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Carver County, MN

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Decedent,

And

Tyka Nelson,

Petitioner.

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

REDACTED

OMARR BAKER'S REPLY IN SUPPORT OF OBJECTIONS TO FINAL ACCOUNT THROUGH 11/30/16, FINAL ACCOUNT FROM 12/1/16 THROUGH 12/31/16, AND PETITION FOR ORDER APPROVING ACCOUNTING, DISTRIBUTION OF ASSETS, AND DISCHARGE OF SPECIAL ADMINISTRATOR

INTRODUCTION

Omarr Baker ("Objectant"), by and through his counsel, hereby submits this reply in support of the objections to the Petition of the Special Administrator, Bremer Trust, N.A., for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator dated December 16, 2016.

The Special Administrator seeks an order approving its accounting and a full discharge from liability. But substantial review and additional information is required before the Court may discharge the Special Administrator—and this warrants a formal evidentiary hearing before the Court. There cannot and should not be a discharge of liability until these pending issues are resolved. Objectant respectfully reiterates the Objections filed on January 11, 2017 and their supplemental objections filed on January 19, 2017, submit this reply in support of the objections, and request the Court put these objections to a formal evidentiary hearing.

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FACTS

Bremer Trust, N.A. was appointed as Special Administrator for the Estate ("Special Administrator" or "Bremer") in April 2016. In December 2016, the Special Administrator filed its Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator ("Petition"). On December 28, 2016, Judge Kevin W. Eide signed an order stating that any objections to the Petition must be filed with the Court prior to or raised at the hearing scheduled for January 12, 2017 at 10:30 a.m. ("January 12 Hearing"). Omarr Baker submitted objections on January 11, 2017 ("Initial Objections"). After the January 12 Hearing, Judge Eide signed an order stating that any additional objections to the Petition must be filed with the Court by January 19, 2017. Objectants filed supplemental objections to the Petition on January 19 ("Supplemental Objections") and on January 26, the Special Administrator filed its response ("Bremer's Response"). On a conference call with the parties and counsel on January 27, 2017, Objectants requested and Judge Eide granted permission to file any reply briefs by 9 a.m. CST on January 30, 2017.

Objectant hereby submits this reply in support of the objections to the Special Administrator's Final Account through 11/30/16, Final Account from 12/1/16 through 12/31/16, and Petition for Discharge. Objectant requests the Court put the objections and issues presented in their Initial Objections, Supplemental Objections, and this reply to a formal evidentiary hearing.

ARGUMENT

A. The Special Administrator's Contentions Regarding Its Discharge and Accounting are Without Merit

The Special Administrator knows that its discharge at this stage procedurally unnecessary and premature—especially considering the breadth of issues involved in the Estate. *See* Minn. Stat.

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§ 524.3-608. And yet, the Special Administrator continues to argue that the accounting is sufficient and that it is entitled to a discharge from liability. Respectfully, this is incorrect.

Bremer seeks a full discharge from liability for its actions as special administrator. In its Petition, Bremer requests the Court approve its accounting *and* discharge from liability. But in the accounting, the Special Administrator fails to disclose or identify every financial transaction, fails to provide any detailed transactions, and fails to identify Bremer's acts in a manner sufficient to allow the Court or other parties to properly investigate whether the Special Administrator is entitled to a full discharge from liability.

How Bremer can ask to be discharged from liability for acts it failed to identify in the accounting remains unexplained.[1] Moreover, how the Court can reasonably consider Bremer's discharge from liability without knowing the full extent of the accounting is troublesome. Under Minnesota law, before receiving a discharge from liability the party seeking discharge must identify every action, on the record, and allow interested parties to conduct discovery, evaluate the party's claims, and take part in an evidentiary hearing.[2] This necessary period for discovery and a separate hearing provides the Court with the essential time and place to carefully consider the discharge.

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[1] In its response, Bremer claims Objectants misunderstand the type of accounting required in probate proceedings. *See* Bremer's Response at p. 16 (citing to Gen. R. Practice 417.02; Affidavit of Laura Halferty filed on January 26, 2017, ¶ 38.) But Bremer has provided no authority supporting its assertion that if it failed to include all transactions in its accounting, the Special Administrator is still entitled to discharge. As an analogy, Objectant directs the Court to Minnesota law regarding disclosure required for valid prenuptial agreements. In Minnesota, a prenuptial agreement is not valid and not enforceable if it fails to provide "a *full* and *fair disclosure* of the earnings and property of each party." *See* Minn. Stat. § 519.11, subd. 1. The Court should compel Bremer to similarly provide a full and fair disclosure of every transaction in the accounting before a discharge from liability.

