

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Supervised Administration

In the Matter of:

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

Estate of Prince Rogers Nelson,

Decedent.

**PROPOSED ORDER REGARDING
ESTATE PROTOCOLS**

The above-entitled matter came before the undersigned on December 13, 2019 pursuant to the motion of Primary Wave Music IP Fund I, LP (“Primary Wave”) for recognition as an interested person under Minnesota Statutes § 524.1-201(33).

On March 22, 2017, the Court entered an “Order Regarding Application of Existing Orders and Protocols to the Personal Representative” (“Protocol Order”), designed to provide guidance to the parties following the appointment of Comerica Bank & Trust, N.A., as Personal Representative (“Personal Representative”) of the Estate of Prince Rogers Nelson (“Estate”). Among other provisions, the Protocol Order included protocols regarding the confidentiality of certain Estate information, compensation for the Personal Representative and its agents, and approval protocols for transactions for which the Estate expects to receive more than \$2 million in revenue. The Court has subsequently supplemented the Protocol Order with additional guidelines and requirements related to the administration of the Estate, including in orders dated May 25, 2018 and April 23, 2019.

Much has changed related to the Estate since the Protocol Order was entered almost three years ago. Most significantly, while in early 2017 the parties interested in the Estate consisted

primarily of the six siblings of the Decedent (the “Siblings”), taxing authorities, and a small number of creditors, that list has since expanded to include the estate of the deceased Sibling Alfred Jackson, multiple law firms that have obtained substantial attorneys’ liens against the interests of certain Siblings, and Primary Wave, which has purchased a portion of the expectancy interest held by Sibling Tyka Nelson.¹

By motion dated November 21, 2019, Primary Wave sought formal recognition as an interested person in this proceeding and asserted that the Court should afford Primary Wave the same rights as the Heirs in this matter, including those set forth in the Protocol Order, as amended. The Personal Representative did not contest Primary Wave’s request to be recognized as an interested person, but opposed certain aspects of the broader relief sought by Primary Wave. Following the motion hearing and a mediation involving the Personal Representative, the Heirs, and Primary Wave, the parties determined that it was in the best interests of the Estate to stipulate to a series of protocols and other provisions to address Primary Wave’s motion.

Based on the stipulation and all the files, records, and proceedings herein, the Court hereby makes the following:

ORDER

1. The Probate Code defines an “Interested person” to include:

heirs, devisees, children, spouses, creditors, beneficiaries and others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from

¹ Primary Wave also submitted portions of an agreement it states it entered into with Alfred Jackson prior to his death under which Mr. Jackson similarly assigned a portion of his expectancy interest to Primary Wave. The validity of that agreement has been challenged in Mr. Jackson’s estate proceeding in Missouri and, as a result, the rights and obligations with respect to Primary Wave herein are based solely on the rights it purchased from Tyka Nelson.

time to time and must be determined according to the particular purpose of, and matter involved in, any proceeding.

Minn. Stat. § 524.1-201(33). Interested persons have statutorily mandated rights under the Probate Code relative to the administration of the estate.

2. Minnesota Statutes § 524.3-101 provides that upon death, a person's real and personal property, in the absence of testamentary disposition, devolves to the decedent's heirs, subject to (as relevant here) the rights of creditors and to administration. That right is transferrable by an heir under Minnesota law. Primary Wave submitted evidence, including declarations from Tyka Nelson and a representative of Primary Wave, that Tyka Nelson sold a portion of her expectancy interest to Primary Wave. No interested party submitted legal authority or evidence to challenge the validity of that transaction. By nature of the partial expectancy interest that Primary Wave purchased from Tyka Nelson, Primary Wave qualifies as a person with "a property right in" the Estate and, therefore, is an interested person in the Estate under the Probate Code.

