

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson
Decedent,

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

**MEMORANDUM OF LAW IN
SUPPORT OF COZEN O'CONNOR'S
APPLICATION FOR
DETERMINATION AND
ESTABLISHMENT OF ATTORNEYS'
LIEN AND ENTRY OF JUDGMENT
FOR LIEN AGAINST OMARR BAKER**

INTRODUCTION

Pursuant to Minn. Stat. §§ 481.13 Subd. 1(c) and 525.491, Cozen O'Connor P.C. ("Cozen"), respectfully submits this memorandum of law in support of its application for the summary establishment of its attorneys' lien, for a determination of the amount of the attorneys' lien, and for an order entering judgment for lien against the Estate of Prince Rogers Nelson (the "Estate") and Omarr Baker ("Baker"). Cozen served as counsel-of-record for Baker in the above-entitled matter from June 23, 2016 through June 18, 2018 in connection with the administration of the Estate and other related matters. During that period of time, Cozen provided valuable and necessary legal services for the benefit of Baker and incurred costs and other disbursements in connection with those legal services. Despite this representation and after repeated demand, Cozen remains unpaid for those services, costs, and disbursements provided and incurred on behalf of Baker in the amount of \$1,419,969.36, exclusive of any costs of collection and of additional, ongoing interest. Under both statutes, Cozen has a lien which attached to Baker's

interest in the Estate upon the commencement of Cozen's representation in these proceedings and takes priority over all third-party claims, as well as a lien against Baker's personal property.

FACTUAL BACKGROUND

On June 23, 2016, Baker retained Cozen to represent him in connection with the administration of the Estate and other related matters and Cozen filed notice of its representation of Baker in this proceeding. (Affidavit of Steven H. Silton ("Silton Aff."), ¶ 3, Ex. B). Cozen continued to represent and provide valuable and necessary legal services to Baker in this capacity for approximately two years, until the representation was terminated on June 18, 2018. (*Id.* at ¶ 4).

Baker signed a written engagement letter which set forth the terms of Cozen's representation of Baker (the "Retainer Agreement"). (*Id.* at Ex. A). With regard to payment of attorneys' fees and costs, the Retainer Agreement states:

As you do not have the current resources to pay our fees, we will seek to recover them as follows. First, we will be seeking to have you named as the personal representative of the Estate. At that time, we will be submitting our bills to the Court for payment directly by the Estate. With regard to any fees not paid by the Estate, we will wait to get paid from your prospective proceeds of the Estate. We reserve the right to apply an interest component of seven percent (7%) to any fees that are unpaid for longer than 30 days. You, of course, are entitled to pay this fee currently to avoid this interest charge. You have the absolute right to discharge us for any reason at any time. In that event, you will remain responsible for all fees and costs incurred through the date of discharge.

(*Id.*)

Although Baker was never appointed Personal Representative of the Estate, Cozen applied for and received partial payment of legal fees it incurred on Baker's behalf from the Estate. (*Id.* at ¶ 9-19). Those amounts were credited to Baker and are not included in Cozen's lien. (*Id.* at ¶ 20; Ex. O). This was an unusual circumstance in an estate matter that greatly

benefitted Baker. (*Id.* at ¶ 21). Despite repeated demand for payment of the amounts owed to Cozen not covered by payments from the Estate, Baker has refused to pay. (*Id.* at ¶ 29).

On October 7, 2019, Cozen provided notice of its attorneys' lien for unpaid legal fees, costs, and disbursements in connection with its representation of Baker between June 23, 2016 and June 18, 2018 (the "Original Lien"). (*Id.* at ¶ 4; Ex. D). On the same day, Cozen also filed a UCC-1 Financing Statement with the Minnesota Secretary of State. (*Id.* at Ex. D). The amount claimed by the Original Lien was \$953,007.50, exclusive of any costs of collection. (*Id.*)

On December 30, 2021, Cozen filed a UCC-3 Amendment and provided notice of its amended attorneys' lien (the "Lien"). (*Id.* at Ex. C). The Lien reflected the true and accurate amount of the lien for unpaid legal services, costs, and disbursements, which totaled \$1,419,969.36, exclusive of any costs of collection and of additional, ongoing interest. (*Id.*) Further detail supporting the amount due to Cozen for legal services provided, costs, and disbursements is more fully set forth in the Silton Affidavit. (*See id.* at ¶¶ 5-21).

The facts above demonstrate that Cozen has established an attorneys' lien on Baker's assets and his interest in the Estate. Accordingly, and for reasons set forth below, this Court may properly summarily establish the existence of Cozen's attorneys' lien in the amount of \$1,419,969.36 and enter judgment in favor of Cozen in that amount.

LEGAL ARGUMENT

A. Cozen's Lien Has Priority Over Third Party Claims.

Attorneys' liens are governed by Minnesota statutes. *See Minn. Stat. § 481.13; Minn. Stat. § 525.491; see also Schroeder, Siegfried, Ryan & Vidas v. Modern Elec. Prods., Inc.*, 295 N.W.2d 514, 516 (Minn. 1980). Pursuant to both relevant statutes, Cozen's attorneys' lien

attached on the commencement of its representation of Baker in these proceedings on June 23, 2016.

