

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In re:

Court File No. 10-PR-16-46
Honorable Kevin W. Eide

Estate of Prince Rogers Nelson,
Decedent.

**BREMER TRUST'S RESPONSE TO
OMARR BAKER'S MOTION TO
EXPAND THE AUTHORITY OF THE
SECOND SPECIAL ADMINISTRATOR**

Introduction

Under Minnesota law, a written instrument, including a judicial order, must be construed as a whole with its terms read as consistently as possible so that all of its provisions are given meaning. Here, Omarr Baker bases his demand that the Court expand the authority of the Second Special Administrator to investigate Bremer Trust on his interpretation of a single sentence of this Court's April 5, 2017 Order. That Order—made after all parties presented evidence and had the opportunity to ask questions concerning the return of funds at issue—discharged Bremer Trust from all liability related to its service as a Special Administrator, including with respect to its dealings with Jobu Presents. Should the Court now expand the Second Special Administrator's authority to investigate Bremer Trust?

Minnesota law also provides that there must be damage to a party before a claim can be brought. Here, when Bremer Trust made the business decision to return an advance paid to the Estate by Jobu Presents in order to stave off litigation and save the Tribute Concert, it did so under a full reservation of rights. The Estate still maintains all rights against Jobu Presents with respect to any monies owing related to the Tribute Concert. Is it appropriate for Mr. Baker to

demand further investigation of Bremer Trust absent a showing of any harm that the Estate has suffered?

Background and Procedural History

The relevant facts concerning Bremer Trust's business decision to return certain monies advanced by Jobu Presents in order to preserve the Tribute Concert going forward were presented to the Court several months ago in connection with Bremer Trust's petition for discharge.¹ Bremer Trust's submissions included the facts concerning Bremer Trust's business decision to return the advance:

B. The Jobu Dispute

The August 29, 2016 letter from Jobu's counsel demanded that the Estate repay \$2,333,000 that Jobu claimed (erroneously) it had paid to the Estate and its Advisors, as well as damages, costs, and expenses in the amount of \$150,000. (Silton Aff. Ex. C.) Counsel for the Special Administrator responded, taking exception to Jobu's factual allegations and asserting an unwarranted breach of the Letter Agreement. (*Id.* Ex. D.) At that point, the Special Administrator was unwilling to repay Jobu the advances it had made against the Letter Agreement or reimburse any expenses. (*Id.*) Because the Special Administrator believed that litigation—whether started by Jobu or the Estate—could adversely affect whether a tribute concert would proceed, the Special Administrator proposed a standstill of all litigation until at least the end of October 2016, as well as the possibility that mediation would precede any litigation. (*Id.*)

The next day, Friday September 9, 2016, Jobu responded with another letter. (Halferty Ex. J.) This letter came from new counsel for Jobu, who stated he had been retained specifically to commence "immediate litigation" related to the tribute concert. Jobu again demanded a payment (this time \$2,500,000) and other concessions (releases, non-disparagement clauses, rescission of the Letter Agreement). Jobu threatened that if such demand were not met by Monday September 12, 2016 litigation would be started on Tuesday September 13, 2016. (*Id.*) Counsel for the Special Administrator communicated with Jobu's counsel on September 12, 2016, and it was agreed that no litigation would be commenced before September 16, 2016 (after the concert was announced). (*Id.* at Ex. K.)

¹ See Affidavit of Steven H. Silton filed January 25, 2017 ("Silton Aff."), The Special Administrator's Reply to Objections by Omarr Baker, Tyka Nelson and Roc Nation to the Special Administrator's Petition for Discharge, filed January 30, 2017 ("Reply") and Affidavit of Laura E. Halferty, filed January 30, 2017 ("Halferty Aff.").

On September 15, 2016, counsel for the Special Administrator and Jobu spoke by phone. The Special Administrator again raised the issue of a litigation standstill until after a family tribute concert took place. Jobu's counsel refused to agree to abstain from filing litigation unless the Special Administrator forwarded the \$2,000,000 payment that Jobu had made to the Estate. Because the Special Administrator believed that litigation would likely result in no family tribute concert taking place (as artists would be very reluctant to perform at a concert surrounded by litigation and controversy), the Special Administrator agreed to forward the \$2,000,000 to Jobu, **with an explicit understanding that all rights and claims between the parties, including the Estate's claims to those funds, were fully preserved.** (*Id.*) Counsel also agreed to mediate the dispute at a time in the future after a family tribute concert had taken place, and that no litigation could be commenced by either Jobu or the Estate unless and until an impasse had been declared at mediation. This agreement was memorialized by an exchange of written emails between counsel. (*Id.*)

(Reply at 6-7—emphasis added.)

