

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF CARVER FIRST JUDICIAL DISTRICT

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4 In Re the Estate of Transcript of Proceedings

5 Prince Rogers Nelson, File No. 10-PR-16-46

6 Deceased.

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8 The above-entitled matter came on for probate hearing
9 before the Honorable Kevin W. Eide, one of the Judges of the
10 First Judicial District, at the Carver County Justice Center,
11 604 E. 4th Street, Chaska, Minnesota, on May 10, 2017.

12 A P P E A R A N C E S:

13 Thomas Kane, Steven Silton and Armeen Mistry
14 appeared on behalf of Omarr Baker and Tyka Nelson.

15 Justin Bruntjen and Nicholas Granath appeared on
16 behalf of Alfred Jackson.

17 Nathaniel Dahl appeared on behalf Sharon Nelson,
18 John Nelson and Norrine Nelson.

19 Joe Cassioppi, Mark Greiner and Angela Aycock
20 appeared on behalf of Comerica.

21 Alan Silver and Robin A. Williams appeared with
22 and on behalf of L. Londell McMillan.

23 Alex Loftus, Jennifer Santini and Andrew
24 Stoltmann appeared on behalf of Brianna Nelson and V.N.

25 David Crosby and Laura Halferty appeared on
behalf of Bremer Trust National Association.

Marc Berg appeared on behalf of
Venita Jackson Leverette.

Cameron Parkhurst appeared on behalf of
Darcell Gresham Johnston

Jacqueline J. Knutson, Official Court Reporter

1 THE COURT: All right. Good morning, Ladies
2 and Gentlemen. I did have an opportunity to meet with
3 the attorneys here today. I think the manner or the
4 order in which we will handle things today are the motion
5 requesting that the Court make a formal order determining
6 the heirs of the Estate of Prince Rogers Nelson;
7 secondly, that we address the motion for dismissal of the
8 claims of Brianna Nelson against Paisley Park and others;
9 that, third, we will address an issue regarding the
10 quashing of a subpoena that has been served on L. Londell
11 McMillan; and then, finally, that we will address an
12 issue regarding the dissemination of information from the
13 personal representative to heirs or their designated
14 representative regarding any licensing agreements that
15 may occur.

16 I have indicated to counsel that I will ask
17 them to be conscience of any information that has been
18 deemed to be confidential business transactions and that
19 we address that in a manner that we will proceed with as
20 much as we can in open court.

21 If necessary -- if there are comments that you
22 feel are necessary regarding confidential information,
23 that at the end of this hearing we would close the
24 hearing to the media and public and continue with it. Or
25 my preference would be that you could submit it under

1 seal after the fact.

2 With respect to the first matter of discussion,
3 the designation of the heirs of the Estate of Prince
4 Rogers Nelson, I did present to counsel a summary of some
5 thoughts that I had.

6 The Court has been concerned about the fact
7 that this matter is before the Court of Appeals, and at
8 least two separate categories of appeals by heirs that
9 this Court has excluded, and that those appeals are
10 ongoing and that there may be a stay of proceedings that
11 presents the District Court from addressing issues
12 regarding a determination of heirs.

13 I presented to counsel a manner of drafting an
14 order that I would hope would protect the interests of
15 those excluded heirs that are before the Court of
16 Appeals, or similarly situated individuals, and I'm
17 inviting counsel to address any comments regarding the
18 Court's thoughts in that regard.

19 So with that, we will formally go on the record
20 in the matter of the Estate of Prince Rogers Nelson.
21 This is Court File PR-16-46.

22 We will also be addressing the matter of
23 Brianna Nelson versus Paisley Park Facility, LLC; Bremer
24 Trust NA; Norrine Nelson; Sharon Nelson; John Nelson;
25 Tyka Nelson and Omarr Baker and Alfred Nelson. This is

1 in Court File CV-17-37.

2 The first matter, as I said, is the
3 determination of heirs issue, and I believe a motion was
4 filed with the Court that I think was signed by all heirs
5 or counsel for all of the non-excluded heirs.

6 Who would like to address it first?

7 MR. KANE: Thomas Kane, Your Honor. We
8 represent Omarr Baker, Tyka Nelson. And Mr. Bruntjen
9 represents Alfred Jackson, also joined with us on that
10 issue.

11 I only have --

12 THE COURT: Mr. Kane, your announcing your
13 appearance makes me realize that I forgot to get all of
14 the attorneys to announce theirs, so if I could just ask
15 you to have a seat for a minute.

16 And we have the appearances for Mr. Kane and
17 Mr. Bruntjen. Can we start over on my left and work
18 around the courtroom and get the other appearances.

19 MS. MISTRY: Sure. Armeen Mistry, Your Honor,
20 on behalf of Omarr Baker and Tyka Nelson.

21 THE COURT: Could I get a spelling of the first
22 and last name?

23 MS. MISTRY: I have a card as well to give to
24 the court reporter. A-R-M-E-E-N. Last name is
25 M-I-S-T-R-Y.

1 MR. SILTON: Steven Silton, Your Honor, on
2 behalf of Omarr Baker and Tyka Nelson.

3 MR. GRANATH: Nicholas Granath on behalf of
4 Alfred Jackson.

5 THE COURT: Nicholas, your last name?

6 MR. GRANATH: G-R-A-N-A-T-H, Your Honor.

7 THE COURT: Thank you.

8 MR. CROSBY: David Crosby and Laura Halferty on
9 behalf of Bremer Trust, the former special administrator.
10 I'll move up when our motion is up.

11 MR. LOFTUS: Alex Loftus for Brianna Nelson and
12 the minor, V.N.

13 THE COURT: Can I get the last name again?

14 MR. LOFTUS: Loftus.

15 THE COURT: Okay.

16 MS. SANTINI: Jennifer Santini, also for
17 Brianna Nelson and V.N.

18 MR. STOLTMANN: Andrew Stoltmann for Brianna
19 and V.N.

20 MR. SILVER: Good morning, Your Honor. Alan
21 Silver on behalf of L. Londell McMillan.

22 MS. WILLIAMS: Good morning, Your Honor.
23 Robin, R-O-B-I-N; Ann, A-N-N; Williams, W-I-L-L-I-A-M-S,
24 for L. Londell McMillan.

25 MR. DAHL: Nathaniel Dahl on behalf of Sharon,

1 Norrine, and John Nelson.

2 MR. CASSIOPPI: Good morning, Your Honor. Joe
3 Cassioppi and Mark Greiner on behalf of Comerica. We
4 also will be here representing Paisley Park Facility,
5 LLC. And with us here today from Comerica is Angela
6 Aycock.

7 MR. BERG: Marc Berg, M-A-R-C, B-E-R-G, here on
8 behalf of Venita Jackson Leverette.

9 MR. PARKHURST: Good morning. Cameron
10 Parkhurst here on behalf of Darcell Gresham Johnston.

11 THE COURT: Thank you.

12 Mr. Kane, I've had you in front of the Court
13 enough. We have a microphone that is giving us some
14 static. And, unfortunately, it's the one in front of
15 you, so I'll just ask you to speak loudly.

16 MR. KANE: Thank you, Your Honor.

17 Again, Thomas Kane, appearing relating to the
18 motion to determine heirs.

19 The -- first, let me address what I think are
20 the major issues that have been raised by the people who
21 opposed that motion, and that is that they do not believe
22 they are adequately protected by the statute. And they
23 don't believe that they are adequately protected by the
24 Court order in the event that the one-year time period
25 that's in the statute goes by and they somehow will be

1 precluded from proceeding.

2 We believe, Your Honor, as we've indicated in
3 our papers, that they -- that it is an incorrect reading
4 of the statute. Minnesota Statute 524.3-412 says:
5 "Formal Testacy Proceedings; Effect of Order; Vacation."
6 And it goes on to read, "Subject to appeal and subject to
7 vacation..."

8 All of those words have been precluded from
9 most of the briefs provided by the individuals who have
10 objected to the determination of heirs.

11 It is clear to us, Your Honor, that that
12 statute was designed exactly for this situation; namely,
13 to protect people in the situation whose case is on
14 appeal. And, therefore, it says specifically, "subject
15 to appeal and vacation..."

16 The second part is I would read down to
17 Romanette 3, under arabic 3, it says, "12 months after
18 entry of the order sought to be vacated."

19 That's our main basis for making an argument.
20 We want that 12-month period start to run. And the
21 purpose of that 12-month period is, once this Court signs
22 an order, everybody in the world has 12 months to make a
23 claim. And we have already had a little over a year
24 since Prince's death, so we would have had, in essence, a
25 little over two years for everybody in the world to make

1 a claim. And we've had during this period of time people
2 from all over the United States and outside the
3 United States come forward and make claims.

4 So I don't think, even though I obviously don't
5 know, that this hasn't been disseminated throughout the
6 whole world, that everybody basically knows -- who knew
7 of Prince knows that he died. And so if there's any
8 claim, I think they are well protected.

9 And the statute contemplates the one-year
10 period of time. The statute imposes on the parties who
11 are running the estate, who is Comerica, and it imposes
12 on the Court to set that time period to start to run.

13 So when the Court rules, which we request that
14 it do so this week or next week or whenever it chooses to
15 do so, if it does do so, everybody will have one-year to
16 make a claim.

17 Now, as to those people who are already on
18 appeal, they are covered by the first half a dozen words
19 of the statute. They are on appeal, so they are fully
20 protected.

21 And as we talked off the record, the issue was
22 raised, well, what about those folks who actually aren't
23 subject to the appeal because they didn't appeal. There
24 are other people, but they are in the same situation. If
25 the Court puts that language in, "similarly situated," I

1 think that will be adequate to protect them as well.

2 So as it relates to the statute and the common
3 law, everybody is fully protected, the people who are on
4 appeal and the people who have made a claim.

5 Finally, the only other issue that I'd like to
6 address is that, as I was taught many years ago when I
7 first started practicing law, the only way to reduce
8 costs in litigation is to reduce the time.

9 These lawyers will fill the time no matter
10 what. And so we need to end the time. And we need to
11 start the time as quickly as possible and end the time.
12 Because the longer it runs, the greater the costs are to
13 the Estate, the greater the costs are to the heirs and
14 potential heirs, and the greater dissipation of the
15 assets.

16 So, for those reasons, Your Honor, we would
17 request the Court enter the order that we proposed or
18 something similar.

19 Unless the Court has some questions, I'll sit
20 down.

21 THE COURT: Thank you.

22 Mr. Bruntjen.

23 MR. BRUNTJEN: Your Honor, I would just like to
24 say that I agree with everything Mr. Kane said. I would
25 just like to add -- I mean, I think the heirs have waited

1 long enough. It's time to make a determination and let
2 the clock start running.

3 THE COURT: Thank you.

4 I'm going to let Mr. Cassioppi go next and
5 raise the issue regarding the issue of the intestacy that
6 you raised.

7 MR. CASSIOPPI: Yes, Your Honor, a few things.
8 First, from a procedural standpoint, we support the
9 motion of the non-excluded heirs. From the procedural
10 standpoint, the Court has done everything it needs to do
11 to enter this order.

12 No person has credibly challenged the fact that
13 any of the six non-excluded heirs are anything but that,
14 the heirs of the decedent.

15 No person has come forward with a will. And
16 Bremer Trust, the former special administrator, did a
17 substantial and thorough search for a will. None was
18 found. And so the Court is at a position now where it
19 is -- this issue is ripe and the time has come, in our
20 view, to enter this order.

21 We support everything that Mr. Kane stated, but
22 wanted to emphasize a few points. We, just within the
23 last two or three weeks, received yet another individual
24 wanting -- applying to be tested for DNA and to be
25 determined whether he was a child of the Decedent. And

1 that coincided with the one-year anniversary of Prince
2 Rogers Nelson. Our concern is and why we support this
3 one-year clock getting started is that if we don't do
4 that and if we wait until every single person who brings
5 a challenge, their challenge goes all the way through the
6 Courts and this could go for years. And so in the
7 interest of finality and certainty, we support this
8 order.

9 The point that the Court raised as to
10 intestacy, the Court has entered a number of orders in
11 this matter that are premised upon the fact that Prince
12 Rogers Nelson died without a will. And, in fact, the
13 Court has in certain orders made specific findings to
14 that effect.

15 But just like how a determination of heirship
16 starts the one-year clock running on any new heirs coming
17 forward, a determination of intestacy does the same
18 thing.

19 So if the Court as part of this order, which --
20 and the non-excluded heirs specifically requested this
21 relief in their petition. If the Court as part of its
22 order determined that Prince died without a will, it will
23 start a one-year clock for anyone to come forward with a
24 will. And if they don't, then that ends the matter under
25 the Minnesota Probate Code.

1 And so for the same reasons why we want a
2 determination of heirship -- certainty, finality -- we
3 also ask the Court formally enter an order that Prince
4 Rogers Nelson died intestate, without a will, so that we
5 can start that one-year clock running for the time for
6 anyone new to come forward with a will.

7 THE COURT: I'd invite anyone else that wishes
8 to address this issue. When you do so, please give us
9 your name. And, secondly, try not to be repetitious.

10 MR. LOFTUS: Alex Loftus for Brianna Nelson.

11 THE COURT: Okay.

12 MR. LOFTUS: Your Honor, the issue here with
13 the timing is the issue currently up on appeal could
14 create new avenues for additional heirs that haven't
15 brought claims presently. So what could happen is if a
16 ruling on the appeal -- in one of the two appeals six
17 months from now, eight months from now, ten months from
18 now -- if ten months from now we have a ruling on appeal,
19 it creates a law or creates a new avenue for heirs to
20 claim and then people are left with only two years to
21 file -- two months to file their claim. And that's --
22 the whole purpose of the statute is that you have
23 one-year from the time that you knew you potentially had
24 a claim.

25 So if the appellate court makes a ruling that

1 opens the door, then any outstanding claimant would be
2 incredibly prejudiced if they only had the two months
3 left to claim.

4 The other issue is -- I'm new to this case, and
5 I've read everything coming in. I've seen that
6 everything has been handled very carefully and
7 cautiously. It's been, you know, kind of a "measure
8 twice, cut once" case all through the proceedings. And
9 as of January, it was too soon to determine the heirs.
10 And as of January, I'm sure everything is the same as it
11 was now. Nothing has changed since then.

