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8/8/2018 5:23 PM
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The McMillan Firm™

August 8, 2018

VIA ELECTRONIC FILING

The Honorable Kevin W. Eide
Judge of the District Court
Carver County Justice Center
604 East 4th Street
Chaska, MN 55318

Re: In the Estate of Prince Rogers Nelson (Court File No. 10-PR-16-46)

Dear Judge Eide:

I write to respectfully seek judicial intervention to compel the disclosure to me of a complete and unredacted version of the report filed with this Court on May 15, 2018 (the Jobu Report), by the Second Special Administrator, Peter J. Gleekel, Esq. ("Mr. Gleekel") for the Estate of Prince Rogers Nelson (the "Estate"). To date, proceedings in the above-titled matter have been shrouded in secrecy and a lack of transparency that cuts against the fundamental rights of the parties to access and respond to these judicial proceedings. (*See, e.g.,* Order dated January 19, 2017, noting the unreasonably large number of documents filed under seal). Most recently, Mr. Gleekel has made public serious and prejudicial allegations against me while simultaneously keeping the details of his investigative processes, analysis, and reasoning hidden under confidentiality designations. As a result, I am forced to seek the Court's intervention in order to acquire and review an unredacted version of the Jobu Report, a document crucial and necessary to my defense of these allegations. Alternatively, since I am acting in a *pro se* capacity, I am requesting also that Mr. Gleekel at least provide me with the partially redacted version of the Report that was provided to the attorneys in the case on an attorney's eyes only (AEO) basis. It was provided on that basis to my co-counsel Alan Silver, but he is not at liberty to provide it to me.

MR. GLEEKEL'S REPORTS

Pursuant to this Court's orders of August 21, 2017 and February 2, 2018, the Court selected attorney Mr. Gleekel (who by his own admission has no substantial prior experience in the entertainment industry) and authorized him to conduct his own investigations and make recommendations regarding whether any action should be pursued by the Estate against any party or parties in connection with the following: (1) a rescinded 2017 agreement between the Estate and UMG Recordings Inc.; and (2) a 2016 agreement between the Estate and Jobu Presents LLC (which arguably involves no asset of the Estate). Mr. Gleekel's investigations resulted in the filing of two separate reports, the first on December 15, 2017 (the "UMG

Filed in First Judicial District Court
8/8/2018 5:23 PM
Carver County, MN

Report"), and the second on May 15, 2018 (the "Jobu Report"), collectively referred to herein as the "Reports." The first Report was provided without, or with only minor, redactions, but as described more fully below, the second was so heavily redacted that it is impossible to even know what action Mr. Gleekel recommended be taken.

In the UMG Report, Mr. Gleekel concludes that there is a "reasonable basis" for potential claims against the Estate's court-appointed Advisors (among other parties), of which I am one. It is my understanding that the Jobu Report finds a similar "reasonable basis," although the actual recommendation that Mr. Gleekel makes is redacted. While this "reasonable basis" standard was based on Mr. Gleekel's own determinations and as a result of his investigation and continued representation of the Estate, I believe that the Reports fail to consider key facts in their allegations and conclusions. In the Jobu Report's heavily redacted form, it is impossible to determine what evidence was reviewed, which potential claims may be supported against which parties, and the specific factual allegations substantiating Mr. Gleekel's claims. (*See, e.g.*, Jobu Report, attached hereto as Exhibit A, at pp. 8-21 consisting of 14 consecutive, fully redacted pages of factual recitation). Indeed, even Mr. Gleekel's final and substantive conclusions are redacted at times. (*See, id.* at pp. 30-43, redacting in their entirety the sections stating and analyzing the bases for potential claims against the Estate's two Advisors).

REQUESTS FOR UNREDACTED JOBU REPORT OR COPY DISCLOSED TO ATTORNEYS

Given the costs associated with proceedings as complex and layered as these, I have elected to serve as my own counsel with regard to my individual role as an Advisor to the Estate (*see,* Notice of Appearance filed on July 26, 2018), and by virtue of that role, as a potential defendant to certain claims recommended in the Reports. It should be noted also that my role as an Advisor was conducted in my capacity as an officer of NorthStar Enterprises Worldwide, Inc. ("NorthStar"), not in my personal capacity. In that context, on multiple occasions, counsel for NorthStar, Mr. Alan Silver, and I have respectfully requested from Mr. Gleekel unredacted versions of the Jobu Report so that I might evaluate completely the facts and circumstances Mr. Gleekel relied upon in learning the nature of these matters and in concluding my or NorthStar's alleged involvement and potential liability.

Given that Mr. Gleekel previously circulated the UMG Report to the parties in completely unredacted form, it is perplexing that with respect to the Jobu Report, he initially proffered that "[t]he Court has advised me to consider whether the unredacted report would constitute privileged information . . . and therefore should not be released." After objection, Mr. Gleekel ultimately disclosed a somewhat less redacted version of the Jobu Report to certain parties and counsel on an "Attorneys' Eyes Only" basis, yet he refuses to provide a copy for my review, despite my *pro se* role in this case. Instead, Mr. Gleekel has imposed a prejudicial standard upon me and has refused to provide the unredacted Jobu Report unless I bind myself to unreasonable and unwarranted confidentiality obligations.

