

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
OBJECTION TO JOINT PETITION TO
PERMANENTLY LIMIT ITS POWERS
AS PERSONAL REPRESENTATIVE**

[REDACTED]

INTRODUCTION

The Heirs are understandably frustrated that, three years after their brother's death, the Estate is not ready to be closed. But the fact remains that until the Estate resolves its tax liability with the IRS and MNDOR, neither the Court nor Comerica can close the Estate or make a distribution of assets to the Heirs. The Petition is a misguided attempt by the Heirs, in conjunction with certain advisors, to short-circuit that process via a transfer of assets designed to personally enrich the advisors. Despite direction from the Court, the Heirs have not established that their proposed transaction is viable, supported by all the Heirs, or will adequately protect the interests of the Estate and its creditors, including the IRS and MNDOR. Like the Court, Comerica is willing to consider creative solutions, but until the Heirs present a workable solution or the Estate's tax liabilities have been satisfied, no one is better suited to effectively administer the Estate than Comerica.

Because the Heirs have not established a valid basis to limit Comerica's authority, and their proposed restrictions would make it impossible to administer the Estate, the Court should deny the Petition in its entirety.

BACKGROUND

I. THE COURT APPOINTED COMERICA AS PERSONAL REPRESENTATIVE AND PROVIDED THE HEIRS SUBSTANTIAL NOTICE AND CONSULTATION RIGHTS RELATED TO ESTATE ASSETS.

The Court appointed Comerica Bank & Trust, N.A. (“Comerica”) as personal Representative on February 1, 2017, following nine-months of Bremer Trust, N.A., serving as special administrator. Ordinarily, a personal representative in Minnesota “has the same power over the title to property of the estate than an absolute owner would have,” and is specifically authorized, without a court order, to (among other powers) sell real and personal property, prosecute, defend, and settle lawsuits, and operate businesses owned by the decedent. Minn. Stat. §§ 524.3-711, 524.3-715. However, in light of the extraordinary circumstances of this Estate, the Court entered an order designed to balance Comerica’s ability to effectively administer the Estate with the Heirs’ desire to have notice and consultation rights related to the sale or exploitation of certain Estate assets. (March 22, 2017 Order.)

Among other provisions, the March 22, 2017 Order limited the real property Comerica was authorized to sell, required Comerica to “keep the Non-Excluded Heirs informed (reporting on at least a monthly basis) regarding the assets and business transactions of the Estate,” and established a notice and objection process for any entertainment transaction with a value over \$2 million. (*Id.*, ¶¶ 2-3.) The Court also approved provisional monthly compensation for Comerica through February 2018, as well as a protocol for reviewing that compensation and Comerica’s expenses and attorneys’ fees every four months. (*Id.*, ¶¶ 5-7.) The Court entered a subsequent order during 2018 approving provisional compensation for Comerica through February 2019 and continuing the compensation, fee, and expense protocol. (Sept. 7, 2018 Order Regarding Personal Representative’s Fees and Costs.) Comerica has petitioned for an order approving

provisional compensation at a lower amount and continuation of the review protocol through January 2020. (Feb. 15, 2019 Petition for Fees and Costs.)

II. THE COURT DENIED A PETITION BY THREE OF THE HEIRS TO REMOVE COMERICA.

During October 2017, three of the Heirs filed a Petition to Permanently Remove Comerica as Personal Representative. By Order dated December 18, 2017, the Court denied the Petition, determining that the driving forces behind the Petition were Comerica's inability to make interim distributions sought by the Heirs because of the Estate's tax obligations and an advisor for the petitioning Heirs. (Dec. 18, 2017 Order, ¶ 46.) Specifically, the Court found "this Petition has been brought before the Court to further Petitioners' agenda and not in the best interest of the estate. The result has been a needless increase in the cost of this proceeding." (*Id.*, ¶ 65.) In addition to denying the Petition, the Court appointed Justice Gilbert to serve as moderator/mediator and stated that, in the event of future disputes between Comerica and the Heirs, the Court would analyze:

whether the Personal Representative is adequately communicating with the heirs, whether the heirs or their advisors are attempting to drive their own agenda to the detriment of the Estate, and whether the Personal Representative needs to be granted additional independence and reduce the influence of the heirs in the decision making process.

