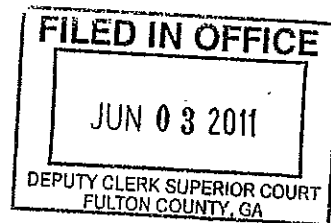


IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

**COPY**

CURTIS LEE MAYFIELD III, et al. )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MARVIN HEIMAN, et al. )  
 )  
Defendants. )

Civil Action No.  
2009-CV-166043



**ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

On May 9, 2011, counsel appeared before the Court to present oral argument on Plaintiffs' and Defendants' Motions for Summary Judgment. After hearing the arguments made by counsel, and reviewing the briefs submitted on the motions and the record in the case, the Court finds as follows.

Plaintiffs are the son and daughter of the late Curtis Mayfield, Jr., an iconic American recording artist and producer who died in 1999. Plaintiffs are contingent beneficiaries of the Mayfield Family Trust (the "Trust"). Defendant Marvin Heiman ("Heiman") served as a co-trustee of the Trust from 1999-2003. Heiman is the president of Sussex Financial Group, Inc. ("Sussex"), an entity that performed investment and management services for the Trust.

This case arises out of a dispute over the management of the Trust by Defendants. Most of Plaintiffs' Complaint centers on a "securitization" transaction that closed in May 2000. In that transaction, the Trust received proceeds from a non-recourse loan to be repaid exclusively from the royalties of certain copyright interests held by the Trust. The copyrights were also pledged to the lender as security for the loan. As part of that

transaction, Plaintiffs sold their individual renewal rights in certain copyrights to the Trust in exchange for \$65,000.00 each.

Plaintiffs contend that the securitization transaction was imprudent because the income stream generated by the royalties was purportedly expected to exceed the loan proceeds. As such, Plaintiffs argue that Heiman was motivated by the desire to secure a 10% commission on the transaction and to generate asset management fees for Sussex. On that basis, Plaintiffs assert a breach of trust claim against Heiman and a breach of fiduciary duty claim against Sussex. As further support for these claims, Plaintiffs contend that Heiman is responsible for the tax consequences of the transaction, which turned out to be unfavorable to the Trust, and that Heiman and Sussex converted money from the Trust by virtue of their receipt of fees generated by the transaction and their continued involvement in the management of the Trust assets.

#### **Defendants' Motion for Summary Judgment**

Defendants moved for summary judgment, among other grounds, on the basis that 1) Plaintiffs' claims are barred by the statute of limitations, 2) Plaintiffs, as contingent beneficiaries under the Trust, lack standing to bring these claims, and 3) Plaintiffs' claims are barred by the 2003 Settlement Order between Heiman and the other Mayfield beneficiaries.

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991). The moving party need only eliminate one essential element of a

party's claim to prevail on summary judgment. Real Estate Int'l Inc. v. Buggah, 220 Ga. App. 449, 451 (1996).

### **Plaintiffs' Standing as Contingent Beneficiaries**

Defendants argue that Plaintiffs are not entitled to recover because, as contingent beneficiaries, they have no present entitlement to anything under the Trust and may never come into present possession of any Trust property. The Court finds that Georgia law does not support this proposition. Under O.C.G.A. § 53-12-192 (2002), a "beneficiary" can proceed against a trustee for a breach of trust. A "beneficiary" is defined as "a person for whose benefit property is held in trust, *regardless of the nature of interest.*" O.C.G.A. § 53-12-2 (emphasis added). See also Cannon v. Bangs, 269 Ga. 671 (1998) (holding that a contingent beneficiary under a will had standing to pursue a claim against an executor); Suntrust Bank v. Merritt, 272 Ga. App. 485 (2005) (recognizing the specific nature of the duty owed by the trustee to contingent beneficiaries under a trust and, by implication, the right of contingent beneficiaries to pursue a claim against a trustee for breach of that duty).

### **Effect of the 2002 Action and the 2003 Settlement Order**

In its October 12, 2009 Order on Defendants' Motion for Judgment on the Pleadings, the Court held that Plaintiffs, who were not parties to an action initiated in 2002 by Altheida Mayfield and the other six beneficiaries ("2002 Action"), were not barred on res judicata grounds from bringing the claims asserted in this case. The Court also ruled that the 2003 Settlement Order, which Plaintiffs did not sign, did not release the claims made by Plaintiffs in this case. In their Motion for Summary Judgment, Defendants resurrect their prior arguments, contending that the 2003 Settlement Order

released all claims concerning Mr. Heiman's services as trustee of the Trust, or at the very least, that the 2002 Action forecloses Plaintiffs' right to pursue claims on behalf of the Trust. Upon review of the 2003 Settlement Order, as well as the Complaint in the 2002 Action, the Court finds no reason to revisit its ruling. "This Court will not find that the Plaintiffs released their claims against Heiman and Sussex as a matter of law when they have not signed a release covering the claims raised in this case, there is no evidence of a release signed on their behalf, and they were not parties to the case in which the Settlement Order was entered." Moreover, Plaintiffs' claims are not barred on res judicata grounds as Plaintiffs were not in privity with Altheida Mayfield or the other parties to the 2002 Action.