3. Ordinarily, under the Probate Code, a personal representative has "the same power over the title to property of the estate that an absolute owner would have," and "[t]his power may be exercised without notice, hearing, or order of court." Minn. Stat. § 524.3-711. Unless specifically limited by the Court, those powers include the ability to enter into the twenty-nine categories of transactions set forth in Minn. Stat. § 524.3-715. A personal representative, however, holds the property of the estate in trust "for the benefit of the creditors and others interested in the estate." Minn. Stat. § 524.3-711; *see also* Minn. Stat. § 524.3-703 ("a personal representative is a fiduciary who shall observe the standards of care in dealing with the estate assets that would be observed by a prudent persona dealing with the property of another").

4. Unless otherwise expressly limited herein, the Personal Representative shall have all of the powers and obligations of a personal representative under the Probate Code as set forth in Minn. Stat. § 524.3-701, *et seq.*

5. The Personal Representative may not sell the parcels of real property located at 539 Newton Ave. N., Minneapolis, MN, 115 King Creek Road, Golden Valley, MN, 3420 Snelling Ave., Minneapolis, MN, 7801 Audubon Road, Chanhassen, MN, 55317 and 8020 Park Place, Chanhassen, MN 55317 without permission of the Court, after having provided all interested persons notice and an opportunity to be heard.

6. The Personal Representative is authorized to enter into any lawful business transaction, including related to licensing or otherwise exploiting the entertainment assets of the Estate, that the Personal Representative deems appropriate and necessary to maximize the value of the Estate and its assets; provided, however, that the Personal Representative shall provide Omarr Baker, John Nelson, Norrine Nelson, Sharon Nelson, Tyka Nelson (the “Living Heirs”) and, subject to all other provisions in this Order, Primary Wave, notice at least 14 business days prior to entering into any entertainment transaction under which the Personal Representative reasonably anticipates receiving more than \$2 million in value (“Significant Entertainment Transactions”), including to allow those interested persons an opportunity to seek Court relief with respect to any such transaction. It is the intent of the Court that the Personal Representative not be required to provide advance notice to any interested person for routine licensing, exploitation, and other contractual matters. The Personal Representative shall, however, keep the Living Heirs informed (on at least a monthly basis through meetings, communications or otherwise) regarding the assets and business transactions of the Estate. The Personal Representative shall also keep Primary Wave informed regarding the assets and business transactions of the Estate through a

monthly telephone conference, and the provision of agendas and minutes from Heirs meetings, annual accountings, monthly account statements, quarterly financial statements, and copies of fee applications.

7. As to the sharing and disclosure of confidential Estate information by the Personal Representative, either pursuant to this Order or in the exercise of the Personal Representative's discretion to share confidential Estate information when not required by this Order, the Personal Representative is authorized to limit such disclosure to the Living Heirs, Primary Wave, and all of their counsel of record in this proceeding, with the understanding that the Personal Representative will have the discretion to share such information in a manner that does not compromise any applicable attorney-client and work product protections or hamper the confidentiality needed for future business and tax purposes. Specifically, with respect to confidential business information involving any Significant Entertainment Transaction, the Personal Representative shall disclose to the Living Heirs and their counsel of record such information as is necessary for them to make a knowledgeable assessment of the merits of the proposed transaction. Moreover, the Personal Representative shall, with respect to Significant Entertainment Transactions, exercise its best efforts to seek the permission of prospective entertainment partners to share the same information related to the transactions with Primary Wave as the Personal Representative shares with the Living Heirs. In the event that it is unable to obtain that permission, the Personal Representative shall inform Primary Wave what categories of information it is not able to share and why. Similarly, the Personal Representative shall seek to provide Primary Wave the same information as the Living Heirs in connection with the monthly telephone conferences, and the provision of agendas and minutes from Heirs meetings, annual accountings, monthly account statements, quarterly financial statements, and copies of fee applications. In the event that the Personal

Representative determines it cannot share certain information with Primary Wave, the Personal Representative shall inform Primary Wave what categories of information it is not able to share and why. Primary Wave reserves its right to seek a court order directing the Personal Representative to share withheld information should it disagree with the Personal Representative's decision.

8. No interested person shall disclose confidential Estate information to third parties unless specifically authorized to do so by the Court or the Personal Representative.

