

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. **REPLY IN SUPPORT OF SNJ, L.
LONDELL MCMILLAN AND
CHARLES SPICER'S MOTION TO
AMEND PROTOCOLS**

Sharon Nelson, Norrine Nelson and Johnny Nelson (collectively, "SNJ"), L. Londell McMillan ("McMillan") and Charles Spicer ("Spicer") (all parties collectively, "PRN Parties"), as heirs and interested persons in the Estate of Prince Rogers Nelson ("Estate") submit this Reply in Support of their Motion to Amend Protocols.

INTRODUCTION

To prevent a dispute in this matter, the PRN Parties stated in their responsive filing that they did not oppose Comerica's and Primary Wave's motion, provided that McMillan and Spicer received equal access to Estate information based on their status as Interested Persons with an expectancy interest, and they simply moved to amend the protocols accordingly. Contrary to Comerica's motives, Primary Wave notified Comerica and the PRN Parties that they had no objection to all Interested Persons equally receiving Estate information on the same basis. Notwithstanding the foregoing, Comerica has incurred further costs to oppose the PRN Parties' motion and ignored the fact that all Interested Persons agree to have access to the same Estate information. Most importantly, Comerica and its counsel have not provided any legal basis or explanation for its proposed discrimination and assertion that McMillan and Spicer should not be treated the same as Primary Wave. Nor has Comerica identified any harm it believes would result

from McMillan and Spicer receiving equal access, to which all Interested Persons have agreed. As this Court is aware, McMillan and Spicer also manage and advise fifty percent (50%) of the Estate. Despite offering no legal support for its position Comerica and its lawyers have opposed the PRN Parties' motion in order to separate and gain a tactical advantage by having the issue moved into a so-called mediation process, where resolution will be delayed as the issue joins the already lengthy list of unresolved mediation issues.

There is no need to mediate this simple dispute. The parties have already made their positions clear. Comerica has not identified any potential harm to the Estate that warrants further discussion. There is also urgency and great importance to this matter, as issues need to be resolved to close the Estate. As the Estate now moves increasingly toward closure, the Interested Persons must collaborate in getting up to speed on the Estate's full business affairs and preparing to take over management of the Estate assets. However, if the Court grants Comerica and Primary Wave's motion to amend protocols without resolving this issue, it will prohibit a healthy and productive collaboration by putting McMillan and Spicer, and the Heirs they advise, at a disadvantage based on the limited subset of Estate business information that they currently have access to. In order to facilitate the Heirs' and Interested Persons' ability to immediately and effectively take over the management of the Estate assets, this issue should be resolved now, and should not be delayed weeks or months.

DISCUSSION

I. COMERICA HAS NOT PROVIDED ANY BASIS TO DENY MCMILLAN AND SPICER ACCESS TO THE SAME ESTATE INFORMATION AS PRIMARY WAVE.

Comerica has not provided any legitimate reason why McMillan and Spicer, as Interested Persons with a percentage-based expectancy interest in the Estate, should not receive access to the

same Estate information as Primary Wave. While Comerica claims that McMillan and Spicer are not similarly situated to Primary Wave because they own a lower expectancy percentage, it provides no legal support or explanation for why this would justify providing them with less information than another beneficiary with an expectancy interest.

McMillan and Spicer each own a significant share of the Estate worth potentially millions of dollars. Additionally, they are advisors to SNJ and have been delegated the authority to act on SNJ's behalf in estate management decisions affecting SNJ's interests. Collectively, the PRN Parties have fifty (50%) percent of the interests in the Estate. McMillan and Spicer are similarly situated to Primary Wave because they have an equally legitimate interest in receiving full access to Estate information, in order to protect their own interests as well as to advise SNJ, as heirs to the Estate. Comerica has not offered any explanation, nor cited any authority supporting the distinction it is attempting to draw between beneficiaries.¹ Comerica's fiduciary duty of impartiality requires that it must give equal consideration to the interests of all beneficiaries. *See Matter of Great Northern Iron Ore Properties*, 263 N.W.2d 610, 621 (Minn. 1978) (recognizing fiduciary duty of impartiality requires "equal consideration for the interests of all beneficiaries"); *See generally*, Minn. Stat. 524.3-703(a). A fiduciary's duty to communicate has never been interpreted to require greater communication with beneficiaries who have a larger percentage of an estate, and Comerica has not cited any authority that would allow it to make such a distinction. The personal representative has a duty to provide information equally to all beneficiaries.

¹ Comerica cites to excerpted deposition testimony of Sharon Nelson in an attempt to create doubt based on the supposed existence of a reversionary right in McMillan and Spicer's expectancy interests. However, it is the terms of the Expectancy Interest agreements that govern, not Comerica's interpretation of Ms. Nelson's testimony. Comerica has seen these agreements and knows full well they contain no such right. (*See* 3/12/21 Memorandum in Support of Motion to Recognize L. Londell McMillan and Charles Spicer as Interested Persons, Silver Decl., Ex. A at ¶ 5). This attempt to muddy the issue should be disregarded.

