

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

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO QUASH SUBPOENA
DUCES TECEM**

L. Londell McMillan (“McMillan”) respectfully submits this memorandum of law in support of his Motion to Quash Subpoena Duces Tecem directed to L. Londell McMillan and served by non-excluded heir Omarr Baker (“Baker”). The motion is made under Minnesota Rules of Civil Procedure 26.03 and 45.

INTRODUCTION

The Subpoena to McMillan is a broad, all-encompassing, and oppressive request for documents that is not tied or limited to any issues that are in dispute in the Estate of Prince Rogers Nelson (“Estate”). It was served despite an Order of this Court dated January 18, 2017 denying a prior effort by Baker and Tyka Nelson to obtain documents from McMillan. Baker did not seek to vacate or amend the Court’s prior Order, but instead simply proceeded to serve the current Subpoena. In addition, the Subpoena imposes undue burden and expense, which violates Minnesota Rule of Civil Procedure 45.03(a). Accordingly, McMillan respectfully requests that this Court quash the Subpoena.

FACTS¹

As this Court is aware, McMillan, along with Charles Koppelman, acted as entertainment industry advisors for the Estate. McMillan also serves as an advisor in various capacities to Sharon Nelson, Norrine Nelson, and John Nelson (collectively “SNJ”). In the course of this relationship, SNJ provided McMillan with a great deal of personal and confidential information, which Baker now demands be produced in connection with the Subpoena. (SNJ Quash Memorandum, at p. 5.)

Baker previously attempted to compel production of information and documents from McMillan. (Omarr Baker and Tyka Nelson’s Notice of Motion and Motion to Compel L. Londell McMillan to Produce Information Necessary to Facilitate the Appointment of a Personal Representative, filed January 10, 2017, Ex. B.) The sole argument by Baker and Tyka Nelson in support of their contention that they were entitled to McMillan’s records was that such records were necessary in order to determine McMillan’s suitability to serve as a personal representative to the Estate. (Omarr Baker and Tyka Nelson’s Memorandum in Support of Motion to Compel L. Londell McMillan to Produce Information Necessary to Facilitate the Appointment of a Personal Representative [“Memorandum in Support of Motion to Compel”], at p. 4.) However, the Court subsequently determined that neither McMillan nor Anthony “Van” Jones would serve as a personal representative for the Estate, and the Court denied Baker and Tyka Nelson’s motion to compel the production of McMillan’s records. (Order for Transition from Special Administrator to Personal Representative, at p. 4, ¶ 9, dated January 18, 2017 [“January 18, 2017

¹ McMillan largely joins in the statement of facts submitted by Sharon Nelson, Norinne Nelson, and John Nelson in connection with their Memorandum of Law in Support of their Motion to Quash the Subpoena Duces Tecum to L. Londell McMillan, filed with the Court on March 16, 2017 (“SNJ Quash Memorandum”), and will endeavor to avoid unnecessary repetition of the facts therein.

Order”]). Neither Baker nor Tyka Nelson sought to vacate or amend the Court’s January 18, 2017 Order that denied the motion to compel.

Despite the Court’s ruling denying the motion to compel, and despite the fact that McMillan is not a personal representative to the Estate, Baker nevertheless served the Subpoena, which seeks the same or similar records from McMillan that the Court previously refused to compel,² which include the following:

1. All documents sent to or received from Norrine, Sharon, and/or John Nelson.
2. All documents sent to or received from Tyka Nelson, Alfred Jackson, and/or Omarr Baker.
3. All documents sent to or received from any Music Business Entity relating to Norrine Nelson, Sharon Nelson, John Nelson, Alfred Jackson, Tyka Nelson, and/or Omarr Baker.
4. All documents sent to or received from any Music Business Entity relating to Prince Rogers Nelson.
5. All documents in the possession or control of L. Londell McMillan relating to Norrine Nelson, Sharon Nelson, John Nelson, Alfred Jackson, Tyka Nelson, and/or Omarr Baker.

