

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:
Estate of Prince Rogers Nelson,
Decedent.

Court File No. 10-PR-16-46
Judge Kevin W. Eide

ORDER & MEMORANDUM

The above-entitled matter came before the undersigned on April 18, 2018, pursuant to Comerica Bank & Trust, N.A.'s (the "Personal Representative's") motions for (1) approval of procedures related to its fees and costs – and those of its counsel – for February 2018 through January 2019; (2) approval of payment of its fees – and those of its counsel – for the time period from October 1, 2017 through January 31, 2018; (3) approval of a settlement agreement with the Tidal Entities; and (4) approval of an entertainment agreement.

Joe Cassioppi, Esq., Mark Greiner, Esq. and Lora Friedemann, Esq. appeared on behalf of the Personal Representative, Comerica. Comerica representatives Angela Aycock and Andrea Bruce also appeared. Samuel Johnson, Esq. appeared on behalf of Sharon Nelson, Norrine Nelson, and John R. Nelson. Justin Bruntjen, Esq. appeared on behalf of Alfred Jackson. Lee Hutton, Esq. appeared on behalf of Tyka Nelson. Mark Jacobson appeared on behalf of Omarr Baker. Jordan Sieve, Esq. appeared on behalf of the Tidal Entities. Sharon Nelson, Omarr Baker and Virginia Baker also appeared.

Following the hearing, the Court issued a preliminary Order as follows:

1. Counsel for Comerica and counsel for the Heirs shall meet and confer, with the assistance of the moderator/mediator if desired, and report to the Court regarding an agreed upon method for the billing and reporting of attorney fees in a manner which would allow the Heirs and the Court to review those billings and determine the reasonableness of those fees. The Court will determine whether a new method for the billing and reporting of attorney fees shall be requested going forward or will be applied retroactively for the billing months currently being considered by the Court.

2. By May 1, 2018, Comerica shall provide to the Heirs and the Court a projected cash flow analysis including pending or anticipated deals, revenue streams, all related expenses, and payment of anticipated estate taxes. The Court's hope is that this will give the Court and Heirs more information regarding the need for additional revenue sources and the sustainability of expenses.

3. The matters argued before the Court on April 18, 2018 are taken under advisement.

4. Comerica and their attorneys shall make Mr. Carter, Mr. Dunn or other relevant advisors available to speak with heir's counsel regarding the advisability of proceeding with the proposed entertainment deal currently being considered by the Court. These discussions shall be handled in the most expeditious and cost effective manner possible. Heirs counsel shall be prepared to address these discussions with the Court on a conference call scheduled herein. In the alternative, the parties shall file any supplemental memoranda on the above issues by April 30, 2018.

5. A telephone conference shall be held on May 2, 2018, at 8:30 a.m. for the parties to make any final oral arguments to the Court. Counsel for Comerica shall set up a conference line for the call and notify the parties accordingly.

The parties did comply with the Court's Order and did specifically speak with Mr. Carter and Mr. Dunn regarding the proposed entertainment deal. The Court heard final argument of the parties via telephone conference on May 2, 2018. Based upon the arguments of counsel and all of the files, records and proceedings herein, the Court makes the following:

ORDER

1. The parties have met and discussed the manner of presenting the attorneys' fees incurred by the Personal Representative and the Court will address the approval of those fees in a separate order.
2. The Personal Representative shall re-submit its attorneys' fees for the period from October 1, 2017 through January 31, 2018 in the form agreed upon by the parties.
3. The proposed Settlement Agreement with the Tidal Entities, as set forth in Exhibit A to Comerica Bank & Trust, N.A.'s Notice of Motion and Motion to Approve Settlement Agreement with Tidal Entities is hereby approved.

4. The entertainment deal proposed by the Personal Representative, as set forth in Exhibit D to the Declaration of David Dunn filed on April 4, 2018, is hereby approved. The Heirs shall either agree on one person to serve as their representative in the negotiation of a long form agreement or, if the Heirs are not able to agree as to a representative, the Heirs shall provide the names of their recommended representatives to the Court no later than 4:30 pm on May 14, 2018. The Court shall then appoint a representative to work collaboratively with the Personal Representative's advisor(s) to negotiate the long form agreement.
5. The attached Memorandum is incorporated herein.
6. Because this Order & Memorandum contains confidential business information, and the public filing of this document could impede the effective administration of the Estate, this unredacted Order & Memorandum shall be filed and kept under seal until further order of the Court.

BY THE COURT:

Dated: May 9, 2018

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

MEMORANDUM

Attorneys' Fees

The Personal Representative has brought motions for approval of procedures related to its fees and costs, and those of its counsel, for February 2018 through January 2019 and approval of payment of its fees, and those of its counsel, for the time period from October 1, 2017 through January 31, 2018. Sharon Nelson, John Nelson and Noreen Nelson have objected to approval of these fees, arguing that they are excessive.

On January 22, 2018, the Minnesota Court of Appeals issued an opinion affirming in part, reversing in part, and remanding the fee awards filed on April 5, 2017 and May 15, 2017 by this Court. Of importance to the motion currently before the Court is the opinion of the Minnesota Court of Appeals that this Court made inadequate findings of fact regarding the determination of whether attorneys' fees incurred by various Heirs benefited the entire Estate, rather than an individual heir. In that matter, this Court had painstakingly gone through the attorneys' fee bills and had marked in the margin the Court's determination as to the nature of the fee. Still, this Court's efforts were found lacking.

The manner in which the Personal Representative has submitted the fees for its attorneys makes it exceedingly difficult or impossible to make the necessary findings of fact regarding the appropriateness of the fees. Therefore, the Court has ordered that they be resubmitted.

