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Elizabeth E. Long
Superior Court of Fulton County

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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 MARVIN HEIMAN AND SUSSEX FINANCIAL GROUP, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants Marvin Heiman ("Heiman") and Sussex Financial Group, Inc. ("Sussex") have filed a Motion for Judgment on the Pleadings. The applicable standard is whether the pleadings disclose with certainty that a plaintiff would not be entitled to relief under any state of provable facts when construing the pleadings in the light most favorable to the plaintiff with all doubts resolved in the plaintiff's favor. Snooty Fox, Inc. v. First American Investment Corporation, 144 Ga. App. 264, 265 (1977); Haldi v. Piedmont Nephrology Associates, P.C., 283 Ga. App. 321, 322 (2007).

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"). Heiman served as a co-trustee of the Trust from 1999-2003. Heiman is the president of Sussex. Sussex performed investment and management services for the Trust. This case arises out of controversies over the handling of the Trust assets by Defendants.

Heiman and Sussex have moved for judgment on the pleadings based on a settlement order entered in a 2002 action brought against Heiman by Altheida Mayfield and six other Trust beneficiaries ("Settlement Order"). Altheida Mayfield is a co-trustee and a beneficiary of the Trust and is a co-executor of the estate of Curtis Lee Mayfield, Jr. Heiman and Sussex argue that the Settlement Order bars Plaintiffs' claims in this case. Plaintiffs here were not parties to the 2002 action. Specifically, Heiman and Sussex argue that Altheida Mayfield, as co-executor and co-trustee of the Trust, released the claims asserted by Plaintiffs in this case.

At oral argument, the attorney for Heiman and Sussex cited Turner v. Trust Company of Georgia, 214 Ga. 339 (1958) as controlling and standing for the proposition that a trustee may bring suit against a predecessor trustee even against the wishes of the beneficiaries. However, in Turner, all of the beneficiaries were parties to the case brought by the trustee. Here, Plaintiffs were not parties to the 2002 action and there is no indication as to why they were not included as parties in that case. In fact, there is no indication that Plaintiffs even knew of the 2002 action. There is also no indication from the Settlement Order, which was attached to Heiman and Sussex's Answer, that Altheida Mayfield brought the 2002 action in her capacity as co-trustee or co-executor nor that she signed any settlement agreement on behalf of the Trust. Viewing the pleadings in the light most favorable to Plaintiffs, there is nothing at this point to show that Plaintiffs, nor anyone on their behalf, ever released Heiman or Sussex from the claims Plaintiffs assert in this case. 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.

Heiman and Sussex also argue that Plaintiffs claims are barred by the doctrine of res judicata which provides that "[A] judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." O.C.G.A. § 9-12-40; Butler v. Turner, 274 Ga. 566, 568 (2001). "For a former judgment to be a bar to subsequent action, the merits of the case must have been adjudicated." O.C.G.A. § 9-12-42. The Settlement Order in the 2002 action is not a decision on the merits. Blakely v. Couch,129 Ga. App. 625 (1973) (holding that a consent judgment is not a decision on the merits for purposes of res judicata.)

Moreover, res judicata applies only in cases involving the same parties or their privies. Here, Plaintiffs were not parties to the 2002 action nor is there anything to show that they were in privity with any party to the 2002 action. In Butler, the Georgia Supreme Court noted that "before privity can be established, the interest of the party must fully represent the interest of the privy and be fully congruent with those interests." Butler, 274 Ga. at 568. There is no indication from the Settlement Order that Altheida Mayfield brought or settled the 2002 action on behalf of the Trust. There is also no indication that Altheida Mayfield represented the interests of Plaintiffs when she litigated the 2002 action. Rather, Plaintiffs argue that, if anything, Plaintiffs' interests are at odds with Altheida Mayfield's interests because she holds a life estate in the corpus of the Trust while they are remaindermen. Accordingly, there is nothing to show that Altheida Mayfield was in privity with Plaintiffs such that she "fully represent[ed]" Plaintiffs in the 2002 action and that her interests were "fully congruent" with theirs. For both of the reasons discussed above, Plaintiffs' claims are not barred by res judicata.

Heiman and Sussex also argue that Plaintiffs' claims are barred by the doctrine of collateral estoppel which "precludes the re-adjudication of an issue that has previously been litigated and adjudicated on the merits in another action between the same parties or their privies." Wickliffe v. Wickliffe Co., Inc., 227 Ga. App. 432, 433 (1997). No issue was adjudicated on the merits in the 2002 action. Heiman and Sussex's collateral estoppel argument also fails.

Heiman and Sussex's Motion for Judgment on the Pleadings is hereby **DENIED**.

SO ORDERED this 12th day of October, 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 Jenner & Block, LLP and Counsel for Arnold Harrison
Peter Bassett, Esq.
Robert Long, Esq.
Kerry Vatzakas, Esq.
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street, N.W.
Atlanta GA 30309

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