

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,

**DECLARATION OF JOSEPH J.
CASSIOPPI**

Decedent.

I, Joseph J. Cassioppi, declare and state as follows:

1. I am a shareholder at Fredrikson & Byron, P.A. (“Fredrikson”), counsel for Comerica Bank & Trust, N.A. in its capacity as personal representative (the “Personal Representative” of the Estate (the “Estate”) of Prince Rogers Nelson (the “Decedent”).

2. Attached hereto as Exhibit A is a true and correct copy of a witness statement executed by Luca Trevisan in connection with the Personal Representative’s lawsuit against Warner Chappell Music Italiana S.R.L. (“Warner Chappell”) in the United Kingdom.

3. Attached hereto as Exhibit B is a true and correct copy of a witness statement executed by Steven Mark Tregear in connection with the Personal Representative’s lawsuit against Warner Chappell in the United Kingdom.

4. Fredrikson, on behalf of the Personal Representative, sent a settlement proposal to the U.S. counsel for Warner Chappell on July 9, 2018.

5. The Personal Representative has kept the Heir Group regularly informed regarding the status of the disputes with Warner Chappell and related parties, including as part of its regular litigation updates at Heir Meetings. That included updates at the Heir Meetings on November 17,

2020 and January 19, 2020. Attached hereto as Exhibit C is a true and correct copy of an email sent by the Personal Representative to the Heir Group on January 19, 2021, providing an update on the status of the litigation. Attached hereto as Exhibit D is a true and correct copy of an email sent by the Personal Representative to the Heir Group on March 22, 2021 related to a memorandum of understanding.

6. Sharon, John, and Norrine Nelson, L. Londell McMillan, and Charles Spicer (the “Objectors”) challenge the legal fees charged by Fredrikson in connection with a meeting convened by Justice Gilbert on April 15, 2021. Although the agenda for the meeting was designated a confidential mediation communication, it required counsel for the Personal Representative to present on seven topics. Three days before the meeting, Norrine Nelson asked that the Personal Representative and counsel address two additional topics. In order to present on and discuss the nine topics, Mark Greiner, Karen Sandler Steinert, and I divided-up the subjects and we all attended the meeting.

7. Based on my experience litigating trust and estate matters, it is the standard practice in most probate matters in Minnesota to include attorneys’ and personal representative’s fees as part of an annual or final accounting.

8. Attached hereto as Exhibit E is a true and correct copy of a consolidated financial statement for the Estate and its controlled entities for the time period of February 1, 2020 through January 31, 2021.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: August 11, 2021

s/ Joseph J. Cassioppi
Joseph J. Cassioppi

TO DECLARATION OF JOSEPH CASSIOPPI

Luca Trevisan
FIRST WITNESS STATEMENT
FILED ON BEHALF OF THE CLAIMANTS
 LT1
 28 August 2020
 QB-2020-001827

IN THE HIGH COURT OF JUSTICE
 QUEEN'S BENCH DIVISION

B E T W E E N:

- (1) COMERICA BANK AND TRUST, N.A.
 (as personal representative of the Estate of Prince Rogers Nelson)
- (2) NPG MUSIC PUBLISHING LLC
- (3) NPG RECORDS INC.
- (4) UNIVERSAL MUSIC CORP.
- (5) SONGS OF UNIVERSAL, INC.
- (6) UNIVERSAL MUSIC PUBLISHING INTERNATIONAL LIMITED.
- (7) UNIVERSAL MUSIC PUBLISHING LIMITED
- (8) SONY MUSIC ENTERTAINMENT

Claimants

- and -

WARNER CHAPPELL MUSIC ITALIANA S.R.L.

Defendant

FIRST WITNESS STATEMENT OF LUCA TREVISAN

I, Luca Trevisan, of via Brera 6, 20121 Milan, Italy will say as follows:

1. I am a lawyer enrolled in the bar of Milan since June 1982. I am also admitted to practice before the Italian Supreme Court of Cassation and before all high courts of Italy.
2. In 1993, I founded the law firm Trevisan & Cuonzo, specialised in intellectual property litigation. In my career, I have handled major landmark cases and managed multi-jurisdictional intellectual property disputes. I am regularly called by universities to host training courses on intellectual property and commercial law. I am a frequent speaker at conferences and regularly contribute to international legal journals. I am a member of AIPPI (the International Association for the

TO DECLARATION OF JOSEPH CASSIOPPI

Protection of Intellectual Property), IBA (the International Bar Association), GRUR (the German Association for the Protection of Intellectual Property) and INTA (the International Trademark Association). I speak fluent English, German and French as well as Italian.

3. In 2016, I was instructed to represent the Estate of Prince Rogers Nelson in referral proceedings instigated by Warner Chapell Music Italiana S.r.l. (“Warner Italy”, the Defendant in these English proceedings) and by Mr Bruno Bergonzi and Mr Michele Vicino before the Court of Appeal of Rome. The Estate of Prince Rogers Nelson confirmed my appointment and I have represented the Estate ever since.
4. This witness statement has been prepared in writing in English with the assistance of the Estate’s English lawyers, Russells - following email and telephone communication with Russells.
5. I have been asked to give this witness statement in order to respond to those filed by Mr Matthew Blower and (in particular) Mr Giorgio Mondini, both dated 3 July 2020, in these proceedings. In particular, I respond to the suggestion made by both of those witnesses that the Italian proceedings involved a claim for “*worldwide copyright infringement*” and that those proceedings were (or are) therefore “*concerned with the infringement of non-Italian (including United Kingdom) copyright*”; so that “*if there were any particular defences which the Italian Defendants might have had to the claim for infringement of United Kingdom copyright, they could have advanced those in the Italian proceedings*” (see in particular paragraphs 9, 43, 52.1-52.2 and 54 of Mr Blower’s witness statement, and paragraphs 10 and 28-29 of Mr Mondini’s witness statement).
6. This suggestion is incorrect. As I explain below, (i) the claim in the Italian proceedings has only ever been advanced on the basis of Italian copyright law (see Section IV below), and (ii) that is moreover the only body of copyright law with which the Italian proceedings could *ever* have been concerned, since Italian jurisdiction was established on the basis of applying the criterion *forum commissi delicti* rather than the domicile of any of the defendants (see Sections III and V below). As the lawyer with conduct of the Italian proceedings on behalf of the defendants, I can confirm that I have never understood a claim to be being advanced under UK copyright law or any other foreign copyright law: only under Italian copyright law. I am therefore very surprised to see this suggestion advanced in the witness statements of Mr Blower and Mr Mondini. It is correct that the plaintiffs in Italy have advanced claims for worldwide *relief*, but the cause of action said to support such relief has only ever been Italian copyright law.

