

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,

Decedent.

Case Type: Special Administration
Court File No: 10-PR-16-46
Judge: Kevin W. Eide

**NORTHSTAR'S MEMORANDUM OF
LAW IN SUPPORT OF ITS
MOTION TO COMPEL**

INTRODUCTION

Pursuant to Minn. R. Civ. P. 45 and 37, NorthStar brings this motion to compel the production of documents from Troy Carter pursuant to the subpoena duces tecum, as amended, served on Mr. Carter on May 1, 2020. (Silver Decl., Ex. A, NorthStar Subpoena). As the Court is aware, Troy Carter is the advisor Comerica hired to replace the services provided by NorthStar and CAK Entertainment, related to the monetization of entertainment deals. Mr. Carter's first assignment upon his engagement by the estate was solicitation of his direction and advice on the rescission of the UMG deal and Warner Brothers Records agreement.

Comerica Bank & Trust, N.A. ("Comerica") and Mr. Carter served objections to this subpoena on May 15, 2020, refusing to produce any documents in response to twelve of the NorthStar's seventeen total document requests ("Requests") served under Rule 45 (Silver Decl., Ex. B, Comerica and Carter Objections).¹ Mr. Carter's refusal to produce is based on an overly restrictive and unreasonable view of what information is relevant in this matter, a view that

¹ Mr. Carter has refused to produce any documents responsive to NorthStar's Request Nos. 1, 4, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17. Mr. Carter has agreed to produce documents responsive to Request Nos. 2, 3, 5 and 6, and to produce documents responsive to portions of Request No. 14 subject to Mr. Carter's view of what is relevant.

inexplicably runs contrary to the issues identified in this Court's April 20, 2020 Scheduling Order and in the Court of Appeals' decision. *See In re Estate Of Nelson*, 936 N.W.2d 897, 908 (Minn. Ct. App. 2019).

Comerica and Mr. Carter have failed to provide specific objections to each of NorthStar's Requests, and fail to identify information they intend to withhold, in violation of the Minnesota Rules of Civil Procedure. Mr. Carter's refusal to reconsider his relevancy positions or even identify what documents he is withholding have forced NorthStar to burden the Court with this motion simply to gain some clarity as to what documents Mr. Carter has and what he is withholding based on his general objections

Comerica and Mr. Carter's refusal to produce the vast majority of NorthStar's requested categories of documents and refusal even to propound proper objections frustrates NorthStar's attempts to discover relevant information concerning Comerica and Mr. Carter's role in the events that caused the rescission of the UMG Agreement, and prevents NorthStar from fully defending itself against the claims brought against it.

On June 3, 2020, counsel for NorthStar met with counsel for Mr. Carter and Comerica via teleconference and discussed the issues in dispute, and although some of the parties' differences were resolved, they were unable to reach a complete agreement.

APPLICABLE LAW

I. LEGAL STANDARD.

Minn. R. Civ. P. 45.06(d) provides that “[a]ll Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Paragraph (b).” Accordingly, the Minnesota Rules of Civil

Procedure “incorporate into Rule 45 for subpoena practice the procedures of Rules 26, 30, 33, 34, and 37 for discovery from parties.” Minn. R. Civ. P. 45 (2007 Advisory Committee Comment).

Minnesota Rule of Civil Procedure 26.02(b) allows parties to “obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.” Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401; *see also Proactive Imaging, LLC v. Peters*, A18-1130, at *7 (Minn. Ct. App. May 6, 2019). Importantly, [“Rule 26.02(b)] provides for broad discovery in a civil proceeding.” *Donahue v. Dakota Cnty.*, A16-1160, at *6 (Minn. Ct. App. Mar. 27, 2017). Even under the amended Rule 26.02(b), “[r]elevance is still to be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on any party's claim or defense.” *Murphy v. Piper*, Civil No. 16-2623 (DWF/BRT), at *8 n. 5 (D. Minn. Dec. 14, 2017); *Proactive Imaging, LLC*, A18-1130, at *8.

II. THE COURT’S APRIL 20, 2020 SCHEDULING ORDER.

In the April 20, 2020 Amended Scheduling Order, the Court provided some “preliminary” guidelines as what may constitute relevant issues in this matter. The issues included (1) whether the Estate “had reasonable and articulable concerns about the overlap such that, considering other alternatives available to the Estate, it was reasonable and prudent for the Estate to rescind the Agreement; (2) “whether the Advisors knew, or had reason to know, of the potential for the overlap, before recommending approval of the UMG agreement;” (3) the work done by the Advisors prior to the point where they allegedly knew or should have known of the potential overlap; and (4) the subsequent use and reliance of work previously done by the Advisors in the development of the agreement that replaced the UMG Agreement.