12 In order to, you know, grant this motion, the
13 potential risk of creating, you know, a determination of
14 heirs, everything that follows from that and the risk of
15 having to unwind all of that and the expense of having to
16 unwind that weighed against potentially waiting
17 another -- I mean, to enter any of the motions in three
18 months to wait on one of the appeals, or six months later
19 when the other appeal is on.

20 THE COURT: Let me throw this out -- and I
21 throw it out as a question to you but to the media and
22 the public as well. It's very possible that the Court of
23 Appeals would say, "Judge Eide, you didn't do everything
24 you needed to do. We are remanding it back to the
25 District Court for further proceedings."

1 And then we do what we need to do down here,
2 and I make a determination yes or no, thumbs up or down
3 regarding the heirs. And then it goes back up to the
4 Court of Appeals, and then there is a request that the
5 Supreme Court review it. We could be looking at a couple
6 of years before we could make this determination.

7 MR. LOFTUS: No one is asking you to wait a
8 couple years. What's being requested is to
9 immediately determine heirs.

10 THE COURT: What I'm asking is: What's going
11 to be different in three months?

12 MR. LOFTUS: The appellate court could -- well,
13 we could lose in appeal. Or the other appeal could lose.
14 Or, you know, it depends on how we lose the appeal too.
15 The way that order is entered could change, you know, how
16 to handle the case.

17 So the harm of waiting for a couple months
18 until that appeal is decided, weighed against the harm of
19 making a decision too early and the potential risk of the
20 appeals being successful and the mess that would ensue
21 and the expense that would ensue compared to just a
22 couple of months of simply entering a continuance order,
23 I guess that's all that needs to be done. It doesn't
24 need to be denied. Just simply enter and continue it.
25 Hang on to the order. You can enter an order the day the

1 appellate ruling comes out.

2 THE COURT: What is the briefing schedule or
3 oral argument schedule or the timing that you would
4 anticipate the Court of Appeals making a decision in your
5 matter?

6 MR. LOFTUS: My brief -- my reply brief is due,
7 I think, on the 18th. And then they have the argument,
8 what's that, about 60 days out. And they have to rule
9 within 90. My assumption is -- I'm not terribly familiar
10 with Minnesota Appellate Court, how they handle things,
11 but if they're aware that there is an urgency, hopefully
12 things would move faster.

13 THE COURT: By your schedule, I think I can
14 extrapolate that the Court of Appeals would rule probably
15 by October.

16 MR. LOFTUS: Okay. So we're talking about
17 waiting until October versus all the attendant risks to
18 enter an order too soon. It's the balancing of that,
19 which it seems like the cautious, measured approach would
20 be to enter a continuance until October.

21 THE COURT: You've looked at my thoughts or
22 jottings that I disseminated in our meeting a few minutes
23 ago, and you've heard Mr. Kane's comments about the way
24 the statute is written. You don't believe that your
25 clients would be protected?

1 MR. LOFTUS: Not entirely.

2 THE COURT: Or I should say your clients or
3 similarly situated people.

4 MR. LOFTUS: I'll be honest, Your Honor. If
5 this was a question of waiting for three years versus
6 adopting what you proposed, then what you are proposing
7 makes sense.

8 If it's a question of waiting until October,
9 might as well not create the risk of -- there's all sorts
10 of things. I mean, we're smart lawyers. We can pick at
11 that order forever. It's just not worth the risk for
12 just a couple months.

13 And then -- certainly this is not -- by
14 entering and continuing the motion, come October you
15 could enter what then makes sense then to enter that type
16 of order. But for now, after how long we have already
17 waited versus how much longer we need to wait for a
18 determination of the appeals, it just seems that the safe
19 course is to hang on for a couple more months.

20 THE COURT: Okay. Thank you.

21 Continuing around the room.

22 MR. BERG: Your Honor, Mark M. Berg on behalf
23 of Venita Jackson-Leverette.

24 Venita Jackson-Leverette is a party to the
25 first filed appeal with respect to your protocol order.

1 That is what we appeal. Our appeal is scheduled for oral
2 argument at the end of June. The argument -- I don't
3 want to add much to what we put in our memorandum of law
4 that we filed and that the other parties have responded
5 to. We do just have a side note. We do not want this
6 matter to drag on forever. Nobody does. All that we're
7 asking is that the determination of heirship, with all
8 the -- with everything that that incidentally implies, be
9 deferred until after the appeals. Now, we don't want
10 that to run on forever. We appreciate the work that the
11 Court put into the proposals that you discussed with us
12 back in chambers.

13 We also appreciate the pointing out that it's
14 unclear as to whether or not this order at this point
15 would be subject to a stay of proceedings because the
16 matter-related issue is on appeal.

17 What we struggle with, however -- first of all,
18 I agree with everything Mr. Loftus says about we think on
19 balance that there will be more harm than good in not
20 deferring this decision until some later point in time.

21 Second, I'm not clear what the compulsion is to
22 need to determine heirs at this point. From what I saw
23 from the moving papers was simply an *a fortiori* argument,
24 that it's time to do this now, although nothing has
25 changed since January.

1 THE COURT: Could you define your Latin term
2 for my court reporter?

3 MR. BERG: Okay. Just, you know, by the mere
4 fact of -- by the mere fact.

5 THE COURT: And can you say it one more time?

6 MR. BERG: A fortiori.

7 THE COURT: Thank you.

8 MR. BERG: I see from the motion they don't
9 want to do anything with respect to distributing assets
10 or anything that substantive, and so it's kind of unclear
11 to me why that requires a compulsion that they determine
12 heirs now.

13 And, also, if they are confident that they are
14 going to be determined as heirs right now, again, I'm not
15 seeing what the compulsion is to do this now.

16 We would respectfully weigh that this be
17 deferred at least until -- at least until the first round
18 of the Court of Appeals with respect to our appeal, which
19 is consolidated with the Gresham Johnston appeal, as well
20 as the Brianna Nelson and V.N. appeal, be determined by
21 the Court of Appeals along with the 30-day period for
22 either party to seek further review from the Supreme
23 Court. At least to revisit it then.

24 THE COURT: Thank you.

25 Mr. Parkhurst, any thoughts?

1 MR. PARKHURST: Your Honor, I won't belabor it,
2 representing Darcell Gresham Johnston.

3 Mr. Loftus and Mr. Berg have made some very
4 great points. I think that if you are inclined to make a
5 determination now, that other "similarly situated"
6 language that we discussed, I think, is pretty important
7 because of the one statute that has the "and" piece where
8 they didn't know about death and, as in this case, it was
9 hard to argue his passing, that Prince Rogers Nelson had
10 died.

11 So that would be my one caveat if you are
12 inclined to do it now, but I also agree with them that a
13 short period of -- a shorter period of time would not
14 cause a problem.

15 Thank you.

16 THE COURT: Thank you. Anyone else?

17 MR. DAHL: Yes, Your Honor. Nathaniel Dahl on
18 behalf of Sharon, Norrine, and John Nelson. We join in
19 the request for determination of heirs. As presented by
20 the Court in the proposed order that we had discussed,
21 that would protect the interests of the appellant.

22 The issue is: What do we do about additional
23 claims? We want to avoid having the Estate spend
24 resources into perpetuity addressing those matters and
25 start the statutory deadline.

1 THE COURT: All right. Anyone else?

2 All right. We will close the hearing with
3 respect to that issue.

4 MR. PARKHURST: I think our party -- can we be
5 excused?

6 THE COURT: Why don't we just take a two-minute
7 recess here. Let some people move around. If there is
8 somebody at the table that doesn't feel that you're going
9 to be needing to be heard on the other matters, perhaps
10 you could yield to other counsel.

11 MR. PARKHURST: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Recess in the proceedings.)

14 THE COURT: All right. We'll go back on the
15 record. The second matter before the Court today is that
16 of the complaint by Brianna Nelson versus Paisley Park
17 Facility and the other Defendants I previously noted.

18 A motion for dismissal under Rule 12 of the
19 Minnesota Rules of Civil Procedure has been brought. I
20 don't know exactly who brought the motion for dismissal
21 to start out with, but a memorandum has been filed with
22 the Court and it's been signed by attorneys for Comerica,
23 as well as for, I think, all but one of the non-excluded
24 heirs. And I'm going to let Mr. Cassioppi start us out.

25 MR. CASSIOPPI: Thank you, Your Honor.

1 As you just mentioned, we are here on actually
2 two motions to dismiss: one brought by Paisley Park
3 Facility, LLC, and then five of the non-excluded heirs,
4 everyone with the exception of Ms. Tyka Nelson.

5 And then Bremer Trust has its own separate
6 motion to dismiss that Mr. Crosby will be addressing
7 because there is -- there are two substantive claims that
8 are brought against Bremer Trust specifically.

9 The Plaintiff here, Brianna Nelson, raises four
10 substantive claims arising out of a draft consulting
11 agreement between Paisley Park and the Plaintiff related
12 to the Paisley Park museum.

13 First, there is a breach of contract claim, and
14 the Defendant in that claim is only Paisley Park
15 Facility, LLC.

16 Second, there is a promissory estoppel claim,
17 and that is asserted only against Bremer Trust.

18 Third, there is a tortious interference claim,
19 and that is asserted only against the non-excluded heirs.

20 And, fourth, there is a fraudulent inducement
21 claim that is asserted against all Defendants.

22 And we in our motion are moving to dismiss all
23 four of those claims against all Defendants. And the
24 reason for that is that as a matter of law, just on the
25 pleadings -- and the pleadings encompass the exhibits to

1 the pleadings, including the draft consulting
2 agreement -- just on the pleadings and the allegations in
3 the pleadings, Ms. Nelson has not asserted or adequately
4 pled any of her claims as a matter of law.

5 Let's start with the breach of contract claim.
6 There are at least two fatal flaws with that claim, based
7 upon the way it's pled in the complaint.

8 First, the draft consulting agreement, which is
9 attached as an exhibit to the complaint, is not signed by
10 Paisley Park Facility.

11 THE COURT: Can I stop you for a moment?

12 MR. CASSIOPPI: Yes, Your Honor.

13 THE COURT: It's referred to in your memorandum
14 as a "draft consulting agreement." I'm familiar with
15 documents that have been drafted by attorney's offices
16 that have, I'll call it, a "watermark" type of thing
17 where it says "draft" across the front of it. Was there
18 anything about this document that identified it as a
19 draft?

20 MR. CASSIOPPI: Based upon the allegations in
21 the pleading, in the complaint, and the actual document,
22 there was no watermark or anything of that nature. It
23 was sent to Brianna Nelson unsigned by Bremer Trust or
24 any of its representatives. But that is all we have in
25 the record currently before the Court. So no watermark

1 or anything of that sort.

2 THE COURT: So I'm going to tell you and the
3 other counsel that perhaps something that I'm most
4 interested with respect to this argument is -- to go back
5 to contract law 101 in our law school days -- there's an
6 offer. You send the agreement, and there is an
7 acceptance, you sign it and you return it. Address that
8 now or whenever it fits into your argument.

9 MR. CASSIOPPI: Yes. We cited the asbestos
10 products decision from the Minnesota Supreme Court on
11 that point, Your Honor. And that is, yes, under basic
12 contract law, if I make an offer and you accept it, under
13 many circumstance that creates a contract. But there is
14 an exception to that, and that exception is that if
15 parties reduce an agreement to writing and specifically
16 make the fact that the agreement is not final until
17 that -- until the writing is signed by both parties, then
18 you don't have a contract unless it's signed by both
19 parties.

20 If you look at the agreement here, which we can
21 because it's in the record, it has some language on it
22 that states -- above the signature block that states
23 "accepted and agreed." And based upon that language, we
24 are within that exception recognized by the Court in the
25 asbestos products case where, despite the fact that one

1 party sends a contract and the other party signs it,
2 there's not a valid agreement because the parties using
3 the language that they chose to use in the agreement
4 specifically made both parties signing it a condition
5 precedent to the agreement being finalized. So for that
6 reason, based on the asbestos products case, there was
7 not a final binding agreement here.

8 In her response, Ms. Nelson points out that
9 there's an exception to the exception. And that is also
10 recognized in the asbestos products case, which is that
11 if you have an agreement that is set forth in writing and
12 only one party signs it, or even if no one signs it but
13 the parties actually move forward and start performing on
14 it, well, then you can have an agreement even if it isn't
15 signed.

16 The problem with that exception is that it
17 doesn't apply here, based upon the allegations in
18 complaint. There are no allegations in the complaint
19 that the Plaintiff here did anything to perform under
20 this agreement after she signed it. Because of that, the
21 exception to the exception does not apply.

22 The second reason why this agreement cannot
23 form the basis for being a contract claim is that this
24 agreement required court approval. The Court in
25 June entered an order June 8, 2016, and at that point --

1 and this is important -- Brianna Nelson was an interested
2 party. She was receiving notices of all filings entered
3 by the Court.

4 On June 8th, the Court entered an order that
5 requires specific court approval for any, quote,
6 "entertainment or intellectual property exploitation
7 agreement which the Estate grants rights that extend
8 beyond November 2nd, 2016."

9 Because the consultancy agreement here had a
10 one-year term and it was related to an estate
11 entertainment asset, it required court approval to be
12 effective and binding.

13 And, in fact, with respect to the six other
14 consultancy agreements that Paisley Park Facility entered
15 into with the non-excluded heirs, Bremer Trust sought and
16 obtained court approval before those agreements were
17 approved.

18 THE COURT: Can you tell me where that is in
19 the record?

20 MR. CASSIOPPI: The Court entered an order on
21 November 8, 2016, approving consultancy agreements. You
22 see that that order was filed under seal, but the Court
23 did, in fact, enter that order on that date.

24 THE COURT: Thank you.

25 MR. CASSIOPPI: And so based upon the plain

1 language of the Court's June order, this agreement could
2 not be valid and binding until the Court approved it.
3 Ms. Brianna Nelson is presumed to have knowledge of that,
4 having received a copy of the June order. And,
5 therefore, this agreement, unsigned agreement, cannot
6 form the basis of a breach of contract.

7 The next claim is tortious interference, and
8 this claim, as I mentioned, is asserted only against the
9 non-excluded heirs. Here too there are two fundamental
10 problems with the Plaintiff's claim.

11 The first is the claim is premised on the
12 existence of a valid and binding contract, the tortious
13 interference with a contract. So for the reasons we just
14 discussed, there is no valid and binding contract, and so
15 one of the essential elements of the tortious
16 interference claim has not been met.

