

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

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

Estate of Prince Rogers Nelson,

Decedent.

**ORDER & MEMORANDUM
GRANTING MOTION
TO APPROVE RESCISSION
OF EXCLUSIVE DISTRIBUTION
AND LICENSE AGREEMENT**

The above-entitled matter came before the undersigned for a hearing on June 13, 2017, pursuant to Personal Administrator Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement. Appearances were as noted in the record. Based on the memoranda of law, declarations, and exhibits submitted to the Court, the arguments of counsel at the hearing and by letter brief thereafter, and all of the files, records, and proceedings herein, the Court makes the following:

ORDER

1. The Personal Administrator's Motion to Approve Rescission of Exclusive Distribution and License Agreement is GRANTED and the Rescission Agreement, submitted as Exhibit U to the Declaration of Joseph J. Cassioppi, is APPROVED.

BY THE COURT:

Dated: July 13, 2017

The Honorable Kevin W. Eide
District Court Judge

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.

MEMORANDUM

On January 31, 2017, the Estate and NPG Records, Inc. and UMG Recordings, Inc. (“UMG”) entered into an Exclusive Distribution and License Agreement (the “UMG Agreement”). The UMG Agreement was negotiated by the former Special Administrator of the Estate, Bremer Trust National Association (“Special Administrator”) with the assistance of its entertainment advisors, L. Londell McMillan (“McMillan”) and Charles Koppelman (“Koppelman”). Shortly after the UMG Agreement was signed, Warner Bros. Records, Inc. (“WBR”) claimed the Special Administrator sold rights to UMG that WBR already held through previous agreements with Decedent. All prior Warner Bros. Records, Inc. agreements are hereinafter referred to as the “WBR Agreements”. As a result of WBR’s claims and after its own review, the Personal Representative argues it cannot unequivocally assure either UMG or the Court that no overlap exists between the rights granted under the UMG Agreement or the rights held by WBR. The Personal Representative has therefore moved the Court for an Order allowing it to enter into a Rescission Agreement with UMG.

In connection with the Personal Representative’s motion, the Court has reviewed a multitude of submissions filed in advance of the hearing including, but not limited to:

1. Comerica Bank & Trust, N.A.’s Notice of Motion and Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1678 on May 17, 2017;
2. Comerica Bank & Trust, N.A.’s Memorandum in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1685 on May 17, 2017;
3. Declaration of Joseph J. Cassioppi in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1686 on May 17, 2017;
4. UMG Recordings, Inc.’s Joinder in Comerica Bank & Trust, N.A.’s Motion to Approve Rescission of Exclusive Distribution License Agreement filed as document number 1709 on May 30, 2017;
5. CAK Entertainment, Inc.’s Limited Objection to Comerica Bank & Trust, N.A.’s Motion to Approve Rescission of Exclusive Distribution License Agreement filed as document number 1729 on June 6, 2017;

6. Omarr Baker's Response in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1730 on June 6, 2017;
7. Memorandum of Law in Opposition to Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution License Agreement filed as document number 1735 on June 6, 2017;
8. Affidavit of Sharon L. Nelson filed as document number 1736 on June 6, 2017;
9. L. Londell McMillan's Memorandum of Law in Response to Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1747 on June 6, 2017;
10. Declaration of L. Londell McMillan in Response to Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1749 on June 6, 2017;
11. Declaration of Virgil Roberts in Response to Comerica's Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1751 on June 6, 2017;
12. Affidavit of Steven H. Sifton in Support of Omarr Baker's Response in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1768 on June 8, 2017;
13. Omarr Baker's Reply in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1773 on June 9, 2017;
14. Affidavit of Steven H. Sifton in Support of Omarr Baker's Reply in Support of Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1775 on June 9, 2017;
15. UMG Recordings, Inc.'s Reply in Support of Its Joinder in Comerica Bank & Trust, N.A.'s Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1782 on June 9, 2017;
16. Comerica Bank & Trust, N.A.'s Reply in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1786 on June 9, 2017;
17. Supplemental Declaration of Joseph J. Cassioppi in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1785 on June 9, 2017; and

18. Exhibits A and B to the Supplemental Declaration of Joseph J. Cassioppi in Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement filed as document number 1787 on June 9, 2017.

The hearing on the Personal Representative's motion was held on June 13, 2017. Though the crux of the motion involves a presumed conflict between the WBR Agreements and the UMG Agreement, the WBR Agreements had not been reviewed by UMG because it contains a confidentiality clause. On June 15, 2017, the Court ordered the WBR Agreements be provided to the Court and UMG's counsel on an attorneys-eyes-only basis. The Court hoped that disclosure of the WBR Agreements would resolve UMG's conflict concerns and, with such an important decision to make, the Court felt it necessary for UMG's attorneys to see the WBR contract so they were not operating based upon speculation or what may have been leaked to them. Unfortunately, upon review of the WBR Agreements, counsel for UMG in a letter filed June 26, 2017 as document 1849 determined, "Our thorough review has only confirmed that rescission is necessary..."

