

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

File No.: 10-PR-16-46
(Judge Kevin W. Eide)

In re:
Estate of Prince Rogers Nelson,
Decedent.

**FINDINGS OF FACT,
CONCLUSION OF LAW, ORDER
FOR JUDGMENT AND
JUDGMENT ESTABLISHING
TYKA NELSON ATTORNEY
LIENS**

The above-referenced matter came on for hearing on January 23, 2019 at 8:30 a.m. before the Honorable Judge Kevin W. Eide, on applications by Gray, Plant, Mooty, Mooty & Bennett, P.A.'s ("GPM"), Holland & Knight, LLP's ("H&K") and Barnes & Thornburg, LLC ("B&T") pursuant to Minn. Stat. § 481.13 for the summary establishment of attorney liens, the amount of said attorney liens and the entry of judgment adjudging the amount due on attorney liens arising from GPM's, H&K's and B&T's prior representation of Tyka Nelson ("Ms. Nelson") in the above-captioned probate proceeding (the "Applications").

John C. Holper of the law firm Winthrop & Weinstine, P.A. appeared on behalf of Holland & Knight, LLP.

Brian A. Dillon of the law firm Gray, Plant, Mooty, Mooty & Bennett, P.A. appeared on behalf of Gray, Plant, Mooty, Mooty & Bennett, P.A.

Shane Solinger of the law firm Barnes & Thornburg, LLC appeared on behalf of Barnes & Thornburg, LLC.

Ms. Nelson, appearing pro se, was also in attendance.

Other appearances were noted on the record.

The Court having considered GPM's, H&K's and B&T's submissions on their applications, and based upon the arguments presented at the hearing and all the Court's files, records, and proceedings herein, makes the following Findings of Facts, Conclusions of Law, Order For Judgment and Judgment.

FINDINGS OF FACT

A. GPM's Attorney's Lien

1. GPM served as legal counsel for Ms. Nelson in the above-captioned Estate proceeding (the "Proceeding") from its commencement in April 2016 through September 27, 2016 and provided valuable legal services to or for the benefit of Ms. Nelson in connection with this Proceeding for which GPM remains unpaid.

2. It is uncontested that GPM's representation of Ms. Nelson was governed by a written engagement agreement that set forth the conditions of GPM's representation.

3. The compensation due GPM for unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with this Proceeding is \$116,652.11, exclusive of collection costs.

4. All of the unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with this Proceeding were necessary and reasonable for the proper and competent representation of Ms. Nelson by GPM in the Proceeding.

5. GPM's unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with this Proceeding are specifically and adequately supported by the Affidavit of Matthew Shea dated December 21, 2108, submitted in support of the Application.

B. H&K's Attorney's Lien

1. H&K served as legal counsel of Ms. Nelson in the above-captioned probate proceeding (the "Proceeding") from September 27, 2016 to April 12, 2017.

2. H&K's representation of Ms. Nelson was governed by a written engagement agreement which set forth the conditions of H&K's representation.

3. In the written engagement agreement executed by Ms. Nelson, Ms. Nelson granted H&K an attorney's lien on any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery was received or obtained in her capacity as a beneficiary of the Estate, solely to the extent of H&K's reasonable attorney's fees and costs incurred on Ms. Nelson's behalf and that remained unpaid at the time of any such distribution to Ms. Nelson or at the conclusion of H&K's representation of Ms. Nelson.

4. During its representation of Ms. Nelson, H&K provided valuable legal services to Ms. Nelson.

5. H&K terminated its representation of Ms. Nelson on April 12, 2017.

6. The compensation due H&K for unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in the Proceeding pursuant to the agreed-upon terms of the written engagement agreement is \$717,254.37, exclusive of collection costs.

7. All of the unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with the Proceeding were necessary and reasonable for the proper and competent representation of Ms. Nelson by H&K in the Proceeding.

8. H&K's unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with the Proceeding are specifically and adequately supported by the Declaration of Robert Barton, submitted in connection with the Application.

C. B&T's Attorney's Lien

1. B&T served as legal counsel of Ms. Nelson in the above-captioned probate proceeding (the "Proceeding") from January 19, 2018 to August 13, 2018.

2. B&T's representation of Ms. Nelson was governed by a written engagement agreement which set forth the conditions of B&T's representation.

3. In the written engagement agreement executed by Ms. Nelson, Ms. Nelson granted B&T an attorney's lien on any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery was received or obtained in her capacity as a beneficiary of the Estate, solely to the extent of B&T's reasonable attorney's fees and costs incurred on Ms. Nelson's behalf and that remained unpaid at the time of any such distribution to Ms. Nelson or at the conclusion of B&T's representation of Ms. Nelson.

