

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Case Type: Special Administration

Court File No: 10-PR-16-46

Estate of Prince Rogers Nelson,

Judge: Kevin W. Eide

Decedent.

**SNJ HEIRS' RESPONSE TO
COMERICA'S OBJECTION TO JOINT
PETITION TO PERMANENTLY LIMIT
ITS POWERS AS PERSONAL
REPRESENTATIVE**

This reply is submitted by the undersigned heirs Sharon L. Nelson, Norrine P. Nelson and John R. Nelson (collectively the "SNJ Heirs"), as heirs to the estate of Decedent Prince Roger Nelson (the "Estate") and three of the six Court approved heirs of the Estate (the "Heirs"), in response to Comerica Bank & Trust, N.A.'s ("Comerica") Objection to the Heir's Joint Petition to Permanently Limit Its Powers as Personal Representative:

INTRODUCTION

The one undisputed point, on which the Heirs and Comerica agree is that the Heirs are understandably frustrated. However, the rationale for such frustration is not merely based on timing (i.e. the fact that the Estate is "not ready to be closed") but rather the Heirs are frustrated due to Comerica's incompetence, misrepresentations, excessive spending, and mismanagement of the Estate of Prince Rogers Nelson. To add to such unanimous sentiments and opinions now, Comerica continues to deceive the Court, evade the Heir's legitimate rights established by the Court, and Comerica has no specific plan, path or process to resolve the tax liability with the IRS and MNDOR. In fact, Comerica continues to delay actions by taking a passive "waiting-game"

and have demonstrated little effort to expedite closure of the Estate and payment of any such tax liability.

Comerica understandably will never admit that it has done a poor job and mismanaged the Estate, especially the intellectual property rights which requires unique expertise and business judgment that Comerica and their excessively paid advisors and attorneys fail to possess (especially for the paltry revenue generated). In an effort to distract the Court from the Heirs Joint Petition and Comerica's mismanagement, Comerica and their counsel manipulate facts and concocts new theories to disparage, discredit, and further insult the Heirs (and various advisors) as the Heirs' seek to protect the best interests of the Estate.

Importantly, this Court on numerous occasions has directed the Heirs to organize together to develop a viable plan in the best interests of the Estate. To Comerica's dismay, the Heirs are now united by the fact that they all no longer trust Comerica and they must create a viable plan together. All Heirs wish to no longer place its trust in Comerica due to its incompetence, waste, mismanagement and delay The Heirs are working collaboratively on a viable alternative to Comerica's Personal Representation and to promptly negotiate with the IRS and MNDOR to pay taxes, and to preserve and optimize the valuable assets of the Estate being wasted by Comerica.

BACKGROUND

I. COMERICA WAS APPOINTED PERSONAL REPRESENTATIVE TO THE HEIRS AFTER NUMEROUS MISREPRESENTATIONS AND THE COURT'S REFUSAL TO APPOINT A CO-PERSONAL REPRESENTATIVE

The Court did appoint Comerica as Personal Representative on February 1, 2017, soon after Bremer Trust, N.A., to serve as special administrator. However, what Comerica failed to reference in it's Objections is that such appointment was based upon the Heirs recommendation of Comerica as well as the Heirs desire to have Comerica appointed along with a co-Personal

Representative who had expertise and experience in the intricate world of the entertainment business. Before Comerica's appointment, the Heirs interviewed numerous candidates to serve as the corporate fiduciary with entertainment business experience. During the interviewing process, Comerica representatives falsely claimed they were a full-service firm which could handle all aspects of the Estate's administration, including the entertainment matters and Comerica presented that they had significant music industry experience. This misrepresentation has now been proven to be false.

Comerica also promised the Heirs that they would be respected and have a major voice in business decisions of the Estate, especially related to the intricate aspects of the music and entertainment assets, the overwhelming largest part of the Estate. Comerica misrepresented to the Heirs that they would act swiftly to negotiate with the federal and state tax authorities to pay such taxes which would allow the distribution of the assets of the Estate to the Heirs. These representations have now been proven to all the Heirs to be false. It should be noted that the SNJ Heirs previously objected to these matters long ago.

