
STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re: Estate of Prince Rogers Nelson,
Decedent.

Court File No. 10-PR-16-46

**PETITION FOR CLAIM
ARISING AFTER DEATH
PURSUANT TO MINNESOTA
STATUTE 524.3-803(b) AND/OR
TO SUPPLEMENT EXISTING CLAIM
TO BE FILED IN REDACTED FORM**

Project Panther, Ltd. ("Project Panther"), Aspiro AB ("Aspiro") and WiMP Music AS ("WiMP," and collectively with Project Panther and Aspiro, the "Petitioners" or "TIDAL") bring this Petition for Claim Arising After Death Pursuant to Minnesota Statute 524.3-803(b) and/or To Supplement Existing Claim (the "Instant Petition") against Comerica Bank & Trust, N.A. ("Comerica"), in its capacity as Personal Representative (the "Personal Representative") for the estate of Prince Rogers Nelson ("Mr. Nelson"), in order to assert a claim for conduct occurring after Mr. Nelson's death as well as to supplement Petitioners' existing claims against the estate that were the subject of the November 11, 2016 Petition for Allowance of Claim and Additional Relief filed in this Court (the "November 2016 Petition") and this Court's January 31, 2017 Findings of Fact, Conclusions of Law, Order & Memorandum on the November 2016 Petition (the "Petition Order"). As and for their Instant Petition, upon knowledge of their own acts and upon information and belief as to all other matters, Petitioners allege as follows:

SUMMARY OF ALLEGATIONS

1. Petitioners bring the Instant Petition in order to seek redress for a violation of valuable and unique rights that Prince Rogers Nelson bestowed upon Petitioners prior to his untimely and unfortunate passing.

2. As a result of Mr. Nelson's well-known and professed affinity for the artist-centric business model of the TIDAL streaming service, Mr. Nelson entered into an Artist Equity Term Sheet, dated July 19, 2015, whereby in exchange for granting certain rights to TIDAL, Mr. Nelson became an equity owner of the company (the "Equity Term Sheet"). In the Equity Term Sheet Mr. Nelson agreed that Petitioners could offer the Musical Assets¹ for digital streaming, inclusive of Mr. Nelson's next two new albums, on TIDAL, and that TIDAL would be the only service that could advertise and promote the streaming of Mr. Nelson's music by using his name and likeness, for a period of five years. Mr. Nelson further represented and warranted that he had the power and authority to grant TIDAL the aforementioned rights. Despite having ample notice of Petitioners' rights – as well as a finding by this Court that Petitioners have adequately stated a claim against Mr. Nelson's estate (the "Estate") – the Personal Representative has ignored Petitioners' important and bargained-for rights.

3. Indeed, rather than engage with Petitioners in a manner that would have preserved the parties' productive business relationship and Mr. Nelson's artistic vision, the Personal Representative's predecessor unsuccessfully sought to dismiss Petitioners' claim against the Estate on what amounted to contrived procedural grounds. For its part, subsequent to its appointment, the Personal Representative refused to provide even basic information as to whether Petitioners' rights were being violated in the face of widespread media reports indicating that the Musical Assets would be broadly available on other digital streaming services in connection with the recent Grammy Awards ceremony. The Personal Representative's silence appears to have been with self-interested reason.

4. On February 12, 2017, the Musical Assets became available for digital streaming across a variety of platforms that are in direct competition with the TIDAL service. In

¹ Terms not otherwise defined in this section shall have the meaning ascribed to them below.

connection with these offerings of the Musical Assets for digital streaming, TIDAL's competitors engaged in prevalent advertising, social media and other promotions which run afoul of Petitioners' exclusive rights to utilize Mr. Nelson's name and likeness in the promotion of music streaming services. Effectively, there has not been any effort by the Personal Representative to enforce and preserve the name and likeness – as well as potentially other – rights given to Petitioners by Mr. Nelson. Accordingly, Petitioners now bring the Instant Petition to recover damages for what amounts to a blatant disregard of Petitioners' contractual entitlements.

THE PARTIES

5. Project Panther is a Cayman Islands Limited Company that is the indirect parent company of the TIDAL music streaming service.

6. Aspiro is a Swedish corporation based in Malmö, Sweden that does business under the name "TIDAL."

7. WiMP is a Norwegian company based in Oslo, Norway.

8. Upon information and belief, Comerica is, and at all times relevant hereto was, a wholly owned subsidiary of Comerica Incorporated and a federally chartered bank and corporation with its principal place of business at 101 North Main Street, Ann Arbor, MI 48104. Comerica was appointed as Personal Representative of Mr. Nelson's Estate as of February 1, 2017 and, in that capacity, stands in the shoes of Mr. Nelson for purposes of Petitioners' claims stated herein.

