

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

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

In re Estate of Prince Rogers
Nelson, Decedent.

**DECLARATION OF BRETT T.
PERALA IN SUPPORT OF THE
OPPOSITION OF CAK
ENTERTAINMENT, INC. TO
THE MOTION OF THE SECOND
SPECIAL ADMINISTRATOR TO
QUASH SUBPOENA *AD
TESTIFICANDUM***

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

BRETT T. PERALA hereby declares the following pursuant to Minn. Stat. § 358.116:

1. I am a partner of the law firm of Rosenberg, Giger & Perala P.C., counsel for CAK Entertainment, Inc. (“CAK”) in the above-referenced proceeding. I offer this Declaration in support of CAK’s Opposition to the Motion of the Second Special Administrator to Quash Subpoena *Ad Testificandum*. This Declaration is based on my personal knowledge of the events recited.

2. Attached to this Declaration as Exhibit 1 is a true and correct copy of the November 22, 2019 Order of Judge Janet L. Barke Cain of the District Court in Court File No. 10-CV-17-368.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: June 5, 2020

/s/ Brett T. Perala
Brett T. Perala

(Perala Declaration)

EXHIBIT 1

Filed in District Court

STATE OF MINNESOTA

NOV 22 2019

DISTRICT COURT

COUNTY OF CARVER

State of Minnesota

FIRST JUDICIAL DISTRICT

Jobu Presents, LLC,

Court File No. 10-CV-17-368

Plaintiff,

-v-

Charles Koppelman; CAK Entertainment, Inc.;
Londell McMillan; and North Star Enterprises
Worldwide, Inc.,

Defendants.

Charles Koppelman and CAK Entertainment,
Inc.,

ORDER

Counterclaimants/Third-Party Plaintiffs,

-v-

Jobu Presents, LLC,

Counterclaim Defendants,

Vaughn Millette,

Third-Party Defendant.

Estate of Prince Rogers Nelson,

Intervenor,

-v-

Charles Koppelman; CAK Entertainment, Inc.;
Londell McMillan; and North Star Enterprises
Worldwide, Inc., and Jobu Presents, LLC,

Intervenor Defendants.

Jobu Presents, LLC,

Counter-Plaintiff to

Intervenor's Complaint,

-v-

Estate of Prince Rogers Nelson, Charles
Koppelman, CAK Entertainment, Inc., Londell
McMillan, and Northstar Enterprises, Inc.,

Counter-Defendants.

Jobu Presents, LLC,

Third-Party Plaintiff to
Intervenor's Complaint,

-v-

Stinson Leonard Street, LLP,

Third-Party Defendants.

Northstar Enterprises Worldwide, Inc. and
Londell McMillan,

Counterclaim Plaintiffs,

-v-

Jobu Presents, LLC,

Counterclaim Defendant,

and

Vaughn Millette,

Cross-Claim Defendant.

The above-titled matter came before the Honorable Janet L. Barke Cain, Judge of District Court, on September 24, 2019, in part, for a motion hearing at the Carver County Government

Center, Chaska, Minnesota.

Jobu was represented by Chris Vlahos, Esq. and Jenna Harris, Esq., both appearing by phone. CAK and Charles Koppelman were represented by John Rosenberg, Esq. and Brett Perala, Esq., appearing by phone, and by Erin Lisle, Esq., appearing in person. Northstar Enterprises and Londell McMillan were represented by Londell McMillan, Esq., appearing by phone. Peter Gleekel, Esq. appeared in person for the Estate of Prince Rogers Nelson (“the Estate”). Brooke Anthony, Esq., appeared in person for Stinson Leonard Street LLP.

The Estate brought a motion requesting the Court issue a protective order preventing the depositions of the Estate and the Second Special Administrator (“SSA”) as noticed by Intervenor Defendants Koppelman and CAK Entertainment. In addition, the parties were able to reach agreement regarding an Amended Scheduling Order in this matter, and the Court issued the 6th Amended Scheduling Order filed October 3, 2019.

