

STATE OF MINNESOTA
PROBATE DIVISION
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT

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

In Re: Estate of

Prince Rogers Nelson

MEMORANDUM IN SUPPORT OF
MOTION TO RECOGNIZE
PRIMARY WAVE MUSIC IP FUND 1,
LP AS AN INTERESTED PERSON
UNDER MINNESOTA STATUTE §
524.1-201(33)

Decedent.

INTRODUCTION

Tyka Nelson (“Ms. Nelson”) has sold a portion of her interest in the estate of Prince Rogers Nelson (the “Estate”) to Primary Wave Music IP Fund 1, LP (“Primary Wave”). As a result of the transaction, Primary Wave is an interested person in these proceedings under Minnesota Statute § 524.1-201(33) (2018) and is entitled to notice of any filings or proceedings related to the administration of the Estate. To avoid any uncertainty, Primary Wave requests that the Court enter an order formally recognizing its status.

FACTS

Prince Rogers Nelson (the “decendent”) died intestate on April 21, 2016. Formal, supervised probate proceedings are ongoing in this Court. Ms. Nelson is one of the decedent’s six (6) legally determined heirs-at-law and has a vested interest in one-sixth (1/6) of the decedent’s estate.

Ms. Nelson and Primary Wave have entered into an Expectancy Interest Transfer Agreement whereby Ms. Nelson has sold a portion of her interest in the Estate to Primary Wave. A copy of the Assignment and Bill of Sale is annexed to the Declaration of Eric J. Magnuson (“Magnuson Decl.”) at Exhibit A.¹

ARGUMENT

I. Ms. Nelson and Primary Wave entered into a valid contract under which Ms. Nelson sold to Primary Wave, and Primary Wave purchased, a portion of Ms. Nelson’s interest in the Estate.

An expectancy interest in an estate is a property right that is transferable. “An assignment or release of an expectancy interest is valid if it is based on fair consideration and is made voluntarily under circumstances free of fraud or oppression.” 16 *Powell on Real Property* § 90.13. Minnesota and other jurisdictions recognize as valid contracts in which an heir conveys or sells a portion of her vested interest in an estate to a third party. *Thayer v. Knight*, 297 N.W. 625 (Minn. 1941).

In *Thayer*, a group of devisees under a will conveyed a portion of their vested interests in the decedent’s estate to two other devisees, prior to the completion of the administration of the estate. *Id.* at 626. The lower court upheld the contract, stating that,

the agreement . . . has been fully performed in good faith by the plaintiffs herein. That defendants have fully ratified said agreement . . . by acquiescence therein and failure to repudiate the same and thereby are estopped to deny the validity of said agreement.

¹ Ms. Nelson and Primary Wave also entered into a Representation Rights Assignment Confirmation whereby Ms. Nelson appointed Primary Wave as her attorney-in-fact with respect to a portion of her expectancy interest not sold to Primary Wave. As her attorney-in-fact, Primary Wave may exercise authority on behalf of Ms. Nelson on all matters relating to the Estate. A copy of the Representation Rights Assignment Confirmation is annexed to the Declaration of Eric J. Magnuson as Exhibit B.

Id. The Minnesota Supreme Court affirmed. *Id.*

Courts in Wisconsin have gone further, recognizing an heir or devisee's assignment of, or contract to sell, even a *non-vested* expectancy interest in an estate. In *Hofmeister v. Henter*, a case cited by the Minnesota Supreme Court in *Thayer*, an heir assigned to a third party creditor his expectancy interest in the estate of his mother who, at the time of the assignment, was still living. 283 N.W. 330, 331 (Wis. 1939). The mother died intestate and the heir conveyed to the third party creditor his interest in the property pursuant to the earlier assignment. *Id.* The Wisconsin Supreme Court concluded that assignments or other contracts entered into by an expectant heir, which transfer inheritance expectancies or future interests, are enforceable if supported "by adequate and fair considerations, are free from vitiating elements, if the surrounding facts and circumstances show no imposition on a necessitous heir, and if the heir is sui juris - in other words, such a contract should be enforced in equity if its enforcement would not be inequitable." *Id.* at 333. See also, *In re: Trust Estate of Tantillo*, 127 N.W.2d 798 (Wis. 1964) (upholding an heir's assignment of his vested interest in his mother's estate); *In re Estate of Wettig*, 138 N.W.2d 206 (Wis. 1965) (finding an heir's assignment of her interest in her still-living uncle's estate was enforceable as it was supported by adequate and fair consideration and not inequitable).

As an heir-at-law with a vested interest in the Estate, Ms. Nelson clearly had the right to sell a portion of her interest to a third party, Primary Wave. The parties entered into the sale in good faith, with consideration, and the sale is now complete. Both

parties were represented by counsel and the attorneys for both parties reviewed all of the substantive documents, provided input, and negotiated the terms before the final contract and related documents were signed. Consequently, like the contracts in *Thayer* and *Hofmeister*, Ms. Nelson's sale to Primary Wave of a portion of her interest in the Estate is valid and enforceable and must be recognized by the Court. *See Thayer*, 297 N.W. at 626.

II. Primary Wave is an "interested person" under Minnesota Statute § 524.1-201(33) (2018) and entitled to notice of any filings or proceedings related to the estate administration.

Minnesota Statute § 524.1-201(33) (2018), defines an "interested person" to include "heirs, devisees, children, spouses, creditors, beneficiaries and *any others having a property right in or claim against the estate of a decedent . . . which may be affected by the proceeding.*" (Emphasis added).

In *Starkey v. Sweeney*, an heir entered into an agreement with his creditor conveying an expectancy interest in his father's estate to that creditor. 73 N.W. 859 (Minn. 1898). The heir's father died intestate and the heir's siblings and mother contested the heir's share of the estate for reasons unrelated to his transaction with the creditor. *Id.* Subsequently, the court commenced distribution proceedings. The creditor intervened, demanding: (1) that the administratrix account for the debtor's share of the estate; (2) that probate proceedings stop until the administratrix completed the accounting; and (3) that the creditor's lien on the heir's share of the estate be foreclosed and sold to pay off the debt. *Id.* The Court granted the creditor's request for an accounting and allowed the creditor to be heard in the probate proceeding regarding

the distribution of the estate. *Id.*

Ms. Nelson and Primary Wave entered into a valid and binding agreement whereby Ms. Nelson sold to Primary Wave a portion of her interest in the Estate. Primary Wave's interest in the Estate is even stronger than the creditor's interest in *Starkey*. As a result of the sale, Primary Wave acquired a property right to the Estate. In addition, Ms. Nelson has assigned to Primary Wave the right to represent her in these proceedings. Magnuson Decl., Ex. B. Primary Wave is entitled to fully participate in the administration of the Estate and, as the owner of a vested interest in the Estate, must be afforded all rights commensurate with its status including, but not limited to, notice of and access to all filings and proceedings that are part of the decedent's estate administration.

CONCLUSION

The transaction between Ms. Nelson and Primary Wave is complete. Primary Wave respectfully asks this Court to recognize Primary Wave as an interested person in these proceedings pursuant to Minnesota Statutes § 524.1-201 (33) and order that Primary Wave is entitled to participate fully in all proceedings on the same basis that Ms. Nelson and the other heirs are able to participate.

Respectfully submitted,

Dated: November 21, 2019

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