After the Bremer experience, where the Heirs wanted more insight and input into business matters, the Heirs were not pleased with the lack of input and Bremer's excessive deferring of administrative matters to attorneys and advisors. During the course of Bremer's administration, it became quite clear that any corporate fiduciary outside the music and entertainment industry would likely be unable to effectively oversee and manage advisors and attorneys to conduct business in the best interest of this particular Estate without such entertainment expertise. The Heirs certainly understood the important need of such expertise (then and now) which underscores why two groups of Heirs proffered separate individuals, L. Londell McMillan (who had the vote of four Heirs) and Van Jones (who had the vote of two

Heirs), to jointly work with Comerica as a co-Personal Representative on Estate business matters, especially related the music and entertainment assets. As the Heirs were divided at the time, they were not able to present solely one candidate and after a hearing to approve a co-Personal Representative, the Court rejected each of the candidates presented by the Heirs to work with Comerica and limit any potential mistakes likely given Comerica's limited experience in the business of entertainment and their lack of knowledge on the sophisticated nature of the Prince business model.

Consequently, the Heirs were now without an internal expert for this Estate serving as a co-Personal Representative. As a result of Comerica's deception and misrepresentations that they had the expertise, the Heirs did not further object after the Court refused to accept either of the Heirs candidates for co-Personal Representative. The Court assumed Comerica had sufficient expertise and appointed Comerica as the sole Personal Representative. Nonetheless, the Court did reserve the right to do the following in the Order dated January 19, 2017:

“This Court shall reconsider the appointment of a co-personal representative in the future if the non-excluded heirs can agree on a co-personal representative, if the Corporate Personal Representative believes that a co-personal representative is necessary for the proper and efficient administration of the Estate, or if the Court is persuaded that a co-personal representative is necessary for the proper and efficient administration of the Estate.”

In light of Comerica's misrepresentations, lack of expertise, lack of trust and delays on matters important to the Heirs, the Court should intervene and support the Heirs Petition.

II. THE PRINCE ESTATE HAS BEEN MISMANAGED BY COMERICA

Despite Comerica's self-serving praise of it's role in the administration of the Estate, the informed facts of the matter tell an entirely different story. The mismanagement of the Estate is rather obvious to those who understand the entertainment and music industry. Consider the lack of music released, the grossly small amounts of revenue received for licensing, the failure by the

Estate to legally protect and defend the UMG Agreement, failure to defend the Roc Nation litigation, the caving in to Warner Brothers on the catalog of the Estate which Prince worked so hard to independently control and other financial matters where Comerica has failed to yield the substantial revenue available to the Estate had a capable and innovative administrator been hired. On top of these professional deficiencies, the representatives of Comerica are mean-spirited, lack the temperament and professionalism to effectively deal with Heirs (especially the SNJ Heirs who are elders) who mourn the loss of their sibling and wish to do what is reasonably possible to protect, preserve and advance the Estate and Prince's legacy.

The SNJ Heirs filed a formal petition and set forth numerous objections outlining the incompetency, breach of fiduciary duty, waste and disrespect of Comerica. These arguments in the SNJ Complaint remain valid now more than ever. This Court dismissed certain of these arguments and such early warnings yet matters have only worsened and now not only 3 Heirs object to Comerica, all the Heirs unanimously object to Comerica and signed the Joint Petition. Regrettably Comerica has shown that they are incapable of operating multiple entertainment businesses, overseeing a real estate portfolio and museum, archiving a vast quantity of audio and video assets, managing advisors in these areas, and negotiating with tax authorities and third parties. As a fiduciary of such extraordinary assets, Comerica is way out of their league of competency. Numerous others, with sufficient expertise, could better serve the Estate and failure to act prudently subjects the Estate to substantial harm and mismanagement.

III. THE CURRENT PETITION IS REASONABLE AND SUPPORTED BY ALL HEIRS

As referenced above, the SNJ Heirs filed the 2017 Petition seeking to remove Comerica. The basis of their claims were intentional misrepresentations by Comerica prior to its appointment as Personal Representative, mismanagement and waste of Estate assets by

Comerica, failure to protect Estate assets, violation of Court orders, and failing to act in the best interests of the Estate. These claims were filed in good faith yet not supported at the time by the other Heirs. After more than two years now, all the Heirs have concluded that Comerica has not performed satisfactorily and they should be limited and/or removed from their duties immediately.

The restrictions proposed by the current Petition seeks to limit Comerica's continued and future mismanagement and allow for a transition of the Estate's administration. As noted in the Petition, the Heirs seek to have Comerica continue to administer the Estate on a month-to-month basis until a transition plan can be approved and agreed upon by the Court.

