

**BASSFORD REMELE**

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June 28, 2017

REDACTED

VIA ELECTRONIC FILING

The Honorable Kevin Eide
Judge of the District Court
Carver County Justice Center
604 East Fourth Street
Chaska, MN 55318

Re: *In re Estate of Prince Rogers Nelson*
Court File No. 10-PR-16-46
Our File No. 8356-1

Dear Judge Eide:

We write on behalf of L. Londell McMillan in response to the letter by UMG Recordings, Inc. (“UMG”) dated June 26, 2017, requesting that the Court approve its demand, and Comerica’s motion, for rescission. We previously provided the Court with our full analysis of the Warner Brothers Records (“WBR”) 2014 contract (since this contract was really a settlement of Prince’s disputes with WBR, we have referred to this contract as the “2014 WBR settlement agreement”), and we will not repeat that analysis here. We also understand that Bremer’s full contract analysis is being provided to the Court by counsel for SNJ. Therefore, we will focus our response on the specific points raised in UMG’s letter.

As a preliminary matter, we were disappointed in UMG’s position. We know that the Court would prefer that the parties reach a business resolution of the current dispute, and that is also our preference. If the Court approves the rescission motion, this will eliminate any possibility of a business resolution, and the estate will almost certainly incur a loss of millions of dollars. Comerica has represented that, in re-marketing the rights that were previously granted to UMG, it will concede WBR’s interpretation of its 2014 contract with Prince, and will not re-market the

_____ , even though everyone else agrees that – at best – WBR has no more than an arguable claim to such rights. In agreeing to WBR’s grab of _____

Comerica is ensuring that the estate will incur a substantial loss on resale. On the other hand, if the Court denies approval of the rescission motion, this will give the parties time to continue to look for a business solution.

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The heart of our quarrel with what UMG has submitted to the Court is the statement on the bottom of page 2 and the top of page 3 of its June 26 letter:

However, we wish to emphasize that for purposes of the instant motion, the Court need not (and, on the record before it, cannot) reach a determination of whether WBR's or Opposing Parties' interpretation of the 2014 WBR agreement is correct. This is because the Personal Representative's Motion is not based on resolving the dispute over the 2014 WBR Agreement, but rather, on the existence of this dispute, which was not previously disclosed to UMG, and which will prevent UMG from exercising the rights it believed it had acquired without litigation brought by WBR. (Emphasis added.)

In other words, it is UMG's position that it is entitled to rescission because of the mere existence of a dispute, without regard to the merits of the competing claim. If the Court accepts this position, this would effectively give WBR veto power over the estate's right to exploit Prince's music merely by raising a dispute as to any of the rights that are even arguably within the scope of the 2014 WBR settlement agreement (and other WBR contracts with Prince). This would give WBR the right to control the estate's future marketing of Prince's musical works, to the great benefit of WBR. This dynamic would be particularly egregious in light of Prince's longstanding acrimonious relationship with WBR. Granting UMG and Comerica's rescission request would not only result in the immediate forfeiture of _____ it would also tie the hands of the personal representative in its future marketing efforts.

The reason that UMG is not entitled to a guarantee that its rights will not be challenged is that it did not bargain for such a guarantee in the contract with the estate. As we set forth extensively in our prior brief – and as Bremer describes on page 6 of its June 21, 2017 contractual analysis – at the time the UMG contract was negotiated, everyone understood that there was uncertainty as to the scope of rights that Prince had granted to others. Prince had only recently passed away. His death was sudden and unexpected, and his records did not clearly show all of the contracts he had negotiated, much less their full terms. *See, e.g.*, the attached email string dated August 2016 between Mr. McMillan and a UMG in-house counsel, Jeff Harleston, in which Mr. Harleston states, “Trying to figure out how to make the _____ issue work for us understanding that the _____ is a bit complicated.” As a result, the parties inserted paragraph 1.8 into the UMG contract – a dispute resolution mechanism that applies in the event the estate cannot deliver products provided for under the contract. That provision was inserted at Mr. McMillan's urging following the seventh draft of the contract, and therefore his interpretation of what that clause means should be given great weight.

Remarkably, UMG's letter does not even mention paragraph 1.8. Paragraph 1.8 is evidence that the contract was never intended to give UMG the kind of certainty that it now claims was a material and essential term, and which it now claims justifies rescission. To the contrary, uncertainty was built into the contract, and this fact is itself evidence that there was no fraudulent inducement. Everyone knew what they were getting – valuable rights in Prince's vault and in his

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released music – with the possibility that there could be competing claims that would be adjusted under paragraph 1.8.

