

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**TROY CARTER'S MEMORANDUM IN
OPPOSITION TO NORTHSTAR'S
MOTION TO COMPEL**

INTRODUCTION

NorthStar Enterprises Worldwide, Inc. and L. Londell McMillan (together, "McMillan") are using the Court's Scheduling Order authorizing discovery related to the Second Special Administrator's Motion for Refund of Fees as an invitation to conduct a fishing expedition into the administration of the Estate of Prince Rogers Nelson ("Estate"). McMillan's subpoena to Troy Carter is so broad that it encompasses every single document or communication that Carter has ever generated or received in his capacity as entertainment advisor to Comerica Bank & Trust, N.A. as Personal Representative of the Estate ("Comerica"). This is an abuse of the Court's Order and Minnesota Rule of Civil Procedure 45. Carter agreed to cooperate with the subpoena and produce responsive documents that are relevant to the issues outlined in the Court's April 20, 2020 Scheduling Order. Dissatisfied with Carter's agreement to produce only relevant documents, McMillan now seeks to compel "[a]ll documents and communications relating to or referring to Prince Rogers Nelson or the Prince Estate," "[a]ll documents and communications relating or referring to conflicts or disputes with Prince, the Prince Estate, the Heirs and/or the representatives," and all documents and communications responsive to his other overly broad Document Requests. (Silver Decl. Ex. A.) Because McMillan's Motion to Compel seeks

production of thousands of documents (many of which are highly confidential) that have no bearing on the Motion for Refund of Fees and because the collection, review, and production of such documents would impose an undue burden and expense on Carter and the Estate, McMillan's Motion to Compel should be denied in its entirety.

ARGUMENT

I. CARTER HAS AGREED TO PRODUCE RESPONSIVE DOCUMENTS THAT ARE RELEVANT TO THE ISSUES OUTLINED BY THE COURT.

Contrary to McMillan's assertion, Carter is not withholding any relevant and responsive documents. In its April 20, 2020 Scheduling Order and Memorandum, the Court set forth its preliminary ruling on the Second Special Administrator's Motion for Refund of Fees. The Court's Order reflects four general subject matters relevant to the Motion: (i) the rescission of the UMG Agreement; (ii) the overlapping rights between the UMG Agreement and 2014 WBR Agreement; (iii) the work done by the Advisors prior to the point where they allegedly knew or should have known of the potential overlap; and (iv) the subsequent use of and reliance on work previously done by the Advisors in the development of the agreement that replaced the UMG Agreement. (April 20, 2020 Order & Mem. at 3; *see* McMillan Mem. at 4-5.) Carter has agreed not to withhold responsive documents relating to any of these four issues, except on the basis of privilege or confidentiality.

Specifically, Carter agrees to respond to the following Document Requests:

2. All documents and communications regarding belief or concern that the UMG Agreement might infringe "prior rights" of WBR, including but not limited to communications following the February 9, 2017 press release announcing the UMG Agreement to the public, and attempts by NorthStar or other parties to provide advisement or clarification regarding the contractual terms.
3. All documents and communications which support the decision to seek rescission of the UMG agreement, as well as any documents supporting that the UMG Agreement infringed on rights granted in the 2014 WBR Agreement.

5. All documents and communications relating or referring to conflicts between UMG and WBR and/or other third parties relating to the rights and/or intellectual property of Prince and/or the Prince Estate.

6. All documents and communications relating to WBR claims regarding conflicting rights with the 2014 WBR Agreement, including research and investigations done and communications to UMG attempting to address WBR's claims and concerns.

14. All documents and communications [. . .] regarding the UMG Agreement, WBR's claims and the decision to seek rescission of the UMG Agreement.

16. All documents and communications concerning any plans, proposals, ideas, designs, schemes or concepts concerning the UMG Agreement, including but not limited to Your or Comerica's understanding and purpose of Section 1.8 of the UMG Agreement and the meaning of the terms "pressing and distribution."