Filed in First Judicial District Court
8/8/2018 5:23 PM
Carver County, MN

PRIOR CONFIDENTIALITY CONCERNS

Mr. Gleekel's preoccupation with confidentiality in my case, it seems, stems from my previous refusal to sign a confidentiality agreement issued to me in an unrelated proceeding by the Estate's personal representative, Comerica Bank & Trust, N.A. ("Comerica") in connection with my role as the business advisor to three of the six Court-approved heirs of this Estate. In that matter, as the Court is aware, the main issue was my unwillingness to agree to Comerica's form agreement and its insistence that "oral disclosures" be covered by the agreement's definition of "Confidential Information." Comerica argued that in addition to documented entertainment deals, certain oral information must be covered by the agreement to protect other proposed business deals at the time. While I was willing to enter into a confidentiality agreement, I was unwilling to include such "oral disclosures" unless they were followed by a contemporaneous written confirmation, given the consistently adversarial position Comerica took against me from the beginning of its role in this case. In the present circumstances, however, none of those issues apply. In this case, I am a *pro se* respondent simply seeking to defend myself against Mr. Gleekel's reported claims. As such, I appropriately wish to know how Mr. Gleekel reached his so-called "reasonable basis" judgment that claims should be pursued against me and the other relevant parties.

MR. GLEEKEL'S DEMAND OF CONFIDENTIALITY AND PENDING MOTION ARE INAPPROPRIATE

The confidentiality requirements demanded of me exclusively are unwarranted because the documents and investigation materials Mr. Gleekel relied upon in reaching his conclusions are either a matter of public record or have already been disclosed to other parties and counsel in these proceedings. It is also significant that the current dispute over confidentiality relates only to the Jobu report which involves the Tribute Concert that took place two years ago and not an asset of the Estate. It is difficult to understand how anything relating to that concert could now be confidential, and even if it were confidential as to the public, it should not be as to me. I was an Advisor to Bremer at the time of the events at issue, and I had full access to private information at the time. At the end of the day, I co-produced the Tribute Concert and hired every performer. I should have greater access to materials in Mr. Gleekel's report, both because of the role I played during 2016 and because I am now acting as my own counsel. Certainly, the Court should not allow disparate treatment of me from others. I have long expressed these fairness concerns to other parties in these proceedings, and now I am forced to bring them to the Court's attention as well, particularly given that only last week, on August 2, 2018, the potential claims suggested by Mr. Gleekel's Reports materialized into a formal motion—albeit a premature and misplaced one—for the recovery of funds from me individually and to which I now am obligated to respond (the "Jobu Refund Motion").

The Estate and Advisors have already agreed in good faith to seek mediation of the Jobu Matters, the dates and procedures for which are being negotiated presently by the parties. Mr. Gleekel's premature Jobu Refund Motion, however, violates that good faith and only serves to hinder the mediation process before it has even begun. Notwithstanding that the Jobu Refund Motion was filed without any supporting legal memoranda or factual pleadings, disclosure *in*

Filed in First Judicial District Court
8/8/2018 5:23 PM
Carver County, MN

their entirety of the conclusions in the Jobu Report is crucial to my ability to both prepare for upcoming mediation and to oppose the Jobu Refund Motion—a motion based solely on Mr. Gleekel's singular findings and to which I am unable at this point to fully respond.

It is well established under both Minnesota and federal law that the most restrictive confidentiality designation available is the limitation of information to "Attorneys' Eyes Only," and the party seeking this designation bears the burden of proving that material designated as such is sensitive enough to warrant such a restriction. Additionally, this level of confidentiality is typically seen in situations where it is absolutely necessary to protect trade secrets and other sensitive business information, none of which are present or at risk of disclosure in the Jobu Report. Although the Minnesota Court Rules direct that *the Court* (not a party or a Special Administrator) may designate "that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way," even then, such designation is appropriate only after a formal motion for protection has been made before the Court, which has not occurred here. (*See*, Minn. R. Civ. P. 26.03(a)(7)). Mr. Gleekel's insistence on this level of confidentiality may be a thinly veiled attempt to shield himself and the findings in the Jobu Report from my defense or public analysis. Such misuse of this designation is subject to the Court's review and amendment, as well as to sanctions, and a Court's determination of the confidentiality of such investigation documents may be appealed as of right under 757 Minn. R. Civ.App. P. 103.03(g). *See*, *e.g., Hearing Associates Inc. v. Downs*, 2013 WL 8022925, at *6 (Minn. Dist. Ct. 2013) (holding that designation of documents as "Attorneys' Eyes Only" was "too broad and prevents the fair and complete preparation of both parties' cases."); *see also, In re GlaxoSmithKline PLC,* 699 NW2d 749, 756–57 (Minn. 2005) (District Court's application of confidentiality restriction to investigation documents was subject to appeal as of right).

