

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In re:

Estate of Prince Rogers Nelson,
DecedentCourt File No. 10-PR-16-46
Honorable Kevin W. Eide**REPLY IN SUPPORT OF APPLICATION
FOR DETERMINATION AND
ESTABLISHMENT OF ATTORNEY'S
LIEN AND ENTRY OF JUDGMENT OF
ATTORNEY'S LIEN**

Lien Claimant White Wiggins & Barnes, LLP (“WWB”) submits the following Reply to Primary Wave’s Memorandum in Opposition to Application for Determination and Establishment of Attorney’s Lien pursuant to Minn. Stat. §§ 481.13 and 525.491, respectfully showing the Court the following:

I.**PERTINENT FACTS**

White Wiggins & Barnes (“WWB”) was engaged to represent Alfred Jackson (now deceased), one of six heirs to Prince Rogers Nelson. WWB served as counsel for Jackson from October 2, 2018 until February 7, 2019. The representation was governed by a signed Engagement Agreement which provided that “all payments are to be paid from the Prince Estate until the parties agree otherwise...” A copy of the Engagement Agreement is attached as Exhibit 1 and incorporated herein for all purposes.

Over the course of its representation of Mr. Jackson, WWB attorneys provided counsel, drafted motions and other court filings, appeared before this and the appellate court on various

matters related to Mr. Jackson's interests in the Prince Estate, and advised Mr. Jackson on matters that affected or related to his interests and potential inheritance from the Prince Estate.

WWB's representation of Mr. Jackson was abruptly terminated on or about February 7, 2019. Shortly thereafter, WWB learned that Mr. Jackson had entered a transaction with Primary Wave whereby a substantial portion of Mr. Jackson's interest in the Prince Estate was to be sold to Primary Wave.¹

On March 7, 2019, the Court issued an Order Regarding Heir Attorney Fee Submissions, which directed that any counsel for the heirs "who wishes to request payment of attorneys' fees or expenses from the Estate for the period of February 1, 2017 through December 31, 2018 shall file a motion seeking such payment by March 31, 2019." For the convenience of the Court, a copy of the Order is attached as Exhibit 2.

Over the course of its representation of Mr. Jackson, Mr. Jackson had never paid any of WWB's fees and expenses for the services of the firm. Therefore, WWB and its local counsel filed a motion for fees as instructed by the Court. The motion was supported by affidavit and copies of the fee statements and invoices. Copies of those documents are attached as Exhibits 3 and 4 and incorporated herein for all purposes.

In its March 7th Order, the Court directed Special Master Judge Richard B. Solum to hear and decide the heir counsels' fee motions. In accordance with that Order, WWB submitted supporting documents and evidence of its work and expenses for the work performed on Mr. Jackson's behalf and responded to inquiries and documents requested by Judge Solum. At no time

¹ The Court may recall that WWB informed the Court regarding disclosures of highly sensitive and confidential information that was allegedly provided to Primary Wave in connection with its pursuit of an acquisition of Mr. Jackson's interests in the Prince Estate.

during that process did Mr. Jackson, nor the myriad other counsel who represented him after WWB was terminated, challenge the fee statements or WWB's motion for payment.

On August 27, 2019, Judge Solum issued an Order on Fee Applications, and awarded WWB \$9,435.00, and the Selmer Firm \$2,063.00. In a 66-page Order, Judge Solum provided specific details regarding the analysis and basis of his decision. Importantly, nowhere in Judge Solum's analysis was there a mention of any challenge to the work performed by WWB, nor the amount of time and fees associated with the work. Rather, the fees and expenses awarded to WWB and its local counsel were reduced primarily because (1) the majority of the work benefited the client, not the Estate; and (2) though some of the work benefited the Estate, Judge Solum adjusted (reduced) the attorneys' fees where multiple timekeepers performed the same or similar work on behalf of their respective individual client. A copy of the August 27, 2019 Order is attached as Exhibit 5 and incorporated herein for all purposes.

The reduced payment WWB received as a result of Judge Solum's Order left a balance of \$177,176.32 for fees and expenses related to the legal services provided to Mr. Jackson in the Prince Estate. Those amounts remain unpaid.

