

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

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

In Re: Estate of

Prince Rogers Nelson

MEMORANDUM IN OPPOSITION
TO APPLICATION FOR
DETERMINATION AND
ESTABLISHMENT OF ATTORNEY'S
LIEN FILED BY WHITE WIGGINS &
BARNES, LLP

Decedent.

INTRODUCTION

On August 4, 2021, White Wiggins & Barnes, LLP ("WWB") filed a Notice of Application for Determination and Establishment of Attorney's Lien and Entry of Judgment of Attorney's Lien for \$177,176.32 for their representation of Alfred Jackson in the Estate of Prince Rogers Nelson ("Prince Estate"). WWB claims to have represented Mr. Jackson from October 2, 2018 to February 7, 2019, at which time Mr. Jackson terminated the representation. At the direction of the court, WWB filed a statement with the court articulating the basis for its claimed lien. Primary Wave submits this memorandum in response.

FACTUAL BACKGROUND

Mr. Jackson died on August 29, 2019. Following his death, estate administration proceedings were commenced in Jackson County, Missouri. On March 1, 2021, as a part of those proceedings, the Circuit Court of Jackson County, Missouri, approved a

settlement, which (1) ratified and confirmed Mr. Jackson's prior sale of 90% of Mr. Jackson's expectancy interest in the Prince Estate to Primary Wave Music IP Fund 1, LP ("Primary Wave"); and (2) sold to Primary Wave Mr. Jackson's additional ten percent (10%) expectancy interest in the Prince Estate. No person, including WWB, challenged the Missouri court's order, which became final when the time for appeal expired. *See Spicer v. Donald N. Spicer Revocable Trust*, 336 S.W.3d 466, 471 (Mo. banc 2011) (dismissing an appeal for lack of jurisdiction because notice of appeal was untimely and judgment of the lower court was final).

On April 6, 2021, this Court issued an order recognizing Primary Wave's purchase of the entirety of Mr. Jackson's expectancy interest in the Prince Estate. No person, including WWB, challenged that order, which has also become final.

Several months after the April 6th order, WWB requested that the Court set a date for a hearing to determine and establish the existence of its claimed lien and order an entry of judgment in favor of WWB. On August 9, 2021, Primary Wave responded by letter requesting that the Court require WWB to indicate its position with regard to what interest may be attached by the lien, and identify the proper responding parties.

WWB responded to Primary Wave's letter on December 7, 2021. WWB's letter acknowledged Primary Wave purchased the entirety of Mr. Jackson's interest in the Prince Estate. WWB also acknowledged that its claims for fees from the Jackson Estate was rejected by the Missouri court. Nevertheless, WWB asserted that it could pursue its attorney lien against the against the "Prince Estate interests attributable to Mr. Jackson."

K. Barnes letter dated December 7, 2021. The letter did not identify further just what those interests might be, or explain how or by whom they were held.

ARGUMENT

I. WWB has no claim against the Estate of Alfred Jackson for unpaid legal fees, having forfeited that claim by failing to timely assert it in the Missouri probate proceedings.

WWB tried to assert a claim in the Jackson Estate, which had more than enough assets to pay the claim in full. However, WWB failed to properly file its claim in the first instance, and by the time they remedied the deficiencies in their filing, the time for submitting a claim had passed. *See* Missouri Order dated June 11, 2021 attached to the Declaration of Brian E. Jorde and Missouri Revised Statutes § 473.360. As a result, WWB's claim was barred, and WWB is not entitled to collect any of its claimed fees.

