

STATE OF MINNESOTA  
PROBATE DIVISION  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT

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

**In Re: Estate of**

**Prince Rogers Nelson**

**REPLY IN SUPPORT OF MOTION TO  
RECOGNIZE PRIMARY WAVE MUSIC  
IP FUND 1, LP AS AN INTERESTED  
PERSON UNDER MINNESOTA  
STATUTES § 524.1-201(33)**

**Decedent.**

-----

Primary Wave Music IP Fund 1, LP has acquired a substantial ownership interest in the Prince Estate. It is not a mere creditor or party with a tangential interest. Having invested millions to acquire an interest in the estate, Primary Wave stands in the shoes of the heirs from whom it acquired its interest, and there is no legal basis to distinguish between the interest of Primary Wave and the interest of any heir.

Without citation to any legal authority and based upon factual assertions of counsel unsupported by affidavit or other evidence, Comerica argues that Primary Wave should not have the same rights as the heirs to participate fully in the administration of the estate. Comerica's argument has no basis in law or fact. Once it purchased a portion of Tyka Nelson's vested interest in the estate, Primary Wave's standing relative to the estate administration proceedings became legally

indistinguishable from that of the other vested heirs.<sup>1</sup> Primary Wave is legally entitled to participate fully and completely in all estate proceedings in the same manner as the heir to whose interests it has succeeded.

Primary Wave made its substantial investment to acquire an interest in the estate with the goal of adding value by offering its industry expertise to assist Comerica and the heirs in bringing these proceedings to a prompt and efficient resolution. In addition to this estate, Primary Wave has purchased assets from the estates of Whitney Houston, Glenn Gould, and Count Basie. (Mestel Decl. ¶ 6.) With respect to these three estates, Primary Wave's participation in the estate caused no disruption or problems in the estate administration. *Id.* On the contrary, Primary Wave's involvement with these estates has provided real value through marketing, digital strategy and branding, and to this day Primary Wave maintains excellent relationships with the estates and families. *Id.*

Comerica does not dispute that Primary Wave is an interested person under Minnesota Statutes § 524.1-201(33) (2019) and concedes that Primary Wave qualifies as a party having a property right in the estate. (Comerica's Resp. at 3-4.) But other than raising vague concerns<sup>2</sup> about the impact of Primary Wave's participation in the estate,

---

<sup>1</sup> While Comerica is the personal representative of the estate, it is not the owner of the assets; instead, it holds them in trust for the heirs, who are the true owners. Minnesota Statutes § 524.3-711 (2019). As Primary Wave demonstrated in its opening memorandum, the heirs hold property rights in the estate that are freely transferable.

<sup>2</sup> Comerica's objections appear to be based on speculative false impressions of Primary Wave's intentions, and a misapprehension of the business dynamics of the music industry which are vital to the value and preservation of the estate's assets.

it can point to no legal authority or compelling reason justifying this Court in curtailing in any way Primary Wave's rights to fully participate in the estate administration proceedings as an owner of estate assets.<sup>3</sup> If issues arise in the future, they can be put on the table, a record can be made, and any concerns can be addressed by this Court.

**A. This is not a request for reconsideration.**

In a previous motion, Primary Wave requested a status conference in connection with its acquisition of a portion of Alfred Jackson's inheritance interest, and nothing more. The Court denied that request, but said that it "will revisit Primary Wave's request once the validity of Primary Wave's purchase is confirmed and Mr. Jackson's own heirs are identified." (Sept. 20, 2019 Order and Memorandum.)<sup>4</sup>

The present motion is based on different facts - Primary Wave's acquisition of a portion of the inheritance interest of Tyka Nelson. As to that transaction, there can be

---

Importantly, Primary Wave's participation in the affairs of the estate will have no negative effect on their value or their sustainability; indeed, Primary Wave's participation in estate matters is likely to be helpful to all interested parties, and to Comerica's efforts in moving the proceedings forward. Primary Wave's interest in the estate is consistent with the goals and objectives of all persons interested in the estate, and does not present any conflicts. Comerica's objections are confused and ill-founded.

<sup>3</sup> In addition to selling a portion of her vested inheritance, Tyka Nelson appointed Primary Wave as her attorney-in-fact with respect to the portion of her vested ownership interest not sold to Primary Wave. In doing so, she authorized Primary Wave to stand in her shoes relative to all proceedings related to the estate and there is no basis in law to deny that grant of authority.

