

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
MEMORANDUM IN SUPPORT OF MOTION
TO HOLD GREGG WALKER
IN CONTEMPT OF COURT****[REDACTED]**

INTRODUCTION

The Court ordered Gregg Walker, by February 23, 2019, to “provide counsel for Comerica all communications and related documents with any third-parties . . . that included confidential information that belongs to the Estate [including] all communications and documents related to the ‘pitch book’” Mr. Walker responded to the Court and the Personal Representative by: (1) representing he was not in possession of the pitch book; (2) representing he did not have any communications or related documents with third-parties that involved confidential information that belongs to the Estate; and (3) producing 3 emails (totaling 8 pages) to the Personal Representative.

Mr. Walker’s representations are patently false. Although the Personal Representative is only in the initial stages of reviewing the approximately 10,000 emails and other documents produced to the Personal Representative by Michael Lythcott in response to the February 23 Order, that preliminary review has revealed that Mr. Walker and Mr. Lythcott worked together to: (1) create the pitch book; (2) [REDACTED]

[REDACTED] (3) enter into non-disclosure agreements with third-

parties to share that confidential information; and (4) communicate and meet with multiple potential lenders and investors, all with the goal of personally enriching themselves. Far from the 3 emails produced by Mr. Walker, a search of the approximately 10,000 documents produced thus far by Mr. Lythcott shows that Mr. Walker was a sender or recipient on 1,811 emails.

Mr. Walker refused to comply with the February 13 Order and lied to the Court and the Personal Representative in an attempt to conceal his blatant violations of his non-disclosure obligations to the Estate. The Court should immediately enter an order to show cause for why Mr. Walker should not be held in contempt of court for violating the Court's February 13 Order, impose a conditional fine, and require Mr. Walker to pay the Personal Representative's attorneys' fees and costs incurred in connection with this motion.

BACKGROUND

I. THE COURT ORDERED GREGG WALKER AND MICHAEL LYTHCOTT TO PRODUCE DOCUMENTS AND COMMUNICATIONS RELATED TO CONFIDENTIAL ESTATE INFORMATION.

Based on evidence that Gregg Walker and Michael Lythcott had disclosed confidential information to third-parties in violation of their non-disclosure agreements with the Estate—most notably a 75-page “pitch book” that contained detailed information on the Estate's finances and entertainment deals—Comerica Bank & Trust, N.A. (the “Personal Representative”) requested an order requiring Mr. Walker and Mr. Lythcott to produce all communications (and related documents) with third-parties related to the Estate's confidential information. (Feb. 8, 2019 Letter to Judge Eide.) Following a telephone hearing where Mr. Walker was represented by his counsel of record in this matter, the Court entered an order (the “February 13 Order”) requiring:

Within 10 days, Michael Lythcott and Gregg Walker shall provide counsel for Comerica all communications and related documents with any third-parties (including, but not limited to, the two entities referenced in the February 8, 2019 Letter filed by Alfred Jackson, Omarr Baker, and Tyka Nelson) that included confidential information that belongs to the Estate. Without limiting the

foregoing, Mr. Lythcott and Mr. Walker shall provide all communications and documents related to the “pitch book” attached to the February 11, 2019 letter filed by White Wiggins & Barnes, LLP. Mr. Lythcott and Mr. Walker shall also provide an access log to the data site referenced in the White Wiggins & Barnes, LLP letter that discloses all parties who accessed the site and what they reviewed.

(Feb. 13 Order, ¶ 1.)

II. GREGG WALKER PRODUCED 3 EMAILS IN RESPONSE TO THE FEBRUARY 13 ORDER AND CLAIMED HE WAS UNAWARE OF THE PITCH BOOK.

Prior to responding to the February 13 Order, Mr. Walker filed a letter with the Court on February 19, 2019. In that letter, Mr. Walker represented that he “is not in possession of any document that fits the description of a ‘Pitch Book.’” (March 5, 2019 Declaration of Joseph J. Cassioppi (“Cassioppi Dec.”), Ex. A.)

