or pending in any way with respect to Bremer Trust; instead, it should be deemed dismissed with prejudice. Minn. R. Civ. P. 5.04(a).

CONCLUSION

For all the reasons stated above, and the reasons stated in Bremer Trust's Amended Memorandum in Support of its Motion to Lift the Stay of Discharge and Approve Payment of Attorneys' Fees and Costs, Bremer Trust respectfully requests that this Court grant that Motion. The SSA's investigations determined that there is no merit to any potential claims against Bremer Trust, and thus keeping Bremer Trust in this litigation is unnecessary and a waste of the Estate and Court's resources.

Dated: July 16, 2018

STINSON LEONARD STREET LLP

By: /s/ Liz Kramer
Laura E. Halferty (#0311698)
David R. Crosby (#237693)
Liz Kramer (#325089)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Telephone: (612) 335-1500
laura.halferty@stinson.com
david.crosby@stinson.com
liz.kramer@stinson.com
- AND -

Filed in First Judicial District Court
7/16/2018 3:06 PM
Carver County, MN

Dated: July 16, 2018

MASLON LLP

By: /s/ Julian C. Zebot
Julian C. Zebot (#0330644)
Martin S. Fallon (#030301X)
Leora M. Maccabee (#0390029)

3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 672-8200
julian.zebot@maslon.com
martin.fallon@maslon.com
leora.maccabee@maslon.com

ATTORNEYS FOR BREMER TRUST, N.A.

4834-0491-9657