17 The second reason why this claim fails as a
18 matter of law is, in addition to the requirement that
19 there be a contract that was interfered with, Plaintiff
20 was required to plead that the non-excluded heirs engaged
21 in an action that was either independently tortious or in
22 violation of state or federal law or regulation.

23 Here, if you look at the allegations and
24 complaint, the only allegation against the non-excluded
25 heirs upon which the Plaintiff here basis or approaches

1 interference claim is in paragraph 27 of the complaint.
2 And it states: "Upon information and belief, the
3 individual Defendants have induced Bremer Trust and
4 Paisley Park to breach the expeditious consultancy
5 agreement."

6 That's it. And so there is no allegation of
7 independent tort. There is no allegation of any
8 violation of state or federal laws or regulation that
9 would give rise to a tortious interference claim. For
10 that reason, Plaintiff has not pled an adequate claim.

11 If you look at her opposition, Ms. Nelson
12 requests a leave to amend, but the Court shouldn't grant
13 doing that on this count because any amendments would be
14 futile. The only grounds for proposed amendment that are
15 set forth in the opposition is a reference to, quote,
16 "e-mail exchange detailing the fact that the corporate
17 Defendants required that all heirs had to assent to
18 payment to Brianna." Again, this suffers from the same
19 problem. There is no allegation of a tort. There is no
20 allegation of a violation of a law or regulation.

21 And so for those reasons, the Court should not
22 grant leave to amend because then the amendment would be
23 futile.

24 Briefly, on the last two claims, fraudulent
25 inducement. We set forth in our brief why there is not

1 an adequately pled fraud claim as to any of the specific
2 elements of a fraud claim under Minnesota law, and I want
3 to talk about just two of them here today.

4 First, this is a fraudulent inducement claim,
5 and it is a fraudulent inducement claim based upon fraud
6 by omission. And to plead a fraud by omission claim
7 under Minnesota law, the Plaintiff needs to plead with
8 particularity, among other things, that the Defendant had
9 a legal or equitable duty to communicate facts to the
10 Plaintiff. There is no such allegation in the complaint
11 here, so for that reason alone the fraudulent inducement
12 claim fails.

13 Second, the Plaintiff was required to plead
14 with particularity reliance. And what she alleges as far
15 as reliance is that she was induced to give up objection
16 she had to Graceland Holdings operating the Paisley Park
17 museum based on this consultancy agreement.

18 But there's a temporal problem here, and that
19 is Brianna Nelson gave up any objection to Graceland
20 operating the museum during August, and it wasn't until
21 October that she received this consultancy agreement. So
22 it is impossible, as a matter of fact and as a matter of
23 law, for Brianna Nelson to have relied on a contract that
24 she did not receive for another two months to give up any
25 potential claims or objection to Graceland Holdings

1 operating the museum.

2 So for those reasons and the reasons set forth
3 in our brief, there is not a valid fraud claim here.

4 Finally, for promissory estoppel, that is
5 served only against Bremer Trust. But to the extent that
6 that is construed as being in reality a claim against the
7 Estate, it fails for three reasons.

8 First, there is no valid or enforceable
9 promise. The only promise that is alleged here is, well,
10 the draft consultancy agreement was sent to me. A
11 promissory estoppel claim does not lie simply because the
12 parties did not finalize the contract. And without some
13 sort of other or additional affirmative promise, there is
14 no valid claim.

15 Second, Ms. Nelson needs to plead reliance.
16 And she pleads the exact same reliance that she pleads
17 with respect to her fraud claim: I relied on this
18 promise about the consultancy agreement in giving up
19 objection two months earlier.

20 Well, it's that same temporal problem. She
21 gave up those objections in August, didn't receive this
22 agreement from Paisley Park until October.

23 Finally, the Plaintiff has not pled justice.
24 She has not pled any out-of-pocket damages, any
25 out-of-pocket costs, anything else that would give rise

1 to injustice upon which a promissory estoppel claim would
2 attach.

3 So for all of those reasons, we respectfully
4 request that the Court grant our motion to dismiss and
5 dismiss all claims against all Defendants with prejudice.

6 THE COURT: Okay. Why don't you go ahead with
7 respect to Bremer, Mr. Crosby.

8 MR. CROSBY: Thank you, Your Honor. I'll speak
9 up with no mike, but I will be short.

10 All the claims in the complaint with respect to
11 Bremer are aimed at Bremer and its role specifically as
12 special administrator; in other words, a fiduciary to the
13 Estate. It is no longer a fiduciary to the Estate. That
14 role now is being fulfilled by Comerica. And so, as we
15 noted in our brief, on the substantive arguments that
16 Comerica relied upon, we adopt those arguments as well.

17 As for the procedural argument as to why Bremer
18 Trust itself should not be a Defendant in the case, we
19 will rely upon what we put in our brief. Unless you have
20 any questions, I'm happy to sit down.

21 THE COURT: Thank you, Mr. Crosby.

22 All right. Who would like to speak in favor of
23 the motion at this point?

24 MR. DAHL: Yes, Your Honor.

25 THE COURT: Mr. Dahl.

1 MR. DAHL: Your Honor, joining in the motion
2 for dismissal -- and I don't have anything to add with
3 respect to the pleadings. I just want to particularly
4 note the lack of specific allegations involving my
5 specific clients: Sharon, Norrine, and John Nelson.
6 It's sufficient as a matter a law, but for purposes of
7 the complaint, we ask that it be dismissed.

8 Thank you.

9 THE COURT: Thank you. Give me just a minute.
10 All right. Anyone else?

11 All right. Who would like to speak against the
12 motion?

13 MR. LOFTUS: Alex Loftus for Brianna Nelson.

14 I'll start with the contract formation. So the
15 contract formation is a question of intent. Here you can
16 infer a lot of the intent from the offer that was sent.
17 The offer doesn't have any markings that indicate it's a
18 draft. The offer is dated August of 2016. There's no
19 future dating in there. There is no reference to court
20 approval included in the offer. There's no express
21 language as to any condition requiring signature for
22 performance. So that's all right included in the offer.

23 The other thing that's included in the offer,
24 and it's most important to -- I'll keep on addressing it
25 as we go forward -- is performance. So the offer defined

1 what performance is required of Ms. Nelson, and it is
2 extremely minimal.

3 Full performance is don't sell any memorabilia.
4 Don't otherwise give it away or make it unavailable. So
5 the key thing is that she had stuff and that her stuff
6 and the other people who signed consultancy agreements
7 may be useful to the museum. They don't know what it is,
8 but just hang on to it. And all you have to do to fully
9 comply is hang onto this stuff. And then, if we want you
10 to come do an interview or come do something, be
11 available for it.

12 It doesn't say she'll take two interviews per
13 year. It doesn't say, you know, attend the facility on
14 these holidays. It just says "be available." It's this
15 extremely low standard. And that's in -- you know, part
16 1A is the "be available" language, and part 4B is, "Do
17 not do anything to impair ownership of material," which
18 is the memorabilia stuff.

19 The other thing that goes to what Defendants
20 knew is part B, which is just kind of a whereas
21 provision: "Consultant possesses certain unique
22 information, history, stories, photographs" --

23 THE COURT: Slow down.

24 MR. LOFTUS: Oh, I'm sorry.

25 "Consultant possesses certain unique

1 information, history, stories, photographs, and other
2 memorabilia about Prince."

3 So in the offer, they communicate that you,
4 Brianna, have stuff that we want. Hang on to it. So
5 what does Brianna do? She hangs onto the stuff. She
6 doesn't sell any of it. Right when -- right after Prince
7 died, that summer and into that fall, that's when all
8 this memorabilia had peak value. And she didn't sell any
9 of it. Now it's been -- outside of this little area of
10 Minnesota, Prince is just -- is not fresh news and not a
11 hot commodity. But she didn't sell any of her
12 memorabilia during that time. She didn't go try and make
13 any other deals to sell her rights to her stories or to
14 do more interviews. So she didn't -- she limited herself
15 in reliance on this agreement during that time period.
16 These are all valuable commodities, whether it's the
17 things, her time, her stories. These are all valuable
18 items that she didn't otherwise sell or transfer to
19 anyone else on reliance of the agreement. I mean, it's a
20 low standard for what performance is, but she fully
21 performed every part of this agreement.

22 The other issue is when we get to the Court
23 approval, which may be an affirmative defense, but this
24 is an extremely fact-intensive inquiry as to whether
25 performance was possible. Essentially, that's what they

1 are arguing, that they could not perform because of court
2 approval.

3 But I don't understand why -- and it will be a
4 weird issue to litigate as the case goes on -- the Court
5 wouldn't approve this. There's nothing wrong about it.
6 It's not argued that the Court would never approve this
7 agreement. It's just this -- you know, the connection
8 between court approval is necessary and the court
9 actually not approving it. That's their burden to prove
10 in an affirmative matter. And at this stage on a motion
11 to dismiss with no affidavit before the Court, they just
12 can't get there.

13 The other thing that's interesting is that the
14 Court order asking for approval of the contract is three
15 and a half months after the contract is dated in August.
16 This was long after, you know, Ms. Nelson signs the
17 agreement that there is any court order regarding
18 approval. And, again, this may be an appropriate
19 affirmative defense to litigate later, but it's not a
20 basis for a motion to dismiss.

21 The other thing, as to formation, so you
22 have -- you have the offer communicated. Then you
23 have -- Brianna does -- fully performs by this minimal
24 performance necessary. And then after that, during her
25 performance, it's communicated by Defendants that we are

1 going to pay you. We're awaiting payment. The payment
2 is delayed for X, Y, Z reason. Nothing about we don't
3 have an agreement, we never agreed to this. Instead,
4 it's explaining delays for why payment hasn't come,
5 which, again, is operating against their performing and
6 operating pursuant to the agreement that already existed.

7 Moving on to tortious interference. As pled, I
8 think we have it titled as "Tortious Interference With
9 Contract." Here in Minnesota we can also -- we don't
10 need to have -- actually have an existing contract for a
11 tortious interference claim. It can be tortious
12 interference for economic opportunity. Even if there
13 weren't a contract in existence, there clearly was the
14 potential for a contract that was known to all the
15 Defendants. And that would be sufficient even if the
16 Court found a contract didn't exist. You'd still have a
17 tortious interference claim of that sort.

18 THE COURT: How was it tortuously interfered
19 with?

20 MR. LOFTUS: The economic --

21 THE COURT: According to the pleadings.

22 MR. LOFTUS: According to the pleadings, it's a
23 contract. The complaint is drafted pretty narrow.

24 THE COURT: But who did what to interfere with
25 the performance in the contract?

1 MR. LOFTUS: I can't address that fully without
2 getting beyond the pleadings. So, no, it requires
3 amendment. There should be a lot more meat on the bones.
4 I'm kind of Monday morning quarterbacking this, but --

5 THE COURT: Okay.

6 MR. LOFTUS: -- it needs more meat. I'll be
7 perfectly honest.

8 And then, in responding to the motion to
9 dismiss, I can't add more meat to it without turning it
10 into a motion for summary judgment. I would rather have
11 leave to amend to add to that than fight a motion for
12 summary judgment by adding a bunch of new evidence in
13 response. Procedurally, it seems safer that way.

14 We have some of the same issues on the
15 fraudulent inducement with lack of meat on the bones. We
16 still -- we covered every element necessary to the stated
17 claim of fraudulent inducement. The key issue that was
18 addressed was duty. And this is a fundamental thing that
19 comes up over and over again in fraud cases. You have a
20 duty to tell the truth the moment you open your mouth,
21 and that's just fundamental. So when Defendants
22 communicated this offer, they assumed the duty to be
23 honest about it.

24 What we believe discovery will show is that
25 there was an intent to secure compliance early in the

1 process. And then once they waited for a determination
2 of heirs, then not pay in order to secure compliance as
3 early as possible and pay as late as possible in order to
4 achieve everything they wanted without having to pay for
5 it. So, again, amendment could probably illuminate this
6 some more. Certainly discovery will illuminate this some
7 more. But as to the duty issue, it's pled as stated.

8 Finally, promissory estoppel. This goes right
9 back to the breach of contract argument. So the promise
10 is contained in the offer. It's a clear, explicit
11 promise. It's relied on. It's relied on by not selling
12 any of the material. It's relied on by not making other
13 deals. It's relied on by not doing anything else to
14 interfere with the Defendants' financial interest in the
15 museum. And then that reliance was justified because
16 she's promised \$100,000 plus \$25,000 every year
17 thereafter so long as she continues this barely minimal
18 performance. So in reliance on that promise that's clear
19 and definite, there is justified reliance and actual
20 damages. And the actual damages came out of the
21 contract.

22 So I think that covers -- yeah, that covers my
23 whole position. If you have any questions.

24 THE COURT: Any response, Mr. Cassioppi?

25 MR. CASSIOPPI: Very briefly, Your Honor.

1 Just so that we have a clear record, the
2 consultant agreement is not dated. It references the
3 exhibition operating agreement, which was dated during
4 August, but the exhibition consultant agreement, which
5 forms the basis for this claim, is not dated. And in the
6 complaint, Brianna Nelson alleges in paragraph 22 that
7 she signed it on October 6th, 2016. Just so we have a
8 clear record on that.

9 With respect to the arguments about performance
10 under the contract, all that the complaint says -- and
11 this is paragraph 34 -- is that "Brianna Nelson has
12 performed and continues to perform her obligations under
13 the exhibition consultant agreement, including being
14 available for personal interviews, being available to
15 provide background information and personal stories for
16 the exhibition and available to review and authorize
17 elements of the exhibition. Brianna Nelson has also
18 offered to loan photographs, letters, and memorabilia to
19 the exhibition."

20 That is it. So anything that Mr. Loftus said
21 beyond that is not on the record in front the Court. But
22 if you look at paragraph 4A of the agreement, which is
23 attached to the complaint, it does not say that Brianna
24 Nelson is prevented from selling any memorabilia or doing
25 anything else. It's much more limited than that. It

1 says: "Consultant at its discretion shall loan to
2 company for use and in connection with the exhibition
3 such photographs, letters, memorabilia, and other
4 material pertaining to Prince as are owned by consultant
5 and available for use in connection with the exhibition."