For the foregoing reasons, as well as principles of fairness and due process, I respectfully request that the Court instruct Mr. Gleekel to provide me with a complete and unredacted version of the Jobu Report (or at the very least, the same version that has been disclosed to other counsel) or, in the alternative, to allow a hearing to be held on this matter.

Respectfully,

/s/ L. Londell McMillan

L. Londell McMillan, Esq.
Acting as Pro Se Respondent
THE MCMILLAN FIRM
240 WEST 35TH STREET, SUITE 405
NEW YORK, NEW YORK 10001
(646) 559-8314
LLM@THENORTHSTARGROUP.BIZ

cc via Electronic Filing: All counsel of record and electronic service list

Filed in First Judicial District Court
8/8/2018 5:23 PM
Carver County, MN

EXHIBIT A

Filed in First Judicial District Court
5/8/2018 1:20 PM
Carver County, MN

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

CASE TYPE: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson

Decedent.

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

REPORT AND RECOMMENDATION OF THE SECOND SPECIAL ADMINISTRATOR CONCERNING THE JOBU PRESENTS AGREEMENT [REDACTED VERSION]

Peter J. Gleekel and Larson • King, LLP were originally appointed the Second Special Administrator of Decedent's estate pursuant to Minn. Stat. § 524.3-617 and the Court's Letters of Special Administration dated August 18, 2017. By this Court's February 2, 2018 Order, the authority of the Second Special Administrator was expanded, pursuant to Minn. Stat. § 524.3-617, to include the following:

a. Conducting an independent examination and making an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents; and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement;

b. Analyze and report in writing to the undersigned with respect to whether pursuing any such claim(s) related to the Jobu Presents agreement is in the best interest of the Estate, considering factors including, but not limited to:

   i. The strength of the evidence supporting any such claims and the likelihood of success on the merits;

   ii. The potential damages that could be recovered on any such claims;

   iii. The cost of pursuing any such claims (attorneys' fees plus other direct financial costs of the lawsuit);

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

iv. The opportunity cost of pursuing any such claims (any potential revenue or opportunities that the Estate would forego);

v. Any other impact on the Estate in pursuing any such claims (for example, harm to Prince's brand, harm to the Estate's relationship with current or potential entertainment partners, impact on willingness of other entities to do future business with Estate, increased tension or disagreement among Heirs); and

vi. The policy implications for this Estate, or other estates, of prosecuting a claim against the person or entity and whether that improperly incentivizes claims on future transactions.

Pursuant to the above-referenced Order, an independent investigation and examination was conducted to determine whether the Estate has a reasonable basis for a claim(s) against any person or entity for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents, and to determine whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the Jobu Presents agreement.

In connection with the performance of the independent examination, the Second Special Administrator reviewed documentation, including agreements, correspondence and emails relating to the appointment and conducted interviews of persons with relevant information. The documentation reviewed by the Second Special Administrator was received from various parties/counsel and includes, but is not limited to, the following:

- Agreements, correspondence and emails from Londell McMillan/North Star Enterprises Worldwide, Inc., through his attorneys, consisting of 8,484 pages of documents;
- A memorandum submission together with exhibits consisting of 820 pages from Omarr Baker, through his counsel;

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

- Agreements, correspondence, emails, transcripts and court pleadings from Comerica, through its counsel consisting of 14,551 pages;
- Pleadings in the action captioned *Jobu Presents, LLC v. Charles Koppelman, et al.*, Court File No. 10-CV-17-368 pending in this Court, consisting of 169 pages;
- Agreements, correspondence and emails from Charles Koppelman/CAK Entertainment, Inc., through its counsel consisting of 1,429 pages.
- Agreements, correspondence and emails from Bremer Trust, through its counsel consisting of 4,545 pages; and
- A letter submission and exhibits submitted on behalf of Bremer Trust, through its counsel consisting of 24 pages.

Interviews of the following persons who were involved or had relevant knowledge of the Jobu Presents agreement, performance under that agreement and the return of the advance to Jobu Presents were interviewed, as was counsel for Comerica, in light of their current involvement on behalf of the Estate:

- Joseph Cassioppi and Mark Greiner of Fredrikson & Byron, counsel to Comerica;
- L. Londell McMillan, entertainment advisor to the estate while Bremer Trust served as the Special Administrator;
- Craig Ordal and Deb Fasen of Bremer Trust;
- Laura Halferty, Traci Bransford and David Crosby of Stinson Leonard Street, LLP ("SLS"). Ms. Bransford served as entertainment counsel for the Special Administrator and was involved in the Jobu Presents agreement and performance by Jobu of the agreement. Ms. Halferty was the relationship partner on the

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

matter, rendered probate counsel, and was involved in the Jobu Presents agreement and performance by Jobu Presents of the agreement. Mr. Crosby was the litigator at SLS with primary responsibility for addressing the termination by Jobu Presents of the Jobu Presents agreement, the decision, in concert with Bremer Trust, to return to Jobu Presents the advance made by Jobu Presents, and the considerations and terms in connection therewith;

- Charles Koppelman, entertainment advisor to the Estate while Bremer Trust served as the Special Administrator;
- Vaughn Millette, Principal of Jobu Presents, LLC ("Jobu"); and
- Ken Abdo and Adam Gislason of Fox Rothschild who represented certain putative Heirs at a point in time in this matter, and who were involved in commenting on, among other things, the selection of Jobu Presents to promote the Tribute Concert ("Tribute"), and the facts and circumstances in respect of the Tribute after Jobu Presents terminated its involvement in the promotion of the Tribute.