[2] Minnesota probate courts have full authority to hold an evidentiary hearing regarding the accounting and discharge from liability *after* the fiduciary is replaced. *See generally Lorberbaum v. Huff*, 765 N.W.2d 919, 922 (Minn. Ct. App. 2009); *In re Estate of Stewart*, A04-808, 2005 Minn. App. LEXIS 62 (Minn. Ct. App. Jan. 11, 2005).

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The Special Administrator claims that because the accounting "filed balance to the penny," this entitles it to a discharge from liability. (*See* Bremer's Response at p. 15.) The accounting, as submitted, may be mathematically correct. But if Bremer failed to (for example) collect all revenues due to the Estate, the accounting would still balance to the penny but Bremer *cannot* and *should not* be discharged from liability until the Court determines that Bremer has disclosed each and every transaction. Bremer's submitted accounting does not provide sufficient information to allow the Court to determine whether the Special Administrator properly collected all revenues due to the Estate, or whether the Special Administrator engaged in other transactions for which they should not be discharged.

At the January 12 Hearing,[3] representatives for the Special Administrator admitted that the full accounting was not provided. (*See* Affidavit of Steven H. Silton filed on January 19, 2017, ¶ 4.) At the hearing, the Special Administrator also claimed that (1) Objectants never requested a full accounting, and (2) many of the documents Objectants noted were missing were available on its HighQ document repository. In its response, Bremer reiterated this point. (*See* Bremer's Response at pp. 8-9, 15-16.)

Any documents on HighQ are not submitted to the Court, ***and therefore not part of the record***. The fact that Bremer continues to rely on HighQ as a substitute for providing a full accounting for the Court's review is without excuse. Moreover, Bremer has provided no legal support for its argument that any disclosure that is not part of the court record (like documents on HighQ) is sufficient for a fiduciary accounting—because no authority supports this. Documents

[3] Objectants have requested from the Court a transcript of the January 12 Hearing. However, the transcript was not available prior to this filing. A review of the transcript, when available, will alleviate some of the hearsay and other issues in Bremer's Response. *See, e.g.*, p. 16 ("Objectants mis-state the testimony of Ms. Fasen at the January 12 hearing . . .").

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that are not part of the record cannot be incorporated into the formal accounting submitted to the Court. As an analogy, Objectant directs the Court to law regarding record review on appeal. In conducting their review, appellate courts review only the information that was presented in that tribunal. *See* MINN. R. CIV. APP. P. 110.01 ("The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases"); *see also* Jeffrey C. Robbins, *New Evidence on Appeal*, 96 MINN. L. REV. 2017 (2016) ("An appellate court can properly consider only the record and facts before the district court and thus ***only those papers and exhibits filed in the district court can constitute the record*** on appeal") (emphasis added). The HighQ documents have never been filed in the district court, and therefore cannot constitute the record. At the very least, there should have been a signed agreement that certain documents on HighQ would be treated as if they are in the record and the Court should have received copies for *in camera* review.

But even if the documents on HighQ are considered, it still does not provide adequate disclosure in the context of accounting. Bremer actually admits that it has not provided all the necessary documentation (*e.g.*, the December 2016 statements were never placed on HighQ or provided to the Court or the Non-Excluded Heirs in another form). (*See* Bremer's Response at pp. 15-16.)

Objectant stresses once more that before the Court provides a discharge of liability, the Special Administrator must provide the full accounting. The haphazard production of accounting related documents that Bremer has provided—few of which are in the record—is insufficient. Objectant respectfully requests the Court defer the Special Administrator's discharge of liability until a full accounting is provided, and put the accounting to a formal evidentiary hearing.

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B. The Special Administrator Breached its Fiduciary Duty to the Estate by Walking Away from the Tribute and Allowing Its Agent to Profit at the Expense of the Estate

In its response, the Special Administrator steadfastly holds that it is faultless for the Tribute mismanagement. Bremer claims that by entering into the standstill agreement with Jobu Presents, LLC ("Jobu Presents"), it is absolved from any blame for the Tribute. (*See* Bremer's Response at pp. 6, 14, 18.) Objectant does not dispute the strategy behind the standstill agreement. But it is not the standstill agreement that created a breached fiduciary duty. It is the fact that Bremer walked away from the profits and funds the Estate should have received from the Tribute that rose to the level of a breach of its fiduciary duty. *See In re Estate of Allard*, A15-0296, 2015 Minn. App. Unpub. LEXIS 1165, at *4 (Minn. Ct. App. Dec. 21, 2015) (a personal representative—and by extension, a special administrator—must act in the "best interests of the estate").

