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7/17/2020 1:52 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

The Estate of Prince Rogers Nelson,

Decedent.

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

THE ESTATE'S CONSOLIDATED RESPONSIVE MEMORANDUM OF LAW IN OPPOSITION TO THE MOTIONS FOR SUMMARY JUDGMENT OF CAK ENTERTAINMENT, INC. AND THE NORTHSTAR PARTIES

[REDACTED VERSION]

INTRODUCTION

It is now settled that this Court has the power to determine and order a refund of the Advisors' excessive fees. The Minnesota Court of Appeals has held in this case that the plain language of Minnesota Statute Section 524.3-721 (2018) applies to the Advisors, specialized entertainment expert agents retained by the Estate to monetize the Estate's assets, and that the statute ". . . provides that the power afforded this court includes the authority to review the 'reasonableness of the compensation of any person' employed by the Personal Representative as well as to order the refund of excessive compensation received." *In re Estate of Nelson*, 936 N.W.2d 897, 906 (Minn. App. 2019) (quoting Minn. Stat. § 524.3-721).

The Advisors engage in a myopic analysis of the Advisor Agreement in advocating that they are entitled to retain the [redacted] the Estate repaid to UMG upon this Court's rescission order. In doing so, they ignore the purpose of the Advisor Agreement namely, to monetize the assets of the Estate. The Advisors' argument is also predicated on an advocated meaning of

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

"earned" in Section 6(d)(ii) of the Advisor Agreement that cannot be harmonized either with that section or the Advisor Agreement as a whole. Section 6(d)(ii) of the Advisor Agreement does not use the word "earned" standing alone and thus in the simplistic dictionary sense repeatedly asserted by the Advisors. Rather, Section 6(d)(ii) states that "Advisors shall be deemed to have earned" thereby connoting a purpose for which it was so deemed. The purpose of the entire section and the answer to the query of that purpose is found from a reading of the entire section. Section 6(d)(ii) read in its entirety makes it unambiguously clear that the "deemed to have earned" term was used in an accounting sense – i.e. to contractually set forth on what the [redacted] rate was to be calculated; namely, on [redacted] without any deductions for sums payable to third parties. Gleekel Dec., Ex. 1 at 4, § 6(d)(ii).

As the Advisors have largely advanced the same arguments in support of their motions for summary judgment, and for the sake of brevity, the Estate addresses both motions in this consolidated Memorandum. Additionally, in its Memorandum of Law in Support of the Estate's Motion for Summary Judgment, the Estate, for the most part, anticipated the arguments advanced by the Advisors in their motions. Again, for the sake of brevity, the Estate has not simply repeated the positions addressed in its Memorandum of Law in Support of its Motion for Summary Judgment. Rather, as those positions are as relevant to the Estate's Motion for Summary Judgment as they are in opposition to the Advisors' motions, the Estate's Memorandum of Law is incorporated herein by reference.

In a nutshell, the Advisors' attempt to retain the [redacted] should be rejected, and their motions for summary judgment should be denied, because the [redacted] retained by the Advisors were not, pursuant to the terms of the Advisor Agreement, earned by them. The purpose of the Advisor Agreement, and the thus the object of the agency, was to protect, preserve, and monetize the assets of the Estate. To that end, the Advisor Agreement sets out a success-based

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Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

[redacted] Having failed to deliver to the Estate an agreement with UMG that resulted in the recognition of any monetary value to the Estate due to the Court's rescission of the Agreement, the [redacted] are excessive and the Estate is entitled to a refund of those [redacted] pursuant to Minnesota Statute Section 524.3-721.

ARGUMENT

I. Minn. Stat. § 524.3-721 Empowers This Court To Review The Reasonableness Of The Advisors' [redacted] And If Found To Be Excessive, Order A Refund Thereof.

Minnesota Statute Section 524.3-721, addressed to the preservation of an estate's assets, empowers this Court to review the reasonableness of the Advisors' fees and to order a refund of any fees the Court finds are excessive. The Minnesota Court of Appeals has laid to rest CAK's implicit argument that this Court is not empowered to review the reasonableness of the [redacted] at issue. *See*, CAK Mem. of Law in Support of Mot. for Summ. J. at 26-27. As the Court of Appeals made clear:

> Here, we acknowledge that the size and complexity of Prince's estate undoubtedly presents unique circumstances. But as indicated by the Maine Supreme Court, the plain language of 18-A.M.R.S.A. § 3-721, which is almost identical to Minn. Stat. § 524.3-721, is unambiguous. (citation omitted) And under the plain and unambiguous language of Minn. Stat. § 524.3-721, an interested person may move the district court to review 'the reasonableness of the compensation' received by a 'specialized agent' employed by the estate. The statute also plainly and unambiguously allows the district court to order any specialized agent who has 'received excessive compensation from an estate for services rendered' to 'make appropriate refunds.' Minn. Stat. § 524.3-721. Nothing in the statute indicates that when the estate is complex, a challenge to the reasonableness of compensation received by a specialized agent must be brought in a plenary action under the rules of civil procedure . . .

