

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

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In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S  
MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS  
S&S DESIGN, LTD'S PETITION FOR  
ALLOWANCE OF CLAIM**

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**INTRODUCTION**

In August 2016, S&S Design, Ltd (“S&S”) contacted the Special Administrator (“Special Administrator”) of the Estate of Prince Rogers Nelson (the “Estate”), alleging that NPG Music & Touring, LLC (“NPG Music & Touring”) owed it \$50,000 pursuant to an unsigned contract. S&S did not assert any contractual relationship with, or any claim against, Prince Rogers Nelson (the “Decedent”) or the Estate. Out of an abundance of caution, the Special Administrator notified S&S of the time limits on asserting claims against the Estate and notified S&S that any “potential” claim it asserted against the Estate was disallowed because its alleged contract was with NPG Music & Touring, not the Decedent. Now, nearly eight months later, S&S has filed a Petition for Allowance of a Claim against the Estate, based on the unsigned contract between S&S and NPG Music & Touring.

The Court should dismiss S&S’s Petition because S&S has not alleged a valid claim against the Estate. S&S’s claim for breach of contract—if any—is a claim against NPG Music & Touring, not against the Estate. The Court should also dismiss S&S’s Petition because both its claim and its Petition are untimely. S&S failed to present its claim against the Estate until more

than one year after the Decedent's death and more than ten months after receiving the Court's Notice to Creditors. S&S also failed to file its Petition for Allowance until nearly eight months after receiving a Notice of Disallowance and nearly six months after the statutory deadline.

### **BACKGROUND**

On May 6, 2016, the Court issued a Notice of Formal Appointment of Special Administrator and Notice to Creditors (Intestate).

On August 15, 2016, the owner of S&S emailed counsel for the Special Administrator "regarding outstanding invoices from NPG Music." (Petition Ex. A.)

On August 31, 2017, Special Administrator's counsel responded to S&S's email, confirming that it had an invoice from S&S on file for \$50,000, as well as an unsigned Lighting Design Production Agreement (the "Agreement"). (*Id.*) The S&S invoice is dated October 1, 2015, and addressed to "NPG Music & Touring" in Suisun City, California. (Unger Decl. Ex. A.)<sup>1</sup> The Agreement is also dated October 1, 2015. (*Id.*) The Agreement is between "S&S Design, Ltd." on the one hand and "NPG Music & Touring" on the other hand, but it was not signed by any representative of NPG Music & Touring. (*Id.*) In its email, Special Administrator's counsel requested that S&S provide a fully executed copy of the Agreement and also enclosed for S&S a copy of the Court's Notice to Creditors. (*Id.* Ex. B.)

On September 6, 2017, Special Administrator's counsel emailed S&S again, reiterating its request for a fully executed copy of the Agreement. (*Id.*) On September 8, 2017, S&S responded and confirmed that it had never received a signed copy of the Agreement. (*Id.*)

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<sup>1</sup> On a motion to dismiss, the Court "may consider matters outside the pleadings if the pleadings refer to or rely on the outside matters." *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643, 647 (Minn. Ct. App. 2010), *aff'd*, 806 N.W.2d 820 (Minn. 2011). The documents attached to the Declaration of Emily Unger are referred to in S&S's Petition and may therefore be properly considered by the Court.

In its correspondence with Special Administrator's counsel, S&S did not allege that it had a contract with the Decedent or that the Decedent owed it any outstanding debts. (*See id.*) S&S's correspondence focused only on its alleged contract with and invoice to NPG Music & Touring. Out of an abundance of caution, however, Special Administrator's counsel mailed S&S a "Notice of Disallowance of Claim" on November 10, 2017. (*Id.* Ex. A.) In the cover letter, Special Administrator's counsel explained that Special Administrator was sending a Notice of Disallowance "as to any potential claim" against the Estate because S&S's invoice did not relate to the Estate, but "may" relate to NPG Music and Touring. (*Id.*) The Notice of Disallowance stated, "Your claim will be barred unless you file a petition for allowance with the Court or commence a proceeding against the Special Administrator not later than two months after the mailing of this notice to you." (*Id.*)

On June 28, 2017, the Court issued an Order clarifying that any creditor claims submitted after September 6, 2016 (four months after the Court issued its Notice to Creditors) "shall be presumed barred and not addressed by the Court."

On July 7, 2017, nearly eight months after receiving the Notice of Disallowance, S&S filed a Petition for Allowance of a Claim, alleging that the Estate owes it \$50,000 pursuant to the Agreement. Comerica Bank & Trust, N.A. ("Personal Representative"), as Personal Representative of the Estate, now moves to dismiss S&S's Petition because S&S has failed to state a valid breach-of-contract claim against the Estate and because the claim and the Petition are untimely.