Minn. Stat. § 481.13, subd. 1 provides:

- (a) An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) upon the interest of the attorney's client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of the lien claim, as provided in this section.

The Minnesota Supreme Court has interpreted § 481.13, subd. 1(a) and held that the statute creates two separate attorneys' liens: a cause-of-action lien and a property-interest lien, each of which has different notice requirements. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 596 (Minn. 2016). The two types of liens are not mutually exclusive. See *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 25-26 (Minn. Ct. App. 1987) (citing *Village of New Brighton v. Jamison*, 278 N.W.2d 321, 326 (Minn.1979)). A cause-of-action lien attaches upon commencement of the proceeding. *City of Oronoco*, 883 N.W.2d at 594. If the attorney did not represent the client at the time of commencement, the lien attaches at the time the attorney first appears in the proceeding. *Williams* 415 N.W.2d at 25-26. Further, § 481.13 "does not require an attorney with a cause-of-action attorney's lien to file separate notice of the lien to have priority over third-party claims." *City of Oronoco*, 883 N.W.2d at 596. Thus, Cozen's cause-of-action Lien is not affected by the fact that Baker assigned his interest in the Estate to Primary Wave, since that happened long after Cozen's cause-of-action Lien became effective on June 23, 2016.¹ *Id.*

¹ Even if *City of Oronoco* had not established that a cause-of-action lien is superior to third-party interests even if the third party had no notice of the lien, Cozen's Original Lien for \$953,007.50

Minn. Stat. § 525.491 specifically applies to attorneys' liens arising from probate proceedings and states that an " . . . attorney may perfect a lien upon the client's interest in the estate for compensation for such services as may have been rendered respecting such interest, by serving upon the personal representative before distribution is made, a notice of intent to claim a lien for agreed compensation, or the reasonable value of services." *Id.* "Once formed, a lien on a cause of action exists until it is satisfied and is not extinguished by the entry of judgment on the cause of action." *Williams*, 415 N.W.2d at 26 (citing *Desaman v. Butler Bros.*, 131 N.W. 463, 464 (Minn. 1911)). Cozen's Lien has been perfected by filing and service on the Personal Representative on January 10, 2021, and its Original Lien was perfected by filing and service on the Personal Representative on October 7, 2019. Minn. Stat. § 525.491.

B. Cozen Has Established Its Right to An Attorneys' Lien in the Amount of \$1,419,969.36.

Minnesota case law has long characterized attorney-lien actions as summary proceedings. See, e.g., *Vill. of New Brighton v. Jamison*, 278 N.W.2d 321, 323-24 (Minn. 1979); *Akers v. Akers*, 46 N.W.2d 87, 91 (Minn. 1951); *Westerlund v. Peterson*, 197 N.W.2d 87, 91 (Minn. 1923). Section 481.13 specifies that the proceeding to establish and determine the amount of the lien will be conducted "summarily" upon application of the lien claimant. Minn. Stat. § 481.13; *Thomas A. Foster & Assocs., Ltd v. Paulson*, 699 N.W.2d 1, 6-7 (Minn. Ct. App. 2005). When a lien claimant petitions the district court under section 481.13, subdivision 1(c), the district court must determine (1) the lienholder; (2) the subject of the lien as defined by the attorney-lien statute; and (3) the amount due. *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 422 (citing Minn. Stat. § 481.13, subd. 1(c)).

was filed with the Secretary of State and put all third parties on notice long before Primary Wave acquired Baker's interest in the Estate.

When there is an express agreement between an attorney and a client that sets the attorney's compensation, the amount of the attorneys' lien for legal services is properly determined by reference to the agreement. *Foster*, 699 N.W.2d at 6; see also *Blazek v. North Am. Life and Cas. Co.*, 121 N.W.2d 339, 342-43 (Minn. 1962). Where the amount of the lien cannot be determined by the agreement, the amount is determined by the reasonable value of the services rendered. *Foster*, 699 N.W.2d at 6 (citing *Roehrdanz v. Schlink*, 368 N.W.2d 409, 412 (Minn. Ct. App. 1985)). After the value of the lien has been determined, the court enters judgment for the amount due. *Id.*

Here, Cozen's legal representation of Baker was governed by the terms of the written Retainer Agreement. Pursuant to the Retainer Agreement, Baker agreed to pay Cozen for fees and costs incurred during his representation. (Silton Aff. at Ex. A). Baker also agreed to a 7% interest charge for fees that are unpaid for longer than 30 days. (*Id.*) As established by the time and cost records in the Silton Affidavit and as explained above, Cozen's lien is properly calculated in the amount of \$1,419,969.36. (Silton Aff. at ¶¶ 5-21; Ex. E-M). Accordingly, judgment should be entered in favor of Cozen and against Baker authorizing payment from the Estate in the amount of \$1,419,969.36.