7. There have been five key judgments in the Italian proceedings to date, which I understand have already been exhibited by other witnesses (both in the original Italian and in English translation):
- a. the first instance judgment no. 3330/2003 issued by the Court of Rome on 30 January 2003 (the “2003 First Instance Judgment”, also referred to by Mr Blower as the Initial Judgment) –pp. 4/14 of LT1 (English translation starting at p. 10);
 - b. the (partial) appeal judgment no. 548/2008 issued by the Court of Appeal of Rome on 11 February 2008 (the “2008 Court of Appeal Merits Judgment”, also referred to by Mr Blower as Judgment A) – pp. 15/34 of LT1 (English translation starting at p. 27);
 - c. the appeal judgment no. 6047/2012 issued by the Court of Appeal of Rome on 3 December 2012 (the “2012 Court of Appeal Quantification Judgment”, also referred to by Mr Blower as Judgment B) – pp. 35/69 of LT1 (English translation starting at p. 55);
 - d. the judgment no. 11225/2015 issued by the Supreme Court of Cassation on 29 May 2015 (the “2015 Supreme Court Judgment”, also referred to by Mr Blower as Judgment C) – pp. 70/154 of LT1 (English translation starting at p. 127); and
 - e. the referral judgment no. 4484/2018 issued by the Court of Appeal of Rome on 3 July 2018 (the “2018 Court of Appeal Referral Judgment”, also referred to by Mr Blower as Judgment D) - –pp. 155/169 of LT1 (English translation starting at p. 162).
8. I exhibit the main pleadings and briefs filed within the Italian proceedings, and particularly the pleadings and counter-pleadings filed in the framework of the proceedings connected to the 2018 Court of Appeal Referral Judgment, including the appeal filed by the Estate of Prince Rogers Nelson against that judgment before the Supreme Court of Cassation, at pp. 170/277 of LT1.
1. **THE ITALIAN PROCEEDINGS**
9. The proceedings which have been ongoing in Italy since 1995 led to the five judgments above. As matters stand under those judgments:
- a. the song “The Most Beautiful Girl in the World” (the “Prince Song”) by the artist known as Prince (full name Prince Rogers Nelson) constitutes, under the applicable Italian law and to the extent that will be later specified in paragraph 50.b below, plagiarism of the song “Takin’ Me to Paradise” (the “Italian Song”) by Mr Bruno Bergonzi and Mr Michele

TO DECLARATION OF JOSEPH CASSIOPPI

Vicino published by Edizioni Chapell S.r.l. (then Warner Chapell Music Italiana S.r.l., and hereinafter referred to as Warner Italy);

- b. the Estate of Prince Rogers Nelson has been ordered to refrain from any further use of the Prince Song;
- c. the Estate of Prince Rogers Nelson has been ordered to pay Warner Italy, as compensation for damages in the total amount of Euro 956,608 plus monetary revaluation and interest; and
- d. the Estate of Prince Rogers Nelson has been ordered to pay Bergonzi and Vicino the total amount of Euro 40,000 each, plus interest, as compensation for moral damages.

A. Background: timeline of the Italian procedure

10. The timeline of the proceedings can be summarised as follows:

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|------------------|---|
| 10 July 1995 | Writ of summons filed by Bergonzi, Vicino and Warner Italy |
| 30 January 2003 | 2003 First Instance Judgment issued by the Court of Rome – claim rejected in full |
| 12 March 2004 | Appeal against the 2003 First Instance Judgment filed by Warner Italy before the Court of Appeal of Rome (Court of Appeal Docket no. 2848/2004) |
| 15 March 2004 | Appeal against the 2003 First Instance Judgment filed by Bergonzi and Vicino before the Court of Appeal of Rome (Court of Appeal Docket no. 2906/2004) |
| 16 June 2004 | The two appeals are joined |
| 11 February 2008 | 2008 Court of Appeal Merits Judgment – decision on the merits of the appeal reversing the 2003 First Instance Judgment and issuing an injunction is issued prohibiting exploitation of the Prince Song in Italy; proceedings continue for the quantification of damages |