UMG also gives far too much credence to arguments that WBR makes that simply cannot be supported by the language of the 2014 WBR settlement agreement. For example, on page 3 of its letter, UMG paraphrases WBR’s argument that the reason

(UMG letter, at 3.) However,

As the parties all agree,
is defined in reference to

But even if

We provided the Court with an expert declaration stating that the
See Declaration
of Virgil Roberts dated June, 6, 2017; *see also* paragraph 5 of Londell McMillan’s June 6, 2017 declaration.

UMG’s only response to this is that it understands that “WBR intends to present expert testimony related to the meaning of in 2014.” (UMG letter., at 6.) This contention is substantially short of even hearsay testimony. It is an indication of what someone says that he or she may present in the future. UMG – the largest record company in the world – has not provided its own declaration or statement of what it says means.

UMG also argues against the contention by Bremer, McMillan, and the SNJ heirs that the reference to

In support of its arguments, UMG refers to

However, Bremer, McMillan, and the SNJ heirs are not arguing that

See also Bremer’s full contractual analysis.

We recognize that the Court does not have an easy decision. On the one hand, it is being told that denial of rescission will result in litigation against the estate in New York or California. On the other hand, if the Court grants rescission, the estate will need to return

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will face a virtually certain loss on re-marketing in light of its apparent assent to WBR without paying anything for them, and the estate may also be subjected to future overreaching claims by WBR. Moreover, it is beyond question that there is going to be litigation no matter how the Court rules on the current rescission motion.

Thus, UMG's position that mutual rescission will resolve an intractable dispute without the expense of lengthy litigation is not true. That litigation has already been commenced.

It is also clear that the only possibility of the parties reaching a business resolution is if the Court denies rescission. That would give Comerica, UMG, and WBR the time and opportunity to try to negotiate a win-win resolution of their dispute. The estate enjoys significant bargaining leverage with respect to WBR, which, to the best of our knowledge, has not been utilized. Whatever rights WBR has

Thus, even if WBR's interpretation of its 2014 settlement agreement with Prince is upheld, at best

Furthermore, WBR also covets other special rights from the estate, such as the just approved by the Court. Thus, it is in WBR's interest as well as in the estate's interest to reach a business resolution.

For these reasons, we respectfully request that the Court deny Comerica's request for rescission.

Sincerely,



Alan I. Silver
Robin Ann Williams

AIS:ac/Attachment

cc via e-service, with attachment:

Justin A. Bruntjen
Randall Sayers
Armeen Mistry
Jeffrey Kolodny
Mark W. Greiner
Laura Halferty
James Clay

----- Forwarded message -----

From: **Harleston, Jeff** <jeff.harleston@umusic.com>

Date: Wed, Aug 31, 2016 at 3:29 PM

Subject: Re: NPG -w- UMG

To: L Londell McMillan <llm@thenorthstargroup.biz>

Cc: "Muir, Boyd" <Boyd.Muir@umusic.com>, "Anthony, Michele" <Michele.Anthony@umusic.com>

Great! Me call you?

Sent from my iPhone

On Aug 31, 2016, at 12:07 PM, L Londell McMillan <llm@thenorthstargroup.biz> wrote:

Hey Jeff: How is 3pm PST?

On Wed, Aug 31, 2016 at 8:52 AM, L Londell McMillan <llm@thenorthstargroup.biz> wrote:
Jeff, perhaps a call would be helpful. Thanks.

Londell

On Wed, Aug 31, 2016 at 2:40 AM, Harleston, Jeff <jeff.harleston@umusic.com> wrote:
Londell:

Once again I apologize for not yet responding formally. We are still very interested. Trying to figure out how to make the issue work for us understanding that the is a bit complicated.

Are you open to a deal where UMG buys out

Are you still in need of a lump sum payment to offset estate tax liability?

I will try you on my way in to the office tomorrow morning to discuss further.

Best,

Jeff

Sent from my iPad

On Aug 30, 2016, at 6:56 PM, L Londell McMillan <llm@thenorthstargroup.biz> wrote:

Trying again.... Please let me know what's up?!!!

Londell

On Tue, Aug 30, 2016 at 5:35 PM, L Londell McMillan
<llm@thenorthstargroup.biz> wrote:
Hey Jeff:

Things are moving very rapidly now and the folks are restless. We need to move very quickly and get something before them. The details we discussed during our marathon meeting should be instructive. Please let me know what else is needed from me please.

Thanks,

Londell

On Tue, Aug 30, 2016 at 8:13 AM, L Londell McMillan
<llm@thenorthstargroup.biz> wrote:
Got it, no problem.

On Tue, Aug 30, 2016 at 12:57 AM, Harleston, Jeff
<jeff.harleston@umusic.com> wrote:
Londell:

As I told you on Saturday, I had a meeting today with our management team to discuss all things Prince. We are still formulating a response on the side, taking into account the Warner Bros situation. I apologize for the delay.

Will try you tomorrow afternoon.

Best,

Jeff

Sent from my iPhone

L Londell McMillan
The NorthStar Group
8/30/2016