

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In re:

Estate of Prince Rogers Nelson,

Decedent.

Court File No. 10-PR-16-46  
Honorable Kevin W. Eide**BREMER TRUST'S MEMORANDUM IN  
SUPPORT OF MOTION FOR ENTRY OF  
PARTIAL FINAL JUDGMENT PURSUANT  
TO RULE 54.02 AND TO APPROVE  
PAYMENT OF ATTORNEYS' FEES  
AND COSTS****INTRODUCTION**

Bremer Bank, National Association, formerly Bremer Trust, National Association ("Bremer Trust"), the former Special Administrator of this Estate, submits this memorandum in support of certifying the Court's January 2, 2019, Second Amended Order discharging Bremer Trust as a partial final judgment under Minnesota Rule of Civil Procedure 54.02. It is in the interest of Bremer Trust, as well as the Estate, to have the appeal period begin running on the Second Amended Discharge Order. Bremer Trust will no longer have to expend the resources to monitor this overwhelming Estate and will receive finality sooner, and the Estate will have one less interested party at the table.

Additionally, in a further effort to close the door on its involvement with the Estate, Bremer Trust respectfully requests that the Court approve payment by the Estate of the remaining attorneys' fees and costs that it has incurred since July 2018. While hopefully it will not be necessary, to the extent additional fees and costs are incurred in the future by Bremer Trust with respect to its administration of the Estate, either on appeal from the Second Amended

Discharge order or otherwise, it also asks the Court to direct the Personal Representative to pay any such fees and costs from the Estate in the ordinary course.

### **BACKGROUND**

Bremer Trust served as Special Administrator for the first nine months of the Estate's administration from April 27, 2016, through January 31, 2017. At the end of its service, Bremer Trust sought to be discharged. This Court held a full-day evidentiary hearing on Bremer Trust's motion for discharge and its accounting on January 12, 2017. On March 27, 2017, the Court granted Bremer Trust's motion for discharge.

Shortly thereafter, the Court stayed its discharge of Bremer Trust as a result of new information. The Court then appointed a Second Special Administrator ("SSA"), who, at the Court's direction, conducted two separate investigations into discrete aspects of Bremer's service to the Estate. At the conclusion of each investigation, the SSA concluded that no viable claims existed against Bremer Trust. However, the SSA suggested that the Estate could assert claims against particular *agents* that Bremer Trust had hired. On June 14, 2018, the Court authorized the SSA to pursue such claims.

After being absolved of any wrongdoing by the SSA, Bremer Trust moved to lift the stay of discharge and to authorize payment of its attorneys' fees incurred through July 2018. After receiving briefs from multiple parties, and hearing over an hour of oral argument on July 19, 2018, the Court granted the motion by Order dated October 17, 2018 (the "Amended Discharge Order"). In doing so, the Court reinstated its March 27, 2017 Order as to Bremer Trust's discharge:

The portion of the Court's March 27, 2017 Order stating that Bremer Trust and its agents are hereby discharged from any and all liability to the Estate of Prince Rogers Nelson associated with its Special Administration of the Estate is hereby reinstated.

*Id.*

In response, the SSA wrote the Court on October 23, 2018, asking the Court to clarify whether the Amended Discharge Order was intended to fully absolve all of Bremer Trust's agents, including those whom the Court had authorized the SSA to seek relief against on behalf of the Estate. The Court requested submissions on the issue raised by the SSA, setting a deadline of November 9, 2018. Multiple parties, including Bremer Trust, filed submissions.

However, before this Court had issued any clarification of its Amended Discharge Order, or otherwise responded substantively to the SSA's query, Alfred Jackson filed an appeal on November 16, 2018. Bremer Trust moved to dismiss the appeal for lack of jurisdiction, and Mr. Jackson subsequently agreed to withdraw his appeal.