<sup>4</sup> The probate proceedings concerning Alfred Jackson's estate are ongoing in Missouri in the 16th Judicial Circuit, Jackson County, Missouri, case numbers 19P8-PR01191 and 19P9-PR01357. There has been no determination of the heirs, and the personal representative of the estate has as of yet not been formally confirmed.

no challenge, and there are no concerns or unanswered questions, about its validity or enforceability. Primary Wave's request to have its interest recognized as a result of that transaction has never previously been presented to the Court. Comerica's claim that this is a request for reconsideration is groundless.

**B. Primary Wave has the same rights as the heirs of the estate.**

Primary Wave purchased from Tyka Nelson a share of her vested ownership interest in the estate. The details of that transaction are partially memorialized in the sealed Bill of Sale that has been provided to the Court. Primary Wave stands ready to provide the full transaction documents to the Court for in camera review if the Court desires to review them. But there can be no dispute that the transaction between Primary Wave and Ms. Nelson is valid and supported by adequate consideration. Comerica doesn't even make that claim, and does not dispute the legal authority cited in Primary Wave's opening memorandum. Nevertheless, Comerica asserts, without providing any legal support, that the Court can somehow ignore Primary Wave's clear property interests. That position is as unfounded as Comerica's other arguments.

It is black letter law that an assignee stands in the shoes of an assignor, and enjoys all rights formerly held by the assignor that have been transferred by virtue of the assignment. *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004) (“An assignment operates to place the assignee in the shoes of the assignor, and provides the assignee with the *same* legal rights as the assignor had before assignment.”) (emphasis added); *see generally* Restatement (Second) of Contracts § 317 (1981) (Assignment of a Right). This rule has been recognized in the context of

probate proceedings. In *Brandenburger & Davis, Inc. v. Estate of Lewis*, four heirs assigned twenty-five (25) percent of the value of the estate property to which each was entitled. 771 A.2d 984, 985 (D.C. 2001). The assignee requested the court confer to it the same rights possessed by the heirs. *Id.* at 986. The lower court denied the assignee's request. *Id.* The appellate court reversed and held that not only was the assignee an interested person in the proceedings, the assignee possessed the same rights as the heirs including "standing to sue in [the] place of [its] assignors, [and] a right to sue for enforcement of claims . . . arising out of the assignments." *Id.* at 989.

Similarly, in *In re Estate of Waterbury*, a widow who believed her husband died intestate assigned her share of the estate to a third party. 189 N.Y.S.2d 32, 33 (Sur. Ct. New York County 1959). After the parties discovered the husband died testate and left his wife with a generous spendthrift trust, the assignees opposed the will's admission to probate. *Id.* The Court held the assignees were entitled to object to the probate because, by virtue of the assignment, they obtained the same rights possessed by the heir and were allowed to object to the will's admission to probate as persons interested in the estate. *Id.* at 34.

Finally, in *Starkey v. Sweeney*, 73 N.W. 859 (Minn. 1898) the Minnesota Supreme Court clearly recognized the rights of an assignee to participate fully in an estate. In that case, the creditor of an heir obtained an assignment of the heir's interest in his father's estate. When the father died, the assignee sought an accounting of the estate, and the recognition of the assignee's interest. The supreme court affirmed a demurrer on the ground that the district court did not have jurisdiction over the probate matter,

which was the proper forum for appellant's claim. *Id.* at 859–60. (At that time there was a probate court separate from the district court.) But the supreme court said unequivocally that if the claim were brought in that court, the assignee was entitled to be heard. (“We are of the opinion that appellant may appear in the probate court, and ask for the accounting which he seeks, and may be heard in that court on the proceeding for the distribution of the estate . . . .”). *Id.*

The holdings of these cases are consistent with numerous provisions of the probate code, which recognize broad rights held by both heirs and interested persons, without distinguishing between the two. Importantly, the rights conferred to an interested person in the probate code go beyond mere notice. Many of the rights and powers granted to an interested person under the probate code either assume or implicitly require that the interested person have access to documents and information since, without such access, an interested person could not exercise the rights given. *See e.g.:*

- Minnesota Statutes § 524.3-105 (2019) (any interested person has broad authority to petition the court for any kind of relief described in the probate code including a petition for an order approving or directing partial distributions, sale of property, or other relief during the pendency of the administration);
- Minnesota Statutes § 524.3-501 (2019) (a supervised personal representative is responsible to the interested parties and subject to the directions concerning the estate made by the court on its own motion or

on the motion of any interested party);

- Minnesota Statutes § 524.3-607 (2019) (any person who appears to have an interest in the estate may petition the court to restrain a personal representative from taking an action or to secure proper performance of a duty if it appears to the court that the personal representative may take an action that would unreasonably jeopardize the interest of the petitioner or an interested person);
- Minnesota Statutes § 524.3-711 (2019) (a personal representative has power over estate assets that an absolute owner would have, but in trust for the benefit of the creditors and others interested in the estate).

