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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

MEMORANDUM IN SUPPORT OF OMARR BAKER AND TYKA NELSON'S OBJECTION TO THE PETITION FOR FORMAL ADJUDICATION OF INTESTACY, DETERMINATION OF HEIRS AND APPOINTMENT OF PERSONAL REPRESENTATIVE

INTRODUCTION

Omarr Baker and Tyka Nelson ("Objectants") by and through their counsel, hereby submit this memorandum in support of their objection in part to the Joint Petition for Formal Adjudication of Intestacy, Determination of Heirs, and Appointment of Personal Representative, dated December 7, 2016 ("Petition"). The Petition requests the appointment of Comerica Bank & Trust, N.A. ("Comerica") and L. Londell McMillan as co-personal representatives of the Estate. The Objectants do not object to the appointment of Comerica as a personal representative of the Estate.

The Objectants object to the Petition to the extent that it seeks appointment of Mr. McMillan as co-personal representative of the Decedent's estate. Mr. McMillan is not suitable to act as personal representative pursuant to Minnesota Statutes § 524.3-203.

FACTS

John, Norrine, and Sharon Nelson filed their Joint Petition for General Administration of Estate, Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Co-Personal

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Representative on December 7, 2016. In this Petition, Mr. McMillan was requested to act as an individual co-personal representative of the Decedent's estate. (*See* Petition, ¶ 15.) On December 16, 2016, the Court issued an order that the various motions for the appointment of either a successor special administrator, a corporate personal representative, and/or an individual personal representative or co-representative shall be heard before the Court on January 12, 2017, beginning at 9:30 a.m. ("Order").

In advance of the January 12 hearing, Objectants submit their objection and memorandum in support of the objection to appointing Mr. McMillan as co-personal representative. As has been previously raised with the Court, there are potential conflicts and questions as to Mr. McMillan's ability to serve as co-personal representative of the Estate. Moreover, Mr. McMillan has contacted the Objectants ostensibly to convince them of his ability to serve as co-personal representative. On January 11, 2017 at 12:17 p.m. CST, Tyka Nelson received a message from Mr. McMillan offering to arrange a no risk loan to her for $10 million. (*See* Affidavit of Tyka Nelson.)

ARGUMENT & AUTHORITIES

The Uniform Probate Code governs appointments of personal representatives. *See* Minn. Stat. § 524.3-203. "No person is qualified to serve as personal representative who is . . . a person whom the court finds unsuitable in formal proceedings." *Id.*, subd. (f)(2) (emphasis added); *see also In re Estate of James R. Franta*, AS12-0663, 2013 Minn. App. LEXIS 122, at *2 (Minn. Ct. App. Feb. 11, 2013); *Crosby v. Hunt (In re Estate of Crosby)*, 15 N.W.2d 501, 505 (Minn. 1944) ("Unsuitability is now a ground for refusing appointment, whereas formerly it was only a ground for removal of an executor.").

In determining suitability as a personal representative, the Court will consider all issues related to the circumstances. *In re Estate of Schorr*, No. C8-02-952, 2002 Minn. App. LEXIS 1287,

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at *6-8 (Minn. Ct. App. Nov. 26, 2002). The district court has wide discretion to determine whether a representative is unsuitable. *In re Estate of Herman*, No. CX-95-785, 1995 Minn. App. LEXIS 1574, at *6-7 (Minn. Ct. App. Dec. 26, 1995).

"Suitable" is not defined by the UPC and "has no fixed and inflexible meaning." *Crosby*, 15 N.W.2d at 506. Suitability is determined by analyzing a person's "temperament, experience and sagacity to discharge [the estate] with fidelity, prudence and promptness . . . having regard to the special conditions of each estate and those interested in it as creditors, legatees and next of kin." *Id*. (quotations omitted). The named personal representative must be "willing, suitable, and competent," in order to be appointed. *Id.*

A. Mr. McMillan has failed to provide the information needed for the Court to properly determine his suitability to serve as personal representative, pursuant to Minnesota Statutes § 524.3-203(f)(2)

Shortly after the Petition was filed, Objectants requested from Mr. McMillan and from Randall Sayers (counsel to John, Norrine, and Sharon Nelson) additional information needed to determine Mr. McMillan's suitability to serve as co-personal representative. After nearly one month of requesting the information necessary for the Court to determine Mr. McMillan's suitability, Objectants were forced to file a motion with the Court on January 6, 2017 seeking the information. For further information, Objectants direct the Court to the motion to compel L. Londell McMillan to produce certain information necessary to facilitate the appointment of a personal representative filed on January 6, 2017 and the accompanying reply subsequently filed. Mr. McMillan has failed to provide the information that Objectants have requested numerous times. As such, the Court lacks the information necessary to determine Mr. McMillan's suitability to serve as co-personal representative.

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B. Mr. McMillan has judgments pending or entered against him which brings into question his veracity and his conflicting financial interests

Mr. McMillan has judgments pending against him or entered against him which bring into question his financial security and suitability to serve as co-personal representative. The United Kingdom's High Court of Justice found Mr. McMillan liable for nonpayment of a $540,000 loan from Barclays Bank PLC to support Mr. McMillan's then law firm, Dewey & LeBoeuf LLP. (*See* Affidavit of Steven H. Silton filed on September 27, 2016 ("First Silton Aff."), ¶ 5; Ex. 2.) In his opinion finding Mr. McMillan liable, the UK justice said one witness was "a careful and straightforward witness whose evidence I felt able to treat as reliable . . . [t]he same cannot be said for Mr. McMillan. He was at times **unwilling to accept what was plain on the face of documents** and seemed to me **to have convinced himself of a version of events which was inconsistent with the contemporaneous record**. ***I did not feel able to rely on his evidence*** where it was in dispute and not supported by a document." (*Id.*, Ex. 2, ¶¶ 8-9) (emphasis added). The UK court further held that "Mr. McMillan gave disclosure of bank statements for some but not all of the relevant period, but with redactions, at least one of which may have been a payment from the Firm. The figures were difficult to reconcile." (*Id.*, Ex. 2, ¶ 42.) The justice also described an email from Mr. McMillan as "disingenuous." (*Id.*, Ex. 2, ¶ 47.)

Mr. McMillan has also faced a series of lawsuits brought by one Jonathan Vilma, in late 2010 and 2015. (First Silton Aff., ¶¶ 6-7, Ex. 3-4.) For further information, Objectants direct the Court to the entirety of the Affidavit of Steven H. Silton, filed with the Court on September 27, 2016. This Affidavit provides details on and full text of the judgments entered or pending against Mr. McMillan.

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C. Mr. McMillan is currently an advisor to the Special Administrator pursuant to the Advisor Agreement and receives commissions on Agreements, creating a serious conflict of interest

Mr. McMillan signed the Advisor Agreement on June 16, 2016. Under the Advisor Agreement, Mr. McMillan is entitled to a 10 percent commission on agreements or amendments substantially negotiated during the Advisors' term and executed within 120 days after the term expires. (*See* Advisor Agreement, ¶ 6(a); 2.) Even as amended, the Advisor Agreement provides a 10 percent commission for those signed within 90 days after the term expires. (*See* Advisor Amendment, ¶ 6(a)). Therefore, Mr. McMillan will receive rights to commission streams that last ***well beyond*** the Special Administrator's term, which creates a serious conflict of interest if he seeks to act as personal representative of the Estate. His interest as an advisor receiving commission creates doubt that Mr. McMillan will make objectively good decisions in the best interest of the Estate as co-personal representative.

For further information, Objectants direct the Court to the Heirs' Memorandum of Law in Support of Non-Excluded Heirs' Objections to Advisor Agreement and Court Approval of "Major Deals," filed with the Court on September 27, 2016. The Memorandum details the commissions Mr. McMillan would receive pursuant to the Advisor Agreement. (*See* Memorandum at pp. 3, 10-12.)

Mr. McMillan has not discussed how he will address this conflict of interest if appointed co-personal representative. Indeed, he has given no indication *at all* what he plans to do about this role as advisor if appointed co-personal representative. These are questions the Court must ask, and concerns that bring into question his suitability.

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D. As an advisor to the Special Administrator, Mr. McMillan's erratic work to date with the Estate brings into question his suitability to serve as co-personal representative

Mr. McMillan was retained as an entertainment industry advisor for the Estate. However, in correspondence with the Heirs' counsel, he views himself in a substantially larger role. (*See* First Silton Aff., Ex. 5.) Mr. McMillan has negotiated with the Heirs' counsel on behalf of himself with little input from the Special Administrator or its counsel, Stinson Leonard Street. (*See* First Silton Aff., Ex. 6.) In fact, Mr. McMillan knew Traci Bransford—of Stinson Leonard Street—long before the underlying proceeding began. One of the questions Objectants have constantly asked (and never received a response to) is how the Special Administrator came to the decision to appoint Mr. McMillan, and why the Special Administrator has allowed Mr. McMillan to seize a much larger role than the Advisor Agreement envisions.

Just a few of the many examples of Mr. McMillan's usurping conduct are detailed below. Mr. McMillan encouraged the Estate to retain Jobu Presents to coordinate the Prince Tribute. From records provided by the Special Administrator, Mr. McMillan retained commission from the $[redacted] that Jobu Presents paid to the Estate. (*See* First Silton Aff., Ex. 7.) Jobu Present's prior experience was presented to the Special Administrator. (*See* First Silton Aff., Ex. 8.)

Later, Jobu Presents pulled out of the Tribute project, without the consent of the Heirs (or, it appears, the Special Administrator). In order to save the Tribute, the Heirs' counsel negotiated with the Special Administrator's counsel, including Jill Radloff, regarding the terms of the Heirs for the Tribute, including media and press release issues. While these negotiations were ongoing, Mr. McMillan announced the Tribute and provided a formal press release that was not supported by the Heirs. The Tribute was publicly announced on September 15, 2016 and Mr. McMillan was quoted as the Tribute coordinator. (*See* First Silton Aff., Ex. 1.)

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After discovering Mr. McMillan's public announcements regarding the Tribute, the Heirs told the Special Administrator that Mr. McMillan should not serve as the spokesperson or issue any press releases related to the Tribute, and the parties came to an agreement on the same. (*See* First Silton Aff., Ex. 9.) While the Heirs and Special Administrator were negotiating, Mr. McMillan continued to communicate with the press regarding the Tribute. (*See id.*) Mr. McMillan's publicist represented and claimed that he "produced and financed the event" (meaning the Tribute). (*See* First Silton Aff., Ex. 10.) The Heirs contacted Mr. McMillan and his team to request he remove any public reference to the Heirs' support of the Tribute. (*See id.*) The Heirs also contacted the Special Administrator regarding the same. (*See* First Silton Aff., Ex. 11.)

Contrary to the Heirs' previous understanding and inconsistent with the ongoing negotiations, the Special Administrator represented to the Heirs that the Tribute is ***not*** an entertainment deal under the agreement between the Special Administrator and the experts, including Mr. McMillan. Specifically the Special Administrator represented that "the Tribute, in its current form is not an entertainment deal commissionable under the advisor agreement. The Special Administrator is not a party to any of these contracts nor is Mr. McMillan the Special Administrator's agent for purposes of this event given his co-promoter status." (*See* First Silton Aff., Ex. 12.)

The Tribute for Prince Rogers Nelson took place on October 13, 2016 at Xcel Energy Center in St. Paul. The day before, the Heirs became aware of a "Tribute After Party" to take place after the Tribute at First Avenue in Minneapolis. (*See* Affidavit of Steven H. Silton filed January 10, 2017 ("Second Silton Aff."), Ex. A, B.) The Tribute After Party was promoted by the Northstar Group, which is L. Londell McMillan's organization and one of the signatories to the Advisor Agreement. The event, which clearly used assets from the Estate for promotion (including mailing

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lists, contacts, etc.), was not sanctioned by the Estate (and the Special Administrator has not indicated that this event was sanctioned by the Estate). (*See id.*) The "Tribute After Party" was hosted by the "Prince Fam Club," which to the Heirs' knowledge, does not involve and is not sanctioned by any of Prince's heirs. (*See id.*)

The same day the Heirs discovered that the "Tribute After Party" was scheduled, Billboard published an article stating that the Vault Masters are being sold for the sum of $[redacted] (*See* Second Silton Aff., Ex. C.) In support of this figure, Billboard cites to "a source close to the situation." (*See id.*) After Billboard published its article, McMillan denied the amount via Twitter. (*See* Second Silton Aff., Ex. D.) Aside from begging the question as to how Billboard got the information in question, the sum is correct. Mr. McMillan, by denying the report (which is for the most part is accurate) is revealing confidential information of the Estate.

Mr. McMillan's behavior on Twitter is concerning overall—beyond the *Billboard* comment. Starting back in August 2016, he tweeted implied and expressed statements regarding his ongoing work with the Estate. (*See* Second Silton Aff., Ex. E.) These references include the "Devil," potential "rumors," and "let's get em," and the dates the Tweets were posted coincide with sensitive negotiations and hearings involving the Estate. While many of the statements are coded in song references, the likes, replies, and retweets make it very clear that Mr. McMillan was discussing his work in his official capacity for the Estate. In light of the parties' confidentiality obligations to the Estate, these tweets are concerning. Moreover, if he uses his substantial Twitter following in a role as co-personal representative, Mr. McMillan could cause substantial damage to the Estate.

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CONCLUSION

For all the foregoing reasons, Objectants Omarr Baker and Tyka Nelson respectfully request the Court deny the Petition filed on December 7, 2016 to the extent it seeks appointment of L. Londell McMillan as co-personal representative of the Estate of Prince Rogers Nelson.

Dated: January 11, 2017

COZEN O'CONNOR

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