9. Non-party Bremer Trust N.A. served as the Special Administrator for the Estate from April 27, 2016 until January 31, 2017 (the "Former Special Administrator").

10. Pursuant to a Common Interest and Information Sharing Agreement between the Former Special Administrator and the Personal Representative, as approved and adopted by this

Court, the Personal Representative has access to all Estate information maintained by the Former Special Administrator before the Personal Representative took over responsibility for the Estate, inclusive of all privileged or confidential information possessed by the Former Special Administrator during its term.

JURISDICTION AND CHOICE OF LAW

11. In connection with its appointment as fiduciary for the Estate, the Personal Representative has consented to “submit[] to the jurisdiction of th[is] Court in any proceeding relating to th[is] [probate] matter that may be instituted by any person interested in th[e] Estate.” Further, pursuant to Minnesota Statute 524.3-703, the Personal Representative “has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.”

12. This Court also has *in rem* jurisdiction over the *res* that is the subject of the Instant Petition – *i.e.*, the Musical Assets and the Equity Term Sheet to which the Mr. Nelson is a party.

13. The Equity Term Sheet provides that it “shall be governed by, and construed in accordance with, the laws of the State of New York.”

BACKGROUND AND FACTS

A. The Parties’ Extensive and Unique Business Relationship

14. Petitioners are parties to agreements with Mr. Nelson and entities owned or controlled by him prior to his death. Petitioners’ interest in certain musical assets (the “Musical Assets”), to which Petitioners possess contractual and other rights, implicates the Estate which holds and controls the Musical Assets following Mr. Nelson’s death. More specifically, Petitioners were granted certain digital streaming rights in connection with the Musical Assets by virtue of numerous written and oral agreements and a substantial course of dealing between Mr. Nelson

and/or his entities, including NPG Records, Inc. (“NPG Records”) and NPG Music Publishing, LLC (“NPG Publishing,” and together with NPG Records, the “NPG Entities,” which entities also are under the control of the Personal Representative), and Petitioners.

15. There were two principal written agreements through which Mr. Nelson granted Petitioners and their relevant licensors, licensees, assignors and assignees rights to the Musical Assets – (i) the Equity Term Sheet; and (ii) a Letter of Intent, dated August 1, 2015, as amended on August 28, 2015, by and between Aspiro as assignee of WiMP, on the one hand, and the NPG Entities, on the other hand (the “Distribution Agreement”). The Equity Term Sheet is the agreement by which Mr. Nelson allowed his music to be offered on the TIDAL streaming service and, in exchange, became an equity owner of TIDAL.

16. Pursuant to the Equity Term Sheet, Mr. Nelson granted to TIDAL [REDACTED]

[REDACTED]

[REDACTED] Mr. Nelson also agreed to

[REDACTED]

[REDACTED]

[REDACTED]

17. Shortly after the parties signed the Equity Term Sheet, Mr. Nelson delivered one new and previously unreleased album for streaming on the TIDAL service (*i.e.* “Hit n Run Phases I and II”), but did not deliver a second prior to his death. Pursuant to the Equity Term Sheet,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. In the Equity Term Sheet, Mr. Nelson also agreed that [REDACTED]

[REDACTED]

19. The Equity Term Sheet further [REDACTED]

[REDACTED]

20. Additionally, in the Equity Term Sheet Mr. Nelson represented and warranted that:

[REDACTED]

21. Pursuant to these rights granted to Petitioners – as well as Mr. Nelson’s well-documented and often-professed affinity for the business model of the TIDAL streaming service – the Musical Assets were, until recently, only available for digital streaming on TIDAL.

B. The Probate Action

22. On November 11, 2016, the November 2016 Petition was filed with this Court by several entities and affiliated parties seeking Allowance of Claim and Additional Relief concerning, among other things, the Musical Assets. The November 2016 Petition outlined the nature of Petitioners' rights to the Musical Assets.

23. The November 2016 Petition highlighted, among other things, the Equity Term Sheet, and centered on the same rights of which Petitioners notified the Former Special Administrator almost six months before filing the November 2016 Petition. More specifically, Petitioners wrote to the Former Special Administrator on May 27, 2016 (the "May 27th Letter") and advised it, among other things, that, prior to his death, Mr. Nelson and the NPG Entities granted to TIDAL streaming rights to the Musical Assets.