FACTUAL BACKGROUND

At the time of Prince's death, Prince was scheduled to perform at US Bank Stadium in August of 2016. As a Minnesota music icon, Prince looked to perform the first musical concert at the newly-opened US Bank Stadium. Thus, at his death, certain family members sought to honor his legacy by holding a Prince Tribute Concert in August of 2016. The family desired to hold the Tribute in August of 2016 to coincide with a planned memorial to honor Prince.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Originally, the Tribute was being coordinated by the family members and their lawyers. In May of 2016, counsel for Alfred Jackson [redacted]. On May 19, 2016, [redacted]. [redacted] Messrs. McMillan and Koppelman were then under serious consideration to be retained by the Estate as its entertainment advisors.

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Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

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Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

[redacted]

On June 2, 2016, the Special Administrator sought Court approval to retain "entertainment industry experts to advise and assist the Special Administrator in the management and preservation of the wide-ranging intellectual property of the Estate, and to perform acts of the administration on behalf of the Special Administrator of the Estate." On June 8, 2016, the Court authorized the Special Administrator to engage entertainment industry experts. The Court authorized the Special Administrator to engage the entertainment industry experts initially for a period through November 2, 2016. The Court retained approval of any entertainment or intellectual property exploitation agreements recommended by the experts. The authorization was subsequently extended through January of 2017. On June 16, 2016, the Special Administrator entered into an Advisor Agreement with North Star Enterprises Worldwide, Inc. (providing the services of L. Londell McMillan) and CAK Entertainment, Inc. (providing the services of Charles Koppelman). The Advisor Agreement was amended and extended on September 14, 2016 to be coexistent with the date the Special Administrator ceased to be the Special Administrator. The Advisor Agreement enabled the Special Administrator to obtain the expertise, management, monetization abilities, advice and services of Messrs. McMillan and Koppelman (the "Advisors"). The Advisors were retained to provide, in part, the following:

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

[redacted]

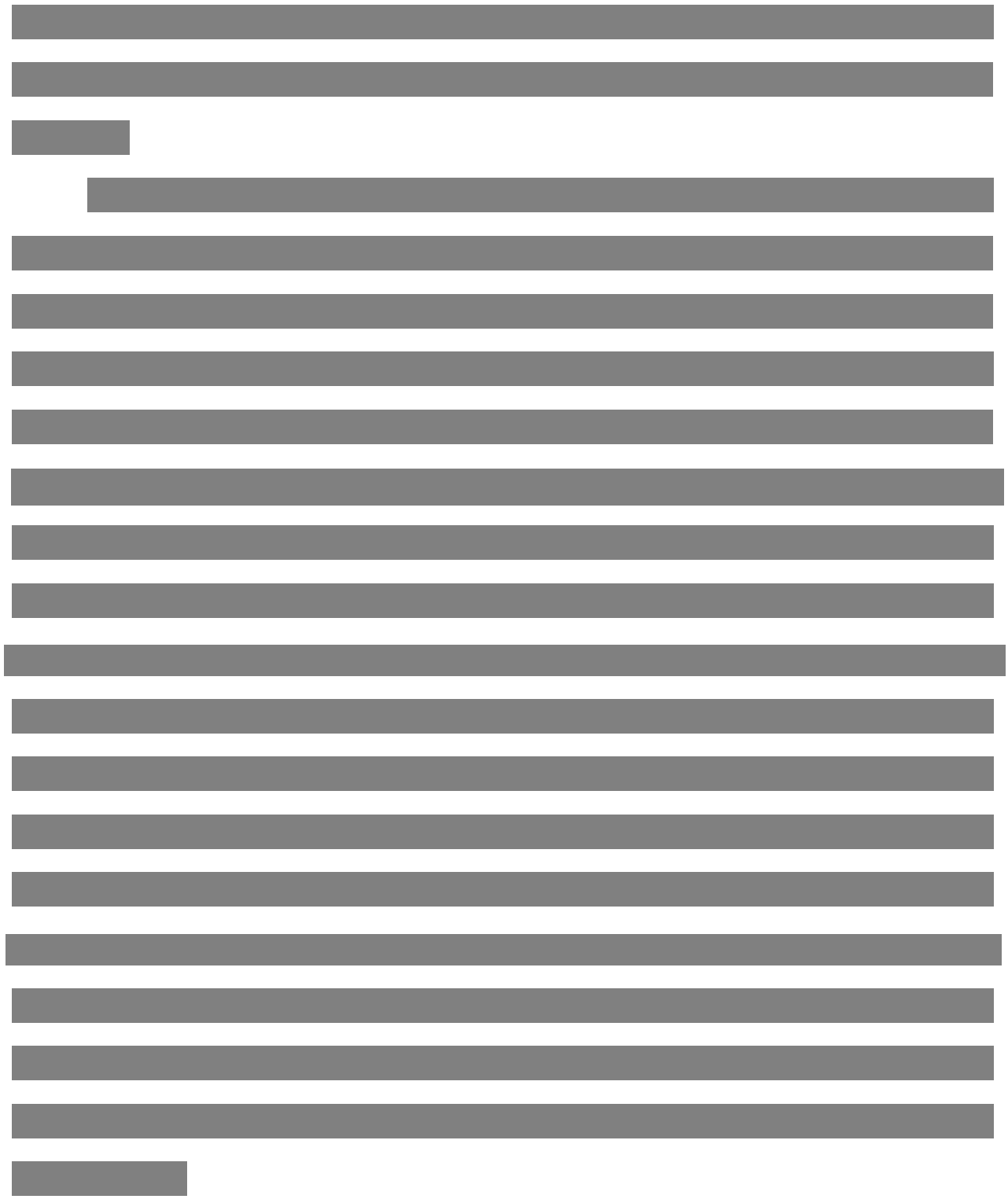
. . .