Now, therefore, based on the evidence submitted by the parties, arguments of counsel, and the file and proceedings herein,

IT IS HEREBY ORDERED:

1) The Estate’s motion for a protective Order is **granted in part and denied in part**. The deposition of the Estate of Prince Rogers Nelson shall not occur in this case, and the notice issued by Intervenor Charles Koppelman and CAK Entertainment, Inc. shall be **quashed**. The deposition of the Second Special Administrator (SSA) shall occur as noticed, subject to the following limitations:

a) The SSA’s deposition shall be limited to the facts gleaned by the SSA in their limited role as SSA and in their examination and investigation into the two (2) specific events outlined in the three (3) Orders of the Honorable Kevin W. Eide filed August 21, 2017, February 2, 2018 and June 14, 2018, in file 10-PR-16-46, and as determined by the Special Master (*see infra*).

b) The deposition shall be overseen by a Special Master, who shall have the authority to rule on specific objections raised throughout the deposition. The parties are encouraged to employ one of the Special Masters utilized in the probate file – Retired Judge Richard B. Solum or Retired Justice James H. Gilbert. If there is an objection to one or both of these individuals, or if there is a more appropriate individual to act as Special Master, the parties shall immediately inform the Court, provide the name or names of possible Special Masters along with qualifications, and the Court will appoint accordingly.

c) There shall be limited questioning and/or requests for documents allowed regarding any knowledge the SSA may have after July 12, 2018 – the filing date of Judge Eide’s Order in file 10-PR-16-46 approving Peter Gleekel, Esq. and the law firm of Larson King, LLP as the attorney for the Estate. The only questioning and/or documents discoverable are only those topics pertaining to Mr. Gleekel’s and Larson King’s role as the SSA, and not as an attorney for the SSA of the Estate.

d) Any mental impressions, opinions, legal theories, tactics, trial strategies, weight of evidence, etc. of the SSA, either in their role as SSA or as attorney, are not subject to inquiry in the deposition as barred pursuant to attorney-client privilege and/or work product doctrine and as determined by the Special Master.

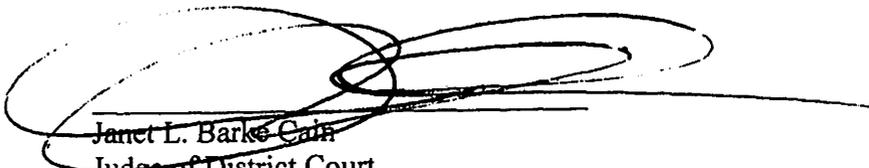
2) All prior Orders not modified by this Order remain in full force and effect.

3) The attached memorandum is incorporated by reference and contains the Court’s

Findings and Conclusions.

BY THE COURT:

Dated: 11/22, 2019.


Janet L. Barke-Cain
Judge of District Court

MEMORANDUM

The Court will not elaborate on the underlying facts in this matter other than the following brief recitation¹:

Following Prince's death, Bremer Trust was appointed Special Administrator of the Estate. Bremer was later discharged, and Comerica was appointed personal representative of the Estate. Pursuant to Order filed August 21, 2017 in file 10-PR-16-46, Judge Eide appointed Peter Gleekel, Esq. and the law firm of Larson King, LLP as the Second Special Administrator (SSA) of the Estate to conduct an independent investigation and examination into the "facts, circumstances and events relating to the rescission of the UMG Agreement... and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the rescission."

The Court further required the SSA to issue a written report to the Court regarding the efficacy of pursuing any such claims in the best interests of the Estate. The Order spelled out specific powers and responsibilities. Notably, the Order grants the SSA the "power and authority to gather facts and evidence from individual witnesses and obtain documents ... consistent with the powers of a general personal representative." The SSA also was granted "the power to compel and take evidence" from parties, and the Court expected "all parties to this matter, especially those interested parties who participated in the motion regarding rescinding the UMG Agreement including agents and experts, to cooperate with the [SSA's] investigation and requests for access to documents and witnesses." Such control would certainly not be afforded an attorney representing a party in a lawsuit – but was afforded to Mr. Gleekel and Larson King in their limited

¹ The Court will refer the parties to prior Orders laying out the factual basis for the present lawsuit revolving around the Tribute Concert, the parties and alleged contracts surrounding that Concert, and the claims at issue.

role as SSA. Tellingly, the only section of the August 21, 2017 Order relating to attorney-client privilege or work-product doctrine is regarding the fees charged by the SSA – ostensibly because the fees were the hourly rates of Mr. Gleekel and other members of the Larson King firm in their role as attorneys.