To be sure, “interested person,” as defined by Minnesota Statutes § 524.1-201(33) (2019), encompasses a broad class of parties including heirs, devisees, children, spouses, beneficiaries, and others having property rights in the estate, as well as creditors and others having a claim against the estate. However, to the degree that the Court is inclined to distinguish between the rights of the various “interested persons,” Primary Wave, as an owner of a portion of the estate, is situated alongside the other owners of the estate – the heirs – and is entitled to participate fully in the administration of the estate on the same basis as the heirs.

Primary Wave is not an officious intermeddler. It is a highly respected member of the music industry and brings to the table sophistication and expertise in music management. (Mestel Decl. ¶ 5.) Its participation can only benefit the estate. After all, as the owner of a large interest in the estate itself, Primary Wave has every incentive to

work with Comerica to maximize the value of estate assets and facilitate the early and efficient conclusion of the estate proceedings and ultimate distribution of the estate assets. There is no basis to believe that Primary Wave would in some way jeopardize its significant financial interest in the estate for its own benefit in other areas. Such an assertion is nothing more than rank speculation. The reality is that Primary Wave's interests are aligned with the interests of the other owners of the estate assets.

Comerica also asserts, without evidentiary support, unspecified "concerns" that its music partners may have as a result of Primary Wave's participation in the probate proceedings. (Comerica's Resp. at 5.) Certainly such vague and unsubstantiated allegations provide no basis for this Court to act. In fact, Primary Wave has an existing business relationship with Universal Music Publishing, an entity that administers Prince's music publishing assets. Universal Music Publishing and Primary Wave have an excellent working relationship. (Mestel Decl. ¶ 9.) If and when Comerica comes to the Court with a specific concern based on demonstrated facts, then the parties will have an opportunity to address those concerns. But it is both unfair and improper to ask this Court to restrict the rights of Primary Wave without any evidentiary or legal basis.

Comerica further argues, again without citation to any facts or law, that Primary Wave's "inclusion may also set a precedent for similarly positioned third parties in the future that could render the administration of this Estate virtually unmanageable." (Comerica's Resp. at 5.) That fear is laid to rest by, among other things, the successful track record that Primary Wave has had in working with the estates of other artists. Primary Wave's expertise in the music industry has added real value to numerous

estates with significant music assets. (Mestel Decl. ¶ 6.) And once again, Comerica's assertion is based on speculation without factual or legal support. If and when circumstances arise in the future where Comerica's concern becomes more than hypothetical, the Court has ample authority to take appropriate action.<sup>5</sup> However, that speculative possibility provides no basis for denying Primary Wave its rights to participate in the estate.

---

<sup>5</sup> As the Court is well aware, while it has authority to act in what it believes to be the best interests of the estate, that authority does not allow it to ignore the record before it, or the law. "A district court abuses its discretion when its decision is contrary to the record or is based on an erroneous view of the law." *In re Estate of Nelson*, 2019 Minn. App. LEXIS 366, at \*25 (Minn. Ct. App. Nov. 25, 2019).

## CONCLUSION

Primary Wave has requested an order recognizing it as an interested person and granting to it the same rights of participation in the estate proceedings as are enjoyed by its assignor, Tyka Nelson, and the other heirs. Comerica's unsubstantiated objections, made without citation to legal authority and unsupported by any factual submission, cannot stand in the way of the clear rights that Primary Wave possesses. With respect, Primary Wave is entitled as a matter of law to the order it has requested.

Respectfully submitted,

Dated: December 10, 2019

**ROBINS KAPLAN LLP**

/s/ Eric J. Magnuson

Eric J. Magnuson (#0066412)

800 LaSalle Avenue, #2800

Minneapolis, MN 55402

Phone: (612) 349-8500

Fax: (612) 339-4181

E-mail: [emagnuson@robinskaplan.com](mailto:emagnuson@robinskaplan.com)

*Attorney for Primary Wave Music IP Fund 1, LP*