[redacted]

. . .

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN



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5/18/2018 1:20 PM
Carver County, MN

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Carver County, MN

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5/18/2018 1:20 PM
Carver County, MN

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5/18/2018 1:20 PM
Carver County, MN

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5/18/2018 1:20 PM
Carver County, MN

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Carver County, MN

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Carver County, MN

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5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Jobu commenced litigation against Bremer Trust, Mr. Koppelman/CAK and Mr. McMillan/North Star on April 21, 2017 in this Court. Bremer Trust was subsequently dismissed from the case. Jobu is proceeding with its claims against Messrs. Koppelman and McMillan. In its lawsuit, Jobu alleges, among other things, that Messrs. Koppelman and McMillan fraudulently induced Jobu into entering into the Jobu Agreement by misrepresenting that the Tribute would include a charitable component, that certain artists had been secured to participate

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

in the Tribute, and material facts in respect of the production of the Tribute concerning the location and date of the Tribute.

Jobu has asserted five counts against Messrs. Koppelman and McMillan: (1) fraud in the inducement, (2) fraudulent misrepresentation, (3) negligent misrepresentation, (4) promissory fraud, and (5) request for declaratory judgment under Minn. Stat. § 555. One of the remedies, among others, Jobu requests is a Court Order rescinding the Jobu Agreement as a result of the alleged fraud in the inducement and promissory fraud.

ANALYSIS

1. Breach Of Duty By Bremer Trust.

A personal representative has broad powers to administer an estate and stands in a fiduciary relationship with the estate. *Goldberger v. Kaplan, Strangis & Kaplan, PA*, 534 N.W.2d 734, 739 (Minn. Ct. App. 1995) *review denied* (Sept. 28, 1995). The Minnesota Probate Code (adopted from the Uniform Probate Code) sets forth the following relevant definition:

> "Fiduciary" includes personal representative, guardian, conservator and trustee.
>
> "Personal Representative" includes executor, administrator, successor personal representative, special administrator, and persons who will perform substantially the same function under the law governing their status.

Minn. Stat. § 524.1-201(18), (40).

A personal representative and special administrator are required to act as a "prudent person dealing with the property of another" and "consistent with the best interests of the estate." Minn. Stat. § 524.3-703(a). A fiduciary must exercise that degree of care that "[persons] of common prudence ordinarily exercising their own affairs." *In re Estate of Janke*, 193 Minn. 201, 204, 258 N.W. 311, 313 (1935) (quoting *Harding v. Canfield*, 73 Minn. 244, 75 N.W. 1112, 1113 (1898)).

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

A personal representative acting prudently for the benefit of the estate may properly:

> [E]mploy persons including attorneys, auditors, investment advisors, or agents, even if they are associated with a personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
>
> [P]rosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties.

Minn. Stat. § 524.3-715(21), (22).

Thus, a fiduciary, such as a personal representative or special administrator, is under an obligation to delegate to and employ a specific agent reasonably. This obligation is a consequence of the obligation of a personal representative to observe the standards of care dealing with Estate assets that would be observed by a prudent person dealing with the property of another. *See,* Minn. Stat. § 524.3-703(a).