Pursuant to Judge Eide’s Order in file 10-PR-16-46 filed February 2, 2018, Mr. Gleekel’s and Larson King’s authority as SSA was expanded to conduct an independent investigation and examination “regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents; and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement.” As in the August 21, 2017 Order, the Court required the SSA to issue a written report to the Court regarding the efficacy of pursuing any such claims in the best interests of the Estate. The Order spelled out specific powers and responsibilities. The Order again granted the SSA the “power and authority to gather facts and evidence from individual witnesses and obtain documents ... consistent with the powers of a general personal representative².”

Again, the Court expected “all parties to this matter, especially those interested parties who participated in hearings before the Court regarding the Jobu Presents agreement including their agents and experts, to cooperate with the [SSA’s] investigation and requests for access to documents and witnesses.” Again, such control would not be afforded an attorney representing a party in a lawsuit – but was afforded to Mr. Gleekel and Larson King in their limited role as SSA. And again, the only section of the February 2, 2018 Order relating to attorney-client privilege or

² See Minn. Stat. §524.3-701, et. seq. - powers and duties of personal representative, which basically provide that the personal representative “steps into the shoes” of the decedent, and is in charge of settling the estate and acting in the best interests of the estate.

work-product doctrine is regarding the fees charged by the SSA.

Judge Eide issued an Order filed June 14, 2018, in which the SSA was “authorized to pursue, on behalf of the Estate, all claims recommended in its reports filed December 15, 2017 and May 15, 2018” subject to a satisfactory fee agreement between the SSA and the Estate, and approval by the Court. A fee agreement and retainer agreement was entered into between the SSA and the Estate (through personal representative Comerica). That agreement, however was an agreement by Larson King to represent the Estate both as court appointed SSA and as counsel, in connection with the two (2) possible lawsuits the SSA was appointed to investigate – one being the present matter before this Court (Jobu). Judge Eide issued an Order filed July 12, 2018, approving the fee and retainer agreement between the SSA and the Estate. Accordingly, as of July 12, 2018, Larson King, and Mr. Gleekel, were both attorney for the Estate/SSA and the SSA. Prior to that date, Larson King and Mr. Gleekel were only the SSA, subject to the limited powers enumerated by the Court, and granted authority they would not be afforded in their role as attorney.

CAK and Koppelman now wish to depose the Estate and/or the SSA. CAK and Koppelman have a right to obtain deposition testimony and discovery from the claimant in the case against them. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense, proportional to the needs of the case, considering access to information, importance of the discovery and burden or expense involved. See Minn. R. Civ. P. 26.02(b). The Court may issue a protective order preventing or limiting discovery if legally sufficient. See Minn. R. Civ. P. 26.03(a)(1); T/C American Monorail, Inc. v. Custom Conveyor Corp., 840 N.W.2d 414, 420 (Minn. 2013).

Regarding the Estate, CAK and Koppelman wish to depose them under Minn. R. Civ. P. 30.02(f) relating to the depositions of corporations, partnerships, associations or governmental

agencies. However, the Estate is none of these entities. An estate is a legal fiction created for the sole purpose of distributing assets and debts of a deceased person. Once distribution is achieved, the estate ends. There are no employees, officers, directors, managing agents, etc. of an estate to depose. See Minn. R. Civ. P. 30.02(f). There is often an executor; however, in this matter because Prince died intestate, there is a court appointed personal representative – Comerica. The Estate cannot be deposed, the deposition of the Estate of Prince Rogers Nelson shall not occur in this case, and the notice issued by Intervenor Charles Koppelman and CAK Entertainment, Inc. shall be quashed. It should be noted, however, that Comerica, the personal representative, may be deposed, if they haven't been already and they have relevant information.

However, the SSA may be deposed by CAK and Koppelman. Whether it is Mr. Gleekel or another member of Larson King (both were appointed by Judge Eide as SSA), there are specific persons who can give testimony relating to and relevant to the claims that CAK and Koppelman wish to defend against. Mr. Gleekel and Larson King investigated and examined people and documents specifically “regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents; and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement.” See Judge Eide Order filed February 2, 2018. CAK and Koppelman have a right, subject to any specific privilege, to depose Mr. Gleekel and Larson King and ask them specific questions and obtain discovery regarding who was investigated, what documents were reviewed, and any other factual inquiry regarding the SSA's role as SSA under the specific Orders of Judge Eide.