#### **Statute of Limitations**

The statute of limitations for a breach of trust against Heiman is six years from the date Plaintiffs "discovered, or reasonably should have discovered, the subject of the claim." O.C.G.A. § 53-12-198 (2002). As to Plaintiff Curtis Mayfield, III's claim for breach of fiduciary duty against Sussex, the statute of limitations is four years. In previous orders on motions to dismiss filed by Heiman and Sussex, this Court has declined to rule, unless it was clear on the pleadings, that Plaintiffs' claims are time-barred as a matter of law.<sup>1</sup> "A motion to dismiss is an anomalistic vehicle by which to assert an action as time-barred by a statute of limitation... . Generally a motion for summary judgment is the appropriate vehicle by which to establish a running of the

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<sup>1</sup> See Oct. 12, 2009 Order on Heiman and Sussex's Motion to Dismiss (finding Plaintiff Sharon Lavigne's claims against Sussex time-barred based on LaVigne's contention in the pleadings that she learned of the claim in 2002); Dec. 2009 Order on Heiman and Sussex's Renewed Motion to Dismiss and Motion to Reconsider (finding insufficient basis to show that Culbreth was a general agent of Plaintiffs to impute his knowledge of claims to Plaintiffs for statute of limitations purposes).

statute of limitation.” Goldston v. Bank of America Corp., 259 Ga. App. 690, 690-691, n.1 (2003).

In its January 14, 2011 Order, this Court also denied Sussex’s motion for summary judgment on statute of limitations grounds, finding that evidence of Mayfield’s knowledge of the 2002 Action against Heiman did not conclusively establish his knowledge of claims against Sussex, who was not a party to the 2002 Action. However, the previous denial of summary judgment does not now preclude the Court from considering additional arguments on the statute of limitations issues raised in the instant motion, together with the expanded record currently before the Court. T.L Rogers Oil Co. v. South Carolina Nat. Bank, 203 Ga. App. 605, 606 (1992).

It is undisputed that the transaction at issue closed on May 4, 2000. Plaintiffs initiated this case on January 11, 2007. As such, Plaintiffs’ claims are time-barred to the extent that Plaintiffs should have discovered the facts on which they claim that the securitization transaction was imprudent prior to January 11, 2001, with respect to Heiman, and January 11, 2003, with respect to Sussex.

As an initial matter, Plaintiffs argue that the claim did not accrue until May 2004, under the theory that the Trust was first harmed by the alleged imprudent transaction when it repaid the lender an amount in excess of the net loan proceeds. The Court disagrees. Plaintiffs’ breach of trust claim is premised on Heiman’s failure to act prudently in entering into the securitization transaction considering, at the time of the transaction, the actual value of the collateral in contrast to the unfavorable loan terms. As such, the breach of trust occurred at the time the transaction closed in 2000, and the Trust was harmed when it incurred the obligation to repay the loan under alleged unfavorable

terms. Accordingly, the cause of action accrued on May 4, 2000. See Allen v. Columbus Bank & Trust Co., 244 Ga. App. 271 (2000) (finding that a cause of action accrued against the trustee at the time of the questionable investment of trust property).

Plaintiffs now contend that they did not discover the imprudence of the transaction until their review in 2005 of an appraisal showing the value of the copyrights. Upon review of the record, however, the Court finds that the information available to the Plaintiffs in 2000, as well as their participation in the transaction, as individuals, apart from their identity as Trust beneficiaries, shows that Plaintiffs were not strangers to the transaction nor were they somehow prevented from appreciating the nature of the transaction at the time the transaction closed in 2000.

Plaintiffs, individually, sold their renewal rights to the Trust on March 15, 2000, and each received \$65,000 in exchange. The Renewal Term Acquisition Agreement, executed by both Plaintiffs, expressly states that the price paid to Plaintiffs in connection with the sale was based on “the value of the Writer’s share of the Renewal Term Rights based on values utilized by [the Lender] in determining the loan amount.” This necessarily refers Plaintiffs to the valuation on which they base their claims in this case. Moreover, by executing the Renewal Term Acquisition Agreement, Plaintiffs “acknowledged his or her understanding” of the value of the royalties considered by the Lender. Plaintiffs also executed Fee Agreements consenting to the 10% fee Heiman received in connection with the transaction. Considering these disclosures (which Plaintiffs acknowledged by their signature), at the very least, Plaintiffs could have discovered the subject matter of their claims in 2000. Moreover, it was incumbent upon Plaintiffs, individually, as sellers under the Renewal Rights Agreement, to inquire into

the value of the copyrights to confirm that they were getting a fair price.

Finally, Plaintiffs contend that the statute of limitations was tolled by Heiman's fraud. Plaintiffs' prior representation in open court that they were not claiming fraud undermines this allegation. See Allen v. Columbus Bank & Trust Co., 244 Ga. App. 271, 273 (2000) (citing the proposition that fraud necessary to toll the statute of limitations requires a greater showing than often required to show fraud that gives rise to a cause of action).