Then, on February 25, Mr. Walker (through counsel) sent a letter to the Personal Representative, purportedly in response to the February 13 Order. (Cassioppi Dec., Ex. B.) In his February 25 letter, Mr. Walker represented that he “is not in possession of ‘any communications and [or] related documents with any third-parties (including but not limited to, the two entities reference[d] in the February 8, 2019 letter filed by Alfred Jackson, Omarr Baker and Tyka Nelson [REDACTED]), that included confidential information that belongs to the Estate.” (*Id.*) Mr. Walker also again represented that “[w]ith regard to the ‘Pitch Book’ referenced in your [sic] February 13 Order, as previously indicated, Mr. Walker is not in possession of a ‘Pitch Book.’” (*Id.*) Finally, for good measure, Mr. Walker claimed that he was “troubled by the allegations against him that have come from the Personal Representative.” (*Id.*)

In purported compliance with the February 13 Order, Mr. Walker included a document production with his letter, which he represented consisted of “any communications with financial

advisors, even those that do not include confidential information that belongs to the Estate.” (Cassioppi Dec., Ex. B.) The production consisted of 3 email chains, totaling 8 pages. (*Id.*)

III. MICHAEL LYTHCOTT’S DOCUMENT PRODUCTION REVEALED GREGG WALKER’S INVOLVEMENT IN THE WIDE-SPREAD DISCLOSURE OF CONFIDENTIAL INFORMATION BELONGING TO THE ESTATE.

In contrast to the 3 emails produced by Mr. Walker, Mr. Lythcott collected and delivered to the Court on February 22 more than 20,000 emails and related documents responsive to the February 13 Order. (Feb. 27 Order at p. 1.) Additionally, on February 25, Mr. Lythcott produced to the Personal Representative a subset of what he had provided the Court, totaling 9,561 emails and documents. (Cassioppi Dec., ¶ 4.) The Personal Representative has, through the date of this motion, reviewed only a small portion of those records, but even that preliminary review confirms that Mr. Walker’s representations to the Court and Personal Representative were false and that Mr. Walker has failed to comply with the February 13 Order.

Mr. Lythcott’s production confirms that by August 2018, Mr. Walker and Mr. Lythcott

██
 ██
 ██
 ██
 ██
 ██
 ██
 ██
 ██
 ██
 ██
 ██
 ██

(*Id.*, Ex. D.)

Although Mr. Walker has repeatedly disclaimed any knowledge of the pitch book (despite the fact that there is an entire page in the pitch book devoted to Mr. Walker and he is listed as a contact person in the document), Mr. Lythcott sent Mr. Walker the “final version[]” of the pitch book on September 23, 2018. (Cassioppi Dec., Ex. E-1.) With the pitch book, Mr.

Lythcott sent Mr. Walker a draft letter to third-parties requesting proposals for a transaction with the Estate, term sheets, and other documents related to the transaction they intended to pitch to investors. (*Id.*, Exs. E-2 – E-6.) [REDACTED]

[REDACTED] (*Id.*, Exs. E-4 – E6.) Mr. Walker and Mr. Lythcott proposed that they receive [REDACTED]

[REDACTED] (*Id.*, Exs. E-3, E-5.) The letter confirms that Mr. Walker and Mr. Lythcott knew that their disclosure of confidential Estate information was in violation of orders entered by the Court:

[REDACTED]

[REDACTED] by providing you with access to these documents you are being afforded a special privilege, so please DO NOT ABUSE IT.

(*Id.*, Ex. E-4 at p. 5.)

Next, Mr. Walker proceeded, purportedly in his role as “the Court appointed Heirs Representative,” to enter into non-disclosure agreements with potential investors, so that he could “exchange non-public confidential and/or proprietary information related in some way to the evaluation of a possible transaction (the ‘Transaction’).” According to the NDA:

The Transaction is the acquisition of the Estate or some or all of its subsidiary(s) and or assets including Paisley Park Enterprises, Paisley Park Facility, NPG Records and NPG Publishing (the “Estate Assets”). As a result, the Heirs Representatives anticipates disclosing to Recipient confidential information and other proprietary information which will be subject to the following terms and conditions.

(Cassioppi Dec., Ex. F (emphasis added).)

Based on the access log produced by Mr. Lythcott, Mr. Walker and Mr. Lythcott provided access to confidential Estate records [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARGUMENT

I. THE COURT SHOULD ENTER AN ORDER REQUIRING GREGG WALKER TO SHOW CAUSE AND HOLD GREGG WALKER IN CONTEMPT BASED ON HIS REFUSAL TO COMPLY WITH THE FEBRUARY 13 ORDER.