6 So it is -- what records or materials she
7 decides to provide to the museum is completely at her
8 discretion.

9 So this entire argument that Ms. Nelson has
10 shifted to try to prove reliance for purposes of
11 promissory estoppel and to try to prove performance of a
12 contract is not supported by the plain language of the
13 contract. There was no duty, no obligation whatsoever to
14 provide any specific materials, and so there is no --
15 there was no prohibition on Brianna Nelson selling
16 anything under the plain language of the agreement.

17 As to fraud, Mr. Loftus mentioned the fact that
18 they covered every element. Well, that's not enough
19 under Minnesota law. You just don't have to recite the
20 specific elements of the claim. You have to plead every
21 single one with particularity, and they've admitted they
22 haven't done that.

23 And if they want to amend -- if their defense
24 is we have a good-faith basis for amending, we can meet
25 all of these elements, they had an obligation to come

1 forward with what those allegations would be. They
2 haven't done so, and a need to amend should be denied.

3 Finally, as far as promissory estoppel is
4 concerned, the only element that the Court needs to focus
5 on is injustice. There is no allegation -- there's been
6 no allegation today and there's no allegation in the
7 pleadings of the injustice element of that claim.

8 And for all of those reasons, we ask that the
9 complaint be dismissed in its entirety.

10 THE COURT: Mr. Crosby, anything else?

11 MR. CROSBY: No, Your Honor.

12 THE COURT: Anyone else?

13 Mr. Kane.

14 MR. KANE: Thomas Kane again, Your Honor.

15 I'd like to reiterate what Mr. Dahl said as to
16 his three clients. We would like to make the same
17 position known on the record, that there is no specific
18 allegation as to any wrongful conduct by Tyka Nelson or
19 Omarr Baker relating to any comment relating to
20 fraudulent inducement in any way, shape, or form.

21 And there is no suggestion, reiterating what
22 Mr. Cassioppi said, that they can make such a good-faith
23 allegation in the future that there is any evidence that
24 somehow they fraudulently induced anybody.

25 There is no fact in front of this Court for the

1 Court to rule in their favor to deny the motion to
2 dismiss. Therefore, we would ask that the motion to
3 dismiss be granted.

4 THE COURT: Thank you.

5 Mr. Bruntjen.

6 MR. BRUNTJEN: Your Honor, Justin Bruntjen for
7 Alfred Jackson. I would just reiterate what Mr. Kane
8 said in regards to Alfred Jackson as well.

9 THE COURT: Thank you.

10 Back to you.

11 MR. LOFTUS: One narrow point in response to
12 what Mr. Cassioppi said. So paragraph -- Mr. Cassioppi
13 addressed that there was no duty to maintain the
14 materials that the -- or the souvenirs. So paragraph 4B
15 of the contract provides that "consultant agrees that it
16 will not at any time do or permit to be done any act or
17 thing contesting or in any way impairing or tendering to
18 impair any part of consultant's rights, title, or
19 interests in the materials."

20 And "materials" is defined earlier as "any
21 photographs, letters, memorabilia, and all other
22 materials pertaining to Prince as are owned by consultant
23 and available for use in connection with the exhibition."

24 So those two combined would seem to be
25 interpreted that -- and certainly a reasonable

1 interpretation by Brianna Nelson that she couldn't sell
2 anything.

3 MR. CASSIOPPI: Briefly, Your Honor, ten
4 seconds just to respond to that?

5 THE COURT: Sure.

6 MR. CASSIOPPI: What 4A makes clear is that it
7 is only those materials that consultant provides to the
8 museum in her discretion. So if you read both 4A and 4B
9 together, it makes clear that the only materials that
10 Brianna Nelson is prevented from selling or otherwise
11 impairing are those materials that in her discretion she
12 makes available to the museum.

13 THE COURT: All right. Anyone else on this
14 issue?

15 All right. Hearing none, we'll take a
16 15-minute recess. And we can maybe shuffle some people
17 around. We'll address the motion to quash the subpoena
18 as well as the issue regarding the confidentiality.

19 (Recess in proceedings.)

20 THE COURT: All right. We'll go back on the
21 record.

22 The third matter that we're addressing today is
23 the issue of the subpoena that was served on L. Londell
24 McMillan to request the production of certain documents.
25 I believe that subpoena was served by the Hansen Dordell

1 law firm. But in any event, they have --

2 MR. DAHL: Your Honor?

3 THE COURT: Yes.

4 MR. DAHL: If I may, I don't think that's an
5 accurate reflection of the record.

6 THE COURT: Who --

7 MR. DAHL: It was served by Omarr Baker's
8 counsel, as I recall.

9 MR. KANE: That's correct, Your Honor.

10 THE COURT: Mr. Kane.

11 MR. KANE: Omarr Baker's counsel served the
12 subpoena. Mr. Dahl opposes that on behalf of his
13 clients, who were not subject to the subpoena.

14 THE COURT: Okay. Thank you for straightening
15 out the record.

16 All right. And so there is a motion, then,
17 filed today to quash that subpoena. Who would like to
18 address the issue in favor of the issuance or the
19 performance of the subpoena?

20 MR. SILVER: Well, I'm -- we moved to quash the
21 subpoena.

22 THE COURT: Correct.

23 MR. SILVER: Is that what --

24 THE COURT: No. What I'd first like to hear is
25 why this subpoena should go forward.

1 MR. KANE: Your Honor, our office, on behalf of
2 Omarr Baker, issued the subpoena to Londell McMillan,
3 served it in his home state, New York, at his place of
4 business and/or home.

5 THE COURT: Okay. Just for the record, it's
6 Mr. Kane speaking. Go ahead.

7 MR. KANE: I'm sorry.

8 I'll deal with one administrative issue before
9 I get to the request, Your Honor. The issue is --
10 because it's been raised several times -- namely, did we
11 give notice. And the purpose of the rule, and it's
12 always been the purpose of the rule in giving notice is
13 so that a party receiving the subpoena, or a party such
14 as Mr. Dahl's clients who believe they have interest in
15 the documents, have a right to object.

16 And what both parties have said -- Mr. Dahl and
17 Mr. Silver have said, we didn't serve the subpoena, the
18 notice exactly the same time. What we did do, which is
19 not really what the rule says, but it says, basically,
20 "at the same time."

21 Once the subpoena was served, we gave notice.
22 And they had adequate time to object, which is the only
23 purpose and basis of the rule. And that's how it's been
24 interpreted for as long as that rule has been in place;
25 namely, that was put in the rules so somebody can't come

1 in and say, well, we didn't know you served the subpoena
2 so we had no way -- we had no way to object.

3 We gave them notice early February. It wasn't
4 responded -- they didn't have to respond for another
5 month. So they had adequate time. They have responded.
6 They have objected. All of their rights are fully
7 protected. So I just want to get that out of the way at
8 the beginning.

9 The reason for the subpoena is two-fold.
10 First, the heirs -- the non-excluded heirs believe they
11 have claims against Bremer Bank and, potentially, Londell
12 McMillan and Mr. Koppelman.

13 Now, I'm going to try to go over some things so
14 we don't have to go off the record and exclude the
15 public. So the Court has got all of it in front of it,
16 so I'm not going to go into a great deal of detail in
17 terms of the mechanics in terms of what the claims are,
18 et cetera.

19 THE COURT: Thank you, Mr. Kane.

20 MR. KANE: We have two claims that we are aware
21 of now. Those are set forth in our redacted papers
22 involving two events. They involve lots of money, and we
23 want the documents relating to those claims. Now, one of
24 the first questions that's going to be asked is, "Well,
25 what's the reason for drafting this subpoena as you did?"

1 The subpoena basically has five parts. Three
2 of those parts go to communication with the non-excluded
3 heirs -- four of them go to the non-excluded heirs. One
4 of them relates to our clients, and they have objected to
5 giving us the documents that they have relating to us.
6 We want to know what information they have attained from
7 us, and they have not stated any reason why they wouldn't
8 give us information relating to us.

9 Second, the issue is related to the Sharon,
10 Norrine, and John clients that are represented by
11 Mr. Dahl. And they have objected, and what we've said is
12 what we want to do is find out what it is that
13 Mr. McMillan told them relating to the transactions and
14 the entertainment deals. That's what we want to know.
15 We don't want to have all the side information. That's
16 why it was very limited and very narrow relating to what
17 we asked for; namely, just tell us what you told the
18 other non-excluded heirs. Because the other information,
19 we don't know what it is or where it is. We're not
20 interested. We are not interested in some personal
21 issues. What we are interested in is the communication
22 between and among Mr. McMillan and all the non-excluded
23 heirs relating to the Prince information.

24 Now, as is acknowledged in their pleadings, it
25 basically says that -- it's basically after Prince died.

1 Now, that relates to everything except subpoena number
2 four, the fourth item, and I'll get to that in a second.
3 So we have two major claims involving a significant
4 amount of money, which is addressed in our papers -- and
5 I'm not going to go into that here -- and we want that
6 information because our clients have a right to know
7 whether or not they have a claim, whether or not they
8 have a right to support Comerica.

9 And my understanding is, from working with
10 Mr. Cassioppi, that they support us getting Item No. 4;
11 namely, all the information relating to McMillan and
12 Prince. Give us all that information so we can determine
13 whether or not there is, in fact, any claim that exists
14 against McMillan and/or Koppelman.

15 There's another lawsuit that's been filed.
16 There's a claim by another party for rescission, which is
17 set forth in our papers, and we would like the
18 information regarding that independently.

19 The second major issue is whether or not
20 Comerica decides to make those claims. It's up to
21 Comerica. For example, today we had the motion to
22 determine the heirs. Comerica didn't make that motion.
23 We made the motion. So there are some motions and some
24 pleadings that the heirs have to make independent of the
25 personal representative.

1 THE COURT: Why? Mr. Kane, raise that in the
2 context that all six heirs suggested, at least in the
3 end, that Comerica be appointed the personal
4 representative. One of the issues that was brought up
5 was whether I should appoint L. Londell McMillan or
6 another person as an individual personal representative
7 to work with Comerica. The Court made a decision to just
8 appoint Comerica and encouraged the parties to establish
9 an open line of communication between them.

10 What I'd really like to see is that everything
11 funnel through Comerica so that we're not having multiple
12 heirs raising multiple issues before the Court. Why
13 can't you talk to Comerica and express your concerns and
14 let Comerica do their job?

15 MR. KANE: Your Honor, we have done that. And
16 I think Mr. Cassioppi will tell you that, as it relates
17 to our clients, we've raised all of these issues with
18 Comerica. Comerica made a decision not to make the
19 motion to determine the heirs. I asked that question.
20 They said, "We want you to make the motion."

21 So we have cooperated fully. There isn't any
22 issue that we have brought without talking to Comerica as
23 it relates to the heirs. We specifically asked them.
24 They said, "We think it's more appropriate that the heirs
25 bring that motion."

1 We said, "We support it." We said, "We fully
2 support it, but it's your motion." That is the reason we
3 did that.

4 THE COURT: Thank you for explaining that.

5 MR. KANE: And that's -- I don't know what's
6 going to happen in the future, Your Honor, but as it
7 relates to all of these issues, but -- I'll digress for a
8 second because we just argued the Brianna Nelson issue.
9 If the Court will remember, our office took the lead on
10 making the motion to determine that Brianna Nelson was
11 not an heir. We did that after talking to the Special
12 Administrator, saying, "Are you going to do this?"

13 And they said, "No, we're not going to do that.
14 So if it's going to be done, you have to do it."

15 So we did it. That's the reason we did it. It
16 isn't that we went off on our own. I mean, with all due
17 respect to myself -- I mean, I know how it works, and the
18 special administrator and the personal administrator is
19 supposed to do all this stuff. And we expect
20 Mr. Cassioppi and his colleagues to do all that.

21 If they ask us to do it because they think it's
22 more appropriate for us to do it, then we will do it
23 because they asked us to do it, which is the reason we're
24 here.

25 As it relates to the information regarding the

1 subpoena, let me address number four. Four goes to all
2 of the issues related to communication between and among
3 Prince and anything related to Londell McMillan. We want
4 all that information to determine whether or not that is
5 a claim.

6 I believe -- and I'm not speaking for him --
7 they will say the special administrator wants that
8 information. Now, the reason we served the subpoena at
9 that point in time, because the special administrator was
10 going to end, theoretically, his role on January 31. And
11 then we were going to get a personal representative, and
12 all the non-excluded heirs agreed to a personal
13 representative. We believe -- I'm just speaking for the
14 heirs we represent now -- we had to move forward as
15 quickly as possible to get this moving and not wait until
16 the process.

17 We talked to the personal representative. They
18 said, "Listen, we've got to catch up. We've got to get
19 all this stuff done." We didn't specifically ask them at
20 that time, but they said, "We can't -- we've got a lot of
21 issues to deal with."

22 And so we made an independent decision to serve
23 the subpoena right then and there to get the ball rolling
24 relating to these claims, which we knew existed at that
25 point in time because we talked to the parties that are

1 objecting to the process and are saying that the deals
2 weren't done right or there's a potential claim against
3 Mr. McMillan or Mr. Koppelman or Bremer Bank.

4 So that's the reason we did it. We are not
5 trying to step on their toes or go outside the sidelines
6 or anything else, Your Honor. We are trying to work as
7 best we can. And we intend to do it, and we're not going
8 to sit there and make our own independent -- let's pick a
9 fight here, pick a fight there. That's not our goal.
10 That's not what we are doing. We're trying to
11 coordinate, and we're doing it the best we can.

12 And in this particular case, we went ahead
13 because of the timing between the end of the special
14 administrator and the personal representative because we
15 knew it would take months to get a subpoena served. We
16 knew that it would take a long time to get this process
17 worked out.

18 And when the personal representative was able
19 to deal with it, we did it. We talked to the personal
20 representative, asked them, "How do you want to handle
21 this?" And that's why we are here today. The reason we
22 needed it is because of the two claims, and we are more
23 than happy -- in fact, we would request -- that the
24 personal representative take the lead on this.

25 THE COURT: Thank you.

1 MR. SILVER: Your Honor, if I may be heard
2 first. Mr. Dahl and I both filed a motion to quash.

3 THE COURT: Okay. Mr. Silver.

4 MR. SILVER: The subpoena is directed at
5 Mr. McMillan. I'll lead on this one.

6 First of all, I should state for the record
7 that Mr. McMillan is in the courtroom today, along with
8 Chrystal Matthews, who is the general counsel of the
9 North Star Group, which is Mr. McMillan's company.