(*Id.*, at p. 14.)

III. THE HEIRS PREPARED A PETITION TO LIMIT COMERICA'S AUTHORITY AS PART OF A SCHEME BY MICHAEL LYTHCOTT AND GREGG WALKER TO TAKE CONTROL OF THE ASSETS OF THE ESTATE.

Unbeknownst to Comerica, by the summer of 2018, Michael Lythcott and Gregg Walker were putting the wheels in motion for a plan with the ultimate goal being [REDACTED] [REDACTED] (April 12, 2019 Declaration of Joseph J. Cassioppi ("Cassioppi Dec."), Ex. A.) As set forth in greater detail in the filings that will be heard by the Court on May 20, 2019

(the motions to hold Gregg Walker in contempt, return Michael Lythcott's flash drive, and amend the February 13 Order), Mr. Lythcott and Mr. Walker proceeded to provide many of the Estate's most confidential records, including entertainment agreements and under-seal and "attorneys-eyes-only" Court filings, to dozens of potential investors and lenders across the world. (See March 5 and March 15, 2019 Declarations of Joseph J. Cassioppi.) As a result of that process, Mr. Lythcott and Mr. Walker facilitated the surreptitious execution by Omarr Baker, Tyka Nelson, and Alfred Jackson of a term sheet [REDACTED] during December 2018. Under the term sheet, those three Heirs bound themselves and purported to bind the Estate to

[REDACTED]
[REDACTED] (Cassioppi Dec., Ex. B at p. 8.) The transaction set forth in the term sheet involved: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (*Id.*, p. 3-7.) The term sheet [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(*Id.*, p. 1-8.) In other words, the "advisor" purporting to represent the interest of the Heirs was instead facilitating a transaction that primarily benefits himself.

As part of discussions among the Heirs related to the proposed [REDACTED] transaction, Sharon Nelson had an undisclosed law firm prepare a draft petition [REDACTED]

[REDACTED] (Cassioppi Dec., Ex. C.) Thereafter, following a meeting between the Heirs, Justice Gilbert, and Primary Wave on January 17, 2019, Sharon Nelson circulated a revised version of the Petition, explaining that [REDACTED]

[REDACTED] (Cassioppi Dec., Ex. D.) In response to the draft petitions, Omarr Baker explained [REDACTED]

[REDACTED]

[REDACTED]

(*Id.*, Exs. C-D.)

Notwithstanding Omarr Baker’s concerns, Mr. Lythcott [REDACTED]

[REDACTED]

[REDACTED]

(Cassioppi Dec., Ex. E.) On February 10, Mr. Lythcott sent the Heirs a final version of the Petition, which they filed on February 19, 2019, without notifying or serving Comerica. (*Id.*, ¶ 7 & Ex. F.)

IV. THE PETITION FILED BY THE HEIRS SEEKS TO IMPOSE RESTRICTIONS ON THE PERSONAL REPRESENTATIVE THAT WILL RENDER IT IMPOSSIBLE TO EFFECTIVELY ADMINISTER THE ESTATE.

In its final form, the Petition asserts that in “February 2019 Comerica’s contract as PR is due to expire,” and asks the Court to allow that “contract to expire and have Comerica continue to administer the Estate on a month-to-month basis until a transition plan can be approved by the

Petitioners and the Court with such goal to occur no later than June 30, 2019.” (Pet., ¶¶ 14, 18.) As grounds for the Petition, the Heirs assert that “more than \$31 million of unpaid estate taxes continue to accumulate interest” and “[d]espite the parties best efforts to reduce estate expenditures, more than \$45 million dollars has been spent on probate related administrative expenses, including over \$10 million on Comerica’s legal fees.” (*Id.*, ¶¶ 15-16.) The Heirs also state that they “do not agree with Comerica’s cashflow projections, accounting, or inventory of Estate assets,” “Comerica has also failed to be responsive to the concerns of the Heirs,” and that they “can prove that the current administrative expenses are not sustainable at the rate the current Personal Representative are administering the Estate.” (*Id.*, ¶ 17.)