Mr. Jackson received, but never paid any of the invoices submitted to him. At some point after Mr. Jackson's death, WWB received notice from the administrator of Mr. Jackson's probate estate that there was an opportunity to submit a claim in Mr. Jackson's probate proceeding. The firm submitted to the probate administrator a claim form and copies of the unpaid invoices and requested payment. After the period for claim submissions had expired, the administrator filed a motion to dismiss WWB's claim on the grounds that the claim submission form was not signed by a Missouri-licensed attorney. In response, WWB engaged Missouri counsel, who responded to

the motion. Though WWB disagrees with the Jackson probate court's decision, the probate court declared WWB's claim a nullity and dismissed it accordingly.

On August 2, 2021, WWB filed a Notice of Application for Determination and Establishment of Attorney's Lien and Entry of Judgment for Attorney's Lien in the Prince Estate. A copy of the Notice is attached as Exhibit 6 and incorporated herein for all purposes. All of the fees and expenses in the Notice Application are related to WWB's legal services performed for Mr. Jackson in the Prince Estate. In a letter to the Court, Primary Wave expressed concerns about WWB's Attorney Lien Application. The Court directed WWB to respond to Primary Wave's inquiry via letter to the Court by December 7, 2021. WWB provided the requested letter, which is attached as Exhibit 7 and incorporated herein for all purposes.²

Primary Wave has not put forth any authority that would defeat this Court's duty to summarily determine the lien and issue judgment. In the sections below, WWB addresses the specific points and arguments asserted in Primary Wave's December 30, 2021 Memorandum in Opposition to Application for Determination and Establishment of Attorney's Lien.

II.

ARGUMENT AND AUTHORITIES

1. Primary Wave's arguments concerning Missouri probate law are preempted by Minn. Stat 481.13.

Primary Wave argues that because Mr. Jackson is deceased, Missouri law now controls whether WWB can be paid for the work performed on Mr. Jackson's behalf in the Prince Estate.

² To avoid repeating the arguments and authorities set forth in the December 7th letter, WWB fully incorporates those arguments and points herein by reference.

Primary Wave's position belies the plain language and numerous Minnesota court holdings regarding Minn. Stat. § 481.13.

The purpose of Minnesota's attorney lien statute is well established. "[T]he general theory behind [lien rights is] that a successful plaintiff should not be permitted the whole of any judgment secured by the services of his attorney without paying for those services." *Schroeder, Siegfried, Ryan & Vidas v. Modern Elec. Prods., Inc.*, 295 N.W.2d 514, 516 (Minn. 1980). The December 7th letter (Exhibit 7) sets forth in detail how an attorney lien is created, and how and by when the lien must be perfected. But the bottom line is clear: an attorney lien is created when the attorney provides legal services pursuant to an engagement, and the lien is not extinguished until it is satisfied. *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 26 (Minn. App. 1987) (concluding that a lien, once formed, is not extinguished until satisfied and that the entry of judgment on the underlying cause of action has no effect on the lien's validity).

In Minnesota, "when a lien claimant petitions the district court under § 481.13, subdivision 1(c), the district court must determine (1) the lienholder; (2) the subject of the lien as defined by the attorney-lien statute; and (3) the amount due." *George E. Antrim, Iii, PLLC v. Sabri*, A13-2174, at *19 (Minn. Ct. App. Sep. 29, 2014). Moreover, it is the work performed, not the invoices of the work, that creates the attorney's right to compensation. *Effrem v. Effrem*, 818 N.W.2d 546, 551 (Minn. Ct. App. 2012) ("The retainer agreement expressly sets forth the hourly rate for the services to be performed by respondent on behalf of appellants. The work performed by respondent on behalf of appellants creates a right to 'compensation' under the attorney-lien statute.").

Citing Missouri law, Primary Wave contends that claims against the estate of a deceased person can only be brought in the probate court of the deceased; and unless those claims are timely brought, they are forever barred. However, Primary Wave does not contest that the lien sought by

WWB arises out of work performed on Mr. Jackson's behalf in the Prince Estate. Primary Wave also concedes that its interests in the Prince Estate flows from the potential distribution to Mr. Jackson (since Primary Wave is his designee for distribution purposes). Further, there is no dispute that distribution in the Prince Estate has yet to occur. Minnesota law makes clear that the attorney's lien under § 481.13 is not extinguished until satisfied. *Williams v. Dow Chemical Co., infra.* Primary Wave has not and cannot offer a single case that supports its contention that Missouri law supersedes Minn. Stat § 481.13 where Minnesota attorney liens are concerned.