In re Nelson, 936 N.W.2d at 906.

The Estate has not, as CAK has characterized the Estate's argument in support of its motion for return of the fees, asked the Court to ignore the Advisor Agreement. CAK's argument in this respect is divorced from reality and the record. The Estate has been consistent in its position since it originally filed its Motion for Refund of Fees, that the [redacted] are excessive because the Advisors

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

are not entitled to a retention of them pursuant to the terms of the Advisor Agreement and as a result, the Court should order a refund of same.[1]

II. The Estate Having Received No Monetary Benefit From The Rescinded UMG Agreement, The [redacted] Received By The Advisors Is Excessive; It Was Not Earned By The Advisors.

The Estate has, in large part, addressed the terms of the Advisor Agreement and why thereunder the Advisors' [redacted] in respect of the rescinded UMG Agreement are excessive and thus, the Advisors' Motions for Summary Judgment should be denied, and the Estate's Motion for Summary Judgment should be granted. The Estate has not simply repeated the positions addressed in its Memorandum of Law in Support of its Motion as indicated above. However, certain aspects of the Advisors' arguments require a response. First, the Advisors make no mention and thus fail to account for the undisputed fact that the scope of the Advisors' agency with the Estate, the object of the Advisor Agreement, was to [redacted] Gleekel Dec. Ex. 1 at 1, 7th WHEREAS Clause and 2, 13th WHEREAS Clause. Based thereon, the Advisors were entitled to a [redacted] only on [redacted] to the Estate resulting from [redacted] as the quoted terms were defined in the Advisor Agreement and have been earlier quoted and addressed in the Estate's Memorandum of Law in Support of its Motion for Summary Judgment. *See* Estate Mem. of Law in Support of Summ. J. at 12-18. As previously addressed by the Estate, and to date ignored by the Advisors, the purpose unambiguously expressed by the terms of the Advisor

[1] CAK also curiously questions the Estate's refund to UMG of not only the approximately [redacted] it received directly from UMG but, also the [redacted] the Advisors received directly from UMG. CAK Mem. of Law in Support of Mot. for Summ. J. at 27, n.13; *see also* McMillan Dec. at ¶ 9. In doing so, CAK demonstrates ignorance of the equitable remedy of rescission. When a contract is rescinded, the parties are to be returned to the *status quo ante* to the extent possible. *Liebsch v. Abbott*, 122 N.W. 578, 581 (Minn. 1989). For that to have had to occur in respect of the Court Order rescinded UMG Agreement, [redacted] needed to be refunded to UMG regardless to whom UMG made the payment. *See, Knopff v. Olson*, No. C7-95-601, 1995 WL 497275, at *2 (Minn. App. 1995).

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

Agreement required the existence of a contract that resulted in a monetary benefit realized by the Estate; in the words of the Advisor Agreement "value given to the Estate." Gleekel Dec., Ex. 1 at 3, § 6(c).

The Advisors' argument that the Sony Agreement executed seventeen (17) months after the Court-ordered rescission of the UMG Agreement constitutes a replacement under Paragraph 6(a) of the Advisor Agreement was addressed by the Estate's Memorandum of Law. Estate Mem. of Law in Support of Summ. J at 14-15. As indicated, the Sony Agreement, entered after the Advisors' term materially differs from the UMG Agreement, not to mention the rescission of the UMG Agreement legally meant that the UMG Agreement no longer existed.

Moreover, even if assuming for purposes of argument, the Sony Agreement entered into on June 25, 2018, *see* Supplemental Gleekel Dec., Ex. 23, approximately 17 months after termination of the Advisor Agreement, can arguably be considered a replacement (the Estate contends that it is not), the Advisors are not entitled to retain the [redacted] under their replacement argument. In making this argument the Advisors intentionally disregard the Amendment and Extension of the Advisor Agreement.

Effective September 14, 2016, the Advisors and the Estate amended and extended the Advisor Agreement. *See* Gleekel Dec., Ex. 5. In the Amendment and Extension the parties agreed to amend the term [redacted] In so doing, the Advisors contractually agreed that they were not entitled to any [redacted] based on any replacement, etc. after the end of the Advisors' term of their agency with the Estate. The Amendment and Extension of Advisor Agreement provides, in relevant part, as follows:

> 2. [redacted] Section 6(a) of the Agreement shall be amended and restated as follows:

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

Id. at 1, § 2 (emphasis added).

The amended definition of [redacted] provides that as to the Advisors, an amendment, extension, addition, substitution, replacement or modification to a pre-Term contract was [redacted] only so long as it was entered into during the term of the Advisors' agency or if the Advisors substantially negotiated same during their agency if executed within ninety (90) days after expiration of the agency. However, the amendment unambiguously provides that the Advisors are not entitled to any [redacted] to any "replacement" occurring after the end of the agency. The Advisors' argument that the Estate's contract with Sony entitles them to retention of the [redacted] is simply wrong.