For their requested relief, the Heirs seek an order prohibiting Comerica from administering any assets other than “assets that existed prior to Decedent’s death” or entering into agreements for a period of longer than one year, requiring Comerica to “implement a system to provide the heirs and their advisors” access to the “vault” and “Estate materials,” providing the Heirs “participation and access to all tax related matters,” and requiring Comerica to, within two months, prepare a plan to transition the Estate. (Pet., at p. 3.)

ARGUMENT

I. THE HEIRS CANNOT ESTABLISH A BASIS TO LIMIT THE AUTHORITY OF THE PERSONAL REPRESENTATIVE TO ADMINISTER THE ESTATE.

The Heirs seek an order drastically limiting Comerica’s ability to administer the Estate, but have not cited any authority (caselaw, statutory, or otherwise) in support of their Petition. Because the Heirs cannot establish the showing required to limit or remove a personal representative under Minnesota’s Uniform Probate Code, the Court should deny the Petition.

Minnesota Statutes § 524.3-607 allows interested parties to seek an order restraining a personal representative, but only if they establish that the personal representative “may take

some action which would jeopardize unreasonably the interest of the applicant or of some other interested person.” Although the Heirs are not directly seeking removal, Minnesota Statutes § 524.3-611 also allows removal of a personal representative for cause, but only if an interested party establishes:

removal is in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative’s appointment intentionally misrepresented material facts in the proceedings leading to the appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

Minnesota courts have removed personal representatives in only limited circumstances, such as when the personal representative failed to comply with specific statutory duties, or where there was gross mismanagement of the estate. *In re Estate of Loewe*, No. CO-89-1077, 1989 WL 138989, at *1-2 (Minn. Ct. App. Nov. 21, 1989) (affirming removal of a personal representative when he did not file the estate’s inventory within the time required by statute, and the inventory, once filed, was “inaccurate and incomplete”); *In re Estate of Anderson*, No. A15-1513, 2016 WL 3582414, at *3-4, 6 (Minn. Ct. App. July 5, 2016) (affirming removal when the personal representative mismanaged the estate by grossly undervaluing assets in a sale for his own benefit). The general rule in jurisdictions that have adopted the Uniform Probate Code is that a disagreement between heirs and a personal representative regarding the administration of the Estate is insufficient grounds to seek removal. *See In re Kramek Estate*, 710 N.W.2d 753, 759-60 (Mich. Ct. App. 2005) (holding that “ordinary dispute” between personal representative and heirs regarding terms of an estate settlement agreement was not a legitimate basis for removal when the dispute could be handled expeditiously by the parties and the trial court and the dispute did not otherwise cause harm to the estate); *see also In re Murphy’s Estate*, 336 So.2d 697, 699 (Fla. Dist. Ct. App. 1976) (“The mere fact that a certain hostility has arisen between a

beneficiary and the [personal representative] absent some showing of wrongdoing on the part of the [personal representative] or other factors which will prejudice the administration does not warrant such drastic action as removal.”).

The Heirs’ three-page Petition is devoid of any allegations, much less evidence, that support an order imposing additional limitations on the authority of Comerica to administer the Estate. Instead, the Petition is premised in its entirety on: (1) the inaccurate belief that Comerica is administering the Estate on a year-to-year contract; (2) allegations regarding unpaid taxes and the costs of administering the Estate, which are based on flawed assumptions; (3) the Heirs’ professed disagreement with Comerica’s cash flow projection, accounting, and inventory; and (4) the assertion that “Comerica has also failed to be responsive to the concerns of the Heirs.”