10 A moment ago, Your Honor, you said that you
11 would prefer that matters be funneled through the
12 personal representative. I think it's important at the
13 outset to state this is a subpoena that was served by
14 counsel for Omarr Baker. It was not served by the
15 personal representative. They've tried to piggyback on
16 the subpoena to a limited extent with respect to one of
17 the requests, but this is not a request that was served
18 by Comerica.

19 When Comerica first came into this case and --
20 which was around the time that I was retained by
21 Mr. McMillan, we met with Comerica and we offered to
22 provide any documents that they might want. We offered
23 at that point to do it informally. We've never received
24 a document request from Comerica, whether formal or
25 informal. And so this is the wrong procedure. This is

1 the wrong way to approach this to have one group of heirs
2 serve the subpoena.

3 And what Mr. Lund said, I think, is helpful in
4 that he divided the subpoena into two parts. It's clear
5 that three or four of the requests specifically request
6 communications between Mr. McMillan and non-excluded
7 heirs, and then two of the requests deal with respect to
8 music entities. And it's helpful to address those two
9 parts separately.

10 When you talk about -- when we look at the
11 request that asks Mr. McMillan to provide documents with
12 respect to the heirs, to the non-excluded heirs, in
13 essence you have one group of heirs trying to obtain
14 confidential information about Mr. McMillan's
15 relationship with another group of heirs.

16 If Omarr Baker and his counsel hadn't said --
17 served a subpoena directly upon Sharon Nelson or Norrine
18 or John Nelson and said, "We would like you to turn over
19 all of your documents relating to your business plans and
20 your financial advice and any advice that you received
21 from Mr. McMillan," this Court wouldn't hesitate in
22 saying that one group of heirs shouldn't have to turn
23 over that kind of information to another group of heirs.
24 And they shouldn't be allowed to do indirectly what they
25 couldn't do directly.

1 This is a broad, all-encompassing request.
2 Mr. Kane just said -- just in response to one of your
3 questions said, "This is a narrow and limited request."
4 Well, it's not narrow and limited, Your Honor. It is not
5 limited in time. There is a definition section that
6 reports to limited time. But right in their brief -- on
7 page 14 on their brief, when they talked about request
8 number three and four that asks for information about the
9 music entities, they say right in their brief that that
10 request would relate to Mr. McMillan's relationship
11 relating to decedent before his death. So they interpret
12 their own request as not being time limited.

13 And so Mr. McMillan, as the Court is aware, has
14 had a long relationship with Prince going back to the
15 1990s. This request is not narrow. It is not focused.
16 It's not directed at the two issues that Mr. Lund
17 indicated to the Court, which was the basis of the
18 subpoena.

19 You know, lawyers who are in my position that
20 bring motions to quash often use the word that this is a
21 "fishing expedition." And, frankly, I don't like that
22 terminology because it's somewhat trite and people always
23 use it. But, frankly, I have trouble in this case
24 thinking of any other way to describe this because these
25 requests are extremely broad. They basically ask

1 Mr. McMillan to produce all documents relating to
2 communications with any of the heirs, whether it's the
3 propounding party or the other, as is the case.

4 They ask for all communications regarding any
5 music entities, which would go back, as I said, to the
6 1990s. It's hard to imagine a broader request and a
7 request that is more imposing not only on Mr. McMillan,
8 but basically asking for confidential information about
9 the other parties.

10 Now, the procedural history is also important,
11 Your Honor. This is not the first time that there has
12 been a request to Mr. McMillan to produce documents. As
13 the Court will recall, there was a prior request and a
14 motion to compel. A document request was served on
15 January 10th, and that was attached to Mr. Dahl's papers
16 that he filed with the Court. And the sole basis of the
17 claim at that point for production of documents was the
18 fact that Mr. McMillan was being proposed as co-personal
19 representative of the Estate at that time. And the Court
20 will also recall that at the January 12th hearing on the
21 determination as to who would serve as personal
22 representative, that Mr. Siltan said that he wasn't going
23 to ask Mr. McMillan any questions because he wanted to
24 receive documents.

25 And then, ultimately, this Court ruled on

1 January 18th that Mr. McMillan would not serve as
2 co-personal representative. And the Court ruled
3 specifically at that time that no documents needed to be
4 produced. Well, rather than vacating that order or
5 asking the Court to reconsider that order, instead a
6 subpoena was served, a broad, all-encompassing subpoena.
7 And the only thing that the other -- that Omarr Baker's
8 lawyers have said -- with respect to the basis of the
9 subpoena in their papers, in their opposition papers they
10 said there were two grounds for obtaining this
11 information. One was because they wanted to determine
12 whether there was a conflict between Mr. McMillan's
13 representation of Bremer as advisor to the special
14 administrator and any relationship with the non-excluded
15 heirs.

16 Mr. McMillan's affidavit or declaration that we
17 submitted in response to this motion made it clear he did
18 not enter into any formal contract with any of those
19 heirs until after this Court's January 18th order, so
20 there couldn't possibly be a conflict. There have been
21 allegations of conflicts. There have been allegations of
22 wrongdoing, but there is simply no evidence to support
23 any of that, Your Honor.

24 Mr. McMillan has served initially Bremer and
25 now in connection with his contracts for the now admitted

1 heirs, he's served them well and diligently. And there's
2 no evidence of any kind of wrongdoing here. If Mr. Lund
3 and his client believe that there has been some kind of
4 wrongdoing, the remedy ought to be a lawsuit, if they can
5 do that without violating Rule 11, which we seriously
6 doubt. But there's no basis in the law for any kind of
7 pre-suit discovery.

8 If you take what Mr. Lund [sic] just told the
9 Court, the reason they want this information is to try to
10 decide whether or not they have a claim. I don't think
11 that's the way the law works, Your Honor. If the party
12 believes they have a claim, they ought to assert that
13 claim and not serve this kind of all-enclosing document
14 request.

15 The other basis that was alleged -- and I have
16 to be careful how I say this in open court -- but there
17 is a separate lawsuit that was filed, and they -- in
18 their papers, they say that they want information with
19 respect to the allegations that were made in that
20 separate lawsuit.

21 The fact is that that lawsuit alleges
22 allegations about Mr. Koppelman, not about Mr. McMillan.
23 And Mr. McMillan, again in his affidavit that was filed
24 to this Court, made it clear, to the extent there is an
25 allegation involving a loan transaction, he had nothing

1 to do with that transaction. He knew nothing about it.
2 He wasn't involved in it. It had no bearing on him. And
3 there is nothing in the subpoena that is going to come up
4 with helpful information with respect to that.

5 The other issue, Your Honor, is that
6 Mr. McMillan is not a party to this case. And so to the
7 extent that this is a subpoena of a nonparty witness, it
8 is governed by the provisions of Rule 45. Rule 45(a)
9 says that the Court is supposed to prevent a nonparty
10 from being subjected to an undue burden in connection
11 with a subpoena. And Rule 45.02D requires that the
12 arrangement for compensation of nonparty be made before
13 the party is required to turn over any documents.
14 Neither of those rules has been complied with in the
15 case. There has been no offer of reasonable compensation
16 to Mr. McMillan as a nonparty.

17 The subpoena really raises the broader issue, I
18 guess, of Mr. McMillan's role in this case. He has been
19 subjected to unjustified attacks in a variety of papers
20 that have been filed with this Court over the course of
21 the last month. He is in a very difficult position
22 because he is not in a position to be able to respond to
23 those or, for that matter, even see the matters that have
24 been presented, in some cases, because they have been
25 filed under seal.

1 We've seen hints of allegations. We've seen
2 redacted documents that appear to be making allegations
3 about Mr. McMillan, but he is in a position where he
4 can't defend himself against these unsubstantiated
5 attacks.

6 And as a result of that, we have filed a
7 separate matter, which I know the Court doesn't want to
8 address directly today, but a motion that he be allowed
9 to intervene with respect to matters that relate directly
10 to him. And I don't think, Your Honor, that you can
11 really address this current motion effectively without
12 dealing specifically with that intervention issue.

13 It seems to us that the proper remedy in this
14 case is, number one, for the Court to quash the subpoena
15 on the grounds that it is overly broad, it's unnecessary,
16 it's not tied to any relevant issue of the case.

17 Secondly, if Comerica wants to serve
18 Mr. McMillan with a more narrowly drawn request that
19 relates specifically to the music entities or some issue
20 that appears to be relevant in the case, we will
21 cooperate with that. Or if Mr. McMillan is named as a
22 party, he will have the normal remedies that a party
23 would have: a right to object to a document request, a
24 right to have this Court ultimately rule on that
25 determination.

1 But, ultimately, Mr. McMillan needs to be
2 allowed to have access to the documents. If people are
3 going to be making these kind of crazy allegations
4 against him, he should have a right to see what those
5 allegations are and to be able to defend himself. The
6 way to do it is not to serve a subpoena to him as a
7 nonparty asking to produce virtually every document that
8 he might have in his possession.

9 That's all.

10 THE COURT: Before you sit, this Court issued
11 an order dated March 27th. I don't know of the exact
12 filing date at this point, but I directed Comerica in
13 that to make an investigation and to make an informed
14 decision regarding a couple of concerns regarding the
15 first attempt at a Tribute concert. And I think you
16 stated very early in your remarks that you were ready and
17 willing to cooperate with Comerica and provide them
18 documents that would assist them in making -- completing
19 that investigation and making a decision. Towards the
20 end of your comments, you started talking about Comerica
21 issuing a more limited-in-scope subpoena. Could you
22 clarify that?

23 MR. SILVER: Yes, Your Honor. First of all, as
24 I indicated at the beginning of my remarks, Comerica has
25 not made any request to us for documents, whether by

1 subpoena, a document request or informal request. And
2 we've never said that we wouldn't produce documents.
3 Mr. McMillan is more than willing to produce documents if
4 they're relevant to any issue in the case. Your
5 March 27th order directed them to pursue an investigation
6 to a narrow and specific point. And if Comerica requests
7 relevant documents with respect to that, we'll produce
8 those documents. This is not about an unwillingness to
9 produce documents. It's an unwillingness to produce
10 every document under the sun in response to such an
11 all-encompassing request, and it's about who is making
12 the request. If Comerica, which is the proper party that
13 was charged by this Court with investigating that issue,
14 wants documents that are relevant to that issue, we will
15 produce them.

16 Now, in terms of the format, the reason I
17 talked about a formal document request is that right now
18 Mr. McMillan is a nonparty. The subpoena has to be
19 considered in the context of the fact that he is not a
20 party to this case. No one has made any claims against
21 him. There's no allegation, specifically of any kind of
22 wrongdoing, other than these innuendos that are contained
23 in a variety of papers. But no one has made a claim
24 against him. And so his rights should be protected.
25 They're the rights that any nonparty or third party has

1 when it comes before this Court in response to a
2 subpoena.

3 If, in fact, anybody brings a claim against
4 him, then the proper procedure is a Rule 34 document
5 request. Although, again, we offered to provide Comerica
6 informally with documents. But if they make a claim --
7 if there is a claim that's made in the future -- and we
8 don't think there's any basis to do that, but if there is
9 a claim that is made, well, then we may be talking about
10 more formal procedures at that point. But, at this
11 point, we have been willing to cooperate, and Comerica
12 has not asked us to produce anything.

13 THE COURT: Thank you.

14 MR. CASSIOPPI: Your Honor, if I may -- well,
15 actually, Mr. Dahl, if you want to go first.

16 MR. DAHL: Briefly, Your Honor, if that's okay
17 with the Court.

18 THE COURT: Go ahead, Mr. Dahl.

19 MR. DAHL: Your Honor, something has become
20 very evident today as we've proceeded, and what I've
21 observed to be, in watching the counsel for Omarr Baker,
22 retreat from the initial document requests that were
23 attached to the subpoena. There was an effort to
24 characterize those requests as being narrowly tailored to
25 particular issues in the case.

1 Respectfully, the document requests speak for
2 themselves, the number 5 particularly: "All documents in
3 possession or control of L. Londell McMillan relating to
4 Norrine Nelson, Sharon Nelson, John Nelson, Alfred
5 Jackson, Tyka Nelson and/or Omarr Baker."

6 There are no limitations there with respect to
7 subject matter, with respect to allowing for protection
8 of my client's personal, financial, business information
9 and of the sorts.

10 The -- I also want to call attention to the
11 timeline. You saw numerous references in the pleadings
12 to development and things we've learned since this
13 subpoena was served. The -- I ask the Court to take
14 notice and question the true purpose of these requests.

15 Other things that are readily apparent now --
16 and I don't think there's any dispute on this -- there is
17 no claim currently asserted against Sharon, John, or
18 Norrine, and certainly not Mr. McMillan, as of yet,
19 although they've suggested they're going to.

20 I respectfully submit that you can't invoke the
21 Rules of Civil Procedure to go and seek discovery from my
22 clients, nonparties, while at the same time not be
23 subject to the requirements of the Rules of Civil
24 Procedure and allow the parties a chance to, you know,
25 examine these claims before we go and burden all these --

1 the parties in the claim.

2 That hasn't happened here. There hasn't been
3 an attempt to dismiss claims. They haven't brought -- I
4 think Minnesota law is pretty clear on that point.
5 Absent certain exceptions, we don't get to invoke the
6 Rules of Procedure and seek formal discovery without a
7 claim. We don't have that. And, you know, I think
8 Mr. Silver's point is well taken, and I will stand by the
9 briefing on this issue with respect to the relevance and
10 the burden.

11 And, as the Court is well aware, the Rules of
12 Civil Procedure changed in 2013, and we have to have a
13 balancing test -- look at proportionality, the resources
14 of the parties, do the analysis. In this case, my
15 clients, they are not -- they don't have the resources of
16 Comerica. They are not L. Londell McMillan. These are
17 three individuals that had lives outside of these
18 proceedings before all this happened and they were thrust
19 in the middle of this estate matter.

20 I respectfully submit that we balance those
21 factors and resources of the parties and, you know,
22 blatant over-broadness of these requests, that those
23 factors weigh in support of quashing that subpoena.

24 With that, I will turn it over to
25 Mr. Cassioppi.

1 THE COURT: Thank you. Before you go,
2 Mr. Silver, I forgot to ask you, during your argument,
3 you mentioned a couple of times the name of "Lund."

4 MR. SILVER: My co-counsel just advised me that
5 I misspoke. You know, when I first met Mr. Kane, one of
6 his partners was Mr. Lund, who I had a great number of
7 dealings with.