TO DECLARATION OF JOSEPH CASSIOPPI

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| 16 March 2009 | Appeal against the 2008 Court of Appeal Merits Judgment filed by Warner Italy before the Supreme Court of Cassation (Supreme Court Docket no. 7388/09) |
| 23 March 2009 | Appeal against the 2008 Court of Appeal Merits Judgment filed by Prince before the Supreme Court of Cassation (Supreme Court Docket no. 7886/09) |
| 26 March 2009 | Appeal against the 2008 Court of Appeal Merits Judgment filed by Bergonzi and Vicino before the Supreme Court of Cassation (Supreme Court Docket no. 7699/09) |
| 3 December 2012 | 2012 Court of Appeal Quantification Judgment – decision on the quantification of the damages for copyright infringement |
| 30 May 2013 | Appeal against the 2012 Court of Appeal Quantification Judgment filed before the Supreme Court of Cassation by Prince (Supreme Court Docket no. 14400/2013) |
| All appeals before the Supreme Court are joined together ex officio | |
| 29 May 2015 | 2015 Supreme Court Judgment – upholding the 2012 Court of Appeal Quantification Judgment, and reforming the 2008 Court of Appeal Merits Judgment in relation to the enforceability of the injunction and the moral damages suffered by Bergonzi and Vicino |
| 8 July 2015 | Referral proceedings instigated by Warner Italy (Court Docket no. 5363/2015) in order to determine the merits of the matter in line with the ruling of the Supreme Court of Cassation, including as to the enforceability of the injunction |
| 25 September 2015 | Referral proceedings instigated by Bergonzi and Vicino (Court Docket no. 5518/2015) in order to determine the merits of the matter in line with the ruling of the Supreme Court of Cassation, including as to the ascertainment and |

TO DECLARATION OF JOSEPH CASSIOPPI

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| | quantification of the possible moral damages allegedly suffered by Bergonzi and Vicino |
| 21 April 2016 | Prince passes away – all proceedings are stopped <i>ex officio</i> |
| 18 July 2016 | Bergonzi and Vicino resume referral proceedings against the Estate of Prince Rogers Nelson |
| 6 September 2016 | Warner Italy resumes referral proceedings against the Estate of Prince Rogers Nelson |
| 19 April 2017 | Referral proceedings are joined |
| 3 July 2018 | 2018 Court of Appeal Referral Judgment) – repeating the statements of the Supreme Court of Cassation in relation to the injunction, and ascertaining and quantifying the moral damages in the amount of Euro 40,000 each |
| 9 October 2018 | Appeal against the 2018 Court of Appeal Referral Judgment filed before the Supreme Court of Cassation by the Estate of Prince Rogers Nelson (Court Docket no. 29619/2018 – proceedings <u>still</u> pending) |

11. The proceedings have been ongoing for more than 25 years now and have not yet concluded. One of the primary reasons for the excessive length of the procedure in this case was the chronic slowness which affected the Court of Rome at the relevant time. I wish to underline that, in my recent experience, the normal course of action in copyright law is to have a final decision (after all appeals have been exhausted) in no more than 10-12 years in total.
12. Pursuant to Italian Law no. 89 of 24 March 2001 (Law 89/01) concerning the reasonable duration of proceedings, the normal duration of proceedings should be no longer than three years in first instance, two years in appeal proceedings and one year in the proceedings before the Supreme Court plus another year in the referral proceedings (i.e., no more than seven years in total). Law 89/01 (also known as the Pinto Act) was introduced in order to deal with the widespread problem of excessively lengthy court proceedings in Italy and provide a remedy in national law in respect of such proceedings, so that claimants would not need to lodge a complaint with the European Court of Human Rights in order to obtain compensation.

TO DECLARATION OF JOSEPH CASSIOPPI

B. Current status of the Italian proceedings

13. As is apparent from this timetable above, the proceedings are still ongoing and are currently pending before the Supreme Court.
14. With the appeal of 9 October 2018 (LT1 pp. 206/277 – English translation starting at p. 246), the Estate of Prince Rogers Nelson contested the 2018 Court of Appeal Referral Judgment, raising seven grounds of appeal concerning:
- a. procedural mistakes made by the Court of Appeal when assessing the claims of Bergonzi and Vicino (first and second grounds) and of Warner Italy (fourth and fifth grounds);
 - b. the erroneous assessment of the claims of Bergonzi and Vicino, in that no actual verification has been carried out with respect to the moral damages they claim (sixth ground); and
 - c. the lack of clarification on the scope of the assessment of the copyright infringement (seventh ground).
15. The seventh ground of appeal (paragraphs 86-94, LT1 pp. 231/233 (IT), (EN) pp. 271/273), by which the Estate requested that the Supreme Court clarify the scope of the ascertainment of the copyright infringement, is particularly relevant here. The Estate asked that the Court confirm that such ascertainment was limited to the Italian territory, in particular given that (i) it is an absolutely settled principle of intellectual property that the infringement must be assessed according to the law of the State in which the infringement took place, and only Italian law was applied in this case (see paragraph 87 of the appeal); and (ii) the Italian Court took jurisdiction based on the criterion of the *forum commissi delicti* and could not ascertain an infringement that allegedly occurred outside the Italian territory (see paragraph 88 of the appeal). See paragraphs 29-33 below in this respect.
16. The decision of the Supreme Court against the 2018 Court of Appeal Referral Judgment is expected in no less than two years' time.

II. THE RELEVANT LEGAL PROVISIONS

17. I explain in detail below the matters which are in issue in the Italian proceedings. As context for that explanation, I first set out a brief factual summary of the relevant Italian legal provisions, concerning:

EXHIBIT A
TO DECLARATION OF JOSEPH CASSIOPPI

- a. international private law (specifically, the criteria for identifying the applicable law in copyright matters);
 - b. jurisdiction and the consequent scope of the ascertainment carried out by the Judge; and
 - c. substantive copyright law regulating injunctions in case of copyright infringement.
- A. Relevant provisions on applicable law in copyright matters, and the principle of territoriality of copyright
18. The Italian legal system is a civil law system, based on a variety of sources that relate to each other in a hierarchical order.
19. Law no. 218 of 31 May 1995, entitled “System of private international law” (Law 218/95), is at the base of our analyses under a private international law perspective. Law 218/95 gathers the basic principles of the system of conflicts of laws in all the various matters: obligations, contracts, work, family and also, as here of interest, intangible assets. Law 218/95 entered into force on 1 September 1995 (technically after the Italian proceedings were commenced). Before Law 218/95, articles 17-31 of Royal Decree no 262 of 16 March 1942 regulated the basic principles of the system of conflict of laws in Italy. For the purposes of the Italian proceedings, however, the provisions of the 1942 Royal Decree corresponded to and are materially identical in their construction and application to the principles provided by Law 218/95. As a matter of fact, all parties in the proceedings and the Courts themselves in their judgments have referred to Law 218/95. It is therefore appropriate to refer to the provisions of Law 218/95 for the purposes of Italian domestic law.
20. The Italian domestic conflicts of laws rules are interpreted and applied without prejudice to the variety of international¹ and European² rules, which are in a higher hierarchical order than Law 218/95 and which, matter by matter, contain specific provisions for the solution of possible conflicts of law where they apply.