24. Thereafter, Petitioners provided a follow up letter to counsel for the Former Special Administrator on October 17, 2016, further advising of the rights held by Petitioners and, among other things, that the Distribution Agreement remained in full force and effect. Petitioners Aspiro and WiMP filed a supplemental statement of claim with the Probate Court on October 21, 2016, and subsequently filed their Statement of Unsecured Claim with this Court on November 7, 2016.

25. Following the Former Special Administrator's Objections to the November 2016 Petition, a hearing before this Court on December 8, 2016, and post-hearing briefing submitted by Petitioners and the Former Special Administrator on January 6, 2017, on January 31, 2017, the Court entered the Petition Order. The Petition Order largely granted the relief sought in the November 2016 Petition, finding that the May 27th Letter was sufficient to put the Former Special Administrator on notice of Petitioners' claimed contractual relationship with Mr. Nelson

and the NPG Entities and, therefore, finding that Petitioners had adequately stated and timely submitted a claim against the Estate.

26. The Petition Order further found that “the record indicates Decedent (or the NPG Entities) granted [Petitioners] some rights with respect to exploitation of some of the Estate’s musical assets.” (emphasis in original). Moreover, this Court entered multiple findings of fact, including that Petitioners have paid all necessary installment advances due to Mr. Nelson or his entities, totaling \$3 million. Specifically, Petitioners paid four advances of \$750,000 each on August 28, 2015; November 13, 2015; April 11, 2016 and November 10, 2016, respectively (the “Artist Advance”). Under the Equity Term Sheet, the Artist Advance was fully recoupable against royalties payable to Mr. Nelson in connection with the streaming of the Musical Assets on TIDAL. To date, the Artist Advance remains unrecouped.

27. Accordingly, the Former Special Administrator, and by extension, the Personal Representative, has been on notice of Petitioners’ interest in the Estate since at least May 27, 2016 and of several core terms of the Equity Term Sheet – including the Exclusivity Restriction – since the date the November 2016 Petition was filed, namely November 11, 2016. While the Petition Order denied Petitioners’ request for Additional Relief – namely that (i) Petitioners be provided with any and all information concerning the distribution or exploitation of the Musical Assets and (ii) that Petitioners be given advanced notice of any agreements or business dealings that could affect Petitioners’ claim and interest in the Estate – the Petition Order made clear that the merits of the Petition would be decided by, at a minimum, this Court (or the court in the parties’ federal copyright lawsuit, as discussed below) at a later time after the benefit of discovery.

28. Upon executing a Confidentiality Stipulation and Protective Order with the Former Special Administrator and, later, the Personal Representative, on January 26, 2017 Petitioners produced to both the Former Special Administrator and the Personal Representative nearly 3,000 documents consisting of 10,313 pages, in a further attempt to demonstrate to the Personal Representative Petitioners' rights to the Musical Assets, including those pursuant to the Equity Term Sheet.

29. Prior to the filing of the November 2016 Petition, the Former Special Administrator caused the Estate to enter in an agreement with Universal Music Publishing Group ("UMPG") whereby UMPG would act as the "exclusive worldwide publishing administrator for Mr. Nelson's entire song catalog." This deal was announced by UMPG on November 2, 2016. Thereafter, on February 9, 2017, Universal Music Group ("UMG") publicly announced that NPG Records and UMG had entered into an agreement pursuant to which UMG was granted "exclusive licensing rights" to Mr. Nelson's NPG Records albums and unreleased works.

C. The Personal Representative's Stonewalling and Attendant Breaches of the Equity Term Sheet

30. Despite the rights granted to Petitioners in the Equity Term Sheet and otherwise, the findings of the Petition Order and the Personal Representative's awareness of the Exclusivity Restriction, Petitioners became concerned due to a series of media reports suggesting that the Personal Representative, or its predecessor the Former Special Administrator, had entered into or were proceeding with business arrangements with digital streaming services other than TIDAL in a manner that could impair Petitioners' rights.

31. By way of example, on January 30, 2017, Billboard.com published an article entitled "Purple Spotify Billboards Suggest that Prince's Music Will Be Available on Major Streaming Service by Grammy Night" (the "Billboard Article"). The Billboard Article discusses a series of

purple-colored advertisements bearing the Spotify logo which appeared beginning on the date of the article across New York City in some of its most high-traffic areas, such as Times Square and the Union Square subway station. The article pointed to the advertisements as evidence that the Musical Assets would soon be available for digital streaming on Spotify, and, while noting that the Estate had declined comment, quoted “sources close to the situation” as confirming that “both Spotify and Apple Music are on board to launch at least some of Prince’s Warner [Music] catalog in time for the Grammys.”

