

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
Honorable Kevin W. Eide

Estate of Prince Rogers Nelson,

Deceased.

**CAK ENTERTAINMENT, INC.'S LIMITED OBJECTION TO
COMERICA BANK & TRUST, N.A.'S MOTION TO APPROVE
RESCISSION OF EXCLUSIVE DISTRIBUTION AND LICENSING AGREEMENT**

CAK Entertainment, Inc. ("CAK"), by and through its undersigned counsel,¹ as an Interested Observer to this matter, hereby submits its Limited Objection to the May 17, 2017 Motion to Approve Rescission of Exclusive Distribution and Licensing Agreement (the "Motion"), filed by Comerica Bank & Trust, N.A. (the "Personal Representative") in its role as personal representative of the Estate of Prince Rogers Nelson (the "Estate").² CAK does not object to the Motion to the extent it seeks the Court's approval of the rescission of the agreement at issue, but rather objects to the Motion only to the extent it seeks to or suggests that the approval sought therein would affect or preclude any of CAK's legal rights.

¹ CAK files this limited objection for the purpose of objecting to the Motion only. Nothing in this filing should be construed as a submission to the general jurisdiction of the Minnesota courts or a waiver of any defenses to this Court's exercise of personal jurisdiction over CAK or Mr. Charles Koppelman in connection with any other claims or proceedings.

² Neither CAK nor Mr. Koppelman have been provided an unredacted copy of the Motion and its supporting papers, and thus this Limited Objection is based solely on the public, redacted version of the Motion. Nonetheless, for the purposes of this Limited Objection only, CAK assumes the accuracy of the facts set forth in the public version of the Motion. Thus, CAK does not fully set forth the background or relevant facts herein, and respectfully refers the Court to the Motion for the description therein. CAK does not waive any rights to contest any of the facts or arguments in the Motion at a later point, and expressly reserves all such rights.

I. THE ADVISOR AGREEMENT AND THE MOTION

As the Court is aware, the Estate, through the then-Special Administrator, Bremer Trust National Association (“Bremer” or the “Special Administrator”) entered an Advisor Agreement with CAK (providing the services of Mr. Charles Koppelman) and Northstar Enterprises Worldwide, Inc. (providing the services of Mr. L. Londell McMillan) (together with CAK, the “Advisors”), dated June 16, 2016 (the “Advisor Agreement”), pursuant to which the Advisors would assist the Estate in its efforts to monetize its entertainment assets.

Consistent with the Advisor Agreement, the Advisors proceeded to negotiate the business terms of several agreements on behalf of the Estate, most of which are not at issue in the Motion and have been beneficial and profitable to the Estate. The Advisors also assisted the Estate with the Exclusive Distribution and License Agreement between the Estate, NPG Records, Inc., and UMG Recordings, Inc. (“UMG”) dated January 31, 2017 (the “UMG Agreement”), which is the subject of the Motion. (*See* Comerica Bank & Trust, N.A.’s Memorandum In Support of Motion to Approve Rescission of Exclusive Distribution and License Agreement, dated May 17, 2017, at 1 (the “PR Brief” or “PR Br.”).) Pursuant to the Advisor Agreement, following the execution of the agreements on which the Advisors assisted the Estate, including the UMG Agreement, the Advisors were paid a commission in the form of a percentage of the funds that the Estate received in those agreements, and were entitled to receive future commissions in connection with those agreements, including the UMG Agreement. (PR Br. at 5, n.1.)

The Personal Representative filed the Motion seeking the Court’s approval of an agreement between the Estate and UMG that rescinds the UMG Agreement (the “Rescission Agreement”). (PR Br. at 11-12, 15-16.) In the Motion, the Personal Representative references certain disputes among the Estate, UMG, and Warner Bros. Records, Inc. (“WBR”) – with whom

the Estate also has an agreement – concerning certain alleged conflicts of the rights UMG and Warner have regarding certain Estate assets as the background for the Personal Representative’s decision to rescind the UMG Agreement. (PR Br. at 2-12.)