(March 3, 2017 Notice to the Parties in this Action of Subpoena Duces Tecum to L. Londell McMillan to Third-Party.) Notably, there is no limitation as to time frame or to subject matter. (*Id.*) Further, as noted by SNJ, Baker failed to arrange for compensation of McMillan in responding to the Subpoena. (*Id.*)

Mere days ago, counsel for Baker and Alfred Jackson served Supplemental Objections to Bremer Trust, National Association’s (“Bremer”) Discharge from Liability (“Supplemental Objections”). The claim is now that Bremer should not be discharged, based on allegedly recently-learned-of breaches of duty or conflicts of interest by Bremer and/or Charles

² Notably, counsel for Baker also had the opportunity to cross-examine and obtain information from McMillan on January 12, 2017, yet he failed to ask McMillan even a single question.

Koppelman. (*Id.* at 4-5.) Specifically, the allegation is that Koppelman loaned funds to Jobu Presents, LLC, (“Jobu”) to induce Jobu to enter into a contract with the Estate regarding a Tribute Concert, for Koppelman’s personal benefit. (*Id.*) The Supplemental Objections further state that Bremer is allegedly liable for the acts of Koppelman because Koppelman acted as Bremer’s agent. (*Id.* at 16-23.) However, although desperate to include McMillan, the Supplemental Objections contain no allegation or evidence that McMillan was involved in, or was even aware of, the alleged loan by Koppelman to Jobu related to the Tribute Concert. Although the Supplemental Objections repeatedly refer vaguely to the actions of “Koppelman and McMillan,” they fail to identify a single, specific allegedly wrongful act of McMillan. And although it is alleged that McMillan received a commission in exchange for his work on the Tribute Concert, there is no claim that he failed to perform the work (and thus should not have been paid) or that the terms of the contract between the Estate and Jobu providing for payment of McMillan’s commission were not disclosed. (*Id.* at 12-13.) There is no affirmative acknowledgment that McMillan gathered most of the performers and saved the Tribute Concert, ensuring that all fans of Prince, and those closest to him, would have the opportunity for a final farewell.

STANDARD GOVERNING MOTION TO QUASH

Under Minn. R. Civ. P. 26.02(b), “[d]iscovery must be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness and must comport with the factor[] of proportionality[.]” Under Rule 26.03, a court may issue an order that “the discovery may not be had” or that “the discovery may be had only on specified terms and conditions, including a designation of the time or place” for “good cause shown.” Further, under Rule 45.03(c), the court “*shall* quash or modify the subpoena if it “subjects a person to undue burden.” (Emphasis added.)

Application of these most basic principles compels an Order quashing the Subpoena. The records subpoenaed were initially requested on the justification that they dealt with McMillan's application to be co-personal representative, and the Court rejected that rationale. As a result, the subpoenaed records have no bearing on, and are not relevant to, the Estate litigation. Further, the Subpoena is overly broad and unduly burdensome and will impose substantial burden and expense on McMillan to respond. Baker has not arranged for McMillan's compensation, as he is required to do. For all of these reasons, McMillan respectfully requests that the Court quash the Subpoena.

ARGUMENT

I. THE RECORDS SOUGHT ARE NOT RELEVANT.

As a threshold matter, information sought in discovery must be relevant to the action. Minn. R. Civ. P. 26.02(a). Information that has no bearing on the determination of an action *on its merits* is not subject to discovery, and may not be obtained via subpoena. *Roberts v. Whitaker*, 178 N.W.2d 869, 877 (Minn. 1970) (affirming the quashing of a subpoena where the court is "not convinced that [the] subpoena could be reasonably expected to disclose evidence material and relevant"); *Jeppesen v. Swanson*, 68 N.W.2d 649, 657 (Minn. 1955); *see also Webster v. Schwartz*, 81 N.W.2d 867, 870 (Minn. 1957). The records Baker seeks from McMillan are not relevant to this dispute for two reasons. First, McMillan is no longer being considered as personal representative. Second, Baker fails to identify any act of McMillan that could impose liability on the Estate.