Mr. Gleekel and Larson King are not required to disclose which documents or persons may

be more or less relevant in the opinion of the SSA to the pursuit of any claims against Jobu (as directed by Judge Eide); and certainly are not required to disclose any mental impressions, opinions, legal theories, tactics, strategies, etc. that would be in furtherance of potential or actual litigation and as determined by the Special Master.

To find otherwise would allow the SSA to do precisely what the SSA argued was a basis for not allowing corporations, etc. to do – take cover behind a ruse of “hide-the-ball” regarding the depositions of corporations, etc. when an entity has salient information for trial but attempts to “[exploit] their size and complexity to advantage by ‘bandying’ their opponents with deposition witnesses who all disclaimed knowledge on the topics the adversary wanted to investigate.” See Estate Memorandum filed September 10, 2019, P. 8, citing Minn. R. Civ. P. 30.02, 1975 Advisory Committee Cmt.; Wright & Miller, Federal Practice and Procedure, § 2103 (3d ed.).

Judge Eide directed “all parties to this matter, especially those interested parties who participated in hearings before the Court regarding the Jobu Presents agreement including their agents and experts, to cooperate with the [SSA’s] investigation and requests for access to documents and witnesses.” It would be an injustice to require the parties being sued by the Estate to cooperate with the SSA’s investigation, and then allow the SSA to hide behind the veil of an opposing attorney after performing duties – albeit at the direction of the Court – that an opposing attorney in any case would not be allowed to perform independently. See Order filed February 2, 2018³. Allowing the SSA to hide behind the cloak of attorney-client privilege on all matters after

³ In addition, the Court would note that it is illuminating that Judge Eide’s orders of August 21, 2017 and February 2, 2018 both reference attorney-client privilege and work product doctrine only as it pertains to the fees charged by the SSA – fees in line with attorney hourly fees. Judge Eide certainly could have referenced these privileges in relation to the information obtained in the investigation of Jobu and the other parties, but did not – ostensibly because the SSA may have been an attorney and his law firm, but they were not acting in the capacity of legal counsel to a party while performing their duties as the SSA. Instead, as noted by Judge Eide, the SSA had authority “consistent with the powers of a general personal representative.” Id.

the SSA was allowed broad investigative authority which required the cooperation of the other parties does not comport with our fundamental view of fairness and justice.

To that end, CAK and Koppelman may take the deposition of Mr. Gleekel and Larson King pertaining to their specific role as SSA, and the facts obtained by the SSA in their investigation and examination in this matter⁴. However, given that Mr. Gleekel and Larson King were specifically appointed as counsel for the Estate on July 12, 2018 by Judge Eide, it is appropriate to limit any inquiry of Mr. Gleekel and Larson King after that date to only knowledge they have as the SSA. By July 12, 2018, the report to the Court regarding possible claims against Jobu and other entities had ostensibly been completed by that time⁵, and most of the information obtained by Mr. Gleekel and Larson King after that date would be in pursuit of litigation. However, as previously acknowledged, there may be some information most likely obtained solely in their role as the SSA (and not attorney) after July 12, 2018 that may be discoverable.

The Court will appoint a Special Master to preside over the deposition(s) of Mr. Gleekel and Larson King by CAK and Koppelman. The Special Master will rule on objections and make all determinations regarding any privileges raised. The deposition(s) shall be transcribed. The Court will appoint Retired Judge Richard B. Solum, Retired Justice James H. Gilbert, or some other person either agreed to by the parties or specifically chosen by the Court, by separate Order. The fee structure for the Special Master shall be as provided by the Special Master and approved by this Court. The fees for the Special Master shall be paid by CAK and Koppelman, unless otherwise directed by the Special Master and approved by this Court. The parties should retain

⁴ The Court would further note that there may be multiple instances where the SSA would be merely a second hand source of specific information, and can direct their answers during deposition accordingly.

⁵ See Judge Eide Order filed June 14, 2018, referencing the completion of the report filed by the SSA on May 15, 2018.

the Special Master as expeditiously as possible.

J.B.C.