IV. LYTHCOTT AND WALKER DO NOT REPRESENT ALL HEIRS.

In an effort to dismiss the merits of the Petition resulting exclusively from Comerica's lack of trust and lack of competency, Comerica alleges a series of acts and flaws against Michael Lythcott (“Lythcott”) and Gregg Walker (“Walker”), all of which have little to nothing to do with the Petition and circumstances behind how and why such restrictions, as requested by all unified Heirs should be granted. It is well known by this Court and Comerica that Lythcott and Walker do not represent the SNJ Heirs. It should also be noted that Lythcott and Walker were also working with Comerica early on when Comerica refused to work with advisors of the SNJ Heirs. How such relationship soured is unknown to the SNJ Heirs however their actions should not have any impact on the Petition jointly signed by all the Heirs. For the avoidance of doubt, Lythcott and Walker never represented the SNJ Heirs.

V. THE HEIRS ARE WORKING JOINTLY TO DEVELOP A VIABLE TRANSITION PLAN WHICH SHOULD BE COMPLETE IN 30 DAYS

This Court has encouraged the Heirs to reach agreement, work together and present a united position with respect to the administration and best interests of the Estate. In an effort to work together and devise a viable business structure, plan and team to advise and/or operate the assets of the Estate, the Heirs have agreed to form a corporate entity with a formal operating agreement. This entity shall be either a member-managed or manager-managed operating structure to secure investment to help pay all creditors and administer the Estate in a responsible manner. Unless Comerica is immediately limited and restricted or removed, the future value and viability of the assets for the Estate will be harmed. While the Heirs may not all share the exact same viewpoints on all matters, the Heirs all now agree on the fact that Comerica is a major liability and internal risk to the legacy of Prince, creditors and the Heirs. Accordingly, the Heirs shall have their operating agreement fully formed within thirty days, competent business partners and/ or advisors, and look forward to a transition from Comerica. The Heirs have identified at least two well-respected banking and trust institutions, which will be able to serve as the corporate fiduciary, as it advances the best interests of the Estate in compliance with prior Court directives.

ARGUMENT

COMERICA'S ACTIONS AS PERSONAL REPRESENTATIVE SHOULD BE LIMITED

As set forth previously, the Heirs' misplaced trust in Comerica has resulted in miscommunication, excessive spending, wasted business opportunities, personal confrontations, excessive tension, litigation and delays in vital efforts to pay state and federal taxes. Comerica's prior efforts to divide the Heirs caused conflict and jeopardized the interests of the Heirs efforts to unify. Respondent's contentions and objections to the Joint Petition to permanently limit its

powers as Personal Representative are cleverly drafted yet without merit, contrary to Minnesota law and, as such, the relief requested in the Petition should be granted. Under Minn. Stat. 524.3-607(a):

“On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of office, or make any other order to secure proper performance of a duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person...”

Notwithstanding the fact that Comerica has failed in its duties as Personal Representative, it cannot be disputed that if Comerica is permitted to continue to act without restriction, it will cause further tension, cause further delay and unreasonably jeopardize the interests and economic potential of the Estate.

I. THE HEIRS HAVE SUFFICIENT BASIS TO LIMIT OR EVEN REMOVE COMERICA

It is well settled Minnesota law that Courts are empowered with the ability to remove a personal representative or special administrator for cause. (Minn. Stat. 524.3-618; Minn. Stat. 524.3-611(b)). Despite Comerica’s contention that Courts have only removed personal representatives in “limited circumstances,” under Minn. Stat. 524.3-611(b), Courts are directed to look at a number of factors in determining removal:

“Cause for removal exists when removal is in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of office, or has mismanaged the estate or failed to perform any duty pertaining to the office. In determining the best interests of the estate, the personal representative's compensation and fees, and administrative expenses, shall also be considered.”

Comerica cites to *In re Estate of Loewe* for the assertion that personal representatives may only be removed in “limited circumstances,” such as failing to comply with specific statutory duties. *In re Estate of Loewe*, No. CO-89-1077, 1989 WL 138989, at *1-2 (Minn. Ct. App. Nov. 21, 1989). In *Loewe*, a 74 year old widower was removed as a personal representative after failing to file the estate’s inventory within the time required by statute and once filed was inaccurate. While the facts are very different from the current matter, the court in *Loewe* found that a personal representative should be able to be removed if they are, “*unfit* regardless of whether they have yet been harmed.” *Id.* (emphasis added). In this case, despite Comerica’s banking and trust history, and Comerica’s hiring and deployment of its law firm Fredrickson and Byron to legally defend it, the actual results of Comerica’s actions demonstrate that Comerica is unfit to handle this particular entertainment Estate.