WWB's assertion that the Missouri court's "ruling has no bearing on the issue of the Minnesota attorney lien for the work performed on behalf of Mr. Jackson" is simply wrong. The creditor of a deceased individual in Missouri is limited to asserting its claim in probate and cannot take any other legal action to collect a debt outside of probate. *See* § 473.360 RSMo ("[C]laims against the estate of a deceased person . . . which are not filed in the probate division of the circuit court within six months after the first published notice of letters testamentary . . . are forever barred against the estate, the personal representative, the heirs, devisees and legatees of the decedent.") Upon Mr. Jackson's death, the Missouri probate court assumed exclusive jurisdiction over all of the assets owned by Jackson at the time of his death, and became the exclusive forum for any claims against those assets. *See* § 472.020 RSMo ("The probate division of the

circuit court may hear and determine all matters pertaining to probate business[.]” The only avenue for pursuing a claim as a creditor against a decedent is in the probate division by timely filing a claim and having it allowed as set forth in the Missouri probate code, Chapters 472-474 RSMo. Here, WWB does not have a personal interest in the property, instead WWB claims an interest (a lien) in property as a creditor of the decedent (Mr. Jackson). Under Missouri law, the probate division has exclusive jurisdiction to hear such claims pursuant to RSMo section 472.020. *See Missouri ex rel. Wratford v. Fincham*, 521 S.W.3d 710 (Mo. App. W.D. 2017) (finding that “where a plaintiff contends that property should be returned to the decedent's estate, and should thereafter be available to satisfy the plaintiff's claim, such a discovery of assets proceedings falls within the exclusive jurisdiction of the probate division.”) *Cf. In re Estate of Sangren*, 504 N.W.2d 786, 789 (Minn. App. 1993) (concluding that the “probate court has jurisdiction over all problems that arise in resolving an estate except those issues excluded by statute”). Simply put, because WWB failed to timely present its claim in the Missouri probate court, it no longer has a claim for unpaid legal fees.

II. Because WWB no longer has a claim against the Estate of Alfred Jackson for fees, it may not assert a lien based on that claim.

An attorney lien is just that – a lien to secure payment for an underlying legal obligation to pay fees. A lien is not a debt, but rather a means to preserve a creditor’s ability to collect a debt. Without an underlying debt, there can be no lien.

Establishing an attorney lien under Minnesota Statutes § 481.13, “enables the attorney to pursue any available methods for foreclosing on a security interest if the

client does not satisfy the underlying debt.” *Dorsey & Whitney LLP, v. Grossman*, 749 N.W.2d 409, 421 (Minn. App. 2008). *See also Nelson v. Nelson*, 806 N.W.2d 870, 872 (Minn. App. 2011):

Generally, a lien secures an underlying obligation. *See* Minn. Stat. § 514.99, subd. 1(b) (2010) (defining a lien as “an encumbrance on property as security for the payment of debt”); *Black’s Law Dictionary* 1006 (9th ed. 2004) (defining a lien as “[a] legal right or interest that a creditor has in another’s property, lasting usu. until a debt or duty that it secures is satisfied”)[.]

It is the underlying debt that is owed, not the lien itself; the lien is merely a means to ensure payment of the debt. *See Crown Equip. Rental Co. v. J.B. Builders, LLC*, No. A08-2005, 2009 WL 2447606, at *3 (Minn. Ct. App. Aug. 11, 2009) (“[T]he lien itself is something distinct from the underlying debt—security for the payment owed.”)

This principle is universally recognized.

As a lien is a right to encumber property until a debt is paid, it presupposes the existence of a debt. If there is no debt in the first instance, there is no need for a lien, so a lien cannot legally exist or attach. In other words, without a debt, there can be no lien.

51 Am. Jur. 2d Liens § 13 (footnotes omitted). “Since a lien is a charge on property for the payment or discharge of a debt or duty . . . it stands to reason that where there is no longer a debt or duty owing, no lien can be claimed.” *Harbour Vill. at Saga Bay, Inc. v. Dahm*, 367 So. 2d 1100, 1102 (Fla. Dist. Ct. App. 1979) (citations omitted).¹

¹ *See also Jackson v. Engert*, 453 S.W.2d 615, 617 (Mo. App. 1970) (“No lien could exist in the absence of an indebtedness.”); *Matos v. Rohrer*, 203 Mont. 162, 175, 661 P.2d 443, 450 (1983) (“Without a debt there can be no lien.”); *Ply-Marts, Inc. v. Phileman*, 40 N.C. App. 767, 768, 253 S.E.2d 494, 495 (1979) (“The debt is the principal, the basis, the foundation upon which the lien depends. The lien is but an incident, and cannot exist without the principal.”); *Shipley v. Biscamp*, 580 S.W.2d 52, 54 (Tex. Civ. App. 1979) quoting *Spencer-*

The need for an underlying debt to support a claimed lien was explained in *Coates v. Acheson*, 23 Mo. App. 255, 260 (1886), a case involving a statutory innkeeper's lien. There the court distinguished between the time when the right to assert a lien may have arisen, and the need for a current indebtedness at the time the lien is enforced.