As Minn. Stat. § 524.3-715(21) authorizes a personal representative or special administrator to hire agents with specialized skills and to "act without independent investigation upon their recommendations" the special administrator or personal representative is not liable to the estate for the "errors, omissions or malfeasance of the estate's agents" unless the delegation or reliance is unreasonable. *In re Estate of Gangloff*, 743 S.W.2d 498, 502-04 (Mo. Ct. App. 1987) (analyzing the same statutory language as Minn. Stat. § 524.3-715(21)); *see also In re Estate of Anderson*, No. A15-1513, 2016 WL 3582414, at *3 (Minn. Ct. App. July 5, 2016) (finding the personal representative not liable because he relied on his attorney's expert advice on the method of selling estate property).

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Minn. Stat. § 524.3-715(22) requires that a personal representative, acting reasonably for the benefit of the estate "prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties." So too, if a special administrator determines that an agent has breached its duty, the personal representative has a duty to bring an action against the agent on behalf of the estate. *See, e.g., Restatement (Second) of Trusts* § 177 comment (a) (requiring trustee to take "reasonable steps" to remedy an agent's breach of duty). *See also Charles M. Bennett, When the Fiduciary's Agent Errs – Who Pays the*

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Bill – Fiduciary, Agent or Beneficiary? 28 Real Prop. Prob. & Tr. J. 429, 468 (Fall 1993) ("Moreover, as a matter of public policy, the law should encourage fiduciaries to retain experts who can make the best possible decisions for the beneficiaries. When an expert errs, the law should place responsibility for damages on the party that rendered the erroneous advice.") *See also Professional Fiduciary, Inc. v. Silverman*, 713 N.W.2d 67, 71 (Minn. Ct. App. 2006).[4]

2. Breach Of Contract By Jobu.

Whether a contract exists requires a threshold factual determination as to whether the parties agreed to be bound by specific contract terms. *See W. Insulation Servs., Inc. v. CNT. Nat'l Ins. Co. of Omaha*, 460 N.W.2d 355, 358 (Minn. Ct. App. 1990); *Baehr v. Penn-O-Tex Oil Corp.*, 258 Minn. 533, 537-38, 104 N.W.2d 661, 664 (1960). In order to find that there, in fact, exists a contract, there had to have been ". . . communication of a specific and definite offer, acceptance and consideration." *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d

4 A successor personal representative retains the rights of the initial personal representative and "[e]xcept as otherwise ordered by the court, the successor personal representative has the powers and duties in respect of the continued administration which the former personal representative would have had if the appointment had not been terminated." Minn. Stat. § 524.3-613.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

772, 782 (Minn. Ct. App. 2006). "The parties must agree with reasonable certainty about the same thing and on the same terms." *Peters v. Mut. Benefit Life Ins. Co.*, 420 N.W.2d 908, 914 (Minn. Ct. App. 1988) (quotation omitted). An alleged contract that is so vague, indefinite, and uncertain as to render the meaning and intent of the parties subject to speculation is void and unenforceable. *King v. Dalton Motors, Inc.*, 260 Minn. 124, 126, 109 N.W.2d 51, 52 (1961). When substantial and necessary terms are left open for future negotiation, a purported contract is "fatally defective" and void. However, the law does not disfavor the destruction of contracts because of indefiniteness. If the terms can be reasonably ascertained in the manner prescribed in a writing, the contract will be in enforced. *Id.* Though not yet expressly adopted by Minnesota courts, the Restatement defines "certainty":

> The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.

Restatement (Second) of Contracts § 33.

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Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

In *Yessup Touring II, LLC v. Baltimore Orioles, Inc.*, the court found the following to be sufficient for a binding contract between an artist and concert host:

> Defendant made a firm contract offer on April 28, and the offer contained sufficiently definite terms. The offer not only laid out the concert date and location and the minimum guarantee to be paid to Van Halen, but also provided that (1) Van Halen would provide his own sound system and lighting; (2) Van Halen would receive 80% of ticket and merchandising sales; (3) defendant would receive all revenues from food, beverages, and parking; and (4) Van Halen was prohibited from performing a concert within 100 miles of Baltimore during the six months prior to the concert without the written permission of defendant.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

No. CV04-6608 (WMB) (SHX) 2005 WL 6124309, at *2 (S.D. Cal. August 5, 2005).

Filed in First Judicial District Court
5/8/2018 1:20 PM
Carver County, MN

Under Minnesota law, a breach of contract requires that the non-breaching party "must show: (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011).

The general measure of damages for breach of contract is the amount that will place the non-breaching party in the same situation as if the contract had been fully performed. *Peters v. Mut. Benefit Life Ins. Co.*, 420 N.W.2d 908, 915 (Minn. Ct. App. 1988); *Sprangers v. Interactive Technologies, Inc.*, 394 N.W.2d 498, 503-04 (Minn. Ct. App. 1986), *review denied* (Minn. Nov. 19, 1986). In *Lesmeister v. Dilly*, 330 N.W.2d 95, 103 (Minn. 1983), the Supreme Court articulated the rule of expectancy damages:

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

> A non-breaching party should recover damages sustained by the breach which arose naturally from the breach or could reasonably be supposed to have been contemplated by the parties when making the contract as a probable result of the breach. However, a party recovering damages for breach of contract should not be better off because of the breach than he would have been had there been no breach.