Under Minnesota law, the Court may hold a person in civil or criminal contempt. *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). The primary purpose of criminal contempt is to punish the contemnor for past behavior and vindicate the court's authority. *Id.* The primary purpose of civil contempt is to induce compliance with the Court's orders. *Id.* Although Mr. Walker's conduct meets the standards for both civil and criminal contempt, *see* Minn. Stat. §§ 588.01, subd. 3(3),

¹ It appears [REDACTED] is inaccurate or incomplete. Although Kennedy Barnes was provided access [REDACTED]

588.20, subd. 2(4), the Personal Representative requests a finding of only civil contempt at this time.²

There are two types of civil contempt: direct and constructive. Minn. Stat. § 588.01, subd. 1. Direct contempt is an act that occurs in the presence of the court, such as disorderly conduct or breach of the peace tending to interrupt the business of the court. *Id.*, subd. 2. Constructive contempt is an act that does not occur in the presence of the court, including disobedience of a lawful order. *Id.*, subd. 3.

Minnesota courts have broad discretion to hold a party in civil contempt, *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. Ct. App. 2001), provided the following conditions are met:

- (1) the court has jurisdiction over the subject matter and the person;
- (2) a clear definition of the acts to be performed;
- (3) notice of the acts to be performed and a reasonable time within which to comply;
- (4) an application by the party seeking enforcement giving specific grounds for complaint;
- (5) a hearing, after due notice, to give the nonperforming party an opportunity to show compliance or the reasons for failure;
- (6) a formal determination by the court of failure to comply and, if so, whether conditional confinement will aid compliance;

² The records produced by Mr. Lythcott confirm that Mr. Walker and Mr. Lythcott have violated multiple orders beyond the February 13, 2019 Order. These include, without limitation, orders dated March 22, 2017 (addressing the disclosure of confidential Estate information), June 15, 2017 (██████████), and May 15 and 25, 2018 (addressing Mr. Walker's obligations with respect to confidential information as an Heirs Representative). The Personal Representative will address those violations in a separate filing after Mr. Walker and Mr. Lythcott produce all records required under the February 13 Order.

(7) an opportunity for the nonperforming party to show inability to comply despite a good faith effort; and

(8) the contemnor's ability to gain release through compliance or a good faith effort to comply.

Mower Cnty. Human Servs. v. Swancutt, 551 N.W.2d 219, 223 (Minn. 1996) (quoting *Hopp v. Hopp*, 156 N.W.2d 212, 216–17 (Minn. 1968)).

Additionally, in cases of civil constructive contempt, the moving party is required to present an affidavit of the facts constituting the contempt to the Court, after which the Court may enter an order to show cause why the opposing party should not be held in contempt. Minn. Stat. § 588.04.

The Personal Representative has established all of the preliminary factors (1 through 4) necessary for a finding that Mr. Walker committed civil constructive contempt in this matter by failing to comply with the Court's February 13 Order, and the additional factors (5 through 8) will be established following the hearing on this motion. First, Mr. Walker submitted to this Court's jurisdiction by accepting appointment as an Heirs' Representative. (May 15 and 25, 2018 Orders.) Second, the Court clearly defined in its February 13 Order the acts Mr. Walker was required to perform—namely, providing records responsive to the February 13 Order to the Personal Representative. Third, Mr. Walker received a copy of the February 13 Order through e-service on his attorney-of-record, Mr. Siltan, and was provided 10 days to comply with the Order. Fourth, this memorandum and the supporting Declaration of Joseph J. Cassioppi and exhibits thereto definitively establish that Mr. Walker: (1) had possession of the “pitch book” and substantial additional records he was required to produce under the February 13 Order; (2) failed to produce those records; and (3) lied about his significant involvement in the disclosure of confidential information that belongs to the Estate in an attempt to avoid

consequences for the violation of his non-disclosure agreement and this Court's orders. Fifth, Mr. Walker will be provided an opportunity to address his conduct at the hearing on this motion. Sixth, the Court (if it grants this motion) will make a formal determination related to Mr. Walker's failure to comply with the February 13 Order. Seventh, Mr. Walker will have the opportunity to show inability to comply despite a good-faith effort. Finally, eighth, Mr. Walker will have the opportunity to avoid further contempt penalties by complying with the Court's February 13 Order and the order entered on this motion.