The question that must be asked is whether Baker's new demands are good-faith requests or harassment. When Baker and Tyka Nelson first sought (unsuccessfully) to compel production of the records currently sought by the Subpoena, the only justification they offered was that McMillan was seeking to act as co-personal representative of the Estate. Specifically, they

argued, “[t]he documents and materials requested is information that will satisfy the Court’s needs in order to properly determine McMillan’s suitability to act as co-personal representative.”) (Memorandum in Support of Motion to Compel, at p. 4.) In their reply brief, they again argued that “[f]or the Court to be able to properly determine McMillan’s suitability, it needs the information requested.” (Omarr Baker and Tyka Nelson’s Reply in Support of Motion to Compel L. Londell McMillan to Produce Information Necessary to Facilitate the Appointment of a Personal Representative, at p. 4.) Presumably, the Court determined that the information was not relevant, as it denied the motion to compel.

Now that McMillan is no longer being considered to act as co-personal representative, the records that Baker seeks to obtain from him have no bearing on the current litigation, to which McMillan is not presently a party or representative. They are therefore not subject to discovery, and the Subpoena must be quashed. Minn. R. Civ. P. 26.02(a); *Roberts v. Whitaker*, 178 N.W.2d at 877; accord *Roberts v. Shawnee Mission Ford, Inc.*, 352 F.3d 358, 362 (8th Cir. 2003) (affirming district court’s quashing of subpoena based on determination that information sought was not “relevant or reasonably calculated to lead to the discovery of admissible evidence” as required by Fed. R. Civ. P. 26 (b)(1)).

Presumably, Baker may attempt to argue that the records he seeks from McMillan are somehow now relevant in light of the new allegations that Koppelman improperly loaned Jobu its advance to secure the Tribute Concert and that Bremer should not be discharged. But Baker failed to identify *any* act of McMillan that was allegedly improper, such that it could subject the Estate to liability.

The Supplemental Objections paint Koppelman, Bremer, and McMillan with a broad brush, desperate to create an appearance of impropriety. But although rife with vague

accusations that attempt to lump together McMillan with Koppelman,³ the Supplemental Objections only allege improper acts by Koppelman individually. For example, they allege only that Koppelman loaned Jobu the funds to pay the advance. (Supplemental Objections, at p. 9.) Further, they purport to provide a recorded conversation between Koppelman and Jobu representative Vaughn Millette, in which Koppelman allegedly stated that he told Bremer to refund Jobu's advance, and in which he demanded that Jobu repay him for the loan. (*Id.*, at p. 13.) Nowhere do they allege that McMillan was involved in this conversation or played any role whatsoever in the alleged loan. Indeed, nowhere do the Supplemental Objections make any specific allegation, or provide any evidence, that McMillan was involved in, or even aware of, Koppelman's alleged loan to Jobu. In fact, he was not.⁴

The records that Baker seeks are not relevant to their new, and largely unsupported, allegations regarding Koppelman. Because McMillan was not aware of or involved in the alleged loan, his records will not prove or disprove, or have any bearing on, the alleged acts of Koppelman. Accordingly, the new allegations do not justify requiring McMillan to comply with the Subpoena.

Other than a clear pattern of harassment, it is unclear why the Supplemental Objections reference McMillan at all. The only specific allegation related to McMillan is that he received a

³ On the very first page of the Supplemental Objections, there is an allegation that "Koppelman and L. Londell McMillan . . . financially backed the original tribute promoter." (Supplemental Objections, at p. 1.) Thereafter, the Supplemental Objections only refer to specific actions by Koppelman with respect to this transaction, and provide only evidence of Koppelman's involvement.

⁴ McMillan denies any allegation that he was aware of Koppelman's alleged loan to Jobu or alleged promotion of Koppelman's self-interest, and he further denies any other allegation of wrongdoing in connection with the Tribute Concert (for which McMillan was the chief reason that artists were secured, the venue was changed, and the Tribute Concert was successful) or with the Estate.

commission for the Tribute Concert. But there is no allegation that payment of the commission for McMillan's work was improper. In fact, it was disclosed that McMillan would receive a commission.

