

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46
Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
REPLY MEMORANDUM IN SUPPORT
OF MOTION TO APPROVE
SETTLEMENT AGREEMENT**

[REDACTED]

INTRODUCTION

The opposition filed by Heirs Sharon Nelson, Norrine Nelson and John Nelson (hereafter, "Opposing Heirs" and "Opposition") should be rejected, for five reasons: (1) the Opposition is made without evidentiary support; (2) the Opposition ignores the benefits of the proposed settlement and overstates the drawbacks; (3) the Opposition fails to acknowledge or account for litigation risk; (4) the Opposition is fueled by a desire to oppose whatever Comerica recommends, regardless of how beneficial it may be; and (5) Comerica followed the procedure required under the Court's March 22, 2017 Order.

For these reasons, and in light of the substantial benefit the proposed transaction presents for the Estate, the Court should grant Comerica's motion and approve the settlement.

ARGUMENT

I. THE OPPOSITION IS BASED ON UNINFORMED AND UNSUPPORTED LAWYER ARGUMENT.

Comerica presented compelling evidence from two industry experts. Troy Carter, the Estate’s entertainment advisor, explained why the proposed settlement [REDACTED]

[REDACTED]

[REDACTED]” Carter Dec., ¶ 13. Jason Boyarski, an entertainment attorney specializing in the music industry, agreed that the proposed settlement

[REDACTED] Boyarski Dec., ¶ 8. This

evidence is unrebutted. Despite all of the advisors and attorneys working with the heirs, the Opposing Heirs offered no evidence supporting their position.

Furthermore, the attorney argument in the Opposition demonstrates a lack of understanding of the underlying litigation and proposed transaction. Notably, as the meeting minutes attached to the Opposition show, Comerica sat down at length with the Heirs to walk through the proposed settlement, and its benefits and drawbacks. Arguments made in the Opposition were not raised by the Opposing Heirs or their attorneys. If they had been, Comerica would have had an opportunity to correct mistaken notions advanced in the Opposition.

Instead, the Opposition assumes facts that are not true. For example, the Opposition asserts that “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. THE OPPOSITION MISSTATES THE BENEFITS OF THE PROPOSED TRANSACTION AND OVERSTATES THE DRAWBACKS.

A. The Opposition Ignores Two Primary Benefits of the Proposed Settlement.

The Opposition ignores two significant benefits of the proposed settlement. First, [REDACTED]

[REDACTED]

[REDACTED] Boyarski Dec., ¶ 7.

The Opposition ignores this evidence.

Second, the proposed agreement would [REDACTED]

The proposed settlement is as good as it gets in litigation, turning a negative (costly and uncertain litigation) into a positive (a fair and beneficial business transaction for the Estate).

B. The Opposition Overstates the Drawbacks of the Proposed Settlement

The Opposition overstates and mischaracterizes the drawbacks of the proposed settlement in several ways.

- 1. [REDACTED]

District Courts have discretion when assessing statutory damages under the Copyright Act. *See Halnat Pub. Co. v. L.A.P.A., Inc.*, 669 F. Supp. 933, 937 (D. Minn. 1987) (“Within these statutory limits, the assessment of damages lies within the Court’s sound discretion and sense of justice.”); *Broadcast Music, Inc. v. Whiskey Bone, Inc.*, 2014 WL 1385190 at *3 (D. Minn. Apr. 9, 2014) (“[T]he amount of any statutory damages award is within the discretion of this Court”); *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 143 (2d Cir. 2010) (“District courts enjoy wide discretion...in setting the amount of statutory damages.”).

[REDACTED]

[REDACTED]

The Opposition relies heavily on *Capital Records, Inc. v. Thomas-Rasset*, 692 F.3d 899 (8th Cir. 2012) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Courts also have broad discretion when considering requests for attorney's fees. *See Pearson Educ., Inc. v. Almgren*, 685 F.3d 691, 695-96 (8th Cir. 2012). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. *Taking Depositions Requires Rejecting this Proposal*

Second, the Opposition criticizes Comerica for considering settlement before taking depositions. This argument ignores reality. When a settlement opportunity presents itself, a litigant either accepts the deal or not; there is no mechanism in the rules of civil procedure or contract law to hold the proposed settlement open while pursuing additional discovery. This proposed settlement is the result of months of negotiation facilitated by retired Judge Richard Solum. The parties participated in a mediation with Judge Solum on August 23, 2017, and negotiated for the next six months before reaching the proposed agreement before the Court. The Estate must either accept the proposed agreement or reject it. If the Estate rejects the proposed agreement, it may not be available later.

