

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIFTH JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Case Type: Civil Contract
Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Court File No. 10_PR-16-46

Decedent.

CAK ENTERTAINMENT, INC.'S
MEMORANDUM IN SUPPORT OF ITS
REQUEST THAT THIS COURT
REVIEW AND RECONSIDER ITS
PRELIMINARY RULINGS
CONCERNING THE SCOPE OF THE
RELEVANT ISSUES TO BE
ADDRESSED AT THE HEARING IN
THIS PROCEEDING

CAK Entertainment, Inc. (“CAK”), by and through its undersigned counsel and pursuant to this Court’s Order of April 20, 2020, hereby respectfully requests that this Court review and reconsider its articulation of what it characterized as a “preliminary ruling” concerning the principal issues to be addressed at the evidentiary hearing that is presently scheduled before this Court on October 13-15, 2020 on the Motion of the Second Special Administrator (the “SSA”) to the Estate of Prince Rogers Nelson (the “Estate”) for the return of certain commissions earned by the former advisors to the Estate (the “Advisors”) in respect of the Estate’s now-rescinded Agreement with UMG (the “UMG Agreement”).

BACKGROUND AND PROCEDURAL HISTORY

As the Court is well familiar with the factual background of this matter, CAK will not burden the Court with a recitation thereof. Rather, CAK will immediately focus on the nature and scope of the issues that CAK respectfully avers should be addressed at the evidentiary hearing in this matter.

On March 26, 2020, this Court convened a conference call with counsel to discuss, *inter alia*, the nature and scope of the issues to be addressed at the contemplated evidentiary hearing. During the course of that call,¹ the Court indicated that, in order to prevail on his Motion, the SSA might well have to shoulder the burden of demonstrating that there was an actual “overlap” between the UMG Agreement and the relevant recording agreements that Prince (or entities on his behalf) had previously signed with Warner Brothers Records (“WBR”). As a concomitant to that observation, the Court also suggested that, in order for the SSA to prevail on his Motion, it might well also be necessary for him to demonstrate that the Advisors had engaged in conduct that constituted a breach of fiduciary duty.

In its Memorandum and Order of April 20, 2020, the Court appeared to modify its earlier observations, and made the following “preliminary ruling”:

1. “[T]he Second Special Administrator does not need to establish that the UMG Agreement overlapped the Warner Brothers Agreement but, instead, that the Estate had reasonable and articulable concerns about the overlap such that, considering the other alternatives available to the Estate, it was reasonable and prudent for the Estate to rescind the agreement.”
2. “Further, the Second Special Administrator would need to prove that the entertainment advisors knew, or had reason to know, of the potential for the overlap, before recommending the approval of the UMG Agreement.”

¹ The recitation that follows concerning the Court’s discussion of the relevant issues during the referenced telephone conference is based on the contemporaneous notes of CAK’s counsel. Counsel is not certain whether there is a transcript of that conference, and assures the Court that he has done his best, both from his notes and recollection, to accurately reconstruct the Court’s observations during the conference.

In its Memorandum and Order, the Court invited the parties to seek review of the Court's preliminary rulings, quoted above, and this submission is made in response to that invitation.

DISCUSSION

CAK respectfully disagrees that the first issue articulated by the Court, as quoted above, *i.e.*, whether the Estate had "reasonable and articulable concerns" about a possible overlap between the UMG and WBR Agreements, is an issue that is central, or perhaps even relevant, to the present proceedings. Rather, as discussed below, CAK believes that the central issue for the Court's consideration is one based on and cabined by the agreement between the Advisors and the Estate (the "Advisor Agreement"). Most basically stated, *post-facto* concerns about a previously consummated and Court-approved transaction (here, the UMG Agreement) cannot - - absent, perhaps, some misconduct of the Advisors - - justify depriving the Advisors of established rights under a written and negotiated contract that had been executed by the parties and approved by the Court.

The November 25, 2019 Decision of the Court of Appeals addressing this Court's Order of March 11, 2019 is highly instructive on the issue. In that Decision, the Appeals Court confirmed that it was not, in the context of that proceeding, establishing the procedures (let alone articulating the issues) that would govern this Court's resolution of the SSA's Motion. Rather, the Court of Appeals noted that "the narrow issue before us concerns the district court's authority to resolve the Estate's motion [seeking a refund of the UMG commissions] under Minn. Stat. § 524.3-721." (Court of Appeals Decision (Appeal Nos. A19-0503, A19-0507), at p. 15.) After making that observation, the Court of Appeals then twice made specific reference to the potentially dispositive nature of the parties' Advisor Agreement. Specifically, the Court of Appeals first noted that "the fact that *the terms of the Advisor Agreement may dictate the outcome of the Estate's motion* does not deprive the district court of the authority to address the Estate's Motion under Minn. Stat. § 524.3-721." (*Id.*, at p.

16, emphasis added.) Emphasizing the central importance of the Advisor Agreement to the present inquiry, the Court of Appeals repeated that identical observation two sentences later in its Opinion, again observing that “*the terms of the Advisor Agreement may ultimately dictate whether Advisors are entitled to retain their commissions.*” (Id., emphasis added.)