17. All documents and communications reflecting Your, or Comerica's understanding and knowledge of the 2014 WBR Agreement, both before and following the February 9, 2017 press release

(Silver Decl. Exs. B-C, Carter Decl. ¶ 2.)¹ Of McMillan's seventeen Requests, these are the only Requests that are limited in scope to relevant subject matters. These Requests seek documents related to the first and second issues—the UMG rescission and overlapping rights between UMG and WBR. (Silver Decl. Ex. C.) McMillan did not issue Requests seeking documents related to the third issue—work done by the Advisors prior to realizing the overlap in rights, nor does Carter possess any such documents because he was not involved in the drafting of the UMG Agreement. (See Silver Decl. Ex. A.) McMillan also did not issue Requests seeking documents related to the fourth issue—the subsequent use of and reliance on work previously done by the Advisors. (*Id.*) The only Requests arguably seeking documents related to this issue are Request Nos. 14 and 16,

¹ Carter has determined that the documents requested by Request No. 16 are encompassed by the amended Request No. 14 and therefore Carter agrees to produce non-privileged documents in response to Request No. 16, as originally indicated in his written objections. Carter has also determined that the only documents he has in response to Request No. 17 are relevant and therefore agrees to produce documents in response to that Request.

to which Carter has agreed to respond. Thus, Carter has already agreed to produce documents in response to the only Requests that are tailored to seek documents relevant to the issues outlined by the Court's April 20, 2020 Order.

In his Motion, McMillan also contends that Carter should be compelled to produce documents relevant to the issues outlined in McMillan's Motion to Seek Review of the Court's Preliminary Ruling, which McMillan filed on June 5, 2020, and remains pending. Unless the Court amends its preliminary ruling to address additional issues, McMillan is only entitled to discover documents related to the four subject matters addressed by the Court's April 20, 2020 Order.

II. MCMILLAN'S SUBPOENA IS OVERBROAD AND IMPOSES UNDUE BURDEN AND EXPENSE ON CARTER AND THE ESTATE.

Under Minnesota Rule of Civil Procedure 45.03(a), a litigant must "take reasonable steps to avoid imposing under burden or expense on a person subject to that subpoena." Information sought through discovery, including through a subpoena, must be relevant to the claims or defenses in dispute. *See* Minn. R. Civ. P. 26.02(a). The Rules of Civil Procedure do not allow a litigant to seek discovery of information "which is desired only for the purpose of placing one party in a more strategic position than he otherwise would be by acquiring information that has nothing to do with the merits of the action." *Jeppesen v. Swanson*, 68 N.W.2d 649, 658 (Minn. 1955). A litigant may not use a subpoena to obtain or compel the production of information that is immaterial to the determination of the issues presented in the litigation. *Id.*; *see also Roberts v. Whitaker*, 178 N.W.2d 869, 877 (Minn. 1970) (affirming the district court's decision to quash a subpoena where the subpoena could not be "reasonably expected to disclose evidence [that is] material and relevant").

McMillan's remaining Document Requests violate Minnesota Rules of Civil Procedure 26.02 and 45.03 because they seek thousands of irrelevant documents and communications. *See*

Jeppesen, 68 N.W.2d at 658 (The discovery rules “are not intended to supply information for the personal use of a litigant that has no connection with the determination of the issues involved in the action or their merits.”). Since Carter objected to the breadth of Request Nos. 1, 4, 7-9, 11, 13, and 15 (the “Disputed Requests”), McMillan has not offered to limit the scope of the Disputed Requests to either the relevant time period or relevant subject matters. (See Silver Ex. C (summarizing meet-and-confer).) As a result, McMillan’s Motion to Compel seeks to impose an undue burden on Carter and an undue expense on the Estate by requiring Carter and his counsel to collect, review, and produce documents with no relevance to the Motion for Refund of Fees.

There is a reason McMillan failed to quote any of the Disputed Requests in his brief – they are patently overbroad and amount to nothing more than a fishing expedition into the Estate’s confidential business. To illustrate, McMillan moves to compel a response to Request No. 1, but never quotes or describes the Request. (McMillan Mem. at 6.) Request No. 1 seeks:

1. All documents and communications relating to or referring to Prince Rogers Nelson or the Prince Estate including but not limited to your agreements and communications with Stinson, Comerica, Fredrikson & Byron, Jason Boyarski and/or UMG.

(Silver Decl. Ex. A (emphasis added).) This Request seeks every document and communication relating or referring to Prince or the Estate that Carter has ever generated or received in any capacity since 2014. (*Id.*) That is the definition of overly broad and unduly burdensome. Not only would responding to this Request require enormous effort and expense, it would require disclosure of the Estate’s most confidential entertainment negotiations to McMillan—an individual who has perpetually refused to sign a non-disclosure agreement with the Estate and to whom the Court has prohibited the disclosure of confidential information. (See April 13, 2018 Order.)

