

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**

**PROPOSED ORDER REGARDING  
PRIMARY WAVE MUSIC IP FUND I,  
LP'S RIGHTS AS INTERESTED  
PERSON UNDER MINNESOTA  
STATUTES § 524.1-201(33)**

**Decedent.**

On November 21, 2019, Primary Wave Music IP Fund 1, LP filed with the Court its "Notice of Motion and Motion to Recognize Primary Wave Music IP Fund 1, LP as an Interested Person under Minnesota Statutes § 524.1-201(33)." The motion came before the Court on December 13, 2019.

**FACTUAL BACKGROUND**

1. Tyka Nelson and Primary Wave entered into an Expectancy Interest Transfer Agreement whereby Ms. Nelson has sold a portion of her interest in the estate to Primary Wave. No challenge has been made by any person to the validity of this transaction.

2. 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 allowing Primary Wave to exercise authority on behalf of Ms. Nelson on all matters relating to the Estate.

3. Part of the relief requested by Primary Wave in its motion was an order granting to it the same rights to participate in the estate administration as is enjoyed by the heirs. At the hearing on December 13, 2019, the Court directed Comerica's counsel to provide counsel for Primary Wave with copies of orders previously entered by the Court concerning the rights of the heirs to participate in proceedings regarding the estate administration, and to be provided information concerning the estate assets and business transactions.

4. Comerica's counsel has provided the following orders to counsel for Primary Wave:

- a. Order Regarding Application of Existing Orders and Protocols to the Personal Representative dated March 20, 2017;
- b. Order and Memorandum on Proposed Entertainment Deal and the Appointment of Heirs' Representatives dated May 25, 2018;
- c. Order and Memorandum Denying Request for Financial Valuation Documentation and Payment of Fees dated July 11, 2018;
- d. Order Regarding Personal Representative's Fees and Costs for February 2019 through January 2020 and Petition to Limit Authority of Personal Representative dated April 23, 2019;

- e. Findings of Fact, Conclusions of Law and Order Denying Petition to Permanently Remove Comerica Bank and Trust N.A. as Personal Representative dated December 18, 2017; and
  - f. Order Determining Intestacy, Heirship, and McMillan Matters dated May 18, 2017.
5. Throughout these proceedings, the Court has balanced the right of the heirs to information concerning the estate proceedings against the need to maintain the integrity of the estate administration. Order of December 18, 2017 at page 12.
6. The Court has emphasized the importance of effective communication between the personal representative and the heirs concerning the administration of the estate. Order of July 11, 2018 at page 3. Among other things, the Court has approved regular meetings between the heirs and the personal representative, and has noted favorably the regular email communications from the personal representative to the heirs concerning matters of estate administration. Order of December 18, 2017 at page 4. In addition, the Court appointed retired Justice James Gilbert to serve as a moderator and mediator to ensure a high level of communication between the personal representative and the heirs and their advisors. *Id.* at page 13.
7. The Court also has tried to balance the interest of the heirs in the estate with the ability of the personal representative to efficiently manage the affairs of the estate. Order of April 23, 2019 at page 3. The Court has taken steps to protect the confidential nature of the information provided by the personal representative to the heirs, including requiring that the heirs and their counsel not disclose confidential business

information to third parties without that party first entering into a nondisclosure agreement in a form approved by the personal representative. Order of March 20, 2017 at page 7. The Court has specifically disapproved, in strong terms, any violations of its orders regarding nondisclosure of confidential estate information. *Id.*

8. The Court also has taken what it considers appropriate action to protect the estate from the efforts of those third parties who have attempted to usurp control of the estate. Order of December 18, 2017 at pages 10 - 11.

9. As part of that effort, the Court has addressed specific issues regarding the administration of the estate, rather than taking categorical action. *Id.* at page 13. For example, when dealing with alleged conflicts concerning Troy Carter, the Court noted that theoretical conflicts exist for all involved in the music industry, but without specific examples of actual conflicts, the Court has declined to take action on the generalized allegations. *Id.* at pages 8 -9.