As set forth in the Motion, after its review of the relevant agreements and documents, “the Personal Representative concluded that some of the claims regarding inconsistencies between WBR’s and UMG’s rights were without merit,” but to date the Personal Representative has been unable to reject with certainty at least one of WBR’s assertions. (PR Br. at 9, 13.) Further, the Personal Representative tried, but was unable to resolve these issues through negotiation with UMG. (PR Br. at 9-11.)

As a result, the Personal Representative made a determination that “[r]escinding the UMG Agreement is in the best interest of the Estate” because the Personal Representative believes that, in the absence of a rescission, the Estate would be forced to engage in lengthy and expensive litigation that risks exposing the Estate to liability. (PR Br. at 12-14.) The Personal Representative further asserts that, “perhaps most importantly, the Estate would incur a significant loss of income while [such] litigation is pending,” because during that time and as a result of the litigation, the Estate’s assets would not be fully exploited, which could lead to the Estate losing out on potential income. (PR Br. at 14.)

Accordingly, the Estate decided to enter the Rescission Agreement, which resolves the disputes with UMG, and provides, among other things, that the UMG Agreement “will be rescinded and considered void *ab initio*.” (PR Br. at 11-12.) In the Motion, the Personal Representative requests the Court’s approval of the Rescission Agreement (PR Br. at 12-14), as well as that the Court “issue guidance on whether the Personal Representative should investigate

and, if warranted, pursue the repayment of the [REDACTED] commission paid to McMillan and Koppelman in connection with the UMG Agreement” (PR Br. at 14-15).

II. THE ESTATE’S BUSINESS DECISION TO RESCIND THE UMG AGREEMENT SHOULD NOT AFFECT THE RIGHTS OF THE ADVISORS

A. CAK Does Not Object to the Rescission of the UMG Agreement

Although it does not believe there is a legal basis for rescission, CAK does not object to the Personal Representative’s business decision to rescind the UMG Agreement. CAK objects, however, to the Motion and the Rescission Agreement to the extent that the Personal Representative is requesting or suggests that the approval of the Rescission Agreement would have any legal effect on the rights of the Advisors, particularly where, as here, CAK has not been provided a full and fair opportunity to contest such a claim.

As is evident from the Motion, Mr. Koppelman did not have a substantial role in the negotiation of the UMG Agreement. Nor has he (or CAK) been a party to or participant in these proceedings to date, and therefore, they were never served with an unredacted copy of the Motion and its supporting papers.³ Similarly, they do not have access to all of the information and documents that the Personal Representative has concerning the issues in the Motion. Nevertheless, based on the information available to CAK (and Mr. Koppelman), including the public, redacted version of the Motion and other public filings, there appears to be no legal basis to rescind the UMG Agreement. Indeed, the Personal Representative indicates in the Motion that it is seeking to rescind the agreement principally because of business reasons. The Personal Representative does not state that it agrees with UMG or WBR’s positions, only that it “cannot

³ Although counsel for the Personal Representative included counsel for CAK on its initial e-mail advising it was going to notice the Motion for May 31, 2017, the Personal Representative did not serve CAK (or Mr. Koppelman) with the Motion. Indeed, the day after the Motion was filed, counsel for CAK requested and received a copy of the Motion from counsel to the Personal Representative, but CAK was only provided a redacted copy.

guarantee a favorable outcome in the [threatened] litigation.” (PR Br. at 13.) Rather, the Personal Representative indicates it made the business decision to rescind the UMG Agreement to avoid the costs, delay, and risks of litigation, and more importantly, to avoid losing the opportunity and potential income from further exploitation of the Estate’s assets during any litigation. (PR Br. at 12-14.)

Of course, whether or not the Estate should rescind the UMG Agreement is a decision for the Personal Representative, in the first instance, and thereafter, for the Court whether to approve such a rescission. Thus, if the Personal Representative believes it is in the best interests of the Estate to rescind the UMG Agreement and avoid the costs and risk of litigation, then that is its decision to make. However, the Personal Representative’s business decision to rescind should not have any legal effect on the Advisors’ commissions.