## ARGUMENT

### **I. S&S FAILED TO STATE A VALID BREACH OF CONTRACT CLAIM AGAINST THE ESTATE.**

The existence of a contract between the plaintiff and defendant is an essential element of a breach of contract claim. *See Universal Lending Corp. v. Wirth Companies, Inc.*, 392 N.W.2d 322, 326 (Minn. Ct. App. 1986). Only the parties to a contract may be held liable for its breach. *See id.* (holding that individual could not be liable for breach of contract as a matter of law where the individual’s company—but not the individual—was a party to the contract). “An officer and shareholder of a corporation cannot be held personally liable for the obligations of the corporation except in certain limited circumstances,” such as where the individual guarantees the company’s contractual obligation or where the company is an alter ego of the individual. *Id.*

Here, S&S has failed to state a claim for breach of contract against the Estate because it has not alleged the existence of a contract between it and the Decedent. Rather, S&S has asserted a claim against the Estate based on its alleged written contract with NPG Music & Touring. The Agreement identifies NPG Music & Touring as party responsible for paying S&S; it contains no payment obligation on behalf of the Decedent. Similarly, the invoice that S&S seeks to collect against the Estate is addressed to “NPG Music & Touring,” not to the Decedent. S&S has not alleged that the Decedent was involved in its alleged transaction with NPG Music & Touring, much less that NPG Music & Touring was an alter ego of the Decedent or that the Decedent guaranteed the Agreement. Thus, S&S has not alleged any contractual relationship between it and the Decedent. Because S&S’s breach of contract claim lacks the most fundamental element—a contract between the parties—its Petition should be dismissed.

## II. S&S'S CLAIM AND PETITION ARE UNTIMELY.

A claim against an estate may be presented either by delivering a written statement of the claim to the personal representative or by filing it with the court. Minn. Stat. § 524.3-804(1). A claim “is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court.” *Id.* A claim that arose prior to a decedent’s death is barred unless it is presented within four months after the court’s notice to creditors or, at most, one month after receipt of the court’s notice to creditors. *Id.* § 524.3-803(a). Once a claim is presented, “no proceeding thereon may be commenced more than two months after the personal representative has mailed a notice of disallowance.” *Id.* § 524.3-804(3). Thus, a petition for the allowance of a previously disallowed claim is barred unless filed within two months after the notice of disallowance. Here, S&S’s Petition should be dismissed because both its claim and its Petition are untimely.

S&S failed to present a claim against the Estate within four months after the Court issued the Notice to Creditors or within one month after receiving such Notice from the Special Administrator. In its Petition, S&S asserts that it presented a written claim against the Estate on August 15, 2016, but this assertion is contradicted by S&S’s email. In its August 15 email, S&S’s owner wrote, “I’m contacting you regarding outstanding invoices from NPG Music.” (Petition Ex. A (emphasis added).) Thus, S&S only notified Special Administrator’s counsel of a potential claim against “NPG Music,” not against the Estate. Although Special Administrator ultimately decided to issue a Notice of Disallowance of any “potential claim” S&S had asserted against the Estate, the Court should not punish the Estate by interpreting the Notice of Disallowance as a waiver of S&S’s failure to present a claim under Minn. Stat. §§ 524.3-803–804. Indeed, such a decision would only serve to discourage personal representatives from exercising caution and from providing liberal notice to potential creditors. Because S&S did not

provide written notice of any claim against the Estate or file a claim against the Estate until it filed the present Petition—nine months after the deadline for creditor claims under § 524.3-803 had passed and after the Court issued an Order barring creditor claims—its Petition should be dismissed.

Even if the Court were to overlook the fatal defects in both the substance and timeliness of S&S's claim, its Petition should nonetheless be dismissed as untimely because it was filed more than two months after S&S received a Notice of Disallowance. Special Administrator's counsel served S&S with a Notice of Disallowance on November 10, 2016. In that Notice, Special Administrator informed S&S that its claim "will be barred unless [it] file[s] a petition for allowance with the Court or commence a proceeding against the Special Administrator not later than two months after the mailing of this notice to you." (Unger Decl. Ex. A (emphasis added).) Thus, S&S was on notice that it was required to file a petition for allowance of any claim it held against the Estate by January 10, 2017, at the latest. Instead, S&S waited nearly eight months and filed its Petition on July 7, 2017. Because S&S failed to file a Petition within two months after receiving the Notice of Disallowance, the Petition is barred by Minn. Stat. § 524.3-804(3) and must be dismissed.

### **CONCLUSION**

Because S&S has failed to state a valid claim for breach of contract against the Estate and because both its Petition and its claim are untimely under Minnesota law, Personal Representative respectfully requests that the Court dismiss S&S's Petition for Allowance of Claim.

Respectfully submitted,

Dated: July 27, 2017

/s/ Joseph J. Cassioppi

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