So too is the Advisors' emphasis on the word "earned" in Section 6(d)(ii) to hold on to the [redacted] misplaced. The Advisors reliance on the dictionary definitions of the term "earned" in Section 6(d)(ii) of the Advisor Agreement runs afoul of what the Court in *Republic National Insurance Company v. Lorraine Realty Corporation* cautioned against in construing a contract – namely, to simplistically engraft a definition of a word from one context onto another. 279 N.W.2d 349, 354 (Minn. 1979) ("Intent is 'ascertained, not by a process of dissection in which words or phrases are isolated from their context, but rather from a process of synthesis in which the words and phrases are

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

given a meaning in accordance with the obvious purpose of the . . . contract as a whole.'" (quoting *Cement, Sand & Gravel Co. v. Agricultural Ins. Co.*, 30 N.W.2d 341, 345 (Minn. 1947))).

A reading of Section 6(d)(ii) makes it clear that this is precisely what the Advisors have done in arguing that the word "earned" standing alone (and defined by various dictionaries) entitles them to retain the [redacted]. It does not. Section 6(d)(ii) by its terms addressed, in the context of the entire Advisor Agreement, the timing on which a [redacted] was to be calculated and, most importantly for this motion, on what the calculation of the [redacted] was to be based. Gleekel Dec., Ex. 1 at 4, § 6(d)(ii). The first sentence of Section 6(d)(ii) provides that there was not to be deducted from [redacted] any sums paid to third parties for purposes of application of the [redacted] calculation. *Id.* The second sentence of Section 6(d)(ii) further emphases that the [redacted] was to be calculated on the gross sum paid to the Estate on a [redacted] *Id.* The contractual language "deemed earned" clearly connotes the purpose for which it was "deemed earned" was for accounting purposes as evidenced by the entirety of the section – i.e. setting the amount to which the [redacted] rate is applied. If that were not the case, as implicitly argued by the Advisors, the term "deemed" would be unnecessary, it would be superfluous.

Moreover, the argument advanced by the Advisors that "earned" standing alone entitles them to the [redacted] also fails to harmonize the provision with the entirety of the Advisor Agreement and its purpose of preserving, protecting and monetizing the assets of the Estate. *See, e.g., Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990) ("We construe a contract as a whole and attempt to harmonize all clauses of the contract." (citing *Telex Corp. v. Data Products Corp.*, 135 N.W.2d 681, 685 (Minn. 1965))); *Republic Nat'l*, 279 N.W.2d at 354.

Finally, the broker fee cases relied upon by CAK and the NorthStar Parties such as *Nelson v. Rosenblum Co.*, 182 N.W.2d 666, 667 (Minn. 1970); *ERA Town & Country Realty, Inc. v. TEVAC, Inc.*,

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

376 N.W.2d 526 (Minn. App. 1985); *Century 21 – Birdsell Realty, Inc. v. Hiebel*, 379 N.W.2d 201 (Minn. 1985); *Andrews v. Flour City Paper Box Co.*, 222 N.W.2d 340 (Minn. 1928); *Bychowski v. ERA Tempo Realty, Inc.*, 655 N.E.2d 292 (Ill. App. 1995), etc. do not provide the Advisors the safe harbor they argue they do. In each of the cases, the broker agreements entitled the broker to a commission upon the payment of a ready, willing, and able buyer. In Minnesota, the rule has been coined the *Lohman Rule* emanating from *Lohman v. Edgewater Holding Company*, 33 N.W.2d 842, 845 (Minn. 1948). *See, e.g., Century 21 – Birdsell Realty, Inc.*, 379 N.W.2d at 204. That is not the case under the Advisor Agreement that, as articulated earlier, is based on [redacted] not the presentation of a ready, willing, and able buyer. The Advisor Agreement required the Advisors to deliver, negotiate, and endorse an agreement that resulted in monetary value to the Estate thus entitling the Advisors to the [redacted].

CONCLUSION

To date, the Advisors have refused to voluntarily refund to the Estate the [redacted] received on the rescinded UMG Agreement. At the time the Estate repaid UMG, the Estate not only repaid sums actually sent to it but, also the sums the Advisors received directly from UMG resulting in a net loss to the Estate. The arguments advanced by the Advisors that they are entitled to retain the [redacted] or, in other words, that they "earned" those [redacted] fail in the face of the Advisor Agreement. The Advisor Agreement was a [redacted] that required that the Advisors deliver to the Estate an agreement that resulted in retained value to the Estate; not a net loss. This is precisely the situation the Minnesota Court of Appeals acknowledged in this matter when it held that under Minnesota Statute Section 524.3-721 this Court has the authority to decide the reasonableness of compensation received, and if this Court decides that that compensation is unreasonable, to order a refund thereof to the Estate.

Filed in District Court
State of Minnesota
7/17/2020 1:52 PM

Date: July 17, 2020

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