B. CAK Objects Only to the Rescission Agreement’s Purported Effect on Its Rights

CAK objects to the Motion to the extent that the Personal Representative is seeking or suggesting that the Court’s approval of the Rescission Agreement will have an effect on the Advisors’ legal rights. In particular, the Personal Representative states in the Motion that because the Rescission Agreement provides that the parties agree that the UMG Agreement will be considered void *ab initio*, therefore the Advisors retention of the commission they received in connection with the UMG Agreement may be “unlawful and/or inequitable.” (PR Br. at 15.) The Personal Representative seems to suggest that the void *ab initio* language has a preclusive or binding effect on the Advisors’ legal rights to retain the commissions received in connection with the UMG Agreement.

The Personal Representative’s business decision to rescind the UMG Agreement – whether or not it contains the void *ab initio* language – does not mean that the retention of the commission is unlawful or inequitable. CAK is prepared to litigate that issue if and when

necessary, but clearly the Motion is not the right time to do so, especially given that CAK was not provided the unredacted supporting papers. Thus, an approval of the Rescission Agreement should not have any effect on the Advisors' legal rights. Accordingly, to the extent that the Personal Representative contends that the Court's approval of the Rescission Agreement and its language that the UMG Agreement will be deemed void *ab initio* effects the Advisors' legal rights, the Court should either deny the Motion, direct the parties to remove the void *ab initio* language, or clarify in the order granting the Motion that the Court's approval does not have an effect on the Advisors' legal rights.

Indeed, it is not clear why the Rescission Agreement states that the UMG Agreement will be considered void *ab initio*, rather than deemed a contract that was voidable and canceled. "A [contract] which is procured through fraud or undue influence is not Void but only Voidable." *Dahlberg v. Young*, 42 N.W.2d 570, 575 (Minn. 1950); *see also Mlnazek v Libera*, 86 N.W. 100, 101 (Minn. 1901) ("The fact that fraud entered into it, or that one party was induced to make the same by the fraud of the other, is perfectly consistent with the existence of the agreement. It is not, therefore, as a rule, void, but only voidable at the election of the defrauded party."). In contrast, an agreement is void *ab initio* only where there is a defect in the execution of the contract, *e.g.*, where a contract is forged or missing a required signature.⁴ *See, e.g., Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979) ("[W]ithout the signatures of both spouses a conveyance of homestead property is not merely voidable but is void and the buyer acquires no

⁴ Even assuming California law would apply based on the statement in the PR Brief that any litigation between the Estate and UMG would likely proceed in California (PR Br. at 10, 12-13), the UMG Agreement would still only be voidable (assuming *arguendo* UMG's allegations were true), not void *ab initio*. *See, e.g., Vil. Northridge Homeowners Ass'n v State Farm Fire and Cas. Co.*, 237 P.3d 598, 602 (Cal. 2010) (under California law, a contract is void "[i]f the fraud goes to the execution or inception of the contract," and voidable where "consent is induced by fraud").

rights whatsoever.”). Here, there are no allegations that there was fraud in the execution of the UMG Agreement. UMG *alleged* only that it was fraudulently induced to enter into the UMG Agreement. (PR Br. at 10, 15.) Thus, there is no need for the void *ab initio* language in the Rescission Agreement, and it should either be removed or the Court should clarify that such language does not have an impact on the Advisors’ rights.

To be clear, CAK does not object to the Personal Representative’s request for guidance from the Court about how to proceed concerning the Advisors’ commissions on the UMG Agreement, nor is CAK asking the Court to make any determinations now as to whether the Advisors can or should keep those commissions. To the contrary, CAK objects only to ensure that the Court’s potential approval of the Rescission Agreement is not a determination of whether the Advisors may or should keep those commissions. That issue may or may not need to be litigated at another time, and if it does, CAK will address the issues properly at that point.

CONCLUSION

For the reasons set forth above, CAK respectfully requests that, at a minimum, to the extent the Court grants the Motion and approves the Rescission Agreement, the Court make clear that any such approval does not affect the Advisors’ legal right to commissions in connection with the UMG Agreement.

Dated: June 6, 2017

BERENS & MILLER, P.A.

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