Stated differently, in order for damages to be recoverable, they must have been within the contemplation of both parties at the time the contract was made, or so likely to result from the breach that they can reasonably be said to have been foreseen. *Franklin Mfg. Co. v. Union Pacific R.R. Co.*, 248 N.W.2d 324, 325 (Minn. 1976).

3. <u>Breach Of The Advisor Agreement Against Messrs. Koppelman And McMillan.</u>

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

4. Breach Of Fiduciary Duty Against Koppelman.

There are two bases on which to find the existence of a fiduciary duty owed by Mr. Koppelman/CAK to the Estate. First, Mr. Koppelman/CAK was an agent of the Estate as defined by the terms of the Advisor Agreement. Second, Mr. Koppelman held a position of trust and confidence of the Estate rooted in his unique skill, expertise and knowledge in the entertainment industry.

Within the context of an expert/agent, a personal representative, and Estate, a somewhat anomalous tripartite relationship is created. The personal representative owes an obligation to the Estate, for which the beneficiaries may hold the personal representative accountable. Minn. Stat. §§ 524.3-703(a), 524.3-712. Yet, the actions of the expert/agent, while for the benefit of the Estate, are not obligations on which the beneficiaries can hold the agent responsible for a lawsuit or otherwise. *Goldberger*, 534 N.W.2d at 739. That right belongs solely to the Estate; the personal representative may hold the expert/agent accountable. *Id.* (*citing Trask v. Butler*, 123 Wash.2d 835, 872 P. 2d 1080 (1994)). The reasoning is the sometimes conflicting interests of beneficiaries and the estate. *Id.*; *see also 2 R. Mallen & J. Smith § 26.10* (in the absence of an express undertaking, fraud or malice, the attorney for a personal representative owes no duty to and cannot be liable for negligence to heirs, legatees, creditors of the estate or surcharged by the probate judge). The tripartite relationship often appears in the form of an estate, a personal representative and an attorney. *Id.; In re Estate of Larson*, 694 P. 2d 1051 (Wash. 1985) (in probate the attorney client relationship exists between the attorney and the personal

Filed in First Judicial District Court
5/8/2018 1:20 PM
Carver County, MN

representative of the estate); *Trask*, 872 P. 2d at 1083. It also arises when a personal representative hires an accountant. *Jewish Hospital of St. Louis, Missouri v. Boartmen's National Bank of Belleville*, 633 N.E.2d 1267, 1279-80 (Ill. App. 1994) (analyzing the obligations of an accountant hired by a personal representative in the same manner as an attorney hired by the personal representative). In these situations, the personal representative and the attorney have an attorney-client relationship. In Minnesota, the attorney-client relationship is considered fiduciary in nature. *STAR Centers, Inc. v. Faegre & Benson, LLP*, 644 N.W.2d 72, 77 (Minn. 2002); *Grambling v. Mem'l Blood Ctrs.*, 601 N.W.2d 457, 459 (Minn. Ct. App. 1999). Similarly, an accountant hired by a personal representative creates a fiduciary relationship. *McCulloch v. Price Waterhouse LLP*, 971 P. 2d 414 (Or. App. 1998) (noting an accountant hired by a personal representative created a relationship "fiduciary in nature"). One court has even found that a creditor of the estate stands in a "quasi-fiduciary" relationship with the estate. *Spice v. Estate of Matthews*, 1 Wash. at 2d 40, 2017 WL 6337457, at *6 (Dec. 12, 2017) (finding an estate and creditor stood in a "quasi-fiduciary relationship" with respect to the management of properties they co-own).

The policy is straightforward: a fiduciary relationship exists when one party places its trust and confidence in the other. *Gibson v. Coldwell Banker Burnett*, 659 N.W.2d 782, 788 (Minn. Ct. App. 2003). This can occur when there is a disparity in business experience. *Cherne Contracting Corp. v. Wausau Ins. Co.*, 572 N.W.2d 339, 342 (Minn. Ct. App. 1998). By definition, a personal representative hires an agent when the personal representative does not have the expertise to handle a certain aspect of estate administration. Minn. Stat. § 524.3-715(21). Indeed, it would likely be a breach of the personal representative's duty to the estate to

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

act otherwise. *See, e.g., Restatement (Third) of Trusts* § 77. There is no discernable difference between the hiring of an attorney or accountant and a personal representative hiring an expert, with the avowed skill and expertise in the unique entertainment industry, such as Mr. Koppelman.

PMH Properties v. Nichols, 263 N.W.2d 799, 801 (Minn. 1978).

See, e.g., In re Estate of Nordorf, 364 N.W.2d 877, 879 (Minn. Ct. App. 1985) (stating that one acting in a fiduciary

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

capacity must exercise utmost fidelity toward the principal and owes the principal a duty of full disclosure); *Carlson v. Carlson*, 363 N.W.2d 803, 805 (Minn. Ct. App. 1985) (stating that one acting in a fiduciary capacity must exercise utmost fidelity toward the principal and owes the principal a duty of full disclosure).