III. NORTHSTAR'S MOTION TO SEEK REVIEW OF THE COURT'S PRELIMINARY RULING.

The Court's April 20, 2020 Scheduling Order also contemplated that additional issues might be relevant to the proceedings, and invited the parties to seek review of the Court's preliminary rulings by June 5, 2020. NorthStar has filed a motion seeking review concurrently with this motion to compel, and has proposed a number of additional issues to be considered (*See* NorthStar Parties' Motion to Seek Review of The Court's Preliminary Ruling Concerning The Scope of Issues To Be Heard at the October 13-15 Hearing on Commission Reimbursement) (hereinafter, "Motion to Seek Review"). NorthStar incorporates the arguments made in its Motion to Seek Review herein. To the extent the Court rules that some or all of the issues raised in the Motion To Seek Review may be considered at the October hearing, NorthStar respectfully requests that the Court consider them in determining the relevancy and proportionality of NorthStar's document requests, as discussed further below.

ARGUMENT

I. MR. CARTER'S UNILATERAL ATTEMPT TO IMPOSE STRICT LIMITS ON RELEVANCY ARE IMPROPER AND CONTRARY TO THIS COURT'S SCHEDULING ORDER.

Mr. Carter has taken the entirely unreasonable and baseless position that the only relevant documents are those relating specifically to the rescission of the UMG Agreement and the "overlap" between the 2014 WBR Agreement and of the UMG Agreement, and that Mr. Carter is not required to produce any other documents outside these categories. (*Silver Decl., Ex. C, 6/4/20 Correspondence*). NorthStar agrees that these categories are certainly relevant; however, Mr. Carter's efforts to limit the scope of the issues are not even consistent with the Court's April 20, 2020 Scheduling Order, which expressly identifies additional relevant issues, including (i) the work done by the Advisors prior to the point where they allegedly knew or should have known of

the potential overlap; and (ii) the subsequent use of and reliance on work previously done by the Advisors in the development of the agreement that replaced the UMG Agreement. Mr. Carter entirely fails to address these issues in his written objections.² Moreover, as set forth in NorthStar's Motion to Seek Review, there are a number of issues that are also relevant and should properly be considered as part of the October hearing.

II. NORTHSTAR'S DOCUMENT REQUESTS SEEK RELEVANT INFORMATION, WHICH SHOULD BE PRODUCED.

A. Mr. Carter Should Produce Relevant Communications Referring to NorthStar and the Heirs.

NorthStar seeks documents in Mr. Carter's possession, custody or control that refer or relate to NorthStar or its representatives (Request No. 7) and documents that refer or relate to the Heirs and their representatives (Request No. 9), including any conflict or disputes with the Heirs or their representatives (Request No. 4). Mr. Carter should search his documents and produce all non-privileged documents responsive to these Requests that are relevant to (i) the claim of overlapping rights between WBR and UMG, (ii) the rescission of the UMG Agreement; (iii) the work NorthStar did prior to when it allegedly knew or should have known of the "overlap," as well as (iv) the extent to which the agreement that replaced the UMG Agreement, on which Mr. Carter worked directly, was based on work done by NorthStar.

² Mr. Carter's counsel now argues that the work done by the Advisors prior to when they allegedly knew or should have known of the potential overlap is not relevant because Mr. Carter was not involved with the Estate until after the UMG Agreement was negotiated. (Ex. C). This argument should be rejected. The Court has ruled that such information is relevant, and the date that Mr. Carter became engaged by the Estate is irrelevant to whether or not he has documents relevant to this issue. Mr. Carter's counsel also claims that only Request No. 14 is relevant to use of and reliance on work previously done by the Advisors in the development of the agreement that replaced the UMG Agreement. (Ex. C). NorthStar disagrees with this assertion, for the reasons set forth in Section II below.

Moreover, the documents sought by Request Nos. 7 and 9 are potentially relevant and/or could reasonably lead to matters relevant to issues raised in NorthStar's Motion to Seek Review, including, but not limited to (i) whether any advisors to Comerica had a motive and/or incentive to rescind the UMG Agreement and negotiate a new deal; (ii) whether rescission of the UMG Agreement was the result of improper action by the Advisors, or a business decision made by Comerica; (iii) whether Comerica sought rescission due to legitimate concerns about an overlap or infringement, or did it have a separate underlying reason for rescinding the UMG Agreement; (iv) whether Comerica could have avoided rescission of the UMG Agreement by offering and negotiating an alternative deal with WBR, and (v) whether Comerica considered paragraph 1.8 of the UMG agreement and if so, why it declined to invoke it; and (vi) what other services were provided by the Advisors that generated revenue for the Estate and for which they should be entitled to a commission under the Advisor Agreement. To be clear, NorthStar is not seeking documents referring or relating to the Heirs that fall outside these relevant categories.