4. During its representation of Ms. Nelson, B&T provided valuable legal services to Ms. Nelson.

5. B&T terminated its representation of Ms. Nelson on August 13, 2018.

6. The compensation due B&T for unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in the Proceeding pursuant to the agreed-upon terms of the written engagement agreement is \$21,816.50, exclusive of collection costs.

7. All of the unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with the Proceeding were necessary and reasonable for the proper and competent representation of Ms. Nelson by B&T in the Proceeding.

8. B&T's unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in

connection with the Proceeding are specifically and adequately supported by the Affidavit of Lee A. Hutton, III submitted in connection with the Application.

D. The Priority of Attorney Liens

1. GPM's cause-of-action attorney's lien attached on April 25, 2016, when GPM noticed its appearance on behalf of Ms. Nelson and commenced this Proceeding by filing a Petition for Formal Appointment of Special Administrator.

2. H&K's cause-of-action attorney's lien attached effective September 27, 2016 when H&K noticed its appearance on behalf of Ms. Nelson in the Proceeding.

3. On October 5, 2016, Roc Nation LLC filed a UCC-1 financing statement asserting an interest in "all assets and properties" of Ms. Nelson.

4. On January 11, 2017, G.W. Walker, LLC and Audubon Loan Funding, L.P. filed a UCC-1 financing statement asserting an interest in "all of Ms. Nelson's beneficial interests in the Estate."

5. On June 7, 2017, G.A. Walker, LLC was added as an additional secured party to the UCC-1 financing statement filed by G.W. Walker, LLC and Audubon Loan Funding, L.P.

6. B&T's cause-of-action attorney's lien attached effective January 29, 2018, when B&T noticed its appearance on behalf of Ms. Nelson in the Proceeding.

7. GPM and H&K have agreed that their liens shall share coordinate priority.

CONCLUSIONS OF LAW

1. Minn. Stat. § 481.13, subd. 1(a) provides that: "An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding...."

2. Minn. Stat. § 525.491 extends this provision for attorneys appearing on behalf of

an heir in a probate proceeding, providing:

“When any attorney at law has been retained to appear for any heir or devisee, such attorney may perfect a lien upon the client’s interest in the estate for compensation for such services as may have been rendered respecting such interest, by serving upon the personal representative before distribution is made, a notice of intent to claim a lien for agreed compensation, or the reasonable value of services. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided.”

3. If the attorney did not represent the client at the time of the commencement of the proceeding, the lien arises at the time the attorney first appears in the proceedings. *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 25-26 (Minn. Ct. App. 1987).

4. The value of a cause-of-action attorney’s lien is determined based on the terms of the fee provisions of a retainer agreement. *Thomas A. Foster & Assocs., LTD v. Paulson*, 699 N.W.2d 1, 6 (Minn. Ct. App. 2005).

5. An attorney holding a cause-of-action lien need not file separate notice of the attorney’s lien for that attorney’s lien to have priority over third-party claims. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (Minn. 2016).

6. Once formed, a cause-of-action attorney’s lien exists until it is satisfied and is not extinguished by the entry of judgment on the cause of action. *Williams*, 415 N.W.2d at 26 (citing *Desaman v. Butler Bros.*, 131 N.W. 463, 464 (Minn. 1911)).

7. Pursuant to Minn. Stat. §§ 481.13, subd. 1(a) and 525.491, GPM has established a valid and enforceable cause-of-action attorney’s lien on any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives or that is obtained on her behalf in her capacity as a beneficiary of the Estate, solely to the extent of GPM’s reasonable attorney’s fees and costs incurred on Ms. Nelson’s behalf and that remain

unpaid at the time of any such distribution to Ms. Nelson or at the conclusion of GPM's representation of Ms. Nelson.

8. The reasonable amount of GPM's cause-of-action attorney's lien is \$116,652.11, exclusive of collection costs.

9. GPM's cause-of-action attorney's lien attached and was effective against third parties as of April 25, 2016, when GPM first appeared in the Proceeding on Ms. Nelson's behalf. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (Minn. 2016).

10. GPM's cause-of-action attorney's lien is prior and superior, and has priority over, any claim, interest, or lien of Roc Nation, LLC, G.W. Walker, LLC, Audubon Loan Funding, L.P., G.A. Walker, LLC, B&T and other third parties, excluding the attorney's lien of Holland & Knight, LLP, which attorney's lien shall share coordinate priority with GPM's cause of action attorney's lien.

11. Pursuant to Minn. Stat. § 481.13, subd. 1(a), H&K has established a valid and enforceable cause-of-action attorney's lien on any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in her capacity as a beneficiary of the Estate, solely to the extent of H&K's reasonable attorney's fees and costs incurred on Ms. Nelson's behalf and that remain unpaid at the time of any such distribution to Ms. Nelson or at the conclusion of H&K's representation of Ms. Nelson.