¹ Article 2 of Law 218/1995 provides that “*The present law shall not prejudice the applications of international conventions in force in Italy.*” This implies that, where it applies, the Berne Convention overrides a contrary provision of the Italian Law.

² In the Italian legal system, in case of conflict between EU provisions and Italian provisions, the first overrides the second – the sole limit being the Italian Constitution. The source for this overriding value of the EU provisions is in Article 11 of the Italian Constitution, which provides that “*Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends*”.

EXHIBIT A
TO DECLARATION OF JOSEPH CASSIOPPI

21. The following provisions identify the applicable law in copyright matters:
- a. Article 54 of Law 218/95: Law applicable to intangible assets: *“Rights based on intangible assets are regulated by the law of the State where they are used”*.
 - b. Article 8 of EC Regulation no. 864/2007 on the law applicable to non-contractual obligations (Rome II): *“The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.”*
 - c. Article 5 of the Berne Convention: *“(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention; (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed; (3) Protection in the country of origin is governed by domestic law”*.
22. Article 54 of Law 218/95, Article 8 of Regulation (EC) no. 864/2007 and Article 5 of the Berne Convention all acknowledge the well-established **principle of territoriality of copyright**. That is, copyright protection is inherently territorial, and depends on the law of the state where such protection is sought. The assessment of the alleged infringement must be based on the specific national law applying in the location of the infringement, which may be different from the law of other countries. There are as many copyrights as countries where the good (in this case, the Italian Song) is used³.
23. As will be explained in more detail in Section IV below, the only law applicable to the Italian proceedings brought by Warner Italy, Bergonzi and Vicino is the Italian law of copyright, as they sought protection from infringement in Italy.

³ See JARACH-POJAGHI, *Manuale del diritto d'autore*, MURSIA, 2019, p. 364.

EXHIBIT A
TO DECLARATION OF JOSEPH CASSIOPPI

B. Relevant provisions on jurisdiction criteria

24. The criteria according to which Italian judicial authorities may be seised are set out, once again, in Law 218/95 and in the 1968 Brussels Convention (subsequently followed by EC Regulation no. 44/2001 and now EU Regulation no. 1215/2012). The criteria concerning special jurisdiction contained in Section 2 of the Brussels Convention also operate in respect of defendant parties domiciled outside the EU (including in the United States of America), as these criteria have been transposed by Law 218/1995 and therefore operate beyond the original scope of effectiveness of the 1968 Brussels Convention⁴). Specifically:
- a. Article 3 of Law 218/95: Reach of jurisdiction: *“1. There is Italian jurisdiction when the defendant is domiciled or resident in Italy or has in Italy an agent authorised to appear in court for him/her in accordance with art 77 of the Code of Civil Procedure, as well as in the other cases provided by law. 2. There is also jurisdiction based on the criteria established by sections 2, 3 and 4 of Title II of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters and protocol, signed at Brussels on September 27, 1968, rendered effective in Italy by the law of June 21, 1971, No 804, and successive modifications in force in Italy, even if the defendant is not domiciled in a contracting state, where a subject matter covered by the Convention is involved. With respect to matters not covered by the Convention, if venue of a case before an Italian judge is proper then he/she also has jurisdiction thereof”*;
 - b. Section 1, Article 2 of the 1968 Brussels Convention (see now Article 4 of EU Regulation no. 1215/2012): *“1. Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State. 2. Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State”*;
 - c. Section 1, Article 3(1) of the 1968 Brussels Convention (see now Article 5(1) of EU Regulation no. 1215/2012): *“1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 6 of this Title.”*; and

⁴ See Court of Milan, 15 February 2014 – see also Supreme Court Joint Division Decisions n. 22239 of 21.10.2009; n. 5090 of 27.2.2008; n. 2060 of 11.2.2003 and n. 5765 of S.U. 12-04-2012, according to which: *“for the purpose of determining the scope of Italian jurisdiction with respect to a defendant who is neither domiciled nor resident in Italy, the criteria set out in Sections 2, 3 and 4 of Title 2 of the Convention should be applied, even where the defendant is domiciled in a State not party to the Convention”*.

TO DECLARATION OF JOSEPH CASSIOPPI

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S M TREGEAR
SECOND WITNESS STATEMENT
FILED ON BEHALF OF THE CLAIMANTS
SMT2
28 AUGUST 2020

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

CLAIM NUMBER: QB – 2020 – 001827

B E T W E E N:

- (1) COMERICA BANK AND TRUST, N.A.
(as personal representative of the Estate of Prince Rogers Nelson)**
- (2) NPG MUSIC PUBLISHING LLC**
- (3) NPG RECORDS INC.**
- (4) UNIVERSAL MUSIC CORP.**
- (5) SONGS OF UNIVERSAL, INC.**
- (6) UNIVERSAL MUSIC PUBLISHING INTERNATIONAL LIMITED**
- (7) UNIVERSAL MUSIC PUBLISHING LIMITED**
- (8) SONY MUSIC ENTERTAINMENT**

Claimants

- and -

WARNER CHAPPELL MUSIC ITALIANA S.R.L.