On the same basis as discussed immediately above, Mr. Carter should produce all non-privileged communications between himself and Stinson, Fredrikson & Byron and Jason Byarski, if any exist (Request No. 1).

If Mr. Carter searches for and does not locate any non-privileged documents relevant and responsive to Request Nos. 1, 7 and 9, he should so state in a written objection.

B. Mr. Carter Should Produce Relevant Documents Referring or Relating To Agreements Between UMG, WBR and the Estate.

NorthStar seeks documents in Mr. Carter's possession, custody or control that refer or relate to the UMG Agreement (Request Nos. 8, 14), the 2014 WBR Agreement (Request Nos. 8, 17), actual or potential contractual arrangements between WBR, UMG and the Estate, including any actual or proposed agreements for WBR to acquire IP rights from the Estate and any proposed

amendment of the 2014 WBR Agreement (Request Nos. 9, 11). Mr. Carter should search his records and produce all non-privileged documents responsive to these Requests that are relevant to (i) the claim of overlapping rights between WBR and UMG, (ii) the rescission of the UMG Agreement; (iii) the work NorthStar did prior to when it allegedly knew or should have known of the “overlap,” as well as (iv) the extent to which the agreement that replaced the UMG Agreement, on which Mr. Carter worked directly, was based on work done by NorthStar.

The documents NorthStar seeks through Request Nos. 8, 9, 11, 14 and 17 may be relevant and/or could reasonably lead to matters relevant to issues raised in NorthStar’s Motion to Seek Review, as discussed in detail in Section II(A) above. Many of these Requests are relevant to, *inter alia*, the business motivations and decisions to rescind the UMG Agreement, whether there actually was an “overlap” or infringement of the WBR agreement, and whether Comerica could have avoided rescission of the UMG Agreement by offering and negotiating an alternative deal with WBR.

NorthStar also seeks documents referring or relating to Comerica’s understanding of Section 1.8 of the UMG Agreement and the meaning of the phrase “pressing and distribution” (Request No. 16). These documents are relevant to the rescission of the UMG agreement, and particularly the reasonableness of rescission in light of possible alternative solutions, including invoking Section 1.8

If Mr. Carter searches for and does not locate any non-privileged documents relevant and responsive to Request Nos. 8, 9, 11, 14, 16 or 17, he should so state in a written response.

C. Mr. Carter Should Produce Relevant Documents Between Troy Carter, Comerica and Bremer.

NorthStar seeks documents in Mr. Carter’s possession, custody or control that reflect communications between Mr. Carter, Comerica and Bremer concerning WBR’s allegation of

conflict between the rights in the 2014 WBR Agreement and the UMG agreement (Request No. 13). NorthStar also seeks documents reflecting communications between Mr. Carter, Comerica and NorthStar from the period prior to Comerica's appointment as Personal Representative that reflect Comerica's ideas, plans or proposals for its role as Personal Representative (Request No. 15).

Mr. Carter should produce all non-privileged documents responsive to these Requests that are relevant to the claim of overlapping rights between WBR and UMG, and the rescission of the UMG Agreement. These documents may also be relevant and/or lead to information relevant to the amount of work completed by the Advisors prior to the date they allegedly knew or should have known of the potential overlap, as well as information showing the extent to which the agreement that replaced the UMG Agreement was based on the Advisor's previous work.

If Mr. Carter searches and does not locate any non-privileged documents relevant and responsive to Request Nos. 13 and 15, he should so state in a written objection.

III. THE INFORMATION SOUGHT BY NORTHSTAR IS PROPORTIONAL TO THE NEEDS OF THE CASE.

Consideration of the factors set forth in Rule 26.02 demonstrates that the documents sought by NorthStar are proportional to the needs of this case. As discussed above, NorthStar's Requests seek information that goes to the heart of the issue of whether NorthStar is entitled to retain its commission. There are millions of dollars at stake through this issue and the amount in dispute represents a significant sum for both NorthStar and the Estate and highlights the importance of resolving the issue, particularly since resolution will help move toward complete settlement of the Estate. Nor is Mr. Carter being asked to incur a significant burden or expense in producing these documents. He is being asked simply to search only his own single email account for a limited time period and related to specifically-identified issues. The benefit to and necessity of this

information for NorthStar outweighs any alleged burden arising from production of the materials sought.