Bremer states that the Tribute sold out in ten minutes. (*See* Bremer's Response at p. 5.) By all public press about the Tribute, it was successful. It was also, most likely, hugely profitable from a financial perspective and would have provided much needed liquidity to the Estate. It was in the "best interests of the estate" for the Special Administrator to retain its involvement in the Estate. *See* Minn. Stat. § 524.3-703(a) (a fiduciary has the duty to settle and distribute the estate "as expeditiously and efficiently as is consistent with the best interests of the estate"). The Tribute, as planned, would have provided at least [redacted] to the Estate. And yet, instead of carefully cultivating the Tribute, Bremer mismanaged it completely. What is more, in its response Bremer blithely admits that "putting on a concert was not a high priority." (*See* Bremer's Response at p. 12.)

Prince's revenue in recent years came from concerts. Since the Decedent's death, the Tribute concert was one way for the Estate to generate revenue from a concert. By walking away

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from the Tribute, the Special Administrator missed a prodigious opportunity to provide needed funds for the Estate.

Bremer's decision not to prioritize the Tribute is revealing. Knowing that the Estate lacked liquidity, Bremer walked away from a [redacted] guarantee without a fight. Knowing the Tribute would provide positive press and benefit the Estate, Bremer allowed its agents mismanage the Jobu Agreement and reap the Tribute's profits. The [redacted] from Jobu Presents is a significant sum, especially considering the Estate's payment of $12 million in estimated estate taxes. (*See* Bremer's Response at p. 1.) At a time when the Estate needed liquidity, Bremer could have increased cash flow significantly with a single concert. But between its other tasks, Bremer deemed the Tribute "not a high priority."[4]

Moreover, Bremer went on to state in its response that "concert promotion was outside [its] professional experience." (*See* Bremer's Response at p. 12.) This is no way absolves Bremer's liability. Negotiating music deals was outside its experience, so the Court allowed Bremer to hire experts to maximize value for the Estate. (*See Findings of Fact, Order & Memorandum Authorizing Special Administrator's Employment of Entertainment Industry Experts* dated June 8, 2016.) In this case, one of the experts Bremer hired had the expertise necessary to promote the Tribute—and he did. How the Special Administrator walked away from the Tribute and allowed its own agent to profit from the Tribute, without seeking payment on behalf of the Estate, remains unexplained and is very troublesome. By entering into the agreement with Jobu Presents, the

[4] Bremer has consistently represented to the Court that the Estate was in "disarray" when was appointed as emergency special administrator. In fact, based on Bremer's representations, the Court credited Bremer with "walk[ing] into personal and corporate mayhem where the Decedent's personal and business affairs were in disarray, a criminal investigation was being undertaken, assets and records were voluminous and scattered, and numerous monetary and heirship claims were about to cascade upon them." *See Order for Transition from Special Administrator to Personal Representative* dated January 20, 2017 at ¶ 4(iii). But Objectant takes exception to Bremer's representation to the Court that the Decedent's "business affairs were in disarray." There is nothing in the record to suggest this "disarray." Objectant has seen no evidence of this from Bremer, and more than word of counsel is necessary to prove it.

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Special Administrator entered into an agreement providing at least [redacted] to the Estate. Bremer had to know the Tribute was a valuable opportunity for the Estate. By walking away from the Tribute after its dispute with Jobu Presents, Bremer surrendered the opportunity to collect millions of dollars for the Estate. Bremer has still provided no good reason for doing so.

Instead of addressing this issue, Bremer lauds its agent, L. Londell McMillan, with stepping up "to rescue the concert." (*See* Bremer's Response at pp. 5, 14.) This is laughable. Mr. McMillan did not "rescue" the Tribute. As its promoter, he *profited* from it.[5] As Bremer well knows, the financial resources received from the Tribute should have gone to the Estate. What is more, Bremer failed to control its agent and allowed Mr. McMillan to take from the Tribute what should have rightfully gone to the Estate. This is a breach of Bremer's fiduciary duty. Under Minnesota law, the Special Administrator is responsible for carefully choosing and monitoring its agents:

> (a) A trustee may delegate to any person, even if the person is associated with the trustee, duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
>
> (1) selecting an agent;
>
> (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
>
> (3) **periodically *reviewing* the agent's actions** in order **to *monitor*** the agent's performance and **that the agent is acting in compliance with the terms of the delegation**.

See Minn. Stat. § 501(c).0807(a) (emphasis added).[6]

Bremer claims it complied with Minnesota Statutes § 501(c).0807, including by "supervising" Mr. McMillan. (*See* Bremer's Response at pp. 11, 14.) But the Special Administrator

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[5] As recently as Sunday, January 29, 2017, Mr. McMillan, using the handle @PRNTRIBUTEOCT13, continues to discuss the Estate and the Tribute publicly on Twitter, stating "we chose 2 NOT reply but on this Sunday, we confirm that the rumors & reports on #PrinceTribute were false!" *See* Exhibit A to the Affidavit of Steven H. Silton.

