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Elizabeth E. Long
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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OCT 12 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. 2009CV166043

ORDER ON DEFENDANTS HEIMAN AND SUSSEX'S MOTION TO DISMISS

Defendant Marvin Heiman ("Heiman") and Sussex Financial Group, Inc. ("Sussex") have filed a Motion to Dismiss. 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., 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.

Heiman served as a co-trustee of the Trust from 1999-2003. Heiman is the president of Sussex. Sussex conducted financial transactions and made investme nts on behalf of 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 all of the Defendants owed them fiduciary duties with respect to the work they performed on behalf of the Trust, and that Defendants have breached those fiduciary duties. Plaintiffs are also alleging breach of trust. Plaintiffs stated at oral argument that they are not claiming fraud or conspiracy. Rather, they contend that there was a breach of fiduciary duty or breach of trust by Heiman and Sussex.

On March 16, 2009, Plaintiffs filed this case as a purported renewal action of a case they filed in January 2007 under civil action number 2007-CV-128087 ("2007 Action"). Plaintiffs voluntarily dismissed their 2007 Action without prejudice in November 2008.

Heiman and Sussex's Motion to Dismiss sets forth several different grounds for dismissal. They contend that the 2007 Action is still pending because under O.C.G.A. §9-11-41 a suit cannot be dismissed over defendant's objection if a counterclaim is pending. Apparently, at the time of the dismissal a counterclaim was pending but Defendants withdrew their objection after the court agreed to hear the counterclaim. The counterclaim has since been ruled upon. Thus, the 2007 Action is no longer pending.

Heiman and Sussex contend that the statute of limitations has run on the breach of fiduciary duty claim. The statute of limitations for a breach of fiduciary duty by Heiman as co-trustee is 6 years from the date Plaintiffs knew of the claim; and 4 years for Sussex. In an affidavit, Plaintiff Curtis Mayfield, III, says he did not learn of the claim until February, 2005. Plaintiff Sharon LaVigne swears that she first learned of the claim at the end of 2002. The Complaint in this case was filed March 16, 2009. Thus, the statute of limitations for the breach of fiduciary duty claim against both Heiman and Sussex would have run for Plaintiff LaVigne and the breach of fiduciary duty claim against Sussex would have run for Plaintiff Mayfield. However, Plaintiffs contend that this case is a renewal of the 2007 Action and therefore, relates

back to the 2007 Action for purposes of the statute of limitations. Heiman and Sussex argue that Plaintiffs had notice through Jackson Culbreth, their agent, of their claims prior to dates they assert in their affidavits. However, Mr. Culbreth may have been an attorney or agent for the Trust, but there is no evidence that he was an agent for these Plaintiffs. This case relates back to the 2007 Action for purposes of the statute of limitations. Thus, Plaintiff LaVigne's claim against Sussex is outside the statue of limitations but her claim against Heiman is not barred. Both of Plaintiff Mayfield's claims may go forward.

In April, 2000, both Plaintiffs entered into a Release and Indemnification Agreement with Heiman (the "2000 Release"). Heiman and Sussex contend that the 2000 Release bars Plaintiffs from proceeding with their claims. The 2000 Release would apply to "any and all claims . . . of whatever kind or nature which they now have, had, or may hereafter claim to have . . . which occurred or existed at any time prior to the date hereof." The 2000 Release was signed by Plaintiffs on April 21, 2000. A superior court judge in the 2007 Action has ruled that O.C.G. A. §53-12-194(a) is applicable to the 2000 Release and therefore the 2000 Release does not bar the breach of trust claim. Although this ruling is on appeal, until such time as it is reversed, it is binding in the case. Thus, the 2000 Release does not bar Plaintiffs' claims.

Sussex's Motion to Dismiss is hereby **GRANTED** as to Plaintiff LaVigne on her breach of fiduciary duty claim, but **DENIED** as to Plaintiff Mayfield. Heiman's Motions to Dismiss are hereby **DENIED.**

SO ORDERED this 12th day of October, 2009.

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

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