8 THE COURT: Okay.

9 MR. SILVER: I think I just sort of in my mind
10 switched those two, so I apologize.

11 THE COURT: I thought that Mr. Lund might have
12 been an attorney that issued the subpoena --

13 MR. SILVER: No. I apologize to Mr. Kane and
14 to the Court also.

15 MR. KANE: I don't look like Mr. Lund at all.

16 MR. SILVER: You're a far cry from Mr. Lund.

17 THE COURT: Mr. Cassioppi.

18 MR. CASSIOPPI: Joe Cassioppi on behalf of the
19 personal representative here.

20 Your Honor, we submitted a very limited brief
21 in support of the subpoena as to one of the five issues.
22 Four of the issues deal with Mr. McMillan's dealings with
23 the non-excluded heirs and, at least at this time, we
24 don't care about those.

25 One, though, asked about all documents sent to

1 or received by any music entity related to Prince Rogers
2 Nelson, and I think that we -- as we construe that
3 subpoena -- though as counsel we have a different opinion
4 on that, we construed it as being limited by the
5 timeframe comment in the definitions which limits
6 documents to those created after April of 2016.

7 The Court is correct that the Court has
8 directed Comerica to investigate -- to make various
9 investigations relating to the Tribute concert, including
10 related to the commission that Mr. McMillan received
11 related to the Tribute concert. And we've been doing
12 that, although it's been a very fluid situation, as I'm
13 sure the Court is aware.

14 Because since that has arisen, there has now
15 been another publicly filed lawsuit that has resulted in
16 a situation where the Estate, Bremer, Mr. McMillan,
17 Mr. Koppelman are all Defendants in a lawsuit, all on the
18 same side, of a claim that has been asserted by the party
19 that originally was going to be putting on the Tribute
20 concert. And so our ability and our motivation and
21 confidentiality and privilege issues related to that
22 investigation has been affected by that.

23 As the Court is also aware, there has also been
24 another subsequent development related to the services
25 Mr. McMillan performed for the Estate. That has also

1 affected the investigation. And while Mr. Silver is
2 right that we did meet with -- or we did meet with
3 Mr. Silver and Mr. McMillan recently, he is overstating a
4 little bit what their offer was.

5 We, in fact, had requested some information in
6 writing from Mr. McMillan, and they declined to provide
7 that to us and wanted to meet with us instead. And so
8 while they have been willing to provide some information,
9 they certainly -- I believe that Mr. Silver was
10 overstating that position.

11 The Court is right that it is primarily
12 Comerica's role and Comerica's job to conduct
13 investigations for the Estate for the benefit of the
14 Estate. The reason why we support this subpoena, at
15 least this limited component of it, is that seeking
16 records from a nonparty in a different state is a wrong
17 procedure. And it can take several months. We are at a
18 point now, with respect to these records, which we do
19 need for purposes of not only our Court-ordered
20 investigation related to the Tribute concert, but also
21 the other subsequent event that has come up, and -- and
22 just the need to see all correspondence related to all
23 entertainment deals as a result of the fact that we now
24 have disputes related to two of them; that it would be
25 beneficial for Comerica to have these records sooner

1 rather than later.

2 And for that reason, that we support the
3 subpoena to the extent that it has been requested and the
4 issue is now ripe that these records be turned over.

5 As far as proportionality is concerned, I just
6 wanted to -- the defenses that were raised in the motion
7 to quash, again, as we have construed the subpoena, or at
8 least as we read it, the request is only for
9 communications or other documents involving these music
10 entertainment deals for a period of only approximately 12
11 months is -- you know, it may be a lot of documents, but
12 it's certainly not a lot of documents in light of the
13 compensation that Mr. McMillan received as a result of
14 services that he performed for the Estate.

15 And so for the reasons set forth in our
16 memorandum, we support the subpoena to the extent that it
17 seeks only these records. In the event the Court denies
18 it, then we will move forward accordingly. And that may
19 require us serving a separate subpoena on Mr. McMillan
20 and Mr. Koppelman. It may involve us working with
21 Mr. Silver and whoever Mr. Koppelman ends up retaining
22 here as counsel to obtain documents informally, or it may
23 involve some combination of both.

24 But just to be clear, Your Honor, we are well
25 aware of what our role is. And we intend to fulfill

1 that, but we do see this aspect of the subpoena as
2 assisting us in obtaining information we need in the
3 administration of the Estate.

4 THE COURT: I think you've advocated that the
5 Court support the subpoena in Item No. 4. Is that the
6 right number?

7 MR. CASSIOPPI: That's correct, Your Honor.

8 THE COURT: And you mentioned the definitional
9 section of the subpoena. If you incorporate that
10 information, do you believe that the subpoena request is
11 sufficiently clear and sufficiently narrow, or should it
12 be redrafted in some way?

13 MR. CASSIOPPI: I think it could be -- I think
14 it could be judicially construed in a manner that is
15 narrow and proportional. And the way that we would do
16 that is by taking the timeframe language, which is
17 defined from April 2016 to the present, and then just
18 limiting those records that would be responsive to this
19 aspect of the subpoena as records from that timeframe.

20 To the extent that there are any concerns about
21 the term "music business entity," I think we could -- I
22 think we could make clear, although I think this is
23 implicit in the request, that it's only those music
24 business entities that have proposed deals or actual
25 deals with the Estate.

1 THE COURT: Who else would like to be heard
2 with respect to this issue?

3 Very good.

4 MR. KANE: Your Honor, I'd like -- may I
5 respond to a couple of points?

6 THE COURT: Mr. Kane.

7 MR. KANE: I think there is some -- I think
8 it's helpful if I put into context how document requests
9 work in large electronic cases. The reason it was
10 drafted the way it was is rather than -- there's two
11 basic ways you can ask for documents. There's other
12 ways, but for our purposes there's just two basic ways:
13 One, give me documents relating to this subject matter,
14 which then requires the party receiving it to read every
15 document and figure it out; or, two, give me documents
16 relating to and from, which only then requires you enter
17 into the computer or you look at your file is it to or
18 from so and so. And then those documents are pulled out.

19 In many cases, and in this particular case, I
20 believe it's much more limiting and much more decisive
21 just to say we want the documents sent to so and so and
22 from so and so relating to -- after this date. That's
23 the reason it was done that way.

24 So I think it's -- at least in my experience
25 was a complete overstatement to suggest that this is some

1 broad-reaching document demand. If you say I want
2 documents to so and so and from so and so, that's a much
3 easier way to deal with it.

4 Second, we -- the cases that are recited by
5 the -- Mr. Silver related to a claim really go the issue
6 has a lawsuit been started. It kind of -- namely, or are
7 you just serving a subpoena with no frame of reference?

8 We have an ongoing process here. We are in
9 probate court. The Court is the general jurisdiction
10 that can issue subpoenas, and the parties can receive
11 protection, to the extent that they need any protection.

12 There is no suggestion that there is not a
13 claim. There are two lawsuits. I mean, there's one
14 lawsuit and then one specific claim, both of which allege
15 very wrongful conduct against Mr. McMillan and
16 Mr. Koppelman. And to the extent that Mr. Silver states
17 that Mr. McMillan is not named, he is a named party and
18 it is alleged that he did those wrongful acts.

19 Now, I'm not here to say whether he did them or
20 didn't do them. I'm just saying he is party to that and
21 the other parties, not us, have made these allegations:
22 first, as to the Tribute concert; and then, second, as to
23 the other major transaction that was entered on January
24 31, 2016.

25 THE COURT: But you are talking about a matter

1 that is not 10-PR-16-46, the Estate of Prince Rogers
2 Nelson.

3 MR. KANE: I'm not.

4 THE COURT: Okay.

5 MR. KANE: So -- as to the first one. The
6 second one, yes, we are because that's part of the claim,
7 and Mr. Cassioppi has advised the Court of that issue.
8 There's specific conduct that has been alleged against
9 Mr. McMillan which has caused Comerica, then, to have to
10 make this claim.

11 We knew about that at that time, so to suggest
12 that there is new information -- we were aware of all
13 that at the time the subpoena was issued. We talked to
14 people. We've been advised by people. That's the reason
15 we issued the subpoena. So the information relating to
16 those two claims is not after-the-fact information.

17 The other issue that I'd like to point out
18 is -- is that, as it relates to our clients -- and I do
19 want to correct something. We had two clients, and I
20 want to make it clear on the record that the claim
21 relating to Mr. McMillan is by Omarr Baker, not Tyka
22 Nelson. They have different interests, and I want to
23 make it clear on the record as it relates to that issue.

24 As it relates to the concern that the Court
25 asked me directly, which I think is a key issue in this

1 case, which is, in my words, why isn't Comerica doing
2 these things and why are you doing these things, because
3 I, the Judge, would like Comerica to do them because
4 that's the way I view it should be done. And I agree
5 with that.

6 THE COURT: Let me stop you there. I as a
7 judge don't care. I as a judge am very concerned about
8 the amount of attorneys' fees that are building up in
9 this case. And I think if we can funnel it through one
10 entity and do things in a smooth, orderly fashion, the
11 heirs will all benefit in the end.

12 MR. KANE: And I'm just trying to tell the
13 Court, we totally agree with that, and we're trying to do
14 it. But, as the Court knows, there is a common interest
15 agreement between Bremer and Comerica, which we believe
16 on behalf, at least, of Omarr Baker that there is a
17 potential issue that Comerica may not be able to assert
18 certain claims. We don't know the answer to that.

19 We're not trying to get in the middle of that,
20 but we need this information to make an evaluation
21 relating to that. We have to get the documents in to
22 proceed as the PR if Comerica had to sign a common
23 interest agreement which limits their rights. And we,
24 therefore, believe we have to go forward to protect our
25 clients' interests regarding those matters independent of

1 what Comerica does.

2 THE COURT: I agree with you on that point.

3 MR. KANE: The other issue that we have, Your
4 Honor, is that -- that, obviously, Mr. Cassioppi and his
5 colleague, Mr. Greiner, have an obligation to all of the
6 heirs. And to the extent that they want to get in the
7 middle of that, they really can't do that, at least from
8 my perspective, and it's awkward. And, therefore, to the
9 extent that there's issues that we believe that need to
10 be addressed, such as is there a claim by our client, our
11 client Omarr Baker, that there is a dispute relating to
12 how this Estate is going to be run, we need to have that
13 information. And that's one of the reasons that we
14 served that subpoena.

15 Now, I could -- if you go to the other points
16 that have been raised, there's only -- really,
17 fundamentally two points that have been raised by both
18 Mr. Dahl and Mr. Silver: One, there's no claim against
19 Mr. McMillan; there is a claim against Mr. McMillan. You
20 know, we're making a claim. There may not be a lawsuit,
21 but there is a claim. And we're in the parameters of the
22 Court, which gives us the full protection; second, the
23 issue is irrelevant.

24 Those are the only two points that they've
25 raised. All of this information is relevant as it

1 relates to at least the two claims that we've talked
2 about; namely, the first -- the Tribute issue; and,
3 second, the issue that arose regarding the contract that
4 was entered on January 31.

5 So we believe that sooner or later we'll have
6 to get these documents. We believe that Comerica would
7 be well served to get all these documents right now. Our
8 heirs would be well served to get these documents right
9 now to determine is there a claim that can go forward,
10 lawsuit. And if there is, then we do it. If there
11 isn't, then it puts an end to it. Otherwise, we're
12 just -- you know, we just keep pushing it.

13 And we have to keep pushing it, Your Honor,
14 because we have an obligation to our clients. And, you
15 know, if we think there's something out there, we just
16 can't sit on our hands and say, well, you know, there's
17 all these other people that are making these allegations
18 of this wrongful conduct, but we're not going to do
19 anything. We have to act, and we need the documents to
20 support it.

21 Once that comes about, we can then sit down
22 with Comerica and say we think there's a claim or there's
23 not a claim and go forward. And that's what we'd like to
24 do, Your Honor.

25 THE COURT: And with respect to your final

1 comments, Mr. Kane -- we're repeating things we've
2 already gone through, but just to make clear, yes, you
3 can sit on your hands if Comerica is taking the lead.
4 You've mentioned some reasons why Comerica may not be
5 able to take the lead in certain things, and I do agree
6 with you in that regard.

7 MR. KANE: Thank you, Your Honor.

8 MR. SILVER: Your Honor, can I --

9 THE COURT: Any -- Mr. Silver.

10 MR. SILVER: -- respond briefly?

11 Mr. Kane just said there is a claim against
12 Mr. McMillan. I don't know what he's talking about. I
13 know that there is a separate lawsuit. Not this action,
14 a separate lawsuit. But I think he's referring to
15 something more than that, and I think -- more than
16 that -- and I think that illustrates the problem that we
17 have in representing Mr. McMillan and the problems
18 Mr. McMillan has.

19 There's all of these allusions to a claim or
20 references to some kind of wrongdoing, but much of that
21 has been filed under seal. There was, I understand, a
22 conference with the Court a couple weeks ago in which
23 Comerica talked about some of the concerns that had been
24 raised. But we weren't privy to that. We don't know
25 what those allegations are. And so if Mr. Kane or

1 Mr. Cassioppi or the Court knows what the claim is, we
2 don't. We don't know what he's referring to.

3 THE COURT: Mr. Silver, let me assure you that
4 we have not discussed anything as to the merits of any
5 claim against Mr. McMillan without Mr. McMillan having an
6 opportunity to have counsel present.

7 MR. SILVER: I certainly appreciate that, Your
8 Honor. And, certainly, as Mr. Cassioppi has advised us
9 of a hearing that may be scheduled later at the end of
10 this month, and we certainly would want to participate in
11 that hearing if these kinds of allegations are going to
12 be made against our client.

13 Another thing Mr. Kane said is that I said that
14 Mr. McMillan was not named as a defendant in that
15 separate lawsuit. I don't think I said that because he
16 was named as a defendant. But what I said is the
17 allegations that were made relate largely or perhaps
18 solely to a loan that Mr. Koppelman is involved in.

19 And Mr. McMillan has filed an affidavit in this
20 case saying that he was not involved in that. He didn't
21 know anything about it. The first he learned about it
22 was when that lawsuit was filed and when he was presented
23 that information by counsel in this case.

24 So to the extent there is any allegation of
25 wrongdoing in connection with that lawsuit, the

1 allegations -- yes, he's named as a defendant, but it
2 does not appear that those allegations are directed
3 against him.