12. The reasonable amount of H&K's cause-of-action attorney's lien is \$717,254.37.

13. H&K's cause-of-action attorney's lien attached and was effective against third-parties as of September 27, 2016, when H&K first appeared in the Proceeding on Ms. Nelson's

behalf. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (Minn. 2016).

14. H&K's cause-of-action attorney's lien is prior and superior, and has priority over, any claim, interest, or lien of Roc Nation, LLC, G.W. Walker, LLC, Audubon Loan Funding, L.P., G.A. Walker, LLC, B&T and other third parties, excluding the attorney's lien of Gray, Plant, Mooty, Mooty & Bennett, P.A., which attorney's lien shall share coordinate priority with H&K's cause of action attorney's lien.

15. Pursuant to Minn. Stat. § 481.13, subd. 1(a), B&T has established a valid and enforceable cause-of-action attorney's lien on any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in her capacity as a beneficiary of the Estate, solely to the extent of B&T's reasonable attorney's fees and costs incurred on Ms. Nelson's behalf and that remain unpaid at the time of any such distribution to Ms. Nelson or at the conclusion of B&T's representation of Ms. Nelson.

16. The reasonable amount of B&T's cause-of-action attorney's lien is \$21,816.50.

17. B&T's cause-of-action attorney's lien attached and was effective against third-parties as of January 29, 2018, when B&T first appeared in the Proceeding on Ms. Nelson's behalf. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (Minn. 2016).

ORDER FOR JUDGMENT

1. Gray, Plant, Mooty, Mooty & Bennett, P.A.'s ("GPM"), Holland & Knight, LLP's ("H&K") and Barnes & Thornburg, LLC ("B&T")'s Applications are hereby GRANTED in their entirety.

2. Pursuant to Minn. Stat. § 481.13, subd. 1(c) judgment in favor of GPM shall be immediately entered and docketed establishing that GPM is the holder of a valid, enforceable and duly perfected cause-of-action attorney's lien against Tyka Nelson in the amount of \$116,652.11. GPM is further entitled to tax statutory costs incurred in seeking the establishment and determination of its cause-of-action attorney's lien.

3. Pursuant to Minn. Stat. § 481.13, subd. 1(c) judgment in favor of H&K shall be immediately entered and docketed establishing that H&K is the holder of a valid, enforceable and duly perfected cause-of-action attorney's lien against Tyka Nelson in the amount of \$717,254.37. H&K is further entitled to tax statutory costs incurred in seeking the establishment and determination of its cause-of-action attorney's lien.

4. Pursuant to Minn. Stat. § 481.13, subd. 1(c) judgment in favor of B&T shall be immediately entered and docketed establishing that B&T is the holder of a valid, enforceable and duly perfected cause-of-action attorney's lien against Tyka Nelson in the amount of \$21,816.50. B&T is further entitled to tax statutory costs incurred in seeking the establishment and determination of its cause-of-action attorney's lien.

5. Upon entry and docketing of the judgments herein, GPM's, H&K's and B&T's cause-of action attorney liens shall be satisfied from any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in her capacity as a beneficiary of the Estate.

6. GPM's cause-of-action attorney's lien is prior and superior, and has priority over, any claim, interest, or lien of Roc Nation, LLC, G.W. Walker, LLC, Audubon Loan Funding, L.P.,

G.A. Walker, LLC, B&T or other third parties, excluding the attorney's lien of H&K, which attorney's lien shall share coordinate priority with GPM's cause of action attorney's lien.

7. H&K's cause-of-action attorney's lien is prior and superior, and has priority over, any claim, interest, or lien of Roc Nation, LLC, G.W. Walker, LLC, Audubon Loan Funding, L.P., G.A. Walker, LLC, B&T or any other third party, excluding the attorney's lien of GPM, which attorney's lien shall share coordinate priority with H&K's cause of action attorney's lien.

8. Based upon the stipulation between H&K and GPM, H&K's and GPM's respective cause-of-action attorneys' liens shall be satisfied on a pro rata basis from any proceeds that Ms. Nelson receives from the Estate and on any distribution, award, judgment, settlement, or recovery she receives from any source, or that is obtained on Ms. Nelson's behalf or for her benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in her capacity as a beneficiary of the Estate.

LET JUDGEMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Eide, Kevin

Kevin W. Eide 2019.03.07 13:47:33
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Dated: March 7, 2019

Kevin W. Eide
District Court Judge

JUDGMENT

I do hereby certify that the forgoing order constitutes the judgment of this Court.

Mary Dalbec
Court Administrator, Carver County, MN

Date 3.8.19

Deputy *Alisa Inauer*

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.