Settlement Agreement

The Personal Representative has argued repeatedly that Minnesota Statutes give the Personal Representative substantial discretion in the administration of an estate and that the Court, in this proceeding, has given the Heirs unprecedented access to information about the Estate's administration as well as input into the actions of the Personal Representative and the decisions of the Court. This level of access has perhaps contributed to the resignation of the Special Administrator, has increased attorney fees, and has caused some delays. The Court understands these concerns, however, at least to this point, has supported this access particularly when it has impacted the continued licensure of Prince's music.

Attorneys for Sharon Nelson, John Nelson and Noreen Nelson ("the objectors" for this part of the motion) point out that, in reality, this Settlement Agreement amounts to another entertainment deal involving streaming rights. However, at its core, this is a settlement agreement involving the resolution of litigation in both the State and Federal Courts. In this area, this Court extends significant latitude to the Personal Representative to "prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties." Minn. Stat. §524.3-715(22).

Both the Personal Representative and the objectors weigh the pros and cons of the litigation and settlement, reaching different conclusions. The objectors acknowledge the uncertainty of the outcome, stating "[n]ot only does the Estate have a *viable* claim for substantial statutory damages, but it also would *likely* obtain recovery of its attorneys' fees and costs incurred in the litigation." Emphasis added. The objectors also note that it is their "understanding that this dispute largely boils down [to] the LoI and the Term Sheet, each of which may have been signed without authority...." It is the Court's understanding that the only surviving witnesses to the signing of

these documents have now aligned themselves with the Tidal entities. The Court acknowledges the objectors concern that depositions of these witnesses have not been taken but also recognizes that the taking of formal statements might put the Estate in a worse bargaining position.

The Court does grant the Personal Representative latitude to prosecute and defend these claims and to enter into this Settlement Agreement, both because of its professional conclusion that it is in the best interest of the Estate to do so, but also due to the likelihood that further discussion, negotiation or argument between the parties to this Estate, and with the Tidal entities, may result in substantially higher attorneys' fees for the Estate and the Heirs.

Entertainment Deal

The Personal Representative has negotiated a "short-form" entertainment deal [REDACTED]

[REDACTED] In this case, all persons identified as Heirs of the Estate of Prince Rogers Nelson oppose the approval of this agreement¹ for the following reasons:

Comerica failed to provide the Heirs the opportunity to review and respond to the proposal as required by this Court's March 22, 2017 Order. The Personal Representative argues that the Heirs were provided with information throughout the term of the negotiation, however, this Court allowed the Heirs to meet with the advisors to the Personal Representative and to make further argument to the Court. The Court believes that it will be appropriate in the negotiation of the long-form of this entertainment deal, and in future entertainment deals which are being considered by the Estate, to have a representative of the Heirs work alongside the advisors to the Personal Representative from the start of the negotiation. This would be contingent upon the advisor for the Heirs and for the Personal Representative being able to work in a collaborative manner in the best interest of the Estate. This would be further contingent on the Heirs' advisor keeping the Heirs informed of the negotiations, and at the same time, requiring all parties to keep the negotiations confidential.

The Court used a similar mechanism in its September 30, 2016 Amended Order Granting In Part The Special Administrator's Motion to Approve Recommended Deals & Denying Motion to Void Advisor Agreement where the Court ordered:

"5. Counsel for the non-excluded Heirs shall appoint up to two counsel or entertainment industry experts to negotiate, along with L. Londell McMillan and Charles Koppelman and the Special Administrator, "long-form deals" from the "short-form deals" which are being approved by the Court today. It is the intent of the Court that the (up to) two persons appointed by the Heirs will be able to offer input into the "long-form deals" and assist in negotiating quid pro quo amendments to the deals, if all can agree. If the persons appointed by the Heirs ultimately disagree with McMillan and Koppelman and the Special Administrator, the terms most consistent with the "short-form deals" being approved today by the Court shall be approved."

¹ Counsel for Alfred Jackson withdrew his objection to the proposed entertainment deal during the May 2, 2018 conference call.

The proposed deal has flawed terms. The Heirs have made arguments regarding specific terms of the proposed deal, to which the Personal Representative has responded. The Heirs have argued that [REDACTED]

The Heirs are concerned that the entertainment partner currently being considered is large, [REDACTED]

However, there are few large players in this market and the same could be said about all of them. A smaller partner may not have the international marketing ability of a larger partner. The Court cannot see a compelling argument either way.

[REDACTED]

[REDACTED]

The proposed deal is not the product of competitive bidding or negotiation. At the conclusion of the hearing on April 18, 2018, the Court directed counsel for the Heirs to meet with Mr. Carter and Mr. Dunn and provide to the Court clear direction as to changes that could be negotiated in the current proposed deal or, if the current proposed deal should be abandoned, through what process of negotiation, or with what partner, could a better deal be achieved. The Heirs did ask the Court for permission to talk with specific proposed partners and the Court denied this request, concerned that the Estate needed to be speaking to the entertainment industry with a single voice. Acknowledging that this limitation put the Heirs in a difficult position to respond to the Court, the Heirs have not presented any clear direction for either improving the current deal or negotiating a different deal.

The Court finds the history of this Estate to be the best indicator of the financial merits of this proposed deal. [REDACTED]



In the last analysis, this Court owes a fiduciary duty to those entitled to the assets of this Estate, whether they be the Heirs, tax authorities or creditors. The Court finds that this entertainment deal has been the product of a bidding and negotiation process that resulted in an offer that will yield appropriate consideration to the Estate for the rights that will be granted. It is in the best interest of the Estate that the Court approve this short-form deal and the negotiation of a long-form contract consistent with its terms.

K.W.E.