4 Finally, Your Honor, I think the concern that
5 we really have here is that this is a subpoena that was a
6 broad, all-encompassing subpoena that has been issued on
7 behalf of one set of heirs against another set of heirs
8 but doing that indirectly by serving it upon
9 Mr. McMillan. If the Court opens the door to that, are
10 the other -- are SNJ going to then be allowed to serve
11 subpoenas on Mr. Baker? Are the parties going to get
12 into a fight with each other? I think that the Court's
13 concept that this should be funneled through Comerica
14 makes sense.

15 And with respect to Mr. Cassioppi's comments,
16 what he has said is that he wants to use the existing
17 subpoena and have the Court narrowly construe it or
18 construe it in a different manner. It seems to me that's
19 a very convoluted way for Comerica to try to get the
20 information it wants.

21 Again, they never specifically asked us for
22 documents. They asked us written questions, which we
23 responded to orally instead, but they never requested any
24 documents. It seems like rather than trying to take
25 somebody else's subpoena and try to construe it in a more

1 narrow manner, it makes more sense for Comerica to direct
2 any questions it has to us or request any documents that
3 it wants from us. If we can produce them informally, we
4 will. If it requires a more formal subpoena, then so be
5 it. But I believe that we can probably produce any
6 information they want in an informal matter. It just
7 depends, you know, of course, on what it is they request.

8 THE COURT: Thank you.

9 MR. SILVER: Thank you.

10 THE COURT: Mr. Dahl.

11 MR. DAHL: Your Honor, I don't think I need to
12 address the claims made by Mr. Kane at this point. I
13 think those positions are well stated in that the
14 positions they're taking are inconsistent. We have a
15 claim, but we need discovery to go find out if we have a
16 claim. I think it's inconsistent and, as I stated
17 before, improper under the Rules of Civil Procedure.

18 But I would like to follow up Mr. Cassioppi's
19 comment. And in the event that the Court is inclined to
20 and traditionally interpret the subpoena that's in a
21 narrow a way as proposed by Mr. Cassioppi, we
22 respectfully submit that it be done in a way that protect
23 my clients' interests.

24 It's beyond dispute that they have communicated
25 with Mr. McMillan regarding their personal, financial,

1 and business dealings. The -- those matters, frankly,
2 should be excluded from such a requirement. And if they
3 are going to be produced, they need to be protected.

4 And I agree with Mr. Silver in that we are
5 opening up a different path in the case, potentially, if
6 we are going to allow one group of heirs to peer into the
7 business dealings of other heirs in a case like this, in
8 a case as unique as this involving the assets and
9 interests of a party implicated by a death.

10 Finally, I just note the burden that we're
11 imposing on the parties and various participants in these
12 proceedings.

13 Now, as the Court has noted, we've seen
14 influxes of litigation, both early on and building up
15 again in late 2016 or the fall of 2016, and we really
16 hate to see the parties continue to be burdened by
17 significant expense over, well, what has been
18 characterized as a "fishing expedition."

19 So just to reiterate, there is no claim. If
20 there is, it needs to be thoroughly vetted before we
21 start burdening the parties.

22 To the extent the Court is inclined to agree
23 with Mr. Cassioppi's interpretation of the request and
24 direct communication through Mr. Cassioppi, I would ask
25 that my clients' interests be protected.

1 Thank you.

2 THE COURT: Thank you.

3 Any further response?

4 Okay. Hearing none, then I will move to the
5 final issue that will be addressed by the Court today.
6 This Court in the fall of 2016, or early during the
7 administration of this Estate, has issued orders that may
8 be referred to as "protocols" or "direction" to the
9 special administrator as to trying to make sure that the
10 non-excluded heirs' concerns were considered and at the
11 same time allow the special administrator to proceed
12 forward in a prompt and orderly fashion to enter into
13 licensing agreements or other contracts to attempt to
14 raise funds necessary for the administration of the
15 Estate and the payment of taxes.

16 Once the special administrator's term ended and
17 the personal representative was appointed here, the Court
18 issued an order which generally extended those protocols
19 to apply to the personal representative as well, and we
20 have a discussion now about the release of certain
21 information regarding that. It was brought to the
22 Court's attention by Mr. Dahl, but I know that
23 Mr. Cassioppi is very concerned about this as well.

24 Who would like to address the Court first?

25 MR. DAHL: I will, Your Honor.

1 THE COURT: Go ahead, Mr. Dahl.

2 MR. DAHL: Yes, Your Honor. Sharon, Norrine,
3 and John, they acknowledge the Court's previous order for
4 protocol and appreciate the role of the personal
5 representative in this case. The protocol has allowed
6 the personal representative at this time to maintain a
7 certain amount of control over information. At the same
8 time, the order was very clear, to the extent of certain
9 transactions, in that the non-excluded heirs could retain
10 a third party of their choosing subject to a
11 non-disclosure agreement as approved by Comerica and its
12 counsel.

13 Now, bearing that in mind, there are several
14 facts that really shouldn't be in dispute in this case.
15 First of all, Sharon, Norrine, and John, they constitute
16 half of the non-excluded heirs. If we presume that we
17 move forward with those six heirs, ultimately, they are
18 going to have half of the Estate. There is no suggestion
19 anywhere that they wish to harm the Estate or otherwise
20 impede its progression.

21 It's also beyond dispute that Mr. McMillan has
22 unique knowledge of Prince, Prince's assets, Prince's
23 business, extensive business relationship with him, and
24 he knows the entertainment industry. He served as the
25 entertainment advisor to the special administrator

1 previously, and he is certainly well qualified.

2 Sharon, Norrine, and John would like his advice
3 in matters regarding the Estate as well as their
4 personal, business, and financial matters, and
5 particularly those matters that the Court has carved out
6 an exception for information to be provided to them with
7 an opportunity for at least some input. There's not a
8 surplus of individuals that are available to provide
9 advise to clients similar to mine with respect to matters
10 related to Prince and the assets.

11 And it's also beyond dispute they've already
12 retained Mr. McMillan to do that. They have an ongoing
13 relationship, and, you know, precluding him from
14 participating in that impedes that relationship.

15 And, finally, perhaps most importantly, there's
16 no suggestion at this time that Mr. McMillan would
17 violate a non-disclosure agreement if one were to be
18 provided. The -- under these circumstances, the
19 March 22nd, 2017, order speaks for itself. And my
20 clients' relationship with Mr. McMillan was known at that
21 time. There had been open testimony before. And the
22 parties and the other non-excluded heirs were aware of
23 them having a relationship.

24 The -- so based on the plain language of the
25 order, my clients should be able to proceed with seeking

1 a non-disclosure agreement for the third parties and
2 advisors that they deem necessary to protect their
3 interests in the Estate and otherwise.

4 The objection in this case sets a dangerous
5 precedent, and it seems to be suggesting that anyone who
6 even has a hint of a potential conflict or being involved
7 in other estate matters should somehow be precluded from
8 participating.

9 Now, with respect to certain transactions that
10 have been raised and potential issues there, lots of
11 different parties and individuals have all participated
12 there. I respectfully submit it's inconsistent to
13 preclude Mr. McMillan while everyone else moves forward.

14 These other conflicts that were originally
15 raised, number one, they remain allegations. As
16 submitted previously, we have a slew of allegations.
17 Mr. Silver has done an excellent job of pointing out that
18 right now it's a lot of conjecture. And if we are going
19 to impede my clients' ability to get the advice they need
20 from somebody that's a recognized expert in the field, we
21 need more than that.

22 The original basis cited was a particular
23 investigation noted by the Court in a previous order.
24 But, as the memorandum under that order indicated, the
25 basis for that request was because of the request from

1 other heirs, non-excluded heirs, to look into that issue
2 and follow up on it. And the Court indicated, you know,
3 we're not sure we'd even hear anything further on that
4 issue.

5 Now, moving on from that, the -- there was no
6 attempt in this matter to even try to craft a
7 non-disclosure agreement that could protect those
8 interests. You know, Comerica took a firm and
9 straightforward position saying no with respect to
10 providing that agreement for Mr. McMillan.

11 Under these circumstances, we submit that's
12 inappropriate. Our client, again, has significant
13 interests in this matter, both as part of the Estate and
14 individually. Mr. McMillan is certainly well qualified
15 to address those interests. And, you know, but for the
16 repeated allegations and filings we've seen from certain
17 parties in this case, it would be to the benefit of the
18 Estate to have somebody like that involved.

19 Just like before when we addressed a certain
20 protocol, in at least one of those deals we made some
21 improvements. And my clients would like to have that
22 continued opportunity.

23 I would also like to address a specific
24 proposal, and I request that that be done in a closed
25 proceeding. But I want to make sure I save that issue.

1 The long and short of it here is that the --
2 Comerica's actions regarding the non-disclosure agreement
3 for Mr. McMillan, it seems to be a big deviation from
4 what's typically provided to known heirs in estates. We
5 don't have that when heirs want to speak to their tax
6 preparers, their business advisors, their accountants.

7 But, admittedly, this estate is different, and
8 everybody acknowledges that. And we know that. But
9 those concerns can be addressed with a non-disclosure
10 agreement. Which, again, there's no evidence to suggest
11 he would violate that. You know, Sharon has known
12 Mr. McMillan for well over a decade, and Norrine and John
13 have developed relationships with him. They know him,
14 trust him, and they want his advice. They acknowledge
15 the special relationship he had with Prince. And I think
16 my clients are entitled to continue their relationships
17 and utilize Mr. McMillan's expertise in benefitting the
18 Estate and protecting their interests, and, frankly, the
19 other interests of the other heirs as well.

20 I respectfully submit that Comerica should
21 provide a non-disclosure agreement to Mr. McMillan, and
22 I'll reserve comments on the proposal.

23 THE COURT: Thank you.

24 Mr. Cassioppi.

25 MR. CASSIOPPI: Thank you, Your Honor. Joe

1 Cassioppi on behalf of Comerica.

2 As Mr. Dahl referenced, the Court in its
3 March 22nd order set forth a few provisions as to certain
4 types of deals in the notice and information that
5 Comerica should provide to the non-excluded heirs. And
6 relevant here, this provision stating that we are to give
7 at least 14 business days notice prior to entering into
8 any deal where the Estate reasonably anticipates that we
9 will receive more than \$2 million over the life of the
10 deal.

11 With respect to this specific transaction --
12 and I'm not going to get into the specifics of it, and
13 it's not necessary for purposes of this argument -- it
14 did fit neatly within this provision. Because if you
15 actually go forward and read on the provision, it states:
16 "It is the intent of the Court that the personal
17 representative not be required to provide advance notice
18 or to seek the approval of the non-excluded heirs for
19 routine licensing, exploitation, and other contractual
20 matters."

21 This was not a new deal. This was a proposal
22 based upon rights that had already been granted to a
23 third party. But Comerica decided to err on the side of
24 caution, provided notice, gave as much information as
25 possible under the circumstances to counsel for the

1 non-excluded heirs. But because this was a very
2 commercially sensitive deal and because of very strict
3 confidentiality provisions in the agreement between the
4 Decedent and our primary partner on this deal, we asked
5 that it not be provided any further beyond the
6 non-excluded heirs' counsel of record and the
7 non-excluded heirs themselves.

8 We got a response back from Mr. Dahl requesting
9 a non-disclosure agreement, that it be provided to an
10 unnamed adviser. We asked who that was, and we were told
11 it was Mr. McMillan. We noted that the circumstances
12 really had changed since March 22nd with respect to
13 Mr. McMillan and Comerica does not feel comfortable
14 providing this specific information to him, and we asked
15 if that was something the clients were willing to agree
16 to. And if they weren't, we offered to go to the Court
17 and seek guidance on the issue so that we could make sure
18 that we were not in any way running afoul with what the
19 Court's direction was. Didn't receive a response to
20 that. All we received was a request for additional
21 information, which we immediately provided, and then we
22 received this letter.

23 This is not something that Comerica wants to
24 do, wanted to do. It's something -- it's a position it
25 took only after a lot of consideration. And it's taken

1 with a lot of hesitancy because Comerica respects and
2 appreciates why Sharon Nelson, Norrine Nelson, and John
3 Nelson want advice on these types of transactions.

4 But because of circumstances that have arisen
5 since March 22nd, we just really do not believe it is in
6 the best interest of the Estate that this type of
7 sensitive commercial information be provided to
8 Mr. McMillan.

9 And it is really three things. The first is
10 the Court's April 5th order which specifically put us in
11 a position where we are adverse to Mr. McMillan because
12 we were required to investigate him. And so because of
13 that adversity, we feel uncomfortable providing
14 confidential business information about the Estate to
15 Mr. McMillan.

16 Second, as has been referenced a few times here
17 today, an additional claim has been filed in Carver
18 County District Court alleging inappropriate conduct by,
19 primarily, Mr. McMillan's partner, Mr. Koppelman. But
20 claims have also been asserted against Mr. McMillan, and
21 that causes us additional concerns.

22 And, finally, as has also been referenced here
23 today, there will be a motion hearing on May 31st
24 regarding an additional transaction in which allegations
25 have been made about Mr. McMillan. It is a transaction

1 involving Universal Music Group. And what causes us a
2 substantial amount of concern about providing
3 confidential business information to Mr. McMillan is
4 that, in connection with the Universal Music Group
5 transaction and the discussions that have taken place in
6 connection with that, we specifically requested that
7 Mr. McMillan not reach out directly to Universal. And he
8 did not follow that and has been trying to have
9 discussions on the side with Universal, which has caused
10 a substantial amount of problems for us as we try to do
11 everything we can to resolve that matter in the way that
12 is most efficient for the Estate.

13 And so I'm not saying -- I'm certainly not
14 saying and certainly not seeking to imply that if we
15 provide confidential information to Mr. McMillan that he
16 would disseminate it, specifically under an NDA. But
17 there are enough things here, particularly like in a
18 situation where we are now adverse with him, where we are
19 not saying that Sharon Nelson, Norrine Nelson, and John
20 Nelson can't provide information under an NDA to
21 advisors. And there are any number of advisors with whom
22 they could -- they could contact or otherwise seek
23 counsel on for this.

24 But as to this specific person, as to -- based
25 on the specific circumstances as they exist now, we do

1 not believe it's in the best interest of the Estate.
2 Ultimately, we will follow whatever the Court directs us
3 to do on this, but we -- that is Comerica's position. We
4 felt that it was important to bring that to the Court
5 before we provided any of those types of information to
6 Mr. McMillan.