The plaintiff's *right* to the lien in this case existed from the time he furnished the boarding, lodging, etc. to the defendant Acheson, and in that sense the lien may be said to have existed from that time. But in fact the lien depends upon the existence of an indebtedness due from the defendant, Acheson, to the plaintiff for said boarding, lodging, etc. Unless such indebtedness exists the lien does not exist.

Id. (emphasis in the original); see also, *Branick v. Nat'l Site Acquisition, Inc.*, 585 S.W.2d 305, 308 (Mo. Ct. App. 1979) (“To be valid, an equitable lien must be based upon a debt or obligation.”)

In *Zitterkopf v. Bradbury*, 783 P.2d 1142 (Wyo. 1989), the Wyoming Supreme Court considered a lien claim and found that the extinguishment of the claimed debt invalidated any claimed lien:

Zitterkopf's claim that the district court erred in invalidating his lien on Bradbury's property need not be addressed since we do not upset the district court's finding that all obligations between the parties have been satisfied. A valid lien requires an unsatisfied debt due the lienor. See W.S. 29-1-301 to 29-1-302. No such debt exists. Thus, Zitterkopf has no right to a lien.

Id. at 1145-46.

Sauer Lumber Co. v. Ballard, 98 S.W.2d 1054 (Tex. Civ. App. 1936) (“The general rule seems to be universal that a lien is but an accessory to, or mere incident of, the debt secured by it, and is discharged and extinguished, ipso facto et eo instante, by payment of the debt[.]”).

That the lien does not create the debt, but only provides security for payment of a claimed debt, has been expressly recognized in Minnesota. “Under the statute, an attorney is given a lien ‘upon the interest of the attorney’s *client*.’ Minn. Stat. § 481.13(1). The statute does not create an agreement to pay attorney's fees, but only imposes a lien to protect an attorney who already has such an agreement.” *Williams v. Dow Chem. Co.*, 415 N.W.2d 20, 26 (Minn. Ct. App. 1987) (emphasis in the original), *citing Johnson v. Blue Cross and Blue Shield of Minnesota*, 329 N.W.2d 49, 53 (Minn. 1983).

Here, WWB’s claim for fees – the debt claimed to give rise to the asserted lien – was extinguished by WWB’s failure to timely present that claim in the Jackson Estate, the exclusive forum in which the fee claim could be asserted. As a result, there is no debt upon which the lien can be based.

III. Even if WWB had a legal claim, there is nothing in the Prince Estate to which its lien can attach, since Alfred Jackson sold his interest before the lien was filed or perfected.

Pursuant to paragraph 4(d) of the Settlement Agreement between Primary Wave and the Jackson Estate, the personal representative of the estate transferred Mr. Jackson’s expectancy interest in the Prince Estate to Primary Wave free and clear of all liens and claims. *See* Declaration of Eric J. Magnuson, Exhibit A. That transfer was effective when the Missouri probate court approved the sale transaction, which took place long before WWB formally asserted its lien in these proceedings. Once again, WWB’s delay in acting is fatal to its claim. Even if there was an underlying debt, and a lien could have been asserted, WWB failed to timely perfect the lien it now attempts to enforce prior to the personal property at issue being transferred to a third party. In

short, and to use the words of WWB's claim, there are no longer any "Prince Estate interests attributable to Mr. Jackson" in the Prince Estate.

The fact that any interest that the Jackson Estate may have had in the Prince Estate was transferred prior to the assertion of a lien by WWB is more than a mere formality. Minnesota Statutes § 525.491 provides that when any attorney has been retained to appear for any heir or devisee, the attorney may perfect a lien upon the client's interest in the estate 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. "The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided." Minn. Stat. § 525.491.