In short, the then-Non-Determined Heirs asked the Special Administrator for assistance with a Tribute Concert that they wanted to go forward. The Special Administrator reluctantly agreed to provide certain assistance. Jobu Presents then threatened immediate litigation unless certain of the funds it had advanced were returned to it, allegedly due to misrepresentations made to it by the Estate and the Estate's advisors.² Bremer Trust believed that any such litigation would likely eliminate any chances for a Tribute Concert going forward, so it made the business decision to return certain funds, but only upon agreement that such return was subject to a full reservation of any and all rights concerning Jobu Presents' actions.

² Recent history has shown that Jobu Presents' threat of litigation was not an idle one. It recently filed a *fourth* version of a complaint against certain Estate Advisors in an effort to adequately state a cause of action against them. Jobu Presents' efforts to allege fraud against Bremer Trust failed; the Court dismissed all claims against Bremer Trust with prejudice in an Order filed October 4, 2017.

Discussion

1. **The April 5, 2017 Order discharged Bremer Trust from all liability as to Jobu Presents.**

The April 5, 2017 Order must be read as a whole so its terms are consistent.³ Paragraph 7 of the Order discharged Bremer Trust from “any and all liability associated with its Special Administration of the Estate.”⁴

Mr. Baker bases his motion solely on Paragraph 10 of the Order:

Comerica Bank & Trust shall investigate and make an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents.

This sentence makes no mention of Comerica investigating Bremer Trust. Nor can the sentence be read that way—doing so would be directly contrary to the discharge of Bremer Trust made just three paragraphs earlier. In its Memorandum that accompanied that Order, the Court repeatedly noted the issues with and threats of litigation involving the Tribute Concert and Jobu

³ See *Coons v. Lemieu*, 59 N.W. 977, 978 (Minn. 1894) (“[A] judgment is to be read as a whole, in order to ascertain its force and effect.”); *State v. Monsrud*, 337 N.W.2d 652, 658 (Minn. 1983) (reviewing a lower court wiretap order and stating that “[i]n determining whether the order and application are sufficiently particular, the papers as a whole must be considered.”); *In re Lambert*, 437 N.W.2d 106, 108 (Minn. Ct. App. 1989) (reviewing a lower court order of involuntary medication and determining that, “taken as a whole,” it adequately outlined a course of treatment even though it did not specify some particulars); see also *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990) (“We construe a contract as a whole and attempt to harmonize all clauses of the contract.”); *Boedigheimer v. Taylor*, 178 N.W.2d 610, 613 (Minn. 1970) (“Unambiguous words are to be given their natural and ordinary meaning taken in their popular sense, giving effect to the purposes of the document as a whole.”).

⁴ While this Order was later stayed, such stay was based solely on the threat of litigation related to the UMG recording deal. Similarly, the Court’s appointment of the Second Special Administrator, which followed the opportunity for input from Comerica, Bremer Trust, the Heirs and the Advisors, is specifically limited conducting an examination of the facts, circumstances and events relation to the rescission of the UMG Agreement. (Order Appointing Second Special Administrator ¶ 1(a).)

Presents. (Mem. at 9, 10 and 12.) It also clarified efforts to revise history by certain of the Heirs' counsel regarding the Tribute Concert:

Current counsel do not recall or recognize that the Special Administrator did everything it could to stay out of the Tribute Concert, leaving it to the heirs to deal with, only to get dragged in at the last minute as things unraveled and time became critical. Now the Special Administrator and its counsel are criticized for being too involved in the Tribute Concert.

(Mem. at 10.)

Instead, the Paragraph 10 Order means exactly what it says—Comerica is to determine whether action should be brought regarding the return of funds to Jobu Presents. In other words—consistent with the discharge of Bremer Trust in Paragraph 7—Comerica must decide whether it will exercise the right that Bremer Trust specifically preserved for the Estate by suing Jobu Presents for its actions related to the Tribute Concert. To the best of the Special Administrator's knowledge, Comerica has not yet chosen to bring litigation against Jobu Presents. It will ultimately decide whether to bring such litigation, per the Court's instructions. Mr. Baker's motion to expand the role of the Special Administrator would accomplish nothing of benefit the Estate, and instead would only lead to further unnecessary expense and delay.

2. Because the Estate's rights with respect to the funds at question remain fully intact, there is nothing for the Second Special Administrator to investigate.

A cause of action typically requires a harm.⁵ Mr. Baker has cited to no harm that has come to the Estate due Bremer Trust's business decision to return certain funds under a full reservation of rights. The Estate maintains such rights, and Comerica, pursuant to the Court's directive, will make an informed decision whether to bring an action against Jobu Presents. There is nothing for the Special Administrator to investigate, because no showing of harm has been presented to the Court.

⁵ See e.g. *Canada ex rel. Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997).

Conclusion

Mr. Baker's motion should be denied because (a) his interpretation of the Order is incorrect and contrary to law and (b) the Estate has suffered no harm and can pursue an action related to the funds returned to Job Presents should Comerica choose to do so.

Dated: November 17, 2017

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