First, the Heirs believe that limitations on Comerica’s authority are warranted because “Comerica’s contract as the PR” expired during February 2019. (Pet., ¶ 14.) This argument confuses the Court’s orders provisionally approving Comerica’s compensation on an annual basis with a non-existent one-year contract as personal representative.¹ Unlike Bremer Trust—whose appointment as special administrator (both based on the circumstances of this case and as set forth in the Probate Code) was temporary—neither the Court’s order appointing Comerica nor Minnesota law imposes any temporal limitation on Comerica’s service as personal representative. Minn. Stat. §§ 524.3-601 – 524.3-701. (Jan. 31, 2017 Letters of General Administration.) Absent termination through resignation or removal for cause, Comerica—like

¹ Whoever drafted the Petition for the Heirs is unfamiliar with basic details regarding this Estate. In addition to allegations regarding a non-existent “contract as a PR,” the Petition states that Peter J. Gleekel was appointed as Second Special Administrator “for the purpose of addressing the substantive concerns and disputes between Comerica and the Heirs.” (Pet., ¶ 13.)

all personal representatives in Minnesota—will continue to serve as personal representative until its appointment is terminated upon entry of an order closing the estate. Minn. Stat. § 524.3-610.

Second, the Heirs reference unpaid estate taxes and the administrative costs of operating the Estate as grounds for limiting Comerica’s authority. With respect to taxes, and as explained in detail at the February 22, 2019 meeting with the Court and in numerous Heirs meetings, mediation sessions, and with various iterations of Heirs’ legal counsel, Comerica is making all necessary tax payments. (April 12, 2019 Declaration of Andrea Bruce (“Bruce Dec.”), ¶ 2.)

[REDACTED]

[REDACTED] With respect to “probate related administrative expenses,” it is unclear where the Heirs’ obtained their \$45 million figure, as the costs associated with the probate proceeding are only a fraction of that amount [REDACTED]

[REDACTED]

[REDACTED] (Bruce Dec., ¶ 4.) Regardless, Comerica has committed to doing everything in its power to reduce expenses (including by offering to reduce its own fees), while

at the same time protecting the Estate and its assets. The fact remains that Comerica is not only administering an estate, it is operating multiple entertainment businesses, overseeing a real estate portfolio and a museum, archiving a vast quantity of audio and video assets, and safeguarding personal property. Despite assurances by those attempting to convince the Heirs to enter into loans and other transactions, those expenses will remain long after the Estate is closed. To the extent that the Heirs believe that any specific expense incurred by the Estate is not warranted, they can object to Comerica's accounting or challenge its fees or that of the Estate's counsel. But the Heirs have not provided any basis to limit Comerica's authority.

Third, the Heirs' make the bare assertion that they disagree with Comerica's accounting, inventory, and cash flow projection. All Heirs had the opportunity to object to Comerica's Interim Accounting (four did file objections) and the Court approved the accounting over the objections. (Dec. 7, 2018 Order Granting Petition to Approve Interim Accounting.) The Heirs do not explain what disagreements they have with the inventory and cash flow projection. Without such information, Comerica cannot respond other than to state that it stands by the accuracy of the inventory and its belief that the cash flow projection presents Comerica's best estimate (based on conservative assumptions and the information available at the time of its preparation) of the financial activity of the Estate. (Bruce Dec., ¶ 5.)

Finally, the Heirs argue (again without any explanation) that Comerica has not been responsive to their concerns regarding administration of the Estate. Without any context for this contention, it is difficult for Comerica to respond. Comerica takes seriously its mandate to hold the assets of the Estate in trust for the Heirs and creditors of the Estate, Minn. Stat. § 524.3-711, and it considers the wishes, concerns, and interests of the Heirs in connection with every decision it makes as personal representative. Even in the face of being sued for \$10 billion by

one Heir and having to expend substantial time and effort mitigating the fallout from the scheming of advisors for other Heirs, Comerica continues to prioritize communication with the Heirs. Comerica spends at least ten hours every two weeks preparing for, participating in, and following up on Heirs' meetings. Further, on an almost daily basis, Comerica seeks the Heirs' input on entertainment matters and administration of the assets of the Estate. (Bruce Dec., ¶ 6.) Just within the last 6 months, and only by way of example, Comerica has honored the wishes of Heirs in connection with modifying a prominent television commercial for the NCAA Final Four, moving the urn containing Prince's remains from public view, purchasing a sound and light system at Paisley Park, securing an agreement to honor Prince at an anticipated major Minneapolis development, directing the development of NPG merchandise specifically requested by Heirs, and agreeing to provide the Heirs gratis use of Paisley Park for a concert they have proposed.² (*Id.*, ¶ 7.) But being responsive to the concerns of the Heirs does not mean that Comerica will always take actions that some or all of the Heirs want or approve. Because of its