Defendant

SECOND WITNESS STATEMENT OF STEVEN MARK TREGEAR

I, Steven Mark Tregear, of Yalding House, 152-156 Great Portland Street, London W1W 5QA, solicitor, will say as follows:-

1. This is my second witness statement in this Part 8 Claim, further to my first witness statement dated 27 May 2020. I refer also to a separate witness statement given by me, also dated 27 May 2020, in the related Part 74 appeal proceedings.
2. I continue to use the abbreviations in my first witness statement in this witness statement.
3. I have had the opportunity of reading the witness statements of Matthew John Blower and Giorgio Mondini dated 3 July 2020 filed on behalf of the Defendant. Italian lawyers for the Prince Estate are responding to the evidence given by Mr Mondini and I have seen and read the witness statement of Luca Trevisan dated 28 August 2020 in that regard.
4. In this statement I respond only to the points Mr Blower has made that do not repeat the Italian position as it has been told to him by Mr Mondini (since Mr Trevisan is addressing those matters on behalf of the Prince Estate). I do not therefore comment on paragraphs 6 - 22 of Mr Blower's evidence as these paragraphs simply record the progress of the Italian litigation and set out his understanding of what has happened in those proceedings, broadly based upon what he has been told by Mr Mondini.

Registration of the Italian Judgments in England and Wales

5. Paragraphs 23 – 26 and 38 - 41 of Mr Blower's statement simply record how the Defendant came to obtain the Cook Order and the fact, not disputed, that the Prince Estate's protective application to appeal the Cook Order is out of time.
6. As to the timing of the application for leave to appeal (not strictly relevant to the Part 8 claim), Mr Blower says that no "*satisfactory explanation to excuse the lateness*" has been given. That is incorrect and first I refer to paragraph 10(b) of my first witness statement in the CPR Part 74 appeal proceedings, which explains that the initial understanding of the Prince Estate was that the Cook Order only concerned the money obligation arising from the Italian Judgments and not the injunction. (Indeed, that remains its understanding.) By a letter dated 17 March 2020 (page 144 of "SMT1"), the Defendant confirmed, in response to the Prince Estate's request for clarification, that its view was that the Cook Order concerned not only the money obligation, but also the global injunction allegedly granted pursuant to the Italian Judgments. The Part 74 appeal was brought just over two months following receipt of that letter, on 27 May 2020.
7. Paragraph 10(g) of my first witness statement in the CPR Part 74 appeal proceedings further notes that that appeal and this Part 8 claim were brought in the circumstances of the constraints on normal working life and the transition into lockdown with which this firm, Trevisan and Cuonzo (the Prince Estate's Italian lawyers) and Counsel had to contend between March and May 2020. However, in light of Mr Blower's comment, I can elaborate on the difficulties we faced (in addition to the obvious ones) in taking instructions from each of the Claimants.
 - 8.1. In addition to the Prince Estate (the First Claimant) there are seven other claimant parties. Two of those are in effect controlled by the Prince Estate (the Second and Third Claimants) but the Fourth to Eighth Claimants are individual entities within either Universal or Sony, the internationally known entertainment companies.
 - 8.2. The Fourth, Fifth and Eighth Claimants are based in America; the Fourth and Fifth Claimants being US companies, the Eighth Claimant a New York law partnership. Once it became clear that the Fourth, Fifth and Eighth Claimants were important parties to these proceedings, my firm first had to make contact with the relevant personnel at those entities (which in practice we did through their UK sister companies), explain what the intended action was about and the reason for the proposed Claimants becoming involved and to then obtain their consent to be added as parties. This was not a straightforward matter (especially in lockdown).
 - 8.3. In addition, although part of the same process, the in house lawyer for the Sixth and Seventh Claimants in this country also had to be informed what this dispute is about, chain of title documentation had to be provided to my firm, it had to be analysed and the Sixth and Seventh Claimants then had to consent to being involved.
 - 8.4. Whilst it is only the First Claimant that is directly involved in the CPR Part 74 appeal, as the Court will appreciate and as the Defendant has agreed, procedurally the two cases are running in tandem which also needed to be explained to the Fourth to Eight Claimants.

- 8.5. These Part 8 proceedings then needed to be prepared and approved so that they were ready for service at the same time as the Part 74 appeal.

Enforcement of the Italian Judgments

9. In paragraphs 27 to 37 of Mr Blower's statement, he addresses the steps taken by his client to date to enforce the Italian Judgments A-D (as he describes them; Judgment A being the 2008 first instance judgment, Judgment B being the 2012 judgment of the Court of Appeal, Judgment C being the 2015 judgment of the Court of Cassation/Supreme Court, and Judgment D being the 2018 judgment of the Court of Appeal which gave effect to Judgment C). In the present context, I need only deal with the injunction and the alleged breach thereof.
10. First at paragraph 31 of his witness statement Mr Blower states that he *"is not aware of the Estate having disputed the scope of the injunction in any other jurisdiction outside of Italy"*. However, I have been informed by Ms Friedemann, an American lawyer for the Prince Estate, and believe, that in relation to the different legal actions the Defendant has commenced in different jurisdictions against the Prince Estate, the position is as follows (copies or translated copies of the different orders to which I refer are at pages 2 to 55 of "SMT2"):-
- 10.1. In Germany, an application was made to the Regional Court of Berlin which resulted in a *"Court certificate of enforceability"* and accompanying *"Ruling"*. Neither of those documents mentions any injunction at all. Both are instead focussed entirely – like the Cook Order – upon the money judgment. The certificate specifies that *"The obligation to be enforced is as follows: The respondents were ordered to pay the claimant 949,719.60 (as first instalment of the sum adjudged in the amount of 956,608) plus interest ..."*. The Ruling appears to have dismissed the application in all respects other than the monetary element specified therein. There was no reference to the injunction.
- 10.2. In Holland the focus has been on the same 2012 Court of Appeal Italian judgment and again there was no reference to the injunction.
- 10.3. In France there have been three court orders. First an order registering Judgment A as described by Mr Blower. That order summarised the Italian proceedings and noted the Italian only scope of the judgment. The second French order registers Judgment B and there is no mention of the Italian injunction in it. The final French order registers Judgment C as defined by Mr Blower. The summary then filed (page 38 of "SMT2") is not entirely clear but I do not see any reference to the 2015 Italian Supreme Court decision and the Italian injunction is neither set out nor explained.
- 10.4. In Australia there is a court order relating to Judgments A-D as Mr Blower describes them. I can trace no reference in the order to the Italian injunction – as with the Cook Order, the focus was on the debt due to the Defendant.
- 10.5. In 2019 in Ontario, Canada, the Defendant took legal action but I am informed by the First Claimant's Canadian lawyer, Andrea McEwan, that no substantive steps have been taken in those proceedings.