Furthermore, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Finally, the Opposition ignores the substantial cost associated with deposition discovery. If the Court does not approve the settlement and the case proceeds, both parties will take depositions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. *The Proposed Settlement Signals No Leniency to Infringers*

[REDACTED]

[REDACTED] the Estate has sent a strong message to infringers in this and other litigation. *See, e.g., Comerica Bank & Trust, N.A. v. Thuy Nam Ly*, No. 1:17-cv-00383 (D. R.I.); *Comerica Bank & Trust, N.A. v. Kian Andrew Habib*, No. 1:17-cv-12418-LTS (D. Mass.) and *Paisley Park Enterprises, Inc. v. George Ian Boxill*, No. 17-cv-1212 (WMW/TNL) (D. Minn.).

The Opposition seems to suggest that the Estate should litigate every infringement case to conclusion. Doing so is not a smart use of resources. Responsible administration of the Estate includes recommending settlements when they are in the best interest of the Estate. [REDACTED]

[REDACTED]

4. *Confidentiality is Required for Access to Unreleased Music*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. *The Opposition Does Not Support Its Contention that* [REDACTED]

[REDACTED] [REDACTED]

Finally, the Opposition asserts that the Estate is [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] This argument is relegated to a footnote, and is not supported with argument or evidence. *See*

Opposition at 9, n.6. [REDACTED]

[REDACTED]

III. THE OPPOSITION IGNORES LITIGATION RISK.

The Opposition fails to acknowledge and account for litigation risk. Although the Estate’s position is strong, victory is never certain.

Furthermore, the Opposition does not factor in the true “worst case scenario” for the Estate in either proceeding. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Although the Estate believes it has the stronger position, victory is not guaranteed. [REDACTED]

[REDACTED]

IV. THE OPPOSITION IS AN OBSTRUCTIONIST PRETENSE.

Having failed in their attempt to remove Comerica as Personal Representative, the Opposing Heirs have chosen to make Comerica’s job as difficult as possible. The Opposition fails to raise a genuine concern regarding the proposed settlement, and appears to be motivated by a desire to oppose whatever Comerica recommends, no matter how beneficial it may be.

This is not the first time a court has been presented with a proposed settlement that is opposed by one or more heirs. Even where heirs object to a settlement for good reasons (which is

not the case here), the court may rely on the personal representative's analysis and recommendation to approve a settlement. *See, e.g., In re Estate of Johnson*, 878 N.W.2d 510, 514-15 (Minn. Ct. App. 2016) (approving settlement without heir's consent where the personal representative "adequately considered the possible alternatives to settlement before determining that approval was in the estate's best interest").

V. COMERICA FOLLOWED THE COURT'S MARCH 22, 2017 ORDER.

The Opposition claims that Comerica "should have followed the Court's process for disclosing entertainment deals articulated in the March 22, 2017 Order." Opposition at 4. Comerica did follow the March 22, 2017 Order. Under the Order, the Personal Representative "is authorized to enter into lawful business transactions, including related to the licensing or otherwise exploiting the entertainment assets of the Estate, that the Personal Representative deems appropriate and necessary to maximize the value of the Estate and its assets; provided, however, that the Personal Representative shall provide the [] Heirs notice at least 14 business days prior to entering into any transaction under which the Personal Representative reasonably anticipates receiving more than \$2 million in value, including to allow the [] Heirs an opportunity to seek Court relief with respect to any such transaction." March 22, 2017 Order at 4. Alternatively, the Order provides:

Nothing herein precludes the Personal Representative from seeking Court approval for transactions and agreements by formal request of the Court, even if not required under this Order, with notice and an opportunity to be heard as required by the Court.

March 22, 2017 Order at 8.

Comerica complied with both provisions of the March 22 Order. Comerica brought this motion on February 16, 2018, and provided the Heirs with the proposed settlement agreement at

that time. In addition to providing more notice than required, Comerica communicated with the Heirs extensively about the proposed agreement.

CONCLUSION

The Opposition presents unsupported lawyer argument that fails to evaluate the true benefits and drawbacks of the proposed settlement. In light of the undisputed evidence before the Court and the substantial benefit the proposed transaction presents, Comerica's motion to approve the settlement agreement should be granted.

Dated: April 16, 2018

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