On January 2, 2019, this Court issued its Second Amended Order & Memorandum Granting Bremer Trust's Motion to Lift Stay of Discharge and Approve Payment of Attorneys' Fees and Costs ("Second Amended Discharge Order"). That Second Amended Discharge Order limited the set of agents who were discharged, clarifying that none of the agents that the Court had authorized the SSA to pursue claims against were discharged. It did not, however, direct entry of partial final judgment as to Bremer Trust.

### **ARGUMENT<sup>1</sup>**

Although typically only final judgments are appealable, when the trial court makes a determination that there is no just reason for delay and directs the entry of a final judgment, appeal may be taken from a partial judgment entered pursuant to Rule 54.02 of the Minnesota Rules of Civil Procedure. Minn. R. Civ. P. 54.02; Minn. R. Civ. App. P. 104.01. The rule's text

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<sup>1</sup> Prior to filing this motion, Bremer Trust repeatedly reached out to Mr. Jackson's former and his current counsel to inquire as to whether Mr. Jackson would be willing to stipulate to certification of the Second Amended Discharge Order pursuant to Rule 54.02, but received no substantive response from his counsel to those requests.

notes that it is appropriate “[w]hen multiple claims for relief or multiple parties are involved in an action...” *Id.*

In analyzing whether a partial judgment is appropriate for immediate appeal, the Court should examine whether “‘substantial benefits to the parties in a particular case outweigh the general policy considerations against piecemeal review,’ which includes the question whether the absence of an immediate appeal would cause prejudice to either party.” *T&R Flooring, LLC v. O’Byrne*, 826 N.W.2d 833, 836 (Minn. Ct. App. 2013) (citing *First Nat’l Bank of Windom v. Rosenkranz*, 430 N.W.2d 267, 268 (Minn. Ct. App. 1988)). While claims that arise out of one set of facts are typically not appropriate for certification for immediate appeal, this general rule must be weighed against other competing interests. *Contractors Edge, Inc. v. City of Mankato*, 863 N.W.2d 765, 769-771 (Minn. 2015). The Court has discretion to “allow a piecemeal appeal if the parties or claims are clearly separable and no prejudice would result from appeal.” *Id.* (citing *Novus Equities Corp. v. EM-TY P’ship*, 381 N.W.2d 426, 428 (Minn. 1986) (citation omitted) (internal quotation marks omitted)).

In particular, when considering whether to direct entry of partial final judgment, the Court should:

- a. Weigh the general policy against piecemeal appeals against the exigencies in the case at hand;
- b. Consider the hardships that could result from a delayed appeal; and
- c. Consider administrative concerns of the case, like the desire to adjudicate one claim fully before deciding whether to continue on to trial with another claim, expense, shortening of length of trial, frivolity of competing claims, and the possibility that another claim or counterclaim could offset the judgment.

*Contractors Edge, Inc.*, 863 N.W.2d at 769-71.

In this case, both the text of the rule and the factors outlined by the Minnesota Supreme Court favor entry of a partial final judgment as to Bremer Trust. As the Court knows all too well, there are “multiple parties” involved in this action, and one of them—Bremer Trust—has been discharged. Bremer Trust's formal role in the Estate ended over two years ago, and the SSA has fully vetted all claims of potential wrongdoing that were raised regarding Bremer Trust's actions as Special Administrator. There is no risk of closely-related claims proceeding to appeal separately. Even the claims that the Court has approved against Bremer Trust's agents are not closely related to Bremer Trust's discharge—an issue that the Court already considered in granting the Amended Discharge Order. Those claims have not even been initiated—they may even proceed in entirely different venues—but the SSA has already found that Bremer Trust is not responsible for any of its agents' purported wrongdoing.

With respect to hardship, it would be a great disservice to Bremer Trust and the court system to have an appeal wait until after all assets are distributed and the Estate is wound up. As the Court recently noted in its Order & Memorandum Granting Comerica Bank & Trust, N.A.'s Amended Petition to Approve Interim Accounting, that could take four or more years. At that point, the facts relating to Bremer Trust's service would be a distant memory, yet a dissatisfied heir could still theoretically appeal Bremer Trust's discharge. Bremer Trust should not have to pay counsel to track this Estate for years into the future.