10. In the same vein, when appointing Gregg Walker as an heir's representative, the Court concluded that any conflict of interest that might exist would be negated by Mr. Walker working in collaboration with others. Order of May 25, 2018 at page 3.

11. The Court has also favored mediation and conciliation to address issues concerning the estate administration. When issues arose concerning whether Mr. Walker improperly disclosed confidential information, the Court ultimately directed Comerica and Mr. Walker to resolve the matter by mediation. Interim Order on Contempt and Related Motions dated May 21, 2019. The parties resolved their dispute,

and the Court approved that Agreement on September 18, 2019. Order Approving Mediated Settlement Agreement dated September 18, 2019.

12. The Court has also rejected nonspecific complaints of the heirs concerning the conduct of the personal representative. Order of April 23, 2019 at page 2. Instead, the Court has encouraged the informal and cooperative resolution of estate administration issues. *Id.*

13. Primary Wave has represented to the Court its desire and intent to work cooperatively with the personal representative with the goal of effective management of the estate going forward, and has specifically represented that it does not intend to revisit any past decisions. Mestel Declaration of December 10, 2019 ¶ 5. Instead, Primary Wave has assured the Court that its desire is to assist the personal representative in the effective management and conclusion of the estate proceedings, in any way it can. *Id.* There is no basis in the record to question this assertion.

14. By affidavit, Comerica's counsel has asserted, in nonspecific terms, that unnamed representatives of the estate's "key entertainment partners" have expressed unspecified "concerns," about Primary Wave having the same level of access to information as the heirs, allegedly because "Primary Wave competes, or otherwise does business with, certain partners." Cassioppi Declaration of September 18, 2019 ¶ 6.

15. Comerica's counsel has presented no details to elaborate on these alleged concerns. Moreover, Comerica has failed to present any evidence to dispute that Primary Wave, as a highly respected member of the music industry, brings to the table sophistication and expertise in music management and marketing that will benefit the

estate. Mestel Declaration of December 10, 2019 at ¶ 5. Primary Wave has stated that it will work with Comerica and the heirs to preserve and maximize the value of the assets and to facilitate the prompt and efficient administration of the estate and ultimate distribution of the estate assets. *Id.*

16. Primary Wave has also asserted that it would not do anything to jeopardize its financial interest in the estate. Comerica has presented no evidence to the contrary.

17. Although the personal representative has asserted in connection with this and other motions that Primary Wave improperly received confidential information concerning the estate in violation of the Court's prior orders, the record is unchallenged that Primary Wave received that information under the terms of a nondisclosure agreement that it entered into with Michael Lythcott, which it understood to be in compliance with this Court's orders. *Id.* ¶ 13. Mr. Lythcott submitted a letter to the Court dated February 14, 2019, where he explained that he provided information to third parties subject to a nondisclosure agreement, which he believed complied with the Court's confidentiality order.

18. The record is also undisputed that Primary Wave has complied in all respects with its obligations under the nondisclosure agreement to which it was a party, and preserved the confidential nature of any information that it received. Mestel Declaration of December 10, 2019 at ¶ 14. There is no evidence that Primary Wave has misused any of the confidential information in its possession nor caused any harm to the estate by virtue of possessing such confidential information. *Id.*

19. Comerica's counsel presented to the Court an exchange of correspondence with Primary Wave's counsel concerning the return of the estate information. Comerica's counsel has proposed only that Primary Wave destroy all confidential information in its possession as a predicate to any further discussions, a request with which Primary Wave at the time felt it was unable to comply. In the absence of the unconditional agreement by Primary Wave to destroy the disputed documents, Comerica has refused to discuss the matter further. Primary Wave's counsel has nonetheless expressed to Comerica's counsel on numerous occasions Primary Wave's desire to work cooperatively to resolve the issue and engage in a constructive dialogue.

