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

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 DEFENDANT ARNOLD HARRISON'S MOTION TO DISMISS

Defendant Arnold Harrison ("Harrison") has 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., ("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.

Defendant Marvin Heiman ("Heiman") served as trustee of the Trust from 1999-2003. Defendant Arnold Harrison ("Harrison") is an attorney in Chicago, Illinois who performed legal services for the Trust. Harrison was a partner with the Chicago law firm Katten, Muchin, Zavis (known as Katten, Muchin, Roseman, LLP since May 2, 2005) ("Katten") from 1981 to June, 2001 and with Jenner & Block, LLP ("Jenner & Block") from June 2001 to the present.

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.

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.

Also on March 16, 2009, Mayfield's widow and six of his other children filed a case under civil action number 2009-CV-166043 as a purported renewal action of a case they brought in 2004 under civil action number 2004-CV-95253 ("2004 Action"). The 2004 Action was voluntarily dismissed without prejudice in November 2008. The purported renewal action filed by Mayfield's widow and six of his other children asserts virtually identical claims