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Order on Defendant Fiduss's Motion to Dismiss (CURTIS LEE MAYFIELD, III)

Elizabeth E. Long
Superior Court of Fulton County

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Long, Elizabeth E., "Order on Defendant Fiduss's Motion to Dismiss (CURTIS LEE MAYFIELD, III)" (2009). *Georgia Business Court Opinions*. Paper 151.
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IN THE SUPERIOR COURT OF FULTON
STATE OF GEORGIA

FILED IN OFFICE
DEC 07 2009
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

CURTIS LEE MAYFIELD, III, et al.,

Plaintiffs,

v.

MARVIN HEIMAN, et al.,

Defendants,

Civil Action File No. 2009-CV-166043

ORDER ON DEFENDANT FRIDUSS'S MOTION TO DISMISS

This case is before the Court on a Motion to Dismiss filed by Defendant Friduss, Lukee, Schiff & Co., P.C. ("Friduss"). After reviewing the briefs submitted on the motion and the record in the case, the Court finds as follows.

The applicable standard is "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff with all doubts resolved in the plaintiff's favor, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts." Baker v. McIntosh County Sch. Dist., 264 Ga. App. 509, 509 (2003); Croxton v. MSC Holding, Inc., 227 Ga. App. 179, 180, (1997); Mathews v. Greiner, 130 Ga. App. 817,821(1974).

Plaintiffs are a son and a daughter of Curtis Lee Mayfield, Jr., ("Mayfield"), a famous American singer-songwriter and record producer who died in 1999. Plaintiffs are named beneficiaries of the Mayfield Family Trust (formerly known as the Mayfield Revocable Trust), a trust organized under the laws of the state of Georgia ("the Trust"). This case arises out of controversies over the handling of the Trust assets by Defendants.

Marvin Heiman ("Heiman") served as a co-trustee of the Trust from 1999-2003. Friduss was hired by Heiman on behalf of the Trust to perform accounting services for the Trust.

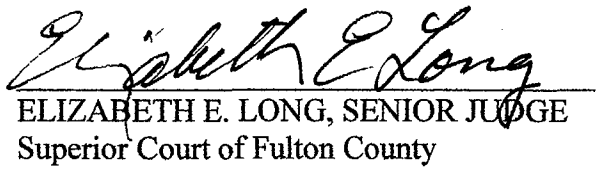
Most of Plaintiffs' Complaint centers on a loan transaction which closed in May 2000. In that transaction, the Trust received proceeds from a loan to be repaid from the royalties from certain copyright interests held by the Trust. Plaintiffs allege that Friduss owes them fiduciary duties with respect to the work it performed on behalf of the Trust, and that Friduss has breached those fiduciary duties. Plaintiffs are also alleging breach of trust against Friduss. Plaintiffs state vehemently that they are not claiming that Friduss committed malpractice. Rather, they contend that there were intentional wrongful acts committed by Friduss that constitute breach of fiduciary duty or breach of trust.

With respect to the claim of breach of fiduciary duty, Plaintiffs contend that Friduss performed false or misleading work for the Trust. These allegations sound in malpractice rather than breach of fiduciary duty. There are no allegations that Friduss did anything other than prepare tax returns for the Trust. This work may be the basis for a claim of malpractice, but nothing further.

Turning to the claim for breach of trust, Plaintiffs' claim that Friduss was delegated duties of the Trust by co-trustee Heiman, but nowhere in the Complaint nor the Amended Complaint do they say what trust duties were delegated. Thus, this claim must be dismissed. Friduss performed accounting work for the Trust, it was not a trustee.

Friduss's Motion to Dismiss is hereby **GRANTED**.

SO ORDERED this 7th day of December 2009.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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