32. On January 31, 2017, the *Minnesota Star Tribune* ran a similar article entitled “Prince’s Music May Soon Be Unlocked on Spotify and Other Streaming Sites.”

33. Likewise, on January 30, 2017, the *New York Post* reported, in an article entitled “Prince’s Top Songs to Hit Streaming Services Night of Grammys,” that according to a “music insider” certain of the Musical Assets would be available for digital streaming on Apple Music, Spotify, Pandora Google Play and Deezer.

34. Collectively, these and other widely-distributed media reports and advertisements suggested that the Estate had consummated (or would soon consummate) agreements with digital streaming outlets other than TIDAL, or with other parties, which permitted the distribution of the Musical Assets in which Petitioners have an interest, with such exploitation set to commence on or about February 12, 2017 in connection with the Grammy Awards ceremony at which Mr. Nelson was honored with a star-studded and rightful tribute.

35. Thus, upon reading the numerous published reports, by e-mail dated January 31, 2017, counsel for Petitioners wrote to the counsel for the Former Special Administrator and counsel for the Personal Representative requesting that they [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] which is prohibited by the Artist Equity Term Sheet dated July 19, 2015.” Petitioners’ counsel did not receive a response to this e-mail.

36. Petitioners followed up with a telephone call and a letter on February 1, 2017 to counsel for the Personal Representative, requesting confirmation that the Estate had not entered into any agreements with music streaming services or undertaken any action in contravention of the Equity Term Sheet and, specifically, the Exclusivity Restriction. By letter dated February 2, 2017, counsel for the Personal Representative refused to provide Petitioners with the requested confirmation, citing the Court’s denial of the request for Additional Relief. Counsel for Petitioners followed up with an email the same day, noting that Petitioners were simply seeking to confirm whether the Estate had or was about to breach any agreement with Petitioners. Counsel for the Personal Representative again stonewalled Petitioners, referring back to their February 2, 2017 letter.

37. This refusal to provide any meaningful information concerning rights to which this Court already had found that Petitioners could pursue and seek discovery on was consistent with the complete lack of transparency with which the Former Special Administrator conducted itself in the face of similar and repeated requests by Petitioners for basic information, and was in spite of the Personal Representative’s fiduciary obligations to the Estate and its creditors.

38. In reliance on these and other media reports, as well as the Personal Representative’s continued unwillingness to provide Petitioners with any information regarding transactions that may affect Petitioners’ rights, Petitioners filed a Verified Petition for a Temporary Restraining Order, Injunctive Relief, Mandatory Disclosure and Emergency Hearing in this Court (the

“Verified Petition”) on February 6, 2017, seeking emergency injunctive relief to prevent the Personal Representative from interfering with Petitioners’ rights in the Musical Assets.

39. This Court conducted a telephonic hearing on the afternoon of February 8, 2017, [REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

41. Ultimately, however, the precise concerns expressed by Petitioners in the Verified Petition came to pass almost immediately as competitors of TIDAL announced the availability of the Musical Assets for digital streaming in a manner contrary to the Exclusivity Restriction in the Equity Term Sheet

42. Specifically, at 12:22 p.m. EST on February 12, 2017, a UMG Twitter post stated that “[t]he unparalleled catalog of songs by *Prince* are now accessible on streaming services worldwide” (emphasis added).

43. Spotify also posted to its official Twitter account a statement reading “[s]how some respect. Get freaky. This is: **Prince**” which promotion included an image of Mr. Nelson set over a purple backdrop (emphasis added). Spotify repeated this advertisement on multiple of its Instagram accounts, including for the verified Instagram handles “Spotify”, “Spotify Mexico”, and Spotify Canada”. Spotify also has launched a massive marketing campaign where Spotify advertisements bearing Mr. Nelson’s image have appeared across the New York City subway system as well as on billboards in at least Los Angeles, California and London, England.

44. The Twitter account for Pandora likewise posted a promotion reading: “Let’s go crazy! **Prince** is now on Pandora. Start listening...” and contained an image of Mr. Nelson (emphasis added). Pandora’s Instagram account posted this same advertisement.