The virtually unlimited scope of documents sought from McMillan in the Subpoena has no bearing on the merits in the Estate litigation, and they are therefore outside the scope of discovery permitted under the Minnesota Rules of Civil Procedure. Minn. R. Civ. P. 26.02(a); *Roberts v. Whitaker*, 178 N.W.2d at 877; *Roberts v. Shawnee Mission Ford, Inc.*, 352 F.3d at 362. Accordingly, the Subpoena should be quashed.

II. THE SUBPOENA IMPOSES AN UNDUE BURDEN AND EXPENSE UPON MCMILLAN.

Under Minnesota Rule of Civil Procedure 45.03(a), a party or attorney issuing a subpoena is required to take reasonable steps to avoid imposing undue burden or expense upon the recipient of the subpoena. Failure to do so may be enforced by imposition of an appropriate sanction, including fees. Minn. R. Civ. P. 45.03(a). Further, a non-party compelled to produce documents is entitled to reasonable compensation in doing so, and the party serving the subpoena "shall make arrangements for reasonable compensation . . . prior to the time of commanded production." Minn. R. Civ. P. 45.02(d). If the serving party fails to do so, the subpoenaed party may object or move to quash. *Id.* Minnesota Rule of Civil Procedure 45.03(c)(1)(D) requires the Court to quash or modify a subpoena that subjects a person to "undue burden."

The Subpoena is overly broad, in that it is not limited in time or subject matter. It simply requests that McMillan produce "all documents," without regard to whether those documents relate to any of the specific issues that will be decided in this litigation. (Subpoena, Ex. B., Nos. 1-5.) In responding to the Subpoena as written, McMillan would be forced to go through documents conceivable dating decades, through years of email communications, and through any

number of personal and business records, which would require a great deal of time, effort, and expense. And based on the wording of the Subpoena, he would be forced to produce documents have nothing to do with any of the non-excluded heirs in this litigation. (*See id.*, No. 4.) This is the type of unfair and undue burden the Minnesota Rules of Civil Procedure are designed to prevent.⁵ Further, as noted by SNJ, many communications between McMillan and SNJ contain confidential, personal, and/or privileged information, which is yet another ground to quash the Subpoena. *See* Minn. R. Civ. P. 45.03(c)(C). Finally, in violation of Rule 45.02(d), Baker failed to make any arrangement for compensation of McMillan – a lawyer and entertainment and financial professional – in responding to the oppressive subpoena. *See* Minn. R. Civ. P. 45.02(d) (stating that quashing a subpoena is an appropriate remedy where the serving party fails to pay reasonable compensation). This factor also compels an order quashing the Subpoena.

The undue burden imposed by the Subpoena is exacerbated under the circumstances of this case. As noted above, the documents sought are irrelevant and have no bearing on the Estate or this litigation. Also, this Court has already expressly denied Baker's request for the production of the documents he now attempts to request in the Subpoena. (*See* January 18, 2017 Order.) Baker has neither sought leave to bring a motion to reconsider the Court's Order nor sought to amend it. At best, the Subpoena is an underhanded attempt to circumvent the January 18, 2017 Order, and at worst it disregards it all together. Baker is therefore in violation of the January 18, 2017 Order, which is yet another basis for quashing the Subpoena. (*See* Minn. R. Civ. P. 37.02).

⁵ This burden is just one more example of Baker's unfair and oppressive conduct against McMillan, in addition to Baker's first and unsuccessful motion to compel and his unsupported attempt to imply wrongdoing by McMillan in the Supplemental Objections.

CONCLUSION

For all of the above reasons, L. Londell McMillan respectfully requests that this Court issue an Order quashing the Subpoena.

BASSFORD REMELE
A Professional Association

Dated: April 26, 2017

By: /s/ Alan I. Silver _____

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