#### CONCLUSIONS OF LAW

1. Under Minnesota law, heirs acquire a vested property right upon the death of the decedent. Minnesota Statutes § 524.3-101 (2019) (providing that upon death, a person's real and personal property, in the absence of testamentary disposition, devolves to the decedent's heirs). That property right is fully transferable by contract.
2. Primary Wave purchased from Tyka Nelson a share of her vested property interest in the estate of Prince Rogers Nelson.
3. There is no dispute that the transaction between Primary Wave and Tyka Nelson is valid and supported by adequate consideration. There is also no dispute that, by virtue of that transaction, as a matter of law, Primary Wave now stands in the shoes of Ms. Nelson to the extent of the transferred interest. Primary Wave is an interested person under Minnesota Statutes § 524.1-201(33).

4. There is no legal authority to distinguish between the interest of Primary Wave and the interest of any heir.
5. In addition, Minnesota law grants to interested persons broad rights relative to estate administration proceedings including, but not limited to, the following:
  - a. Minnesota Statutes § 524.3-105 (2019) (any interested person has broad authority to petition the Court for any kind of relief described in the probate code including a petition for an order approving or directing partial distributions, sale of property, or other relief during the pendency of the administration);
  - b. Minnesota Statutes § 524.3-501 (2019) (a supervised personal representative is responsible to the interested parties and subject to the directions concerning the estate made by the Court on its own motion or on the motion of any interested party);
  - c. Minnesota Statutes § 524.3-607 (2019) (any person who appears to have an interest in the estate may petition the Court to restrain a personal representative from taking an action or to secure proper performance of a duty if it appears to the Court that the personal representative may take an action that would unreasonably jeopardize the interest of the petitioner or an interested person); and
  - d. Minnesota Statutes § 524.3-711 (2019) (a personal representative has power over estate assets that an absolute owner would have, but in trust for the benefit of the creditors and others interested in the estate).

6. By virtue of Tyka Nelson assigning a percentage of her interest in the estate and appointing Primary Wave as her attorney-in-fact with respect to the portions of her vested interest not sold to Primary Wave, Primary Wave is entitled to participate fully in all proceedings on the same basis that Ms. Nelson and the other heirs participate. Primary Wave also must comply fully with all prior orders of this Court concerning confidentiality and appropriate use of estate information to which it gains access.

7. If there is a specific concern regarding Primary Wave's participation in the estate proceedings, the parties may bring that concern and the facts upon which it is based to the Court, and all parties will have an opportunity to address those concerns.

8. The Court adopts the following procedure with regard to Primary Wave's continued participation in these proceedings as an Interested Person under Minnesota Statutes § 524.1-201(33), consistent with this Court's prior orders regarding the right of heirs to participate in the estate proceedings:

- a. The personal representative must disclose enough information to Primary Wave and its counsel as necessary to allow them to make a knowledgeable assessment of the merits of any proposed transaction in which the personal representative anticipates receiving more than \$2 million in value.
- b. Prior to disclosure of any confidential estate information to a third party, Primary Wave shall first enter into a nondisclosure agreement with that third party using a form approved by the personal representative.

- c. The personal representative must keep Primary Wave informed (reporting on at least a monthly basis) regarding the assets and business transactions of the estate.
- d. The personal representative shall provide Primary Wave with copies of any documents and information provided to the heirs.
- e. Primary Wave shall be invited to the twice-monthly meetings the personal representative conducts with the heirs.
- f. Primary Wave shall be copied on the daily email correspondence provided to the heirs by the personal representative.
- g. The personal representative shall provide to Primary Wave documents necessary in order to conduct its own analysis of how the estate is doing to meet its obligations.

**IT IS HEREBY ORDERED THAT:**

1. The Court grants the Motion to Recognize Primary Wave Music IP Fund 1, LP as an Interested Person under Minnesota Statutes § 524.1-201(33). By virtue of the assignment from Tyka Nelson to Primary Wave of a portion of her inheritance interest, Primary Wave stands in her shoes to the extent of the transfer, and is entitled to the same rights that she possesses to participate in the estate administration.
2. Comerica and Primary Wave shall comply with the procedures laid out in this Order regarding Primary Wave's continued participation in these proceedings as an Interested Person under Minnesota Statutes § 524.1-201(33).

Dated: \_\_\_\_\_, 2020

BY THE COURT:

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Kevin W. Eide  
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

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