The transfer of any interest that the Jackson Estate might have had in the Prince Estate took place before WWB attempted to perfect its lien. And the law recognizes that unperfected liens are not effective against third parties. As to third-parties (any party other than the client or in this case, Primary Wave), the requirements of the statute concerning notice and filing of the lien must be met in order to bind non-clients to the lien.

In *Williams v. Dow Chem. Co.*, 415 N.W.2d 20 (Minn. Ct. App. 1987) (cited by WWB in its letter to the Court) the Minnesota Court of Appeals explained clearly the difference between when a lien becomes effective against the interest of the client, and when it becomes effective as to a third party.

As against Liberty, which is a “third party” and not a client, Williams' lien on the Parranto defendants' interest in the proceeds would have become effective “from the time of filing the notice of the lien claim.” Minn. Stat. § 481.13(1). Under Minn. Stat. § 481.13(4), a lien on the client's personal property “shall be filed in the same manner as provided by law for the filing of a security interest.” Williams did not file notice as provided for the filing of a security interest; the only “notice” received by Liberty was the notice of lien on judgment filed in federal court. Thus, Williams' lien never became effective against Liberty.

Id. at 26.²

Here, WWB asserts a lien against Mr. Jackson’s interest, and later the Jackson Estate’s interest, in the Prince Estate. As this Court has previously recognized, an expectancy interest is personal property that may be transferred or sold. Order Regarding Estate Protocols filed March 26, 2020, at p.3. It is not a “cause of action.” As the declaration of Eric J. Magnuson shows, Primary Wave conducted UCC lien searches

² The court went on in that case to explain how a different result obtains when the party against whom the lien is sought to be enforced is defendant in the litigation in which the lawyer for the claimant renders services, and the source of funds to pay the claim of the lawyer’s client.

Dow, on the other hand, was a defendant in the federal litigation and not a “third party” for purposes of the attorney's lien statute. Cases interpreting a 1905 statute that is, in all relevant aspects, identical to the current statute state repeatedly that the payment of a claim without the plaintiff's lawyer's consent makes the paying defendant subject to the enforcement of the attorney's lien. . . .

The theory behind these cases is that while the parties have a right to settle their dispute without the plaintiff's lawyer's consent, such a settlement cannot defeat the lawyer's statutory interest in the client's cause of action. The defendant is charged with notice of the existence of the statutory lien, and must therefore include that claim in the settlement. *See Krippner v. Matz*, 205 Minn. 497, 502–03, 287 N.W. 19, 22–23 (1939).

Id. (some citations omitted)

in Minnesota and Missouri prior to its acquisition of Mr. Jackson's interest in the Prince Estate, which showed no perfected security interest in favor of WWB. Primary Wave also carefully reviewed the record in these proceedings and determined WWB had not filed the lien notice required by § 525.491.

In contrast, both Asa Weston and Justin Bruntjen, attorneys who previously represented Mr. Jackson in the Prince Estate, had filed both written notice with the court and UCC statements with the secretary of state when they asserted their attorney liens against Mr. Jackson's interest. Their claims were addressed in the Missouri probate and are no longer an issue in this case. WWB, however, did neither prior to the Jackson Estate's expectancy interest in the Prince Estate being transferred to Primary Wave.

WWB's purported lien was not perfected prior to the transfer of the interest of the Jackson Estate in the Prince Estate, and even if there were an underlying debt to support the lien, the lien is not effective as to the third-party transferee, Primary Wave.

CONCLUSION

Primary Wave respectfully requests that this Court deny WWB's Application for Determination and Establishment of Attorney's Lien and Entry of Judgment of Attorney's Lien because there is no underlying debt supporting the claimed lien. Moreover, neither Mr. Jackson nor his estate held any interest in the in the Prince Estate when the lien was purportedly filed, and the failure of WWB to timely perfect any lien rendered the lien claim ineffective as to Primary Wave.

Respectfully submitted,

Dated: December 30, 2021

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