As a result, the Court should enter an order to show cause why Mr. Walker should not be held in contempt and, following a hearing, hold Mr. Walker in contempt for refusing to comply with the February 13 Order.

II. THE COURT SHOULD REQUIRE GREGG WALKER TO COMPLY WITH THE FEBRUARY 13 ORDER, PAY THE ATTORNEYS' FEES AND COSTS ASSOCIATED WITH THIS MOTION, AND IMPOSE A CONDITIONAL FINE.

The Court is not dealing here solely with a failure to comply with an order. What makes Mr. Walker's conduct in this case particularly egregious is his attempt to conceal his improper actions, including by making knowingly false statements to the Court and the Personal Representative. Despite having assisted with the creation of the pitch book, Mr. Walker disclaimed any knowledge of the document. Despite having been personally involved in communicating with (and obtaining non-disclosure agreements from) third-parties, Mr. Walker asserted that he did not have any communications or documents with third-parties related to the Estate's confidential information. Despite being a sender or recipient on more than 1,800 of the emails produced by Mr. Lythcott, Mr. Walker produced 3 emails.³

³ To the extent Mr. Walker's statement is accurate that he "is not in possession of any communications and [or] related documents" involving the Estate's confidential information, it means that he has systematically deleted records responsive to the February 13 Order.

The Court should order Mr. Walker to appear and show cause why he should not be held in contempt for his violation of the February 13 Order. If the Court determines Mr. Walker violated the February 13 Order, the Court may impose a punishment of imprisonment up to six months, a fine up to \$250.00, or both.⁴ As civil contempt is meant to induce compliance with court orders, the imposition of “purge” conditions is required. That is, the court must impose conditions that—if satisfied—would allow the contemnor to end or avoid the punishment. *See Swancutt*, 551 N.W.2d at 224 (in civil contempt, “the contemnor has the keys to the jail.”); *e.g.*, *Zaldivar v. Rodriguez*, 819 N.W.2d 187, 195–96 (Minn. Ct. App. 2012) (contemnor could avoid imprisonment by paying money owed under child-support order).

Here, the Personal Representative requests that the Court impose a conditional fine of the statutory maximum of \$250.00, which Mr. Walker may purge by complying with his obligations under the February 13 Order. In addition, where the contempt has caused actual loss or injury to a party, the Court may order the contemnor to “pay the party aggrieved a sum of money sufficient to indemnify the party and satisfy the party’s costs and expenses, including a reasonable attorney’s fee incurred in the prosecution of such contempt.” Minn. Stat. § 588.11. Here, the Estate was forced to incur the fees and costs associated with reviewing records produced by Mr. Lythcott to uncover the falsity of Mr. Walker’s representations to the Court and the Personal Representative. The Estate should not be required to bear the fees and expenses associated with this motion, particularly in light of the intentional false statements made by Mr.

⁴ Although the Minnesota Legislature has prescribed maximum punishments for contempt, the Minnesota Supreme Court has recognized that the judiciary has inherent authority to punish contempt and has affirmed punishments beyond those authorized in the Minnesota Statutes. *See Tatum*, 556 N.W.2d 541 at 547.

Walker in an attempt to hide his conduct. The Personal Representative will file an affidavit of counsel following the hearing listing the fees and costs incurred filing and arguing this motion.

CONCLUSION

For the reasons set forth above, the Personal Representative respectfully requests that the Court order Gregg Walker to show cause why he should not be held in contempt and, following a hearing, find Gregg Walker in contempt of court and order him to comply with the February 13, 2019 Order. The Court should also require Mr. Walker to pay the Estate the attorneys' fees and costs associated with this motion and impose a conditional fine, which Mr. Walker may purge only by fully complying with the Court's Orders.

Dated: March 5, 2019

/s/ Joseph J. Cassioppi

Mark W. Greiner (#0226270)
Joseph J. Cassioppi (#0388238)
Emily A. Unger (#0393459)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street
Suite 4000
Minneapolis MN 55402-1425
612-492-7000
612-492-7077 fax
mgreiner@fredlaw.com
jcassioppi@fredlaw.com
eunger@fredlaw.com

Attorneys for Comerica Bank & Trust, N.A.

66045487.1