CAK respectfully submits that the Court of Appeals was abundantly correct in its dual observations regarding the potentially dispositive impact of the Advisor Agreement. As such, the starting - - and perhaps final - - point of this Court’s analysis, it is submitted, must be with the Advisor Agreement. CAK is aware of no authority that permits a court to either ignore or rewrite a duly executed contractual undertaking between arms-length parties, particularly one that, as the Court of Appeals noted, was least implicitly approved by this Court. (See id., at p. 13.) The Estate, ably assisted by counsel of its choosing, made a decision to enter into the Advisor Agreement with CAK and NorthStar Enterprises Worldwide, Inc. (“NorthStar”) after negotiating the comprehensive and detailed terms of that Agreement. The Advisor Agreement’s commission structure was placed before this Court, front and center, during the proceedings in which the Court ultimately approved the UMG Agreement. Indeed, certain of the heirs objected to the UMG transaction for the reason, *inter alia*, that they felt that the commission that the Advisors would receive in respect of that transaction would be excessive, *i.e.*, the very basis of the SSA’s present Motion. Notwithstanding those objections, this Court approved the transaction, including the Advisors’ compensation in respect thereof.

It is CAK’s position that, under the plain and unambiguous language of the Advisor Agreement, the Estate is not entitled to a return of the Advisors’ commission, even though it later made a business decision to rescind the underlying transaction upon which those commissions were based. CAK will not argue the contractual point here, *i.e.*, it is content to raise that issue in the context of the evidentiary hearing presently scheduled before the Court. Rather, CAK makes these

observations solely in the hope that the Court will properly, in CAK's view, direct its central and material attention in this proceeding to the terms of the Advisor Agreement, rather than a *post-facto* evaluation of the reasonableness *vel non* of the Estate's later decision to rescind the UMG Agreement.

In light of the foregoing, CAK respectfully suggests that the Court's "preliminary ruling" in its April 20, 2020 Order that the Estate may be permitted to escape its contractual obligations to the Advisors if it can simply demonstrate that "it was reasonable and prudent for the Estate to rescind the [UMG] agreement" does not properly frame the issue. One can imagine a myriad, indeed virtually endless, scenarios that may arise *post-facto*, that might counsel a party, for sound business reasons, to consider rescinding or otherwise escaping from a transaction it had previously entered into. The reasonableness of that decision, however, and whether it reflected prudent business judgment, cannot, CAK submits, dictate whether commissions previously earned by third-parties on that transaction under a written and court-approved contractual undertaking must be disgorged. If that were the case, any party that later had reservations about a consummated transaction - - well-founded, reasonable, and in good-faith - - could somehow defeat another party's earned contractual entitlement to a payment based on that transaction by simply deciding as a matter of business judgment - - without the approval of its contractual counterparty - - to rescind the underlying transaction. Such a result, of course, runs counter to established principles of the binding nature of contracts and a court's inability to ignore or rewrite parties' contractual undertakings. See Pollock-Halvarson v. McGuire, 576 N.W.2d 451, 455 (Minn. Ct. App. 1998) ("People have a right to make legal contracts and to expect the courts to honor and give binding effect to their agreements. So important and unfettered is the right to contract that courts have no authority to invalidate unwise or improvident agreements or to rewrite them so as to achieve a fairer bargain for one party or another.") (internal citations omitted);

Telex Corp. v. Data Products Corp., 271 Minn. 288, 294 (Minn. 1965) (“[I]t is not for this court to create or add exceptions to the contract or to remake it on behalf of either of the contracting parties. It is not ordinarily the function of courts to rewrite, modify, or set aside contract provisions fully considered and agreed upon between the parties.”).

In summary, CAK respectfully submits that the primary issue for this Court’s consideration at the evidentiary hearing in this matter is whether, pursuant to the terms of the parties’ Court-approved Advisor Agreement, the Advisors are entitled to retain, or are compelled to return, the commissions they earned in connection with the UMG Agreement.

CAK does understand, however, that the plain language of the Advisor Agreement may not be the only issue that is appropriate for the Court’s consideration. As noted above, during the Court’s March 26, 2020 conference call with counsel, the Court offered that, in addition to placing a burden on the SSA to demonstrate an actual overlap between the UMG and WBR Agreements, the SSA might well also be required to demonstrate that the Advisors had breached their fiduciary duty to the Estate in connection with the UMG Agreement. That sentiment appears to have been echoed, although perhaps not as affirmatively, by the Court in its April 20, 2020 Order, specifically, in its observation that the “Second Special Administrator would need to prove that the entertainment advisors knew, or had reason to know, of the potential for the overlap, before recommending the approval of the UMG Agreement.”

CAK recognizes that, if the SSA is able to prove - - and CAK is confident he will be unable to do so - - that the Advisors purposefully misled the Estate; intentionally failed to disclose relevant information to the Estate regarding the potential overlap between the UMG and WBR Agreements; or otherwise intentionally withheld information from the Estate relevant to the Estate’s determination whether to enter into the UMG Agreement in the first instance, those factors might well be relevant to

the Court's ultimate determination on the commission issue. While the Court's articulated first "preliminary ruling" concerns the Estate's state of mind, the second component of the Court's preliminary ruling focuses on the conduct of the Advisors, which CAK acknowledges may well be a relevant area of inquiry for the Court. That stands in sharp contrast to the Court's first preliminary ruling that the Estate's conduct - - independent of and without the input or consent of the Advisors - - if generally reasonable and articulable, can somehow defeat the Advisors' contractual entitlement to retain a previously earned commission.

It is CAK's understanding that NorthStar is filing a separate submission that addresses what it deems to be the appropriate scope of the issues for this Court's consideration at the scheduled evidentiary hearing. Rather than file a duplicative submission with the Court, CAK reserves the right, respectfully, to join in NorthStar's articulation of the relevant issues, to the extent that CAK concurs in the same.

CONCLUSION

For the foregoing reasons, CAK urges this Court to focus on the fundamental issue that the Appeals Court itself determined "may ultimately dictate the outcome of the Estate's motion," *i.e.*, the relevant provisions of the Advisor Agreement.

Respectfully Submitted,

CAK ENTERTAINMENT, INC.

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