45. The Twitter account for Apple Music ran a promotion bearing the word “Prince” along with the “love symbol” to which Mr. Nelson changed his stage name during his lifetime. Apple Music ran a similar advertisement on Instagram which also read “**Prince**. Now streaming on #AppleMusic” (emphasis added).

46. For its part, iHeartRadio posted to its Twitter account an advertisement reading “Welcome to the wonderful world of **Prince**” which also contained an image of Mr. Nelson with an overlay reading “**Prince** streaming on demand” (emphasis added). iHeartRadio has gone on to engage in a series of social media promotion bearing Mr. Nelson’s name and likeness.

47. Similarly, the official Twitter account for Amazon Music has run multiple promotional posts including a post reading “**Prince** forever” (emphasis added) which promotion also contains an image of Mr. Nelson.

48. Upon information and belief, the foregoing activity of digital streaming services other than TIDAL (the “Improper Digital Streaming Advertisements”) are just a sampling of the

promotions, advertisements and marketing efforts that are in violation of the Exclusivity Restriction. Collectively, the referenced Improper Digital Streaming Advertisements – all of which are attached hereto as composite Exhibit A – make clear that the Personal Representative has not honored its obligations under the Equity Term Sheet or, in the alternative, is liable to Petitioners for breach of express representations and warranties contained in such agreement.

49. As set forth herein, any agreement by the Estate providing a digital streaming service with the right to use Mr. Nelson’s name or likeness for promotional purposes – or, likewise, the Personal Representative’s failure to enforce the Exclusivity Restriction – constitutes a violation of at least the Equity Term Sheet.

50. Further, to the extent the Estate lacks the power to enforce the Exclusivity Restriction, [REDACTED]

[REDACTED]

51. In either scenario, Petitioners have been stripped of the benefit of the bargain they struck with Mr. Nelson – namely, to not have his name and/or likeness used to “promote, advertise or market” a direct competitor of TIDAL pursuant to the terms of the Equity Term Sheet.

CLAIMS FOR RELIEF AGAINST THE PERSONAL REPRESENTATIVE

COUNT ONE BREACH OF CONTRACT

52. Petitioners repeat and reallege paragraphs 1 through 51, inclusive, hereof and incorporate said paragraphs herein by reference as though set forth at length.

53. Petitioners and Mr. Nelson and his affiliated entities entered into valid and binding contracts on at least July 19, 2015 and August 1, 2015, namely the Equity Term Sheet and the

Distribution Agreement. Through these agreements, Petitioners were unequivocally and unambiguously granted the exclusive right to use Mr. Nelson's name and/or likeness to "promote, advertise, or market" TIDAL in connection with digitally streaming the Musical Assets, to the exclusion of any other digital streaming service having the ability to market and advertise Mr. Nelson's name and likeness. Mr. Nelson also [REDACTED]

54. Petitioners have fully performed their obligations under these agreements, which were supported by valuable consideration. Specifically, Petitioners have, among other things, paid the required artist advances due under the agreements, totaling \$3 million, through installments paid on August 28, 2015; November 13, 2015; April 11, 2016 and November 11, 2016, respectively.

55. Despite Petitioners' performance of their obligations under the agreements, the Personal Representative breached at least the Equity Term Sheet by entering into an agreement that contravenes – or failing to enforce – Mr. Nelson's promise that digital streaming services other than TIDAL could not use his name and likeness in connection with advertising, marketing and promotion of those services.

56. Alternatively, to the extent the Personal Representative does not have the ability to enforce or honor the Exclusivity Restriction, [REDACTED]

57. As a direct and proximate result of the Personal Representative's breach of its obligations under at least the Equity Term Sheet, Petitioners have suffered damages, which include, but are not limited to, a denial of the benefits of the parties' bargain, lost goodwill and loss of substantial profit.

58. As a direct and proximate result of the foregoing breaches of contract, Petitioners have been damaged in an amount to be determined at trial, but believed to be in the millions of dollars.

PRAYER FOR RELIEF

Based on the facts set forth above, Petitioners respectfully request that the Court enter judgment in favor of Petitioners and against the Personal Representative, as follows:

1. Awarding compensatory damages in an amount to be determined at trial, but believed to be in the millions of dollars;
2. Awarding all interest permitted by law; and
3. Awarding such other order and further relief as the Court deems just, proper and equitable.

Dated: February 16, 2017

By: 
Lior Tibon

PROJECT PANTHER LTD.

ASPIRO AB (for itself and on
behalf of WiMP Music AS)

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