C. The Lien Amount of \$1,419,969.36 is True, Accurate, and Reasonable Under the Circumstances

As set forth in the Silton Affidavit, the amount of attorneys' fees and costs billed to Baker is true, accurate, and reasonable under the circumstances. Minnesota courts have considered various factors to determine the reasonableness of statutory attorney fees. See, e.g., *Green v. BMW of North America, LLC*, 826 N.W.2d 530, 536 (Minn. 2013) (in determining the reasonable value of legal services, a court should consider "all relevant circumstances"). Courts generally begin with the hours reasonably expended on the litigation and multiply those hours by

a reasonable hourly rate. *Id.* Other circumstances that inform a court's determination of reasonableness include the "time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client." *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008). In prior proceedings in this matter, and although the statute did not govern, the Minnesota Court of Appeals suggested that this Court consider similar factors in determining the reasonable value of attorneys' fees requested to be paid by the estate as set forth in Minn. Stat. § 525.515(b)(1), (2), and (3). See *In the Matter of the Estate of: Prince Rogers Nelson*, A17-0880, January 22, 2018 Opinion.

Here, the circumstances confirm that the amount of \$1,419,969.36 is true, accurate, and reasonable under the circumstances. First, the amount of legal fees and costs incurred by Baker directly correlate to actual legal services performed on his behalf and for his benefit. (Silton Aff. at ¶ 28). Second, the legal services that were performed on Baker's behalf were performed by qualified legal professionals with appropriate experience levels for the task required. (*Id.*) Where possible, Cozen utilized paralegals and associate attorneys with lower rates to perform such necessary tasks. (*Id.*) The complex nature of this Estate and Baker's representation further justify the fees charged. (*Id.*) Furthermore, the total amount of the Lien represents only a fraction of Baker's inheritance from the Estate. Finally, the fees charged track the agreement set forth in the Retainer Agreement between Baker and Cozen. (Silton Aff. at Ex. A). Accordingly, the amount of \$1,419,969.36 is true, accurate, and reasonable under the circumstances.

Cozen's fees were not only true, accurate, and reasonable under the circumstances, but Baker accepted and was aware of the amount of the fees and the work performed on his behalf.

Cozen attorney Steven H. Silton met regularly with Baker to keep him apprised of the accrual of fees and to discuss that issue with him. (*Id.* at ¶ 22). Silton also periodically sent Baker copies of the proformas setting forth all time and fees to date in detail. (*Id.* at ¶ 23; Ex. R-U).

Further, on numerous occasions, Baker acknowledged the appropriateness and reasonableness of Cozen's fees. (*Id.* at ¶ 25). This includes an Affidavit from Baker dated March 27, 2019, wherein Baker indicated that "From July 2016 to June 2018, Cozen O'Connor performed work for the benefit of the Estate. I have reviewed the Affidavits of Thomas P. Kane (dated January 2019) and Steven H. Silton (dated March 2019 filed in the above captioned case. Upon information and belief, the **representations made in those affidavits are accurate**. I have also reviewed the invoices attached to these affidavits, and the **billings therein appear accurate**, were intended to, and did benefit the Estate." (*Id.*) (emphasis added). The January 2019 Affidavit of Thomas P. Kane, which Baker stated under oath was accurate, states that "Cozen now seeks an order from the Court for fees incurred from February 1 to December 31, 2017 that were **just and reasonable and commensurate with the benefit** to the Estate from the recovery so made or from such services." (*Id.*) (emphasis added). The March 2019 Affidavit of Steven H. Silton, which Baker stated under oath was accurate, states that "On January 10, 2019, Cozen moved for an order from the Court for fees incurred from February 1 to December 31, 2017 that were **just and reasonable and commensurate with the benefit** to the Estate from the recovery so made or from such services." (*Id.*) (emphasis added). Finally, Baker wrote a letter to Judge Solum on August 9, 2019, wherein he supported Cozen's fee request to the Estate and acknowledged the reasonableness of Cozen's fees. (*Id.* at ¶ 26; Ex. Y). Therefore, this Court should determine that the amount of fees charged to Baker was reasonable.

CONCLUSION

For the reasons as set forth above, Cozen respectfully requests that this Court grant its Application, determine and establish its lien against Omarr Baker in the amount of \$1,419,969.36, further determine that Cozen's cause-of-action lien takes priority over all third party claims, and enter judgment accordingly ordering that the amount be paid by the Estate prior to distribution of the Estate.

Dated: January 10, 2022

COZEN O'CONNOR

s/ Mark Jacobson
Mark Jacobson (#188943)
Samuel E. Mogensen (#400920)
Steven H. Silton (#260769)
33 South Sixth Street
Suite 3800
Minneapolis, MN 55402
Telephone: (612) 260-9000

ACKNOWLEDGMENT

The undersigned acknowledges that, pursuant to Minnesota Statute §549.211, sanctions may be awarded to the party or parties against whom the allegations made in this application are asserted.

/s/ Mark Jacobson
Mark Jacobson