7 THE COURT: Mr. Silver, did you want to be
8 heard on this?

9 MS. WILLIAMS: Actually, I'm going to cover
10 this, Your Honor. Robin Ann Williams for L. Londell
11 McMillan.

12 Your Honor, Mr. McMillan doesn't want to be the
13 tail wagging the dog here. Mr. McMillan appreciates this
14 issue about what Sharon, Norrine, and John want, and that
15 is what should be the outcome of this particular matter.

16 SNJ -- if I may use that moniker -- SNJ has
17 expressed what they want. They have entered into a
18 management agreement with Mr. McMillan, and Mr. McMillan
19 is their adviser and manager now. And if Mr. McMillan is
20 not able to receive information about proposed deals to
21 or by the Estate, he will be hobbled and they will be
22 hobbled in providing information that they want to
23 receive from him.

24 And, as Mr. Cassioppi has pointed out, there
25 are three reasons why Comerica is concerned about

1 Mr. McMillan receiving that information. The first is
2 that Comerica feels that it is officially adverse to
3 Mr. McMillan because it has been appointed to investigate
4 the commission from the concert. And while Mr. McMillan
5 feels no adversity toward Comerica, the reality is that
6 that investigation is a side show. We don't know the
7 outcome of the investigation. It could be Comerica would
8 decide the Tribute concert is an Estate asset. It could
9 be they'll conclude that Mr. McMillan did a spectacular
10 job. But none of that matters because it has nothing to
11 do with present and future dealings that are being
12 presented to the Estate.

13 The second issue that has been raised, Your
14 Honor --

15 THE COURT: Can I stop you for a minute?

16 MS. WILLIAMS: Yes.

17 THE COURT: I'm going to ask a question of
18 Mr. Cassioppi, but then -- so that I can get back to you.

19 You indicated that the matter of current
20 concern is a renegotiation or an additional component to
21 an agreement that had already been reached by the Estate
22 with this partner; is that correct?

23 MR. CASSIOPPI: We are -- I think to answer
24 this question fully, we may need to do it outside the
25 presence.

1 THE COURT: And maybe we don't need to go
2 there. My question was: Has Mr. McMillan been involved
3 in negotiations with this partner?

4 MR. CASSIOPPI: He was involved in negotiations
5 with this partner when the deal was originally entered
6 into.

7 THE COURT: Last fall?

8 MR. CASSIOPPI: Last fall. And it went
9 through -- through January.

10 THE COURT: Okay. That's what I was looking
11 for.

12 Back to you, Ms. Williams.

13 MS. WILLIAMS: Your Honor, do you have any
14 follow-up questions about the concert issue before I move
15 on to the second point?

16 THE COURT: No, I don't.

17 MS. WILLIAMS: All right. The second point is
18 this lawsuit involving Mr. Koppelman, and I think that
19 folks have been, frankly, sloppy with the language they
20 are using about this lawsuit. And I don't know if there
21 has been any submission to the Court calling
22 Mr. Koppelman "Mr. McMillan's partner," but certainly in
23 correspondence with Comerica that has been suggested.

24 Mr. Koppelman was an adviser to Bremer and the
25 Estate. Mr. McMillan was adviser to the Estate and to

1 Bremer. That does not make them partners. I'm
2 Mr. Silver's partner; I'm not Mr. Cassioppi's partner.
3 And so there should be no concern that there is a
4 partnership between Mr. Koppelman and Mr. McMillan that
5 would preclude Mr. McMillan from receiving information
6 about, again, present and future deals. So that is
7 another distracting injury here and another excuse that,
8 frankly, does not hold water as to why SNJ's wishes
9 should not be followed.

10 And last but not least is this deal that we are
11 speaking of. To drive home Mr. Silver's point, again we
12 are at a bit of a disadvantage here, Your Honor, because
13 we are not parties. There are -- there is information
14 being submitted under seal that we are not able to read,
15 et cetera, so it's difficult to respond. I will say that
16 Mr. McMillan has been very open, and we have communicated
17 openly to Comerica that he stands ready to assist
18 Comerica with that particular issue.

19 Mr. Cassioppi just mentioned that Comerica
20 believes that Mr. McMillan may be having side
21 conversations. I don't know the details of those, again
22 because we are here with one hand tied behind our back.
23 But I will say, Your Honor, that a protective order
24 solves that problem because Your Honor can order in a
25 protective order that any adviser to any non-excluded

1 heirs is not to have side conversations with the
2 principals of any proposed deal.

3 And I would hope what's good for the goose is
4 good for the gander; that if Mr. McMillan would be
5 restricted in so doing, so would everybody else, except
6 Comerica because, as Your Honor has pointed out, the
7 Court's wish is to funnel everything through Comerica.

8 So a protective order solves the problem, and
9 there's no suggestion that Mr. McMillan would not follow
10 the terms of a protective order. And a protective order
11 protects Comerica's concerns, and it also allows SNJ's
12 wishes to be met. And it allows Mr. McMillan to fulfill
13 the terms of the contract that he has with SNJ.

14 Thank you.

15 THE COURT: Thank you.

16 Anyone else wish to be heard?

17 MR. CASSIOPPI: One final comment on behalf of
18 Comerica, Your Honor. Joe Cassioppi.

19 To be clear, it is our belief and our hope that
20 this restriction would be temporary. We have no interest
21 in these disputes going on any longer than they need to.
22 And once everything is resolved with respect to the
23 issues that we've discussed in our correspondence and
24 that we've referred to here today and the adversarial
25 nature in the current relationship is put aside, then

1 this type of restriction wouldn't be necessary anymore.

2 But, as things stand, it is our belief that it
3 is in the best interest of the Estate to have this type
4 of information not be provided to Mr. McMillan.

5 THE COURT: Thank you.

6 Ms. Williams, I'll give you a moment.

7 Mr. McMillan, your attorneys can come back and
8 talk with you.

9 MS. WILLIAMS: Can I have one moment, Your
10 Honor?

11 THE COURT: We'll go off the record.

12 Anybody wants to just stand, stretch, talk to
13 your neighbor, feel free.

14 (Discussion outside of the record.)

15 THE COURT: We'll go back on the record.

16 Anything further?

17 MS. WILLIAMS: Yes. And I thank the Court's
18 indulgence for that brief recess. We were having a bit
19 of difficulty from time to time with these coded
20 questions and answers in the room, again, because we
21 aren't parties.

22 We believe that Your Honor asked Mr. Cassioppi
23 about whether -- with respect to a deal presently pending
24 before the Estate, whether Mr. McMillan was previously
25 involved in that deal. And we don't know what deal is

1 presently being offered. We don't know what deal
2 Comerica does not want to tell us about, but we do not
3 believe that Mr. McMillan was previously involved in the
4 deal that is presently before the heirs. And, again, we
5 don't know what the deal is because we haven't been given
6 the information, but we wanted to make that clear to the
7 Court.

8 THE COURT: Thank you.

9 MR. CASSIOPPI: Your Honor, I may have
10 misunderstood your question too, but this may be
11 something that we should talk about outside of the
12 presence of the public just to make sure that I
13 understood you correctly and didn't.

14 THE COURT: Okay.

15 MR. BRUNTJEN: Your Honor, I have one thing to
16 say.

17 THE COURT: Note your appearance.

18 MR. BRUNTJEN: Justin Bruntjen on behalf of
19 Alfred Jackson.

20 Your Honor, in the February 9th interview with
21 *Billboard Magazine*, Mr. Koppelman and Mr. McMillan were
22 interviewed. And in that interview from the article,
23 Mr. Koppelman says, "That why it's always good to have a
24 lawyer as a partner" -- "as your partner," in regards to
25 Mr. McMillan.

1 And in response, Mr. McMillan says, "We've got
2 another big, huge deal." After that.

3 MS. WILLIAMS: May I respond?

4 THE COURT: I don't know that you need to, but
5 go ahead.

6 MS. WILLIAMS: This is why we should not have a
7 full cast in the courtroom. I would just point out, to
8 the extent that article exists, I'm not aware of it. I
9 haven't read it. But it was available on February 9, and
10 it -- you know, this is trial by ambush presented kind of
11 like that today.

12 By while Mr. Koppelman may say whatever he
13 means to say by identifying Mr. McMillan as a partner,
14 these stray comments in a news article, it certainly does
15 not make them legally partners. And they are not and
16 were not legally partners.

17 THE COURT: They were partners as advisors to
18 the Estate, and I recognize that.

19 MS. WILLIAMS: Thank you, Your Honor.

20 THE COURT. Okay. Anyone else?

21 MR. KANE: Your Honor, I just have one quick
22 comment, Your Honor.

23 THE COURT: Mr. Kane.

24 MR. KANE: Thomas Kane on behalf of -- these
25 comments are on behalf of Omarr Baker. I just want to

1 make it clear that once the motion to quash was served,
2 we were requested -- we, our office, was requested to
3 provide to Mr. Silver and Ms. Williams information that
4 was under seal. As far as I know, everything they asked
5 for we provided to them, and it included the information
6 that we are talking about right now. So all that
7 information was provided under the seal. In terms of
8 what our brief was, the affidavits, the transcript,
9 et cetera, it was provided.

10 Now, whether or not there is something else,
11 I'm not going to get into that, but I -- my comment is
12 not to disagree with Mr. Silver and Ms. Williams, but
13 just to make sure that the Court understands we are
14 trying to cooperate and give other parties the
15 information they need so we can have a full and open
16 discussion on the record.

17 The second point I would make is that --
18 that -- as you heard Mr. Cassioppi, the personal
19 representative is in a position, and my word is it's an
20 awkward position relating to Mr. McMillan at this point
21 in time. Our view is that we have to -- we, on behalf of
22 at least whatever heirs want to participate, have to come
23 in and try to protect the interests as it relates to
24 those issues. And in this particular matter, we are
25 trying to protect the issue by getting in the subpoena.

1 And I'm not trying to go back to that, but as it relates
2 to the -- and Mr. Cassioppi mentioned it -- the UMG deal
3 involves specific allegations relating to wrongful
4 conduct. We were aware of that. That's why we are
5 trying to go forward with that, and it relates to the
6 concert issue that we previously discussed.

7 Thank you, Your Honor.

8 THE COURT: Anyone else?

9 MR. DAHL: Yes, Your Honor. Nathaniel Dahl
10 again on behalf of Sharon, Norrine, and John.

11 In listening to the comments today, we have not
12 heard a justification for a blanket exclusion. We've
13 heard general references to one particular situation, as
14 addressed by the Court in its previous orders, and
15 another dealing. To go so far as to make a blanket
16 exclusion, not even attempt to craft an NDA for
17 Mr. McMillan, imposed a significant burden upon my
18 client, as previously articulated.

19 And also just note, you know, these proceedings
20 don't occur in a vacuum. You know, we've had, you know,
21 well over a year of proceedings. And as Comerica is
22 aware, they watched the proceedings with Bremer, and I
23 suspect at least in part they are taking a very cautious
24 approach how to handle these things in light of the
25 environment currently present in this Estate.

1 And so when we talk about the burden to my
2 client, we're not just talking about the motion to quash.
3 We're not just talking about the NDA issue of
4 Mr. McMillan. The overly litigious approach to some of
5 these issues in this case is really extracting a toll,
6 and I just want to highlight that issue for the Court.

7 Thank you.

8 THE COURT: Anyone else at this time?

9 MS. WILLIAMS: Your Honor, just briefly. We've
10 asked for privileges, but we'd like to acknowledge the
11 courtesy that the Cozen firm extended to us when they
12 served their reply last week. The memorandum cited
13 documents that were sealed or redacted, and Mr. Kane
14 appreciated that we would have difficult times with
15 regard to the motion to quash if we did not have those
16 kind of materials. So he gave them to us with the
17 understanding that we would follow confidentiality
18 restrictions on those materials.

19 Our point is not in any way, shape, or form to
20 suggest they didn't give us what we asked for, but we
21 asked for a very small amount because we are aware of the
22 fact that many things have been filed under seal. So for
23 the vast majority of what's happened in this file,
24 Bassford Remele has not accessed that. But certainly
25 Mr. Kane was kind enough to give us the materials we

1 needed for the immediate motion present before you.

2 THE COURT: Okay. Then, at this time, the
3 Court will conclude the public hearing in this matter.
4 We will adjourn for about ten minutes to allow some folks
5 maybe to leave, the media to get their stuff out of here.
6 We will re-adjourn in a private session only to address
7 the more specific questions that Ms. Williams or
8 Mr. Cassioppi have raised as to what the current deal is
9 and whether Mr. McMillan was involved in a related deal.

10 I expect it's going to be about a two-minute
11 discussion regarding that sole issue, and then we'll
12 adjourn for the day.

13 Mr. Cassioppi.

14 MR. CASSIOPPI: Your Honor, there is one other
15 issue, as Mr. Dahl referenced. Setting aside the issue
16 of the NDA and Mr. McMillan, Mr. Dahl's clients have
17 challenged the specifics of this deal now in their
18 letter, and we would like to address that too as part of
19 the closed session.

20 THE COURT: Very good. We will do so.

21 So any parties -- in other words the
22 non-excluded heirs and their counsel, as well as the
23 personal representative and Mr. -- or yeah -- and Mr.
24 McMillan and his counsel can stay in the courtroom for
25 that.

1 We will reconvene in about ten minutes.

2 MR. CASSIOPPI: Thank you.

3 THE COURT: Mr. Cassioppi?

4 MR. CASSIOPPI: Yes. Sorry, Your Honor.

5 I have no objection to Mr. McMillan and his
6 counsel staying for the first portion dealing with the
7 clarification of what the deal is. I'd ask that after
8 that part of the closed hearing is finished, that
9 Mr. McMillan and his counsel leave.

10 THE COURT: So ordered.

11 MR. CROSBY: As to -- David Crosby for Bremer.
12 As to Bremer, whether Bremer can be there for part or all
13 of the closed session.

14 THE COURT: Anybody wish to respond?

15 MR. CASSIOPPI: As to the first part. The
16 first part I think it is all right for Bremer to be
17 there. And they may have some input on it.

18 As to the second, it doesn't involve anything
19 with which they are related, so I would ask that they be
20 excused as well.

21 THE COURT: Very good. Thank you. We will be
22 in recess.

23 (Recess in proceedings.)

24

25