[6] Minnesota courts have not interpreted Minnesota Statutes § 501(c).0807. In Bremer's Response, it cites to out-of-state case law in support of its argument. Objectant respectfully requests the Court consider this statute in the context of Minnesota law, including Minnesota's version of the Uniform Probate Code.

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has purposely misinterpreted the statute. Minn. Stat. § 501(c).0807(c) states that ***only if*** a trustee complies with the three conditions above can it escape liability. Here, Bremer failed to exercise reasonable care in selecting an agent. It failed to properly establish the scope of agency. Most egregiously, it failed to monitor its agent especially in the context of the Tribute. For this, the Special Administrator is liable to the Objectants and to the Estate. *Id.*

Additionally, the Special Administrator's argument that it "supervised" its agent undercuts its own position—namely, that the Tribute was *not* an entertainment deal under the deal made with the expert advisors; that Bremer was *not* a party to any of the contracts; and that Mr. McMillian was *not* Bremer's agent with respect to the Tribute concert. (*See* Affidavit of Steven H. Silton filed on September 27, 2016, Ex. 12; Affidavit of Laura Halferty filed on January 26, 2017, Ex. E, F.) On one hand, Bremer portrays itself as responsibly supervising Mr. McMillan's actions with respect to the Tribute. (*See* Bremer's Response at p. 14.) On the other, Bremer washes itself completely of Mr. McMillan's actions with respect to the Tribute. (*See* Bremer's Response at p. 5.) These two positions are irreconcilable. Moreover, they demonstrate the Special Administrator's culpability and are representative of its continued pattern of misinformation to the Non-Excluded Heirs. For these reasons alone, the Court should put Bremer's discharge from liability to an evidentiary hearing in order to properly determine the facts in this case.

Bremer further argues that because Objectants "reaped the financial rewards" (*see* Bremer's Response at p. 12) and were "intimately involved" in the Tribute (*see id.* at p. 13), they are somehow estopped from asserting a breach of fiduciary claim. Respectfully, this misstates Minnesota law with respect to Bremer's fiduciary duty. Bremer cites no authority to support its argument that Objectants are estopped from asserting the breach of fiduciary duty claim (because there is no authority in support). The Special Administrator, and by extension, its agents, owe a

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fiduciary duty to the Estate. *See* Minn. Stat. § 524.3-703(a); *In re Estate of Neuman*, 819 N.W.2d 211, 216 (Minn. Ct. App. 2012) (a fiduciary must manage assets under the level of care of "a prudent person dealing with the property of another"); *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997) ("[f]iduciary duty is the highest standard of duty implied by law"). Nowhere does Minnesota law imply that another party's "financial rewards" will estop a fiduciary duty claim.

The fact that the Non-Excluded Heirs received payment is irrelevant to the Special Administrator's argument. In fact, the payments support Objectants' argument. First, it bears noting that the Non-Excluded Heirs were paid for their consent and their work for the Tribute—including performing. This was not some scheme in which the Non-Excluded Heirs took place, and are now seeking to expose. Second, it is important to consider that if the Non-Excluded Heirs received more than half a million dollars, the payment to Bremer's agents must have been impressive. In the context of Bremer's breach of fiduciary duty, the question for the Court to consider is not how much money the Non-Excluded Heirs received, but rather how much money the Special Administrator's agent received and how much the Estate *lost*. The payment to the Non-Excluded Heirs was for their participation in the Tribute. In contrast, the payment to the agents is money that *should have gone to the Estate*. For this, the Special Administrator is liable.

The extent to which Bremer stretches its arguments further demonstrates its breach of fiduciary duty by mismanaging the Tribute, failing to control its agents, and failing to act in the best interests of the Estate. The issues surrounding the Tribute and the Advisors make it inappropriate to grant the Special Administrator a discharge from liability. As such, the Objectant respectfully requests the Court defer the Special Administrator's discharge, find the Special

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Administrator breached its fiduciary duty to the Estate, and put both issues to an evidentiary hearing.

CONCLUSION

In light of all the facts surrounding Bremer, the Court must carefully consider whether discovery and an evidentiary hearing are necessary. Objectant Omarr Baker is a Non-Excluded Heir to the Estate of Prince Rogers Nelson—and has the right to raise these questions. It would be a violation of Objectant's due process rights—not to mention, a serious discredit to the Decedent's Estate—to grant Bremer a full discharge from liability without at least granting discovery and an evidentiary hearing on these claims.

For all the foregoing reasons, the Objectant respectfully reiterate the Objections filed with the Court on January 11 and January 19, 2017, submit this reply in support of the Objections to the Special Administrator's Final Account through 11/30/16, Final Account from 12/1/16 through 12/31/16, and Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator, and request the Court put these objections to a formal evidentiary hearing.

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