9. The Personal Representative is authorized to retain accountants, appraisers, entertainment industry experts, counsel, realtors, and other professionals the Personal Representative deems necessary to administer the Estate, pursuant to terms the Personal Representative determines are reasonable under the circumstances. Nothing herein shall limit the Personal Representative or any interested person from seeking Court review of the propriety of the employment of any agent by the Personal Representative or the reasonableness of an agent's compensation pursuant to Minn. Stat. § 524.3-721.

10. As a condition of receiving any confidential information related to the Estate, Primary Wave shall: (1) enter into a non-disclosure agreement in the form provided by the Personal Representative, which shall include a provision prohibiting Primary Wave from utilizing any confidential Estate information in a manner unrelated to its status as an owner of an expectancy interest in the Estate; (2) certify that Primary Wave and all of its affiliated entities have destroyed all confidential Estate information Primary Wave obtained from any party prior to the date of this Order (including, but not limited to, Michael Lythcott and/or Gregg Walker); provided, however that Primary Wave and its affiliated entities may maintain one copy of any confidential Estate information currently in their possession in a secure location, as necessary for regulatory

compliance, asset valuation or audit purposes, provided that Primary Wave and affiliated entities may not access or utilize that confidential Estate information without prior written notice to the Personal Representative unless the information is accessed or utilized solely for regulatory compliance, asset valuation or audit purposes; and (3) obtain a similar certification from any person to whom Primary Wave or any of its affiliates provided confidential Estate information. For the avoidance of doubt, nothing herein shall be construed as requiring the Personal Representative to provide confidential Estate information Primary Wave to the extent that doing so would result in a violation of any agreement to which the Estate or any of its managed entities is a party, or if providing such information could hamper the confidentiality needed for future business and tax purposes.

11. The Probate Court in Jackson County, Missouri is in the process of appointing an administrator or other authorized representative for the Estate of Alfred Jackson. Upon confirmation of that appointment, the Personal Representative shall work collaboratively with the administrator or authorized representative of the Estate of Alfred Jackson related to the sharing of information in connection with the Estate of Prince Rogers Nelson. For the avoidance of doubt, nothing herein shall be construed as requiring the Personal Representative to provide confidential Estate information to the Estate of Alfred Jackson to the extent that doing so would result in a violation of any agreement to which the Estate or any of its managed entities is a party, or if providing such information could hamper the confidentiality needed for future business and tax purposes. The Personal Representative, if it deems it necessary, may require the administrator or authorized representative of the Estate of Alfred Jackson to execute a non-disclosure agreement in the form provided by the Personal Representative as a condition of the administrator or authorized representative receiving confidential information related to the Estate of Prince Rogers Nelson.

12. Nothing herein precludes the Personal Representative from seeking Court approval for transactions and agreements by formal request of the Court, even if not required under this Order, with notice and an opportunity to be heard as required by the Court.

13. The Personal Representative is authorized to employ subpoenas pursuant to Minn. R. Civ. P. 45, as well as the discovery means addressed by Minn. R. Civ. P. 26-37. *See* Minn. Stat. § 524.1-304. The Personal Representative is also authorized to utilize interstate depositions and discovery, including requesting the issuance of subpoenas pursuant to the authority of courts in jurisdictions outside of Minnesota, with this Order serving as the Court's authorization of the Personal Representative to seek appropriate legal process in other jurisdictions for the purposes discussed above. To the extent notice to all parties is required, *see, e.g.*, Minn. R. Civ. P. 45.01(e), the Personal Representative shall provide notice to the interested persons, including those entitled to notice pursuant to Minn. Stat. § 524.3-204.

14. Consistent with Minn. Stat. § 524.3-504, the Personal Representative shall not make any distribution from the Estate without prior order of the Court after providing notice and an opportunity to be heard to all interested persons.

15. Nothing herein shall prohibit the Personal Representative or any interested person from seeking to amend that Order in the event that the protocols hereunder are not supporting the best interests of the Estate.

Dated: _____, 2020

BY THE COURT:

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.