Additionally, under Minnesota law, agents must act solely for the benefit of his/her principal in all manners connected with the agency. *Dahl v. Charles Schwab & Co., Inc.*, 545 N.W.2d 918, 925 (Minn. 1996); *Doyen v. Bauer*, 211 Minn. 140, 145, 300 N.W. 451, 454 (1941). This duty is also known as a duty of loyalty. *Doyen*, 211 Minn. at 145, 300 N.W. at 454. An agent is therefore "not permitted to put himself in an antagonistic relation to his principal," and must exercise the utmost good faith. *Id.* Profits made during the course of an agency belong to the principal whether they are fruits of performance or violation of an agent's duty, and an agent may not profit from the relationship nor engage in self-dealing without the principal's consent after full disclosure of facts which might affect the principal's decision. *Dahl*, 545 N.W.2d at 925; *Doyen*, 211 Minn. at 145, 300 N.W. at 454.

An agent also owes his principal the duty to exercise reasonable care, skill, diligence and judgment in performing the object of the agency or, in other words, due care. *Northern Pac. Ry. Co. v. Minnesota Transfer Ry. Co.,* 219 Minn. 8, 12, 16 N.W.2d 894, 896 (1944). Stated otherwise, an agent owes a duty to the principal to act in the principal's best interest within the authority of the agent.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

5. Breach Of Fiduciary Duty Against Messrs. Koppelman And McMillan.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

6. Alternative/Additional Remedy Against Mr. Koppelman.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

7. Repayment Of The Commission Received By Mr. McMillan.

In the case of overcharged fees, the Court has the power to order repayment of such excessive compensation to the Estate.

> The propriety of employment of any person by a personal representative including an attorney, auditor, investment advisor or specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for a personal representative's services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Minn. Stat. § 524.3-721. This is the case because "[t]he reimbursement of overcharged personal representative fees is analogous to a case of improperly charged attorney's fees. If attorney's

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

fees are improperly charged to the estate, they are returned to the estate because the improper fees constituted damage or loss the estate." *In re Estate of Sweetland*, 770 A.2d 1017, 1020 (Me. 2001); *see also Bookman v. Davidson*, 136 So.3d 1276, 1280-81 (1st D.C.A. Fla. 2014) (finding, based upon similar language to Minn. Stat. § 524.3-721, that district court had authority to order disgorgement).

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8. Breach Of Duty By SLS.

With respect to SLS, attorneys have a duty "to exercise that degree of care and skill that is reasonable under the circumstances, considering the nature of the undertaking." *Prawer v. Essling*, 282 N.W.2d 493, 495 (Minn. 1979); *see also Sjobeck v. Leach*, 213 Minn. 360, 365, 6 N.W.2d 819, 822 (1942).

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

9. <u>The Cost And Impact Of Pursuing Claims.</u>

In its Order Expanding Authority of the Second Special Administrator, the Court requested an estimate of the fees, costs and potential impact to pursue recommended likely claims. It is anticipated that assertion of any of the claims addressed above will be met with a vigorous defense.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

It is not believed that there would be any opportunity cost to the Estate of pursuing any of the claims addressed herein. None of the intellectual property or other property rights of the Estate would be affected, save for the legal fees and costs of litigation. Thus, it is not believed that assertion of the recommended claims would affect any potential revenue or opportunities of the Estate. The Estate would not be hamstrung in any respect in continuing its administration.

Similarly, it is not believed that there would be any other adverse impact on the Estate in pursuing claims. The Second Special Administrator does not believe that pursuit of the claims portends of any reasonable likelihood of harm to Prince's brand or the Estate's relationship with current or potential entertainment partners. Nor is it believed there would be an impact on the willingness of other entities to do future business with the Estate.[6]

6 The Court has also asked if pursuit of any of the claims could conceivably serve as a reasonable basis for any increased tension or disagreement among Heirs. The important consideration is "reasonable" basis. Given the potential considerable recovery from pursuit of the claims, the Second Special Administrator is hard pressed to believe there is a reasonable basis for increased tension or disagreement among the Heirs in the event the recommended claims, or any number of them, are pursued.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

There would be no alleged wrongdoing or transgressions that any putative defendant addressed herein could credibly claim against the Estate or its Special Administrator.

10. <u>The Policy Implications For The Estate, Or Other Estates, Of Prosecuting Claims.</u>

Finally, the Court has asked that the policy implications for the Estate, or other estates, of prosecuting the recommended claims be addressed. It is the Second Special Administrator's opinion that the policy implications for pursuing the recommended claims not only incentivizes this Estate but, also other estates.

Filed in First Judicial District Court
5/18/2018 1:20 PM
Carver County, MN

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LARSON • KING, LLP

By: *s/ Peter J. Gleekel*
Peter J. Gleekel (#149834)
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, Minnesota 55101
Telephone: (651) 312-6500
Facsimile: (651) 312-6618
Email: pgleekel@larsonking.com

SECOND SPECIAL ADMINISTRATOR

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