Court’s have determined that removal is in the best interests of the estate when there is “considerable animosity” between the personal administrator and the heirs of the estate, and there is disagreement as to the administration of the estate. *See In re Estate of Michaelson*, 383 N.W.2d 353, 356 (Minn. Ct. App. 1986). There is far more than “considerable animosity” in this case, there appears to be deep tensions and resentment among Comerica, Comerica’s advisors and the Heirs. Furthermore, removal is warranted where a personal representative has violated or disregarded a Court order. *See In re Drew 's Estate*, 236 N.W. 701, 702-03 (Minn. 1931). Lastly, Courts have sanctioned removal where it can be shown that there has been waste, mismanagement, delay, or other serious issues with respect to Estate assets. *See Matteson v. McClure*, 245 N.W. 382, 382 (Minn. 1932).

The SNJ Heirs, now all the Heirs, have attempted, to no avail, to be allowed an opportunity to have a fact-finding to show how Comerica has allowed assets to be wasted (such

as lack of released music), mismanagement (Paisley Park, vault planning, excessive spending, self-dealing by advisors, etc.) and delay (tax negotiations, music releases, etc.).

a. The Heirs and Comerica have considerable animosity with each other and vehemently disagree with respect to the administration of almost all matters related to the Estate

It is telling that Comerica does not cite to any Minnesota authority (statutory or otherwise) with respect to its contention that “a disagreement between heirs and a personal representative regarding the administration of the Estate is insufficient grounds to seek removal.” In fact, Minnesota case law is clear that removal is in the best interests of the estate where there is “considerable animosity” between the personal administrator and the heirs of the estate, *see In re Estate of Michaelson*, 383 N.W.2d 353, 356 (Minn. Ct. App. 1986). Furthermore, there has been, continues to be, and will likely be increased tension and disagreements with Comerica to the administration of the Estate. *See In re Estate of Michaelson*, 383 N.W.2d 353, 356 (Minn. Ct. App. 1986). Additionally, the two non-Minnesota cases cited by Comerica for the contention that “a disagreement between heirs and a personal representative regarding the administration of the Estate is insufficient grounds to seek removal,” are easily distinguishable from the immediate action. *In re Murphy’s Estate*, the Florida court recognized an overwhelming preference for retaining a personal representative chosen by the deceased while in this Estate, Comerica is a corporate personal representative that Prince did not choose, and for whom all six of the Heirs now wish to remove or limit. *In re Murphy’s Estate*, 336 So.2d 697, 699 (Fla. Dist. Ct. App. 1976). Additionally, *In re Kramek Estate* is cited by Comerica to articulate that “ordinary disputes” are not a sufficient basis to remove a Personal Representative, if the dispute could be handled expeditiously by the parties and the trial court, and the dispute does not cause harm to the Estate. *In re Kramek Estate*, 710 N.W.2d 753, 759- 60 (Mich. Ct. App. 2005). *Kramek* is easily distinguishable from the immediate action. First, the lack of relevant corresponding case

law addressing similar disputes, coupled with the “undeniable”, “unique” and “extraordinary nature of this probate” reflects that these *numerous* disputes are not ordinary. (Order Approving Fees And Costs And Expenses And Establishing Procedure For Review and Approval of Future Fees And Costs and Expenses (dated October 28, 2016)). “[T]he unique and extraordinary nature of this probate is undeniable.” *Id.* Furthermore, it is evident that this Court and the Parties have been unable to expeditiously resolve these disputes, as they continue years after the initial Petition to Remove Comerica.

The Heirs continue to assert that they have multiple disagreements with Comerica regarding the administration of the Estate, including, but not limited to, Comerica’s delays on tax negotiations, cash flow projections, accountings, lack of business plan, lack of catalog plan, return of millions of Estate dollars and inventory of Estate assets. Notwithstanding these disagreements, Comerica continues to be evasive and/ or non-responsive to the concerns of the Heirs. Comerica’s citing of certain examples in which it has allegedly “honored” the Heirs wishes with respect to certain Estate matters (all smaller concerns than material decisions), fails to address the fact that Comerica has repeatedly failed to give notice and adequate consultation to the Heirs with respect to the sale and exploitation of Estate assets and other material matters involving the Estate. Comerica’s failure in this regard is not only a basis for removal but also a violation of this Court’s March 20, 2017 Order.

b. Comerica made certain misrepresentations to the Heirs prior to being appointed as Personal Representative

