Georgia State University
ScholarWorks @ Georgia State University

Georgia Business Court Opinions | College of Law

12-3-2009

Order on Defendant Heiman and Sussex's Renewed Motion to Dismiss and Motion to Reconsider (CURTIS LEE MAYFIELD, III)

Elizabeth E. Long
Superior Court of Fulton County

Follow this and additional works at: http://scholarworks.gsu.edu/col_businesscourt

Recommended Citation
Long, Elizabeth E., "Order on Defendant Heiman and Sussex's Renewed Motion to Dismiss and Motion to Reconsider (CURTIS LEE MAYFIELD, III)" (2009). *Georgia Business Court Opinions.* Paper 150.
http://scholarworks.gsu.edu/col_businesscourt/150

This Court Order is brought to you for free and open access by the College of Law at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

COPY
FILED IN OFFICE
DEC 03 2009
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CURTIS LEE MAYFIELD, III et al.,	)	
Plaintiffs,	)	
v.	)	**Civil Action File No. 2009CV166043**
MARVIN HEIMAN, et al.,	)	
Defendants,	)	

ORDER ON DEFENDANTS HEIMAN AND SUSSEX'S RENEWED MOTION TO DISMISS AND MOTION TO RECONSIDER

This case is before the Court on a Renewed Motion to Dismiss and Motion for Reconsideration filed by Defendants Marvin Heiman ("Heiman") and Sussex Financial Group, Inc. ("Sussex"). Plaintiffs are named beneficiaries of a trust created by the musician Curtis Lee Mayfield, Jr. ("the Trust"). Heiman served as a co-trustee of the Trust from 1999-2003. Heiman is the president of Sussex. Sussex conducted financial transactions and made investments on behalf of the Trust.

2000 Release

Heiman and Sussex previously filed a Motion to Dismiss upon which this Court ruled in an Order dated October 12, 2009. In pertinent part, that Order provided:

> 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.

The Court of Appeals has since ruled that O.C.G.A. §53-12-194(a) does not void the 2000 Release. In pertinent part, the 2000 Release provides:

> 13. Indemnification, Hold Harmless and Release. For and in consideration of the distribution of the Net Principal Amount, the Beneficiary does hereby ...
>
> (c) Release, remise, acquit and forever discharge the Trustees, and all of their insurers, sureties, affiliates, agents, personal representatives, administrators, attorneys, successors and assigns, from any and all claims, demands, relief, liabilities, obligations, promises, agreements, controversies, damages, causes of action, suits, rights, costs, losses, debts and expenses (including all attorneys' fees) of whatever kind or nature, which they either now have, had, or may hereafter claim to have against the Trustees or entities arising out of any action, event, omission, transaction, agreement, or occurrence, which occurred or existed at any time prior to the date hereof, whether or not now known or suspected or claimed, whether in law, arbitration, equity, statutory, or otherwise, and whether accrued or hereafter identified or maturing, other than the agreed upon distribution of the Net Principal Amount.
>
> (d) Release, any and all claims which the Beneficiary now has or may have had, however arising in law or in equity against the Estate of Curtis Lee Mayfield, any trust created by or for Curtis Lee Mayfield of which Beneficiary was a primary or residuary beneficiary, inclusive of any claim against the Mayfield Family Trust (formerly known as the Mayfield Revocable Trust) as the trustees, agents and attorneys for all of said trusts.

This Court now finds that the 2000 Release expressly releases Heiman because the language of the Release specifically includes "Trustees" and Heiman was a co-trustee of the Trust at the time of the 2000 Release. The Court further finds that the 2000 Release expressly releases Sussex as an "affiliate" or "agent" of Heiman.

In light of the Court of Appeals opinion, this Court hereby modifies its October 12, 2009 Order on Heiman's and Sussex's Motion to Dismiss to rule that the 2000 Release bars Plaintiffs' claims against both Heiman and Sussex based on any of their conduct that occurred prior to the execution of the 2000 Release on April 21, 2000. Any of Plaintiffs' claims against Heiman and Sussex for their conduct occurring after April 21, 2000 remain pending in this case.

Jackson Culbreth as General Agent for Plaintiffs

To support a statute of limitations argument, Heiman and Sussex argued in their Motion to Dismiss that an attorney, Jackson Culbreth, was a general agent of Plaintiffs in 1999-2000 so that any knowledge he had as to Heiman and Sussex's alleged wrongdoing at that time was attributable to Plaintiffs and started the running of the statute of limitations period. In its October 12, 2009 Order, this Court ruled that "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."

While an additional piece of evidence was filed by Heiman and Sussex to establish that Culbreth was a general agent of Plaintiffs, the Court continues to find otherwise. In support of their current motion, Heiman and Sussex filed a Petition to Probate Will in Solemn Form that was signed by Culbreth on behalf of the co-executors of Curtis Lee Mayfield, Jr.'s estate, namely Altheida Mayfield and Heiman. The Petition to Probate lists Plaintiffs among Curtis Lee Mayfied, Jr.'s heirs-at-law. The Court acknowledges that Plaintiffs allege in paragraph 91 of their Complaint that Culbreth was "representing Altheida Mayfield and the other heirs, in their individual capacities." However, the Court finds that the phrase "in their individual capacities" is meant to distinguish Culbreth's representation of the heirs in the probate of the estate from any representation they had as Trust beneficiaries. Accordingly, nothing relied on by Heiman and Sussex supports a finding that Culbreth was a general agent of Plaintiffs so that his knowledge may be imputed to them for statute of limitations purposes. The Court denies Heiman and Sussex's Motion on this issue and reconfirms all statute of limitations rulings in its October 12, 2009 Order.

SO ORDERED this 3rd day of December, 2009.

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

Copies to:
Attorneys for Plaintiffs:
James Voyles, Esq.
Mark F. Milhollin, Esq.
The Voyles Milhollin Law Firm
3745 Cherokee Street, Suite 702
Kennesaw, GA 30144
(770) 421-8883
(770)421-8884 fax

Patrick B. Moore, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
950 East Paces Ferry Road, Suite 3000
Atlanta, GA 30326
(404) 876-2700
pmoore@wwhgd.com

Attorneys for Defendants:
Counsel for Katten, Muchin, Zavis and Counsel for Katten Muchin Rosenman LLP
C.B. Rogers, Esq.
Dan F. Laney, Esq.
Kimberly L. Myers, Esq.
Julie M. Reed, Esq.
Rogers & Hardin
2700 International Tower, Peachtree Center
229 Peachtree Street N.E.
Atlanta, GA 30303

Counsel for Friduss, Lukee, Schiff & Co., P.C.
Paul W. Burke
Eric R. Mull
Drew, Eckl & Farnham, LLP
880 West Peachtree Street
P.O. Box 7600
Atlanta, GA 30357-0600

Counsel for Sussex Financial Group, Inc. and Counsel for Marvin Heiman
Anthony L. Cochran, Esq.
Todd P. Swanson, Esq.
Chilivis, Cochran, Larkins & Bever, LLP
3127 Maple Drive, NE
Atlanta, GA 30305