11. These proceedings are therefore, as I understand it, the first in which the Defendant's lawyers have suggested that the injunction granted in the Italian proceedings encompasses not just Italy but also every jurisdiction worldwide (or at least every jurisdiction which has a body of copyright law). They are therefore the first in which the Prince Estate has been required to deal with any such contention.
12. Next it is unclear to me whether Mr Blower is seeking to insinuate that the Prince Estate or indeed any of the other Claimants has continued to exploit the Prince Song outside Italy. However, and for the avoidance of doubt and as I confirmed at paragraph 28(a) of my first witness statement, there has been no exploitation of the Prince Song by any of the Claimants since at least December 2017. None of the matters mentioned by Mr Blower cast any doubt on this. To the contrary, the Prince Estate and the Claimants have been respectful of the arguable scope of the Italian injunction irrespective of its dubious worldwide enforceability. This is so despite the Prince Estate's position that the Italian Judgments are not on their face effective to prohibit exploitation outside Italy (or at very best their effect is unclear pending the forthcoming appeal), and to the extent that they do, are unenforceable. In particular:
 - 12.1. When the Prince Estate negotiated with the Eighth Claimant prior to June 2018 to permit the Eighth Claimant to exploit certain master recordings of Prince's performances, it declared to the Eighth Claimant the existence of the Italian legal proceedings. As a result I am informed by Michael Smith, director of Legal and Business affairs at Sony Music Entertainment UK Limited, that the Eighth Claimant and those deriving rights from it have not sought to exploit the recording of the Prince Song since the Eighth Claimant acquired the right to do so. That was obviously a prudent declaration by the Prince Estate but also reflected the position in which it found itself having regard to the claimed scope of the Italian injunction.
 - 12.2. Jason Boyarski, an American lawyer at the firm of Boyarski Fritz LLP who represented the Prince Estate during negotiations with the Fourth and Fifth Claimants in 2016 tells me, and I believe, that the position in relation to the Italian injunction was explained to the Fourth and Fifth Claimants.
 - 12.3. The same is true, I am informed by Mr Boyarski, in respect of a separate agreement entered into by the Prince Estate in relation to performance income generated by the Prince catalogue of songs which agreement was concluded in December 2016.
 - 12.4. Further, I am informed by Mr Boyarski and believe that when Prince died in April 2016 a Special Administrator was appointed by the US court to handle the Prince Estate's affairs. Mr Boyarski believes that the Administrator notified various third parties of the position in relation to the Italian litigation and the Prince Song.
 - 12.5. However, I believe some performance and broadcast income in relation to the Prince Song has been collected on behalf of both Prince and the Prince Estate. First Mr Boyarski believes that in some instances where blanket performance or broadcast

licences have historically been in place with third parties very small sums were generated by the Prince Song. However it was neither possible nor practical to close down each and every licence of that nature only in relation to the Prince Song.

- 12.6. Separately the Performing Right Society ("PRS") based in England grants licences in relation to the public performance of musical and literary copyrights. It also collects income generated by such public performances as well as from broadcast income generated by the exploitation of those musical and literary copyrights registered with it. I am informed by Karen Fishman, senior corporate counsel at PRS, that as at 23 July 2020 PRS was only holding twenty-eight pence in respect of the Prince Song.

The arguments made under the Part 8 Claim

13. The Prince Estate's position is that the Italian Judgments only deal (and only purport to deal) with a breach of Italian copyright law. There has never been any trial in Italy, or indeed elsewhere, of the dispute under UK copyright law. The injunction handed down by the Italian Court only applies in respect of exploitation of the Prince Song within the territory of Italy, pursuant to the territoriality principle which is central to copyright law. As Mr Trevisan explains, that is the effect of the Italian Judgments, properly construed, as a matter of Italian law. In any event, to the extent that the Italian Judgments are intended to have such extraterritorial effect, they are unenforceable outside Italy or should not be recognised for the various reasons relied upon by the Prince Estate.
14. At best, it must follow from the difference between the parties' lawyers in this regard that it is unclear whether the Italian Supreme Court intended the injunction to apply in respect of exploitation of the Prince Song in other countries (including the UK).
15. These are matters which the Prince Estate will address primarily by way of submission (and Mr Blower notes at paragraph 41 that they are principally matters of law and argument). Nonetheless, I make the following comments on points made at paragraphs 38 - 55 of Mr Blower's statement.
16. First, at paragraph 43 of his statement, Mr Blower alleges that *"there can be no doubt that the Italian courts were concerned with worldwide copyright in the Italian Judgments"*. He repeats this suggestion at paragraph 54 of his statement. Mr Trevisan deals with this in his witness statement but I specifically note:–
 - 16.1. Mr Blower does not dispute the overarching principle that copyright is territorial. That means, in practice, that if one party wants to prove that his/her/its copyright has been infringed by another then it must prove in accordance with the law of the country where infringement is said to have occurred.
 - 16.2. There is no evidence I have seen that the Italian court, in over twenty-five years of this litigation and despite multiple applications and hearings, has ever been addressed on the copyright laws of, for example, the United States of America or the United Kingdom. Indeed Mr Trevisan informs me and I believe that the Italian courts have

always examined, assessed and ruled the issue of the alleged copyright infringement in accordance with Italian copyright law. That means that the Italian courts have never addressed certain important issues which it would have been necessary to address as a matter of, for example, US or UK copyright law.