Prior to being appointed as the Personal Representative for the Estate, Comerica made material representations to the Heirs with respect to its business acumen and expertise in the entertainment industry. As a result of and in reliance on said misrepresentations, the Heirs supported the appointment of Comerica as the Personal Representative. In actuality, Comerica

lacked the expertise to negotiate sound business deals on behalf of the Estate and otherwise navigate the needs of the Estate in the entertainment industry. Under Minnesota law misrepresentations prior to being appointed as personal representative are a basis for removal. Minn. Stat. 524.3-611(b). Comerica's history of deceit and misrepresentation has been outlined previously in significant detail in the SNJ Heirs' prior Petition to Remove Comerica (the "2017 Petition") and the supporting briefs and affidavits filed in connection with that Petition in 2017. (*See* SNJ Heirs Petition To Permanently Remove Comerica Bank & Trust N.A. As Personal Representative, filed on October 27, 2017; *see also* Declarations of Sharon, Norrine and Johnson Nelson filed on November 17, 2017). The 2017 Petition sought to remove Comerica based on facts established by SNJ that Comerica had intentionally misrepresented prior to its appointment as Personal Representative with respect to its business expertise in the entertainment industry, mismanagement and waste of Estate assets by Comerica, failure to protect Estate assets, violation of Court orders, and failing to act in the best interests of the Estate. However, this Court's eventual denial of the 2017 Petition only emboldened Comerica in its misrepresentations and disregard for the Heirs.

c. Comerica has and continues to mismanage and waste the Estate's assets

While Comerica attempts to list its purported achievements as Personal Representative of the Estate, Comerica conveniently fails to mention its continued mismanagement of and waste of Estate assets. This mismanagement and waste includes, but is not limited to disregarding and agitating the Heirs, making unilateral decisions with respect to music and audio recordings from Paisley Park, excessive spending on probate related administrative expenses (including over \$10 million for Comerica's legal fees), and failing to adequately address the Estate's tax liability. Pursuant to Minnesota law this also serves as an appropriate cause for removal. *Matteson v.*

McClure, 245 N.W. 382, 382 (Minn. 1932) (holding removal of executor warranted where there is waste, mismanagement, delay, or other serious issues with respect to Estate assets).

II. THE JOINT PETITION IS REASONABLE AND IN THE BEST INTEREST OF THE ESTATE. COMERICA CONTINUES TO MAKE MISREPRESENTATIONS TO THE COURT TO ENRICH ITSELF

Comerica's pattern and practice of making material misrepresentations to the Heirs and to this Court began even before its appointment as Personal Representative when Comerica intentionally misrepresented material facts regarding its competence and intentions as a potential candidate for the role. These misrepresentations are not limited to a single transaction or course of action, but rather reflect a continued disregard for this Court's orders and the role of the Heirs. Further, Comerica's wrongful conduct persists presently, much to the benefit of Comerica and to the detriment of the Estate and Heirs.

Comerica's arguments in its Objection to the current Joint Petition to Limit Comerica (the "Joint Petition") reflect a complete failure by Comerica to consider the Heirs' legitimate objections with any level of credence or credibility. Comerica and its counsel continue to disrespectfully frame any legitimate dispute or objection raised by any of the Heirs as the result of "scheming of advisors for other Heirs" and "self-interested advisors," and even the slightest efforts by the Heirs to provide input on material and important matters of Estate assets as efforts "hijacked by advisors for certain Heirs in an attempt to enrich themselves personally." (*See* Comerica's Objection to Joint Petition to Permanently Limit Its Powers, filed on April 12, 2019, at p. 3, 11, 15).

By repeatedly dismissing the Heirs concerns, Comerica offers little to no good-faith efforts to work cooperatively with the Heirs and their advisors. The very serious issues raised in the Joint Petition should signal to Comerica and this Court that these disputes are not trivial, are

not based on merely meddling or interfering advisors, and are not commonplace or nominal disagreements. Rather, the Joint Petition is based on the unanimous agreement by the Heirs legitimate concerns, which reflects delays, posturing, lack of economic opportunity, excessive spending and mismanagement by the Personal Representative.

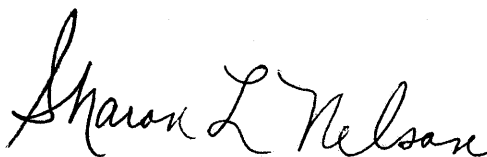
CONCLUSION

For the foregoing reasons, SNJ Heirs respectfully request that the Court grant the Heirs' Joint Petition to Permanently Limit Comerica's Powers as Personal Representative.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Date: 4/17/19

Sharon L. Nelson:



Signed in Washington County,

State of Minnesota

Date: 4/17/19

Norraine P. Nelson:



Signed in Hennepin County,

State of Minnesota

Date: 4/7/19

John R. Nelson



Signed in Hennepin County,

State of Minnesota