McMillan’s other Disputed Requests are similarly broad and burdensome, seeking large categories of documents, only a handful of which are potentially relevant. To the extent that a

small subset of the documents responsive to the Disputed Requests are relevant to the Motion for Refund of Fees, those relevant documents are already being produced by Carter in response to Request Nos. 2-3, 5-6, 14, and/or 16-17. The following summarizes the basis for Carter's objections:

Document Request(s):	Reason Request Is Overly Broad and Unduly Burdensome:
4. All documents and communications relating or referring to conflicts or disputes with Prince, the Prince Estate, the Heirs and/or the representatives.	The only conflict or dispute relevant to the Motion for Refund of Fees is the conflict among UMG, WBR, and the Estate regarding overlapping rights, and Carter is producing documents regarding that conflict in response to Request No. 5. All other documents and communications encompassed by this Request—for example, communications regarding the Boxill litigation or Heirs' objections to the terms of potential entertainment deals—are not relevant. (Carter Decl. ¶ 4.)
7. All documents and communications relating or referring to NorthStar or its representatives.	Most documents responsive to this Request have no relevance to the Motion for Refund of Fees, such as documents relating to McMillan's actions as an advisor to Sharon Nelson. (Carter Decl. ¶ 5.) Carter is producing any relevant responsive documents in response to Request No. 2.
8. All documents and communications relating in any manner to the UMG Agreement or the 2014 WBR Agreement. 9. All documents and communications concerning any plans, proposals, ideas, designs, schemes or concepts from WBR regarding attempts to acquire Prince Estate intellectual property rights following Prince's death, including but not limited to the rights provided for in the UMG Agreement, as well as WBR's attempts to negotiate an amendment of the 2014 WBR Agreement. 11. All documents and communications concerning actual or potential contractual arrangements between WBR, UMG	WBR had a long history with Prince dating back more than thirty years, it is currently a major entertainment partner of the Estate, and the Estate continues to operate under the 2014 WBR Agreement. As a result, Carter has a substantial number of highly-confidential documents and communications related to WBR and WBR Agreements that are responsive to these Requests and do not involve any issue relevant to the Motion for Refund of Fees. (Carter Decl. ¶ 6.) To the extent these Requests encompass relevant documents regarding the 2014 WBR Agreement, or the UMG Agreement, Carter is producing such documents in response to Request Nos. 3, 5-6 or 14.

Document Request(s):	Reason Request Is Overly Broad and Unduly Burdensome:
and/or Prince Rogers Nelson or the Prince Estate.	
13. All documents and communications between You, Bremer and Comerica following WBR allegations regarding UMG Agreement conflicting with rights in the 2014 WBR Agreement, including any documents reflecting You or Comerica seeking Bremer's assistance and guidance, and any materials provided by Bremer in response.	Because this Request uses the phrase "including" rather than "regarding" and because "and" is to be construed as disjunctive, this Request is seeking all documents and communications with Bremer or <u>Comerica</u> since February 2014. Like Request No. 1, this Request seeks thousands of irrelevant and confidential documents regarding the Estate's other entertainment deals. (Carter Decl. ¶ 3.) To the extent that a small fraction of the responsive documents is relevant to the Motion for Refund of Fees, Carter is producing such documents in response to Request Nos. 2-3, 5-6, or 14.
15. All communications between You or Comerica and Bremer, the Heirs, Heirs representatives, and/or NorthStar prior to Comerica's appointment as the Personal Representative which reflect Comerica's plans, proposals, ideas, designs, schemes or concepts for its role as Personal Representative.	This Request seeks no relevant documents. Comerica's plans, proposals, ideas, designs, schemes or concepts for its role as Personal Representative have no bearing on any issue raised by the Motion for Refund of Fees, and McMillan has articulated no potential relevance in his brief. Additionally, Carter was not involved with the Estate until after Comerica was appointed as Personal Representative and therefore does not have any responsive documents. (Carter Decl. ¶ 7.)

As illustrated by the scope of these Disputed Requests, McMillan's Motion to Compel is an impermissible attempt at "acquiring information that has nothing to do with the merits of the action" and should be denied as such. *Jeppesen*, 68 N.W.2d at 658.