- 16.3. I am informed by Mr Trevisan (see paragraph 51 of his statement) that under Italian law when the anteriority of the work of the claimant is undisputed (as is the case with "Takin' Me To Paradise"), it is up to the defendant to prove that he had no contact with the song said to have been copied. As I understand it from Mr Trevisan, the only time the Italian courts touched upon this was in 2008 when the Court of Appeal observed "*the plagiarised authors scanty popularity and the difficulty to trace their composition in the domestic and above all foreign markets cannot be regarded as a sign of the impossibility of plagiarism*". Thus, the only question considered by the Italian courts has been whether plagiarism was impossible. There is no obligation on the claimant to prove that the defendant had contact with or access to the work being copied.
- 16.4. However, and by way of contrast and example, Ms Friedemann tells me that under US federal law there are two essential elements to a US copyright infringement claim: ownership of a valid copyright and then copying/unlawful appropriation of the original elements of the copyrighted work. Copying may be proved by direct evidence of copying (which is not present in this case) or through indirect or circumstantial evidence. Proof of copying through indirect evidence requires a showing that the alleged infringer had access to the copyrighted work and that the accused work is substantially similar to the copyrighted work. A copyright owner may prove access to the copyrighted work by demonstrating either widespread dissemination of the work or a chain of events that caused the defendant to have access to the work. When a copyright owner seeks to prove copying through indirect evidence the similarity between the copyrighted work and the accused work must give rise to an inference of copying, such that the accused work would not have arisen if it had been independently made. The accused infringer may rebut an accusation of copying by showing that the accused work was created independently, without reference to the copyrighted work.
- 16.5. Ms Friedemann further informs me that an injunction is not automatically granted to a successful plaintiff under US copyright law. To obtain an injunction, the plaintiff must show that it will suffer irreparable harm absent an injunction and that legal remedies such as money damages are inadequate to compensate for the injury. The court may also consider the balance of hardships between the parties and whether the public interest is served by issuing an injunction.
- 16.6. As such, matters essential to considering whether the alleged plagiarism would be actionable under US federal copyright law have never been argued in front of the Italian court.

- 16.7. Similarly, under English copyright law, absent direct evidence of copying, I believe the usual way to establish copyright infringement is to show the similarity or similarities between the two works and to then demonstrate the possibility the defendant had access to and familiarity with the claimant's work. Once an opportunity to copy can be shown the burden shifts to the defendant to explain away any similarity. However, as noted at paragraph 16.3 above, the process was not, according to Mr Trevisan, followed through in the Italian litigation.
- 16.8 Accordingly, if as Mr Blower says, the Italian court was concerned with worldwide copyright infringement, it does not appear to have applied any territory by territory analysis based on applicable local law.
17. Second, and in response to paragraphs 50 – 52 of Mr Blower's statement (injunction and public policy), I note as follows:–
- 17.1. Mr Blower suggests, at paragraph 51, that a submission to the effect that recognition of a foreign judgment would be manifestly contrary to public policy is an *"argument against the recognition of (the injunction) under Article 34(1) of the Judgments Regulation"* which is not available in the context of the Part 8 claim (as opposed to the appeal). However, this misunderstands the case being advanced by the Prince Estate.
- 17.2. As a matter of construction, court orders should be interpreted so that their effect is lawful and in line with fundamental human rights. Accordingly, the Cook Order should not be given an interpretation which is (manifestly) contrary to public policy (to the extent that such a construction is unavoidable, the Prince Estate of course seeks to appeal against it).
- 17.3. What the Defendant seeks to do on its reading of the Cook Order is to prevent each of the Claimants from enjoying and enforcing their national copyright without there having been any trial let alone a fair trial applying applicable copyright laws. That cannot be correct and is contrary to public policy in my submission.
- 17.4. Mr Blower's point seems to be a suggestion that the Prince Estate has, in effect, had its opportunity if it wanted to raise national copyright issues in the Italian litigation, but did not take that opportunity. However, as Mr Trevisan explains, the entire Italian proceedings were conducted on the basis of Italian substantive and procedural law only (the central allegation being a breach of Article 156 of the Italian Copyright Law no. 633/1941 as I understand it). The onus was not, Mr Trevisan tells me and I believe, on Prince and the Prince Estate to raise international copyright issues before the Italian court, because the Italian court was only applying Italian copyright law. The Italian court could not issue an injunction preventing exploitation of the Prince Song in a foreign territory; as a matter of principle it is simply not seised with that power. Accordingly foreign law issues were not relevant regardless of the scope of the injunction the Italian songwriters contended for.