In response to the UMG letter confirming its position on the necessity of rescission, the Court received a number of additional submissions including:

1. A letter from Attorney Steven H. Silton on behalf of Omarr Baker filed as document number 1851 on June 28, 2017;
2. A letter and attachments from Attorney Nathaniel A. Dahl on behalf of Sharon Nelson, Norrine Nelson and John Nelson filed as document number 1856 on June 28, 2017;
3. A letter from Attorney Alan I. Silver on behalf of L. Londell McMillan filed as document number 1868 on June 28, 2017;
4. A letter from Attorney Scott Edelman on behalf of UMG filed as document number 1876 on June 30, 2017;
5. A letter from Attorney Robin Ann Williams on behalf of L. Londell McMillan filed as document number 1878 on July 3, 2017;
6. A letter and exhibits from Attorney Joseph J. Cassioppi on behalf of the Personal Representative filed as document numbers 1884 and 1885 on July 5, 2017;

This Court has attempted to thoroughly and thoughtfully interpret the contract terms in the 2014 WBR Agreements and the 2017 UMG Agreement. The Court notes that Sharon, Norrine and John Nelson and Mr. McMillan focus on the term "pressing and distribution" in the critical phrase "pressing and distribution of Records" from the 2014 WBR Agreements, whereas Comerica

focuses on the term “Records.” Comerica ably argues that the term “Records” can include the digital download or streaming rights to published work. Mr. McMillian argues that the term “pressing and distribution” generally and customarily means physical copies of records and this interpretation is supported by the expert Affidavit of Virgil Roberts.

Sharon, Norrine and John Nelson and Mr. McMillian argue that this Court should allow for additional discovery and the submission of expert testimony regarding the interpretation of the Agreements. This Court believes that all relevant agreements have been provided to the parties and that experts can be found to support the position of each party.

In the end, this Court is reminded that it cannot make a final and binding decision with respect to the interpretation of these contracts. The right to interpret these contracts is venued with the courts of the States of New York and California under the terms of the WBR Agreements and the UMG Agreement respectfully. Under the most complicated of scenarios, Universal could seek to void the UMG Agreement in California and, after protracted litigation and if the Estate were successful, WBR could then seek declaratory relief as to their Agreements in New York.

It has been suggested that UMG is bluffing and they really wouldn’t file suit in the State of California if this Court does not rescind the contract. In light of UMG’s letter of June 26, 2016, and after their attorneys had an opportunity to view the WBR Agreements, this does not appear to be a bluff. More importantly, this Court must proceed cautiously to preserve the assets of the Estate. If litigation is commenced in New York or California, the exploitation of a substantial portion of the Prince music catalog may be lost for years.

On page 2 of Comerica Bank & Trust, N.A.’s Reply Memorandum filed June 9, 2017, the Estate sets forth the factual reality it faces when it has to consider whether the rescission of the UMG Agreement is in the best interest of the Estate. The Court must reluctantly accept this reasoning. The Estate further points out that, under the UMG Agreement, if the Estate were unsuccessful in litigation and the UMG Agreement was ultimately voided, the Estate could be held liable for extensive attorneys’ fees and costs over and above the distribution advances.

The Court also needs to address the issue of whether the UMG Agreement can be preserved through the application of Paragraph 1.8 of the Agreement. That paragraph provides generally that if the Estate is not able to deliver due to rights claimed by a third party, the Estate can elect to return 110% of all Distribution Advances and other costs previously paid by Universal with respect

to the applicable Label Product, and the term with respect to such Label Product shall be deemed terminated.

This paragraph has been interpreted by counsel for some of the parties to allow the Estate and UMG to parse out the value of the UMG Agreement which purportedly overlaps with the WBR Agreements, allow the Estate to return 110% of that value to UMG, and permit the parties to move forward with the remainder of the UMG Agreement. The Court does not believe that this is a viable manner of proceeding for the following reasons:

- (1) UMG has argued that the UMG Agreement was consummated as a result of fraudulent misrepresentation or mutual mistake. If this were proven, UMG argues, the Agreement would be void *ab initio* and Paragraph 1.8 would not serve as a remedy.
- (2) UMG argues the Paragraph 1.8 is not intended to serve as a mechanism to preserve the larger contract by allowing the Estate to return funds to UMG for rights to music that the Estate could not convey. Rather, UMG argues that this clause addresses the allocation of consideration between Prince Rogers Nelson (now his Estate) and NPG records.
- (3) If Paragraph 1.8 would be read to allow the Estate to return the value of music rights that are alleged to overlap with the WBR Agreements, there is no provision in the UMG Agreement as to what that value might be. The UMG Agreement does have a provision requiring the parties to meet and confer and to try to resolve disagreements. However, there is no provision for arbitration of the dispute, thus leaving the matter open for protracted and expensive litigation even if Paragraph 1.8 was implemented as a remedy.
- (4) This Court has no authority to resolve these arguments or disputes as they must be addressed in the State of California. Therefore, a declaration by this Court that Paragraph 1.8 provides a mechanism for the severability of the UMG Agreement upon the return of certain funds by the Estate would be meaningless to the parties.

As previously noted, this Court believes that the Estate must proceed in a cautious manner to preserve the assets of the Estate. While the rescission of the UMG Agreement may certainly be seen as proceeding with a lack of caution, the Court believes that the other option of long and potentially expensive litigation while tying up the music rights owned by the Estate makes the other option more treacherous.

K.W.E.