III. CARTER'S OBJECTIONS TO MCMILLAN'S SUBPOENA ARE PROPER.

A. Minnesota Rule of Civil Procedure 34 Does Not Apply.

Carter did not issue "boilerplate" objections as McMillan asserts. (McMillan Mem. at 9.) In response to McMillan's subpoenas, Carter served detailed objections to McMillan's Definitions, Instructions, and Document Requests that explained the bases for his objections and specifically identified the Requests to which he agreed to respond. (Silver Decl. Ex. B.) McMillan argues that Carter was required to serve written objections and responses to each of the seventeen Requests, but there is no such obligation under the Rules of Civil Procedure. Rule 34.02(c) applies to written

discovery requests between parties, not to subpoenas. *See, e.g.*, Rule 34.02(c) (“The party upon whom the request is served must serve a written response within 30 days after the party is served”). By contrast, Rule 45, which governs subpoenas, requires that the recipient of a subpoena serve only a “written objection to producing any or all of the designated materials.” Minn. R. Civ. P. 45.03(b)(2). Indeed, requiring a subpoena recipient to provide a full, written response to each individual Request rather than categorical objections and an accompanying document production would be antithetical to Rule 45, which requires the party issuing the subpoena to “take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.” Rule 45.03(a).

B. Carter Is Entitled to Withhold Confidential Documents.

“[T]he court shall exercise its power with liberality in issuing orders which justice requires for the protection of parties or witnesses from unreasonable annoyance, expense, embarrassment, or oppression.” *Sumstad v. Wilson*, 2009 WL 173506, at *3 (Minn. Ct. App. Jan. 27, 2009) (quoting *Baskerville v. Baskerville*, 75 N.W.2d 762, 769 (Minn. 1956)). Under Rule 45.03(c), a court may quash or modify a subpoena if it “requires disclosure of a trade secret or other confidential research, development, or commercial information.” Minn. R. Civ. P. 45.03(c)(2)(A). As explicitly permitted by Rule 45.03(c), Carter has objected to producing documents on the basis of confidentiality. While Carter expects that he will be able to produce most or all confidential documents once the parties have negotiated a protective order, there may be instances in which contractual obligations such as non-disclosure agreements or confidentiality clauses prohibit any disclosure. For any documents Carter withholds as confidential, he has offered to produce a log for McMillan. At present, McMillan’s motion to compel documents withheld as confidential is premature and the Court need not address it.

C. Carter Is Not Withholding Any Documents Because McMillan's Requests Are Duplicative.

McMillan asks the Court to determine that his Requests are not duplicative or, alternatively, that Carter waived this objection. While McMillan's Requests are duplicative—for example, Request No. 1 arguably encompasses all of McMillan's sixteen other Requests—Carter is not withholding any documents based on this objection. Therefore, the Court need not address the objection.

IV. THE ESTATE IS ENTITLED TO REIMBURSEMENT OF THE REASONABLE ATTORNEYS' FEES INCURRED IN DEFENDING THIS MOTION.

Minnesota Rule of Civil Procedure 45.03(a) requires a subpoenaing party to “take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.” Minn. R. Civ. P. 45.03(a). If a party or attorney breaches this obligation, the Court “shall” impose “an appropriate sanction,” including payment of reasonable attorneys' fees. *Id.* Because Carter agreed to produce documents in response to those Requests that are reasonably tailored to seek relevant documents, McMillan had no cause to bring a Motion to Compel. By issuing an overbroad subpoena, declining to limit the scope of his Requests during the meet-and-confer process, and then moving to compel Carter to collect, review, and produce thousands of irrelevant documents, McMillan and his counsel have violated their obligation to avoid imposing an undue burden and expense. As a result, the Court must impose an appropriate sanction. Carter respectfully requests that the Court require McMillan to reimburse the Estate for the reasonable attorneys' fees and costs incurred in responding to this Motion to Compel. Carter requests permission to submit a declaration of attorneys' fees and costs within 14 days of the filing of an order denying McMillan's Motion.

CONCLUSION

Because McMillan's subpoena is patently overbroad and seeks production of confidential Estate documents that have no relevance to the Second Special Administrator's Motion for Refund of Fees, the Motion should be denied in its entirety.

Dated: June 12, 2020

/s/ Emily A. Unger

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