IV. MR. CARTER'S OBJECTIONS ARE IMPROPER UNDER THE RULES.

Mr. Carter made a single boilerplate objection in which he refused to produce any documents in response to twelve of NorthStar's seventeen document requests on the basis that they were "overly broad" and did not seek relevant information. (Silver Decl., Ex. B, Comerica and Troy Carter's Objections to the Subpoenas on Troy Carter). Mr. Carter's objections to NorthStar's document requests are improper under the Rules. Minn. R. Civ. P. 34.02(c) requires that Mr. Carter must respond to each individual request and must "state with specificity" the grounds for objecting to the request. Critically, "[a]n objection must state whether any responsive materials are being withheld on the basis of that objection." Moreover, "[i]f an objection is made to part of an item or category, that part shall be specified and inspection permitted of the remaining parts." By failing to make complete, specific objections under Rule 34.02, Mr. Carter has turned his objections into a moving target which can constantly change and shift according to the arguments that his attorneys make. This is highly prejudicial to NorthStar, who cannot assess Mr. Carter's compliance with its subpoena without proper disclosure of which categories of documents are being withheld and which are being produced. For this reason, and due to counsel's inability to add any further clarity to these matters during the meet and confer, NorthStar has been forced to bring this motion. NorthStar seeks not only that NorthStar be compelled to produce relevant information, but that Comerica and Mr. Carter be ordered to serve objections that comply with the Rules.

V. NORTHSTAR’S REQUESTS ARE NOT DUPLICATIVE AND MR. CARTER HAS WAIVED HIS OBJECTION.

During the parties’ meet and confer, Mr. Carter’s counsel argued that he was refusing to produce any documents for twelve of NorthStar’s requests on the basis that they are “duplicative” of the Requests to which Mr. Carter has chosen to respond (*i.e.*, that there is no need to respond to other Requests because Mr. Carter’s “chosen” Requests allegedly address all the issues Mr. Carter claims to be relevant). (Silver Decl., Ex, C). However, the Requests Mr. Carter has chosen not to respond to are separate and unique from the Requests he has chosen to respond to, and each seeks relevant information, even under Mr. Carter’s unreasonably limited interpretation.

Since Mr. Carter never raised this objection in his May 15, 2020 written objections, it has been waived. *See, e.g., Microsoft Corporation v. Multi-Tech Systems, Inc.*, Civil No. 00-1412 ADM/RLE, at *1 (D. Minn. Feb. 26, 2002) (holding that objections not made within the time period specified in a Rule are waived). Moreover, Rule 34.02(c) requires that if an objection is made to part of a request, the objectionable portion must be specified and information responsive to the rest of the request must be produced. Mr. Carter has conceded that these Requests are relevant to the extent that they seek information concerning the overlap of the WBR/UMG agreements and the rescission of the UMG Agreement.³ Accordingly, Mr. Carter should agree to produce the documents responsive to at least the relevant part of each Request, and explain what further documents he is withholding based on his objections. Mr. Carter has refused to do this.

³ As discussed further in Section II above, NorthStar believes that there are numerous additional grounds for the relevancy of these Requests, and that documents should be produced in response to each such Request accordingly.

VI. CONFIDENTIALITY IS NOT A PROPER BASIS FOR MR. CARTER TO WITHHOLD RESPONSIVE INFORMATION.

Comerica and Mr. Carter have objected to producing certain unidentified documents on the basis that Comerica has a confidentiality obligation with respect to documents received from Bremer Trust, N.A., pursuant to its Common Interest Agreement with Bremer. NorthStar understands that Comerica has raised this issue with Bremer and has received a waiver to produce documents marked as “confidential” by Bremer. Accordingly, there should be no longer be confidentiality concerns in producing documents received from Bremer. To the extent that Comerica or Mr. Carter believe that their own responsive internal documents are confidential, this should not constitute a basis to withhold such documents from production. NorthStar has indicated to Comerica and Mr. Carter that it is willing to negotiate a protective order to safeguard the disclosure of confidential materials.

CONCLUSION

For the foregoing reasons, NorthStar respectfully requests that the Court grant NorthStar’s motion to compel and order Mr. Carter to (1) serve proper objections in compliance with the Minnesota Rules of Civil Procedure; and (2) produce all non-privileged, relevant documents responsive to each of NorthStar’s Requests.

BASSFORD REMELE
A Professional Association

Dated: June 5, 2020

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