- 17.5. It is for this reason that the only proper reading of the Italian Judgments is that they are concerned only with an infringement of Italian copyright law. If and to the extent that the effect of the Italian Judgments goes further than this (as the Defendant contends, contrary to the position of the Prince Estate), then this is contrary to public policy and the fundamental (and Article 6 ECHR) right to a fair trial.
18. Mr Blower says (paragraph 52.4 of his statement) that certain of the Claimants (the Fourth and Fifth Claimants) had direct knowledge of the proceedings in Italy such that they can have "*no cause for complaint*" about what is now happening. However, those parties only acquired rights which stem from the agreement dated 27 October 2016 exhibited at "SMT1" and referred to in paragraph 10 of my first witness statement. As I explain above, they acquired those rights with knowledge of the extant Italian proceedings but at that point, the Italian courts had handed down Judgments A-C as Mr Blower describes them. Judgment D (which is still the subject of an appeal) related to territorial enforcement. However, it is simply unreasonable and impractical to assert that efforts should have been made by either the Fourth or Fifth Claimant to engage themselves in protracted and convoluted Italian litigation which had by 2016 determined the substantive question of whether the Prince Song plagiarised "Takin' Me To Paradise". Those Claimants were reasonably entitled to assume that the Italian courts would not purport to make an exorbitant injunction, and that, if they did, the English courts would decline to enforce it as a matter of public policy.
19. Finally I also note that Mr Blower says nothing about either the Sixth, Seventh or Eighth Claimants having lost their opportunity to present their arguments to the Italian court: plainly they had no such opportunity. Those Claimants have been and are being prejudiced by the approach the Defendant is taking in this matter.

Statement of Truth

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full name: Steven Mark Tregear

Signed:

Position or office held: Partner

Dated: 28 August 2020

From: [Bruce, Andrea](#)
To: [Larry Mestel](#); [Ramon Villa](#); [Timothy Murphy](#); [Charles Spicer, Jr. \(charles.spicerjr@gmail.com\)](#); [jupsn.llc@gmail.com](#); [Justice James Gilbert](#); [Norrine Nelson \(norrine92841@gmail.com\)](#); [Omarr Baker \(obaker@prnfamily.com\)](#); [President Nelson](#); [Tyka Nelson](#); [Virginia Baker](#)
Cc: [Aycock, Angela \(Contingent Worker\)](#)
Subject: Update- Bergonzi Litigation
Date: Friday, January 29, 2021 2:28:15 PM
Attachments: [image001.png](#)

[EXTERNAL E-MAIL]

Dear Heirs, Primary Wave, and Mr. Murphy:

As you know, one of the remaining outstanding litigation items is the Bergonzi matter. As we have discussed on various occasions, this case involves a judgment in Italy obtained against Prince during his lifetime, and this judgment must be satisfied before the Estate can close—the monetary judgment is final and cannot be appealed. We are continuing to negotiate with Warner Chappell regarding three items: (1) the portion of revenues the Estate earned on the song from the time the judgment was entered (2012) to present that will be paid to Warner; (2) how future revenue earned on the song will be split; and (3) Warner's demand for payment of its legal fees seeking to enforce the judgment.

To remove the monetary judgment as an impediment to wrapping-up the Estate, and to avoid additional interest and to reduce attorneys' fees, we believe at this time it is best to pay the monetary judgment. As such, we intend to pay, by month end February, the judgment in the amount we have computed as owing-- €614,309.92 plus interest from February 1, 2021 through the date of payment. The €614,309.92 figure is based on the total judgment amount, offset by royalty amounts previously collected by the judgment holder, plus interest from the date of judgment through January 31, 2021.

Warner Chappell has not affirmatively responded to us that that they are in agreement with this figure. If Warner Chappell decides they disagree, they may continue to file actions seeking to collect funds held by third parties. We would contest any such activity based on the position that the judgment has been paid in full, and we believe the Estate has the stronger position.

The alternative course of action is to do nothing, and in that case Warner Chappell would continue to bring third party collection actions until the judgment is paid. The Estate is responsible to bear Warner Chappell's attorney's fees in those proceedings.

Benefits of paying the judgment now include: (1) it avoids further attorneys' fees incurred by Warner Chappell in bringing additional third party collection actions; (2) once the judgment has been paid, if Warner Chappell brings another enforcement action and loses then Warner Chappell has to pay the attorney's fees the Estate incurred; and (3) the interest being accrued

on the judgment will stop accruing.

Because of the benefits described above, we intend, by month end February, to pay the judgment amount we have computed as owing, and we will take the position going forward that the judgment has been paid in full.

If you have any questions or concerns about this course of action, please let us know by February 12th, 2021.

Thank you,

Andrea Bruce, CFP® | Vice President, Manager- Trust Unique Assets | Comerica Trust
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From: [Bruce, Andrea](#)
To: [Larry Mestel](#); [Ramon Villa](#); [Charles Spicer, Jr. \(charles.spicerjr@gmail.com\)](#); [jupsn.llc@gmail.com](#); [Justice James Gilbert](#); [Norrine Nelson \(norrine92841@gmail.com\)](#); [Omarr Baker \(obaker@prnfamily.com\)](#); [President Nelson](#); [Tyka Nelson](#); [Virginia Baker](#)
Cc: [Aycock, Angela \(Contingent Worker\)](#)
Subject: Important Communication- Settlement of Bergonzi Litigation
Date: Monday, March 22, 2021 10:31:06 AM
Attachments: [image001.png](#)
[Memorandum of Understanding - 220321 \(v4\).doc](#)

[EXTERNAL E-MAIL]

Dear Heirs and Primary Wave,

At last week's heirs meeting, Comerica provided an update that we were close to reaching settlement terms for the Bergonzi litigation. Today, I am pleased to notify you that we have reached agreement on terms to resolve this litigation. A Memorandum of Understanding outlining the settlement terms is attached to this email.

Comerica intends to submit this proposed settlement to the court first thing Wednesday morning. We would like to submit it with a statement that we have shared it with the heirs and Primary Wave, and that no parties have objected. As such, please review this email and the attached Memorandum of Understanding. If you have an objection to this settlement, please let me know no later than end of day tomorrow, March 23, 2021. Thank you.

Regards,

Andrea Bruce, CFP® | Vice President, Manager- Trust Unique Assets | Comerica Trust
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EXHIBIT E

TO

DECLARATION OF JOSEPH J. CASSIOPPI

(FILED ENTIRELY UNDER SEAL)