There are also multiple administrative benefits of allowing Mr. Jackson to appeal immediately if he so chooses. For example, it would further reduce the number of interested parties that must be served with Court filings. It would also reduce the administrative burden

and cost to the Estate of having to reimburse the fees and costs that Bremer Trust would continue to incur for the indefinite future.

Because each of those factors supports allowing an immediate interlocutory appeal, Bremer Trust requests that the Court find there is no just reason for delaying any appeal of the Second Amended Discharge Order, and allowing an immediate appeal would provide a substantial benefit to the parties. These benefits outweigh the general policy against piecemeal appeals, eliminate the prejudice that will result to the Bremer Trust if appeal is not immediately taken, cause no additional prejudice to the heirs or other parties, and further the interests of judicial economy.

**I. THE COURT SHOULD DIRECT THE ESTATE TO PAY BREMER TRUST'S REMAINING REASONABLE ATTORNEYS' FEES AND COSTS.**

Bremer Trust also seeks Court approval for the payment of its remaining reasonable attorneys' fees and costs incurred between July 2018 and the date that this motion is taken under advisement by the Court. Minn. Stat. § 524.3-720 provides that “[a]ny personal representative or person nominated as personal representative who defends or prosecutes any proceeding in good faith, whether successful or not, ... is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred.” Minn. Stat. § 524.3-720 (2018). Minn. Stat. § 525.515 provides that any attorney performing services for the estate at the behest of a personal representative or special administrator should receive “just and reasonable” compensation.

Twice before, this Court has approved payments to Bremer Trust of attorneys' fees and costs that it incurred that relate to its work as Special Administrator and that post-date Bremer Trust's tenure as Special Administrator, and it should do so once again. (*See* November 1, 2017 Order Granting Motion for Fees & Sealing Invoice Redactions; Second Amended Discharge

Order.) Bremer Trust seeks the Court's approval for the payment of attorneys' fees and costs that were reasonably and necessarily incurred as a result of Bremer Trust having to remain involved in this Estate since its July 2018 motion to lift the stay of discharge, including expenses that it incurred as a result of, among other things, the motion to lift the stay of discharge, the Court's request for submissions in response to the SSA's request for clarification regarding the Amended Discharge Order, Mr. Jackson's initial appeal of that Order, and, more recently, efforts to obtain Rule 54.02 certification of the Second Amended Discharge Order. Bremer Trust's supporting affidavits include the Declarations of Julian Zebot and Laura E. Halferty, with attached billing statements, which meet Minnesota General Rule of Practice 119's requirements and set forth in detail the factual basis for why these fees and costs are properly payable from the Estate.

The legal expenses for which Bremer Trust seeks approval in this motion include fees and costs incurred by Maslon LLP and Stinson Leonard Street LLP ("Stinson"), some of which have been paid, and some of which are as yet unpaid by Bremer Trust. The supporting affidavits provide documentation of legal expenses through the end of March, 2019, and Bremer Trust intends to file supplemental attorneys' fees declarations with the Court so as to capture all fees and costs incurred through the date that this motion is taken under advisement by the Court. Accordingly, Bremer Trust respectfully requests that the Court authorize payments by the Estate directly to Bremer Trust for Bremer Trust's reasonable attorneys' fees and costs incurred.

Finally, while hopefully it will not be necessary, to the extent additional attorneys' fees and costs are incurred in the future by Bremer Trust with respect to its administration of the Estate, either on appeal from the Second Amended Discharge Order or otherwise, Bremer Trust asks the Court to authorize the Personal Representative to pay any such fees and costs from the

Estate in the ordinary course, as it would with any other set of administrative expenses, and without the need for Bremer to bring further motions to approve payment of fees and expenses.

### CONCLUSION

For all the reasons stated above, Bremer Trust respectfully requests that this Court grant its Motion for Entry of Partial Final Judgment pursuant to Rule 54.02 and to Approve Payment of Attorneys' Fees and Costs.

Dated: April 3, 2019

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Dated: April 3, 2019

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