Plaintiffs cite Goldston v. Bank of America Corp., 259 Ga. App. 690 (2003), as support for their argument that where a confidential relationship exists, the failure to disclose certain key information is sufficient to toll the statute of limitations, even absent an affirmative fraudulent misrepresentation. In Goldston, the trustee bank failed to disclose for over thirty years the very existence of a trust established for the benefit of the settlor's children in connection with a divorce proceeding. Id. at 692. Under those circumstances, the Court found the bank's concealment of the trust's existence understandably prevented the beneficiary from discovering a cause of action for mismanagement of the trust's assets. Id. at 693.

In contrast, any alleged failure to disclose in this case is more akin to the circumstances found in Allen v. Columbus Bank & Trust, Co., 244 Ga. App. 271. There, the beneficiary accused the trustee bank of fraud for failing to disclose "any appraisals for property sold by the trust" in order to bring a claim for breach of trust after the statute of limitations. Id. at 273. The court found that this failure, even if the trustee was obligated to make such a disclosure, did "not amount to the kind of fraud... which would toll the statute of limitations" without evidence that the beneficiary requested such information or

that the information was intentionally withheld. Id.

Likewise, in this case there is no evidence in the record showing either that Plaintiffs requested the appraisal or that Heiman intentionally withheld any such information from Plaintiffs. As evidence that Heiman suppressed information, Plaintiffs have only cited to discussions at a meeting between Heiman, Jackson Culbreth and the other beneficiaries, and it is undisputed that neither Plaintiff was present, so anything said or not said in that meeting would have no relevance to this issue. Additionally, the record is devoid of evidence that Plaintiffs, themselves, requested any further information from Heiman. Without such evidence, any alleged failure of Heiman to disclose such information “does not amount to the kind of fraud which would toll the statute of limitation.” Allen, at 273. Accordingly, the Court finds that Plaintiffs are barred by the statute of limitations from pursuing claims against Heiman and Sussex for breach of trust and breach of fiduciary duty arising out of the securitization transaction.

#### **Tax Advice**

Plaintiffs claim that the damage to the Trust due to the unfavorable tax consequences of the securitization transaction naturally flows from Heiman’s purported breach of trust in connection with the transaction. Because the Court finds that any underlying claims arising out of the securitization transaction are time-barred, Plaintiffs are precluded from recovering any alleged tax damages. To the extent that Plaintiffs attempt to evidence a further breach of trust against Heiman for the tax position taken by the Trust in connection with the transaction, the Court is not persuaded. The record shows that the Trust hired attorneys to render tax advice, as well as an accounting firm to prepare the Trust’s tax returns. The Court finds no basis here on which to impose



liability on Heiman considering that the tax treatment was recommended by professionals and the tax returns were prepared by professionals, upon whose opinion Heiman and the Trust were entitled to rely. See Trust Art. 9.5. Ludwig v. Ludwig, 281 Ga. 724 (2007).

### Conversion

Plaintiffs conceded at the hearing that they are not asserting a separate claim of conversion against Heiman and Sussex. Rather, they cite Heiman's and Sussex's alleged conversion of fees charged to the Trust as further support for their breach of trust and breach of fiduciary duty claims. To the extent that Plaintiffs' allegations are based on Defendants' receipt of fees generated in connection with the securitization transaction, Plaintiffs are precluded by the statute of limitations from pursuing these claims.

With respect to any additional allegations that Defendants converted Trust property by charging the Trust excessive or duplicative fees, the Court finds that the Complaint simply does not support such a claim. Plaintiffs cite to four paragraphs in the Complaint in support, paragraphs 82, 98, 99, and 163. None of these paragraphs rise to the level of conversion, nor do they allege the elements of conversion.

### Accounting

Although Plaintiffs concede that they are not asserting a claim for an accounting, they nevertheless cite Heiman's alleged failure to provide an accounting as further grounds to support their breach of trust claim. Upon review of the record, however, Plaintiffs admit that they never requested an accounting from Mr. Heiman, as required under the Trust. Thus, he did not breach any duty to Plaintiffs by virtue of not providing an accounting.

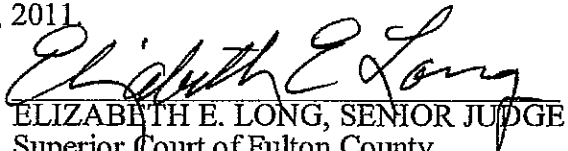
**Forgery**

Plaintiffs concede that they are not asserting a claim for forgery, nor damages based directly on this conduct. Thus, the Court will not address these allegations.

**Conclusion**

For the reasons set forth above, Defendants' Motion for Summary Judgment is hereby **GRANTED**. Accordingly, Plaintiffs' Motion for Summary Judgment is **DENIED**.

**SO ORDERED** this 3<sup>rd</sup> day of June, 2011.

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

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