2. Minnesota law only requires that an attorney lien be sought before distribution.

In a second point, Primary Wave claims to be a "third-party" with regard to WWB's attorney lien application.³ Based on that characterization, Primary Wave says that WWB can no longer pursue an attorney lien related to the work performed for Mr. Jackson in the Prince Estate because WWB's Notice of Application was filed after Primary Wave purchased Mr. Jackson's interests in the Prince Estate. This position is contradicted by clear Minnesota statutory and case authority.

In support of its "third-party" argument, Primary Wave seems to rely on an older version of § 481.13. Citing to *Williams v. Dow Chem.* on page 9, Primary Wave quotes from a portion of the case that describes the notice requirements under then § 481.13(4), arguing that WWB's application for attorney's lien had to occur before Primary Wave acquired Mr. Jackson's interests in the Prince Estate. However, § 481.13(4) was repealed, and § 481.13 no longer includes the notice requirement upon which Primary Wave relies. Primary Wave's position is also directly contradicted by Minn Stat. § 525.591 which provides:

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

³ It is difficult to see why this would be the case, as Primary Wave is actually an Interested Person under Minn. Stat. § 524.1-201 based on its acquisition of Mr. Jackson's expectancy interest in the Prince Estate.

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. WWB's right to an Attorney Lien was not extinguished by the Jackson probate proceedings.

Primary Wave devotes considerable pages in an argument that WWB's ability to seek an attorney lien for the work it performed on Mr. Jackson's behalf in the Prince Estate was somehow extinguished by the Jackson probate proceeding. But Primary Wave cannot identify a single Minnesota case that supports this position and, instead, cites to numerous cases that have no bearing or relevance to Minnesota's attorney lien statutes.

For example, *Crown Equip. Rental Co. v. J. B. Builders*, an unpublished case cited by Primary Wave on page 5 of the Opposition Memo, involves a mechanic's lien. *Harbour Village*, also cited on page 5, is a Florida case involving a lien based on a sale of land. *Coates v. Acheson*, cited on page 6, is about an innkeeper's lien. Simply put, Primary Wave cannot overcome the clear, unambiguous language of Minnesota's attorney lien statutes.

As stated above, attorney liens in Minnesota are wholly governed by statute, which preempts the field. *Schroeder, Siegfried, Ryan & Vidas v. Modern Elec. Products, Inc.*, 295 N.W.2d 514, 516 (Minn.1980) ("Although the attorney's charging lien existed at common law and at equity, it is now wholly governed by statute."); *Village of New Brighton v. Jamison*, 278 N.W.2d 321, 324 (Minn.1979) (finding statutes had "preempted the field of law regarding attorneys liens and substituted statutory procedures for those of common law and equity"); *Akers v. Akers*, 233 Minn. 133, 46 N.W.2d 87, 91 (1951) ("The lien of an attorney, whatever it may have been at common law, is in this state regulated by statute" (quoting *Forbush v. Leonard*, 8 Minn. 303,

305 (1863))). Where a client has an interest in money affected by an action in which the attorney is employed, under § 481.13, the statutory requirements for an attorney lien are met.

Considering the stated purpose of Minnesota's attorney lien statutes—to prevent a client from benefiting from an attorney's services without paying for them—and provides security for recovery of fees, *see, e.g. Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014), it stands to reason that WWB is entitled to a lien against Mr. Jackson's (or his designees') interests in the Prince Estate.

Minnesota courts have addressed this point directly. In *Northern States Power Co. v. Gas Services, Inc.*, 690 N.W.2d 362, 365-66 (Minn. Ct. App. 2004), the court held:

Minn.Stat. § 481.13, subd. 1(c), was amended in 2002. 2002 Minn. Laws ch. 403, § 2. The amendment changed the phrase "The liens . . . may be established, and the amount thereof determined, by the court, summarily, in the action or proceeding," to "A lien . . . may be established, and the amount of the lien may be determined, summarily by the court under this paragraph." We conclude that by changing the phrase "in the action or proceeding," to "by the court under this paragraph," the legislature intended that the statute henceforth would empower a court to establish and determine liens without regard to whether or not the action or proceeding in which the fees were incurred was before that court. Therefore, contrary to Bajwa's argument, we further conclude that the fact that Foster's fees were incurred in a federal court action does not bar state court jurisdiction under Minn.Stat. § 481.13 (2002).

III.

CONCLUSION

WWB's Application for Determination and Establishment of Attorney Lien should be summarily considered and approved, and a judgment for the unpaid fees entered.

DATE: January 14, 2022

Respectfully submitted,

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