

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

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

Estate of Prince Rogers Nelson,
Decedent.

REDACTED

**OMARR BAKER'S REPLY IN SUPPORT
OF COMERICA BANK & TRUST, N.A.'S
MOTION TO APPROVE RESCISSION OF
EXCLUSIVE DISTRIBUTION AND
LICENSE AGREEMENT**

Omarr Baker, by and through counsel, brings this reply in support of Comerica Bank & Trust, N.A.'s ("Comerica" or "Personal Representative") Motion to Approve Rescission of Exclusive Distribution and License Agreement (the "Motion"). Shortly after its appointment, the Personal Representative of the Estate of Prince Rogers Nelson (the "Estate") faced claims of conflicting rights to the sound recordings of Prince Rogers Nelson ("Prince" or "Decedent") held by Warner Bros. Records, Inc. ("WBR") and UMG Recordings, Inc. ("UMG"). The former Special Administrator of the Estate, Bremer Trust, N.A. ("the Special Administrator" or "Bremer"), negotiated the Exclusive Distribution and License Agreement at issue (the "UMG Agreement"), and executed it on January 31, 2017, the last day of its term.

INTRODUCTION

To the extent that the Court is unable to come to a conclusion that [REDACTED]

[REDACTED]

Baker respectfully requests the Court continue this Motion until the record is better developed. To make a ruling on the limited record could release UMG from a valid contract and release the

Special Administrator and its advisors from liability for the extensive damage to the Estate that results.

Moreover, in the responsive briefs filed on June 6, 2016, Mr. L. Londell McMillan made the untrue statement that no party had previously raised the argument that the UMG Agreement conflicted with rights given to WBR. This is belied by an extensive record dating back to September, 2016, when counsel for the Heirs uniformly argued in great detail that the [REDACTED] [REDACTED] The Heirs continued to voice their concern in the months leading up to execution of the UMG Agreement on January 31, 2017.

ARGUMENT

A. If the Court is Unable to Decide Whether [REDACTED] the Court Should Continue this Motion until the Record is Better Developed.

The Personal Representative requested the Court's approval to rescind the UMG Agreement to avoid "costly and uncertain litigation with UMG and WBR." (*See* Mem. in Sup. of Mot. to Approve Rescission, filed May 17, 2017, at pp. 12-14) ("[T]he alternative to rescinding the UMG Agreement is engaging in costly and uncertain litigation with UMG and WBR in California and New York courts, respectively. Such litigation is against the best interest of the Estate for several reasons.") The reason the Personal Representative gives the Court for rescinding the UMG Agreement is a cost and risk management analysis. As a contractual and strategic matter, the Personal Representative is inhibited from arguing strongly that fraud exists due to the potentiality of litigating these very issues with UMG and is precluded by Court order from being adverse to Bremer.

The cost and uncertainty has become readily apparent from the memoranda filed by Sharon, Norrine, and John Nelson and L. Londell McMillan in response to this Motion. (*See* L.

Londell McMillan's Memorandum of Law in Response to Comerica's Motion to Approve Exclusive Distribution and License Agreement, filed June 6, 2017; Sharon, Norrine, and John Nelson's Memorandum of Law in Opposition to Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement, filed June 6, 2017.) Rather than address Comerica's simple but elegant argument as to why rescission was in the best interest of the Estate, the responsive memoranda cited above—in particular, McMillan's memorandum and declarations—muddy the issue before the Court and seek to litigate the actual dispute between UMG and WBR.

In particular, [REDACTED] does little to assist the Court in deciding the present Motion. As such, if the Court requires additional evidence (which it should not) regarding [REDACTED] Baker respectfully urges the Court to continue the Motion until the record is better developed.

B. [REDACTED]

In the responsive briefs filed on June 6, 2016, Mr. McMillian argued that no party had previously raised the argument that the UMG Agreement conflicted with rights given to WBR. This is categorically false, and shows the efforts that some parties will go to distort the record. As early as September, 2016, the Heirs collectively voiced concern that [REDACTED] In a brief, filed on September 28, the Heirs (including Sharon, Norrine, and John Nelson) made an argument that looks prescient:

[REDACTED]

[REDACTED]

(See Mem. in Sup. of Non-Excluded Heirs’ Opposition to Special Administrator’s Motion to Approve Recommended Deals, filed under seal Sept. 28, 2016, p. 11, emphasis added.) Despite this specific warning, Bremer and its experts aggressively pushed the UMG Agreement forward,

[REDACTED]

What was a poorly negotiated agreement in short term was, not surprisingly, difficult to convert to a conforming executable long-form agreement. Throughout the negotiation process the Heirs expressed their concern that [REDACTED]

[REDACTED] (See Affidavit of Steven H. Silton, filed June 9, 2017, Ex. A (Email from Cate Heaven Young dated Dec. 23, 2016) [REDACTED]

[REDACTED]

[REDACTED] Ex. B (Email from Steve Silton dated Dec. 23, 2016) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. C. (Email from Cate Heaven Young dated Jan. 9, 2017) [REDACTED]

[REDACTED]

[REDACTED] Ex. D (Email from Bob Labate dated Jan. 11, 2017) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. E (Email from Bob Labate dated Jan. 13, 2017)

[REDACTED] Ex. F [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]) Bremer and its experts bullied

through these concerns, and ultimately received final Court approval even when critical terms of the UMG Agreement were admittedly incomplete.

This is consistent with how Bremer, through its experts, dealt with UMG. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*See* Declaration of Joseph J.

Cassioppi, Ex. B, filed under seal May 17, 2017 (Email from L. Londell McMillan dated October 31, 2016), emphasis added.)¹

Bremer, sometimes directly, and sometimes through their experts, obfuscated the facts in order to enter into contracts which ultimately only benefited themselves. The Heirs worked diligently and—before Mr. Abdo was replaced—collectively to avoid this very Motion that

1 [REDACTED]

Comerica was required to bring. The Estate and the Heirs should not be penalized for actions taken over their respectful, albeit strenuous, objection. The substantial damages this has caused the Estate must be identified and recouped.

CONCLUSION

As previously stated in his response, Omarr Baker supports the Personal Representative's conclusion that it is in the best interest of the Estate to avoid litigation and rescind the UMG Agreement. However, Baker respectfully requests that should the Court agree with the Personal Representative and grant the Motion, it abstain from simultaneously ruling on the Special Administrator's discharge from liability. Baker further requests the Court provide direction regarding whether the Personal Representative and/or select Heirs have standing to investigate and, if warranted, pursue claims for breach of fiduciary duty against the Special Administrator. Finally, Baker respectfully urges the Court, if necessary, to consider further developing the record prior to deciding on the present Motion.

Dated: June 9, 2017.

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