Comerica has failed to articulate any harm that would allegedly be suffered by the Estate if McMillan and Spicer were granted equal access to Estate information. This is not surprising because there are already numerous safeguards in place, including existing limits on confidential business information provided to the Heirs and Interested Persons, a meet-and-confer process to address any disputes over such information, non-disclosure agreements signed by McMillan and Spicer, as well as the fact that McMillan and Spicer are not competitors of the Estate's entertainment partners. In the absence of any harm to the Estate caused by granting McMillan and Spicer equal access to information, and in the absence of any rational reason to draw a distinction between McMillan and Spicer and Primary Wave, as expectancy interest owners, there is no reason why this motion should not be granted.

II. THE PRN PARTIES' MOTION TO AMEND PROTOCOLS SHOULD BE RESOLVED NOW.

Comerica's token resistance to McMillan and Spicer's request for equal access demonstrates that although it does not have any basis to oppose, it prefers, for tactical reasons, to move the issue into mediation where the parties' positions are highly unlikely to change and resolution will be significantly delayed. This is not a typical mediation where all disputes are addressed in a single day-long session. If it were, then it might make sense to see if the parties could resolve their dispute before it is submitted to the Court. But, in this case, mediation is an ongoing process, stretching out over weeks and months – and so far, very little has actually been resolved. Thus, referral to mediation under these unique circumstances is simply a means of “burying” the issue - the equivalent of the denial of a motion, since issues that have been sent to mediation have simply been added to the lengthy mediation agenda, and then remain there indefinitely.

Despite Comerica's insistence on mediating this dispute, there is little that mediation will accomplish, other than solidifying the parties' positions, further delaying resolution of the issue and increasing expense to the Estate. Comerica had made its position quite clear: it believes McMillan and Spicer are not entitled to equal access to Estate information because they (i) already receive some Estate information; and (ii) are not similarly situated to Primary Wave in a manner that entitles them to equal access. (Comerica's Response to Motion to Amend Protocols, at 3-4). Comerica has framed this as a binary issue – either McMillan and Spicer are entitled to receive equal access or they are not. Clearly, Comerica believes they are not, as set forth in its responsive brief and prior communications. (SNJLC's Motion to Amend Protocols, McMillan Decl., Ex. A at 3-5)². Since Comerica has not identified any harm or other potential implications for the Estate, there is nothing to discuss in mediation.

Comerica falsely claims that the PRN Parties refused to mediate, but it was Comerica who refused to engage in any direct discussion of this issue, and instead forced it immediately into mediation. (SNJLC's Motion to Amend Protocols, McMillan Decl., Ex. A at 3-5).³ Having thwarted McMillan and Spicer's attempt to comply with the Court's May 3, 2021 Order requiring

² Although McMillan's Declaration in support of SNJLC's Motion to Amend Protocols was filed on August 6, 2021 along with the brief, Ex. A to McMillan's declaration was inadvertently omitted from the filings and was filed with the Court on August 27, 2021.

³ This is part of a recurring pattern wherein Comerica has refused to engage directly with the PRN Parties and instead has forced substantive issues immediately into mediation, where the process is often stalled and dragged out while hefty attorney and mediation fees continue to accrue. (*See* SNJLC Motion to Enforce Existing Court-Ordered Protocols on Communication, at 3-5, McMillan Decl., Exs. A, B, C.)

the parties to “consult with one another, informally,” Comerica should not now be rewarded by having the issue pushed into an already crowded mediation where it will be further delayed.⁴

CONCLUSION

For the foregoing reasons, the PRN Parties respectfully request that the Court grant their request to amend protocols and grant McMillan and Spicer equal access as Interested Persons to the Estate information Comerica now wishes to share with Primary Wave. As owners of half of the Estate, the PRN Parties wish to have all Interested Persons fully informed and available to help advise, as needed. Comerica has articulated no legitimate basis for why McMillan and Spicer should not receive equal access to Estate information. Primary Wave has indicated it does not have any objection to McMillan and Spicer receiving equal access to information. To the extent there arise any issues regarding the implementation of a Court Order granting equal access, McMillan and Spicer are ready and willing to discuss these issues directly with Comerica, and mediate the issues if it becomes necessary.

If the Court orders the issue into mediation, the PRN Parties request that the Court order the parties to first engage in direct, substantive good faith discussions, as contemplated by the May 3, 2021 Order, and set mediation on an expedited schedule, consistent with the timing considerations discussed above.

⁴ Comerica suggests that its failure to directly engage with the PRN Parties is due to a “combative” tone in emails. However, in the email exchange at issue here (8/6/21 McMillan Decl., Ex. A; *see also* 8/10/21 McMillan Decl, Ex. B), the dispute in the emails arose as a direct result of frustration caused by Comerica’s immediate refusal to engage with a straight-forward, polite request and instead force the issue directly into mediation. Comerica’s counsel are equally responsible for provoking and contributing to the tone of the ensuing conversation.

Dated: August 31, 2021

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