² While the Heirs argue that Comerica has not been responsive to their concerns, they frequently seem unwilling to meet Comerica halfway in its attempts to address those concerns. [REDACTED]

[REDACTED] (Bruce Dec., ¶ 8.) [REDACTED]

[REDACTED] (*Id.*, ¶ 9.) In accordance with their wishes to be involved in shaping Prince's legacy through use of his music, the Heirs are sent every music licensing request for their input. With the exception of one Heir, Comerica generally receives no response regarding these license requests. Yet, the same Heirs who do not provide input on the requests have criticized Comerica for its decisions on licensing requests. (*Id.*, ¶ 10.) While Comerica is committed to being responsive to the concerns of the Heirs, there are limits to what it can reasonably accomplish when those concerns are often moving targets.

role as an independent personal representative that must balance the (often differing) wishes of all Heirs with the need to satisfy creditors, Comerica cannot substitute the judgment of the Heirs for its own professional judgment.

Comerica, acting under the Probate Code and the protocols established by the Court, has more than fulfilled its fiduciary obligations to the Heirs. There is no basis to limit Comerica's authority.

II. THE LIMITATIONS SOUGHT BY THE HEIRS WOULD MAKE IT IMPOSSIBLE TO EFFECTIVELY ADMINISTER THE ESTATE.

Even assuming the Heirs could establish a basis to limit the authority of Comerica—to be clear, they cannot—the restrictions and other relief requested in the Petition would make it impossible for Comerica—or any corporate fiduciary—to administer the Estate.

First, the Heirs seek to limit Comerica to administering “only assets that existed prior to Decedent's death,” and prohibit Comerica from administering any “new assets or derivative works from preexisting assets.” (Pet., ¶¶ 3-4.) Such restrictions would make it impossible to administer any of the entertainment assets of the Estate. Comerica could not approve licensing requests. It could not approve merchandise. It could not oversee the Paisley Park Museum. It could not fulfill the Estate's commitments under its entertainment agreements [REDACTED] [REDACTED] and other partners. It could not generate new revenue to pay taxes and administrative costs. It could not develop new projects necessary to secure and expand Prince's legacy by keeping Prince music relevant and a part of the cultural conversation. The Estate would come to a complete stop, to the detriment of all and the benefit of none.

Second, the Heirs seek to prevent Comerica from entering into new agreements with a duration of more than one year without Court approval. This request ignores that the Court has

already established a protocol for all material entertainment transactions (which may involve \$2 million or more in proceeds) where the Heirs may object and require Comerica to seek Court approval for the transaction. (March 22, 2017 Order, ¶¶ 2-3.) Requiring Comerica to seek Court approval of all agreements which could potentially last more than one year would significantly increase administrative costs and reduce and devalue the available opportunities, while unduly interfering with Comerica’s ability to operate the Estate. That said, Comerica recognizes the uncertainty related to when the Estate will close and, accordingly, attempts to maximize flexibility in connection with all agreements.

Third, the Heirs request that they and their advisors be provided opportunities to “hear, review, and acquire the unheard or ‘vault’ materials.” (Pet., at p. 3.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Bruce Dec., ¶ 11.) In the meantime, all Heirs have been provided the opportunity to personally inspect Iron Mountain’s facility—including the Prince vault therein—and Comerica has reviewed the inventory of vault assets with the Heirs. In addition, the Heirs have been given opportunities [REDACTED]. (*Id.*)³

Fourth, the Heirs seek “full information, participation and access to all tax related matters.” (Pet., at p. 3.) As personal representative, Comerica is “the taxpayer” and responsible for managing the resolution of the Estate’s tax liabilities. It has fulfilled and will continue to

³ The Petition also requests a system to provide the Heirs’ access to Estate materials “while also ensuring that no additional inadvertent disclosures of intellectual property occurs.” (Pet., ¶ 7.) It is unclear what materials or inadvertent disclosures the Heirs are referring to.

fulfill that responsibility in the most transparent method possible while maintaining privilege and the confidentiality of the process. Specifically, Comerica has been providing the Heirs regular updates ([REDACTED] [REDACTED]) on the status of its federal and Minnesota tax returns. (Bruce Dec., ¶ 12.) [REDACTED] [REDACTED] it will consult with the Heirs regarding next steps and strategy. The Heirs will also be kept informed regarding any negotiations with the taxing authorities. (*Id.*)

Finally, the Heirs ask the Court to order Comerica to prepare (within two months) a plan for transitioning administration of the Estate, notwithstanding they have provided no details on the identity of to whom the Estate is to be transitioned. Presumably (because they participated in the preparation of the Petition), at least some of the Heirs envision a transfer of assets to [REDACTED] [REDACTED]. For the reasons discussed at the February 22, 2019 meeting (and setting aside poor economics for the Heirs that are a product of a non-competitive process managed by self-interested advisors), the proposal [REDACTED] is not feasible while the Estate's tax liability to the IRS and MNDOR remains unresolved, even if such a proposal was supported by all six Heirs.

During September 2017, Comerica provided the Heirs a memorandum designed to get them to work together to develop a governance structure that can be put in place when the Estate can begin distributing assets. (Bruce Dec., ¶ 13.) Comerica received no response to that memorandum. Following his appointment, Comerica also asked Justice Gilbert to focus on developing governance plans with the Heirs to ensure an orderly distribution of assets from the Estate. (*Id.*) To the best of Comerica's knowledge, the Heirs have made no progress on a plan

for managing the assets of the Estate once they are ready for distribution. Instead, the process has been hijacked by advisors for certain Heirs in an attempt to enrich themselves personally. Comerica continues to believe that Heirs should lead the development of a plan for how they wish to manage the assets of the Estate when those assets are ready for distribution, including a governance structure. In the meantime, Comerica is taking the steps necessary to facilitate the transfer of assets to the Heirs upon closing of the Estate.

III. THE COURT SHOULD DENY THE PETITION AND REITERATE THE PARTIES' RESPECTIVE ROLES AND OBLIGATIONS.

Comerica takes seriously the fact that all six Heirs have sought to limit its authority. But the Petition must be viewed for what it is—an attempt to facilitate a transaction [REDACTED] that is not feasible for tax purposes, is supported by only three of the Heirs, and which was the product of a secret, non-competitive process designed by advisors [REDACTED]. Despite the challenge of attempting to work on a regular basis with certain Heirs who are openly hostile to Comerica's administration of the Estate, Comerica has done an admirable job of continuing to communicate with and seek the input from all of the Heirs, while simultaneously professionally managing the Estate and its complex assets.

Comerica's preference in connection with every estate it administers is to build and maintain strong relationships with estate beneficiaries. It is not looking for an excuse to limit the involvement of the Heirs in this Estate and has expended significant effort over the past two years to communicate and consult professionally, courteously and reasonably with the Heirs. But at the same time, the current process has been abused to facilitate hidden agendas at the expense of the Estate. Comerica looks forward to discussing with the Heirs and the Court at the April and May hearings how best to ensure appropriate involvement of the Heirs while also

ensuring Comerica can effectively administer the Estate. At a minimum, Comerica asks the Court to reiterate the confidentiality obligations of the Heirs and that they are ultimately responsible for the actions of their agents.

CONCLUSION

For the reasons set forth herein, Comerica respectfully requests that the Court deny the Petition in its entirety.

Respectfully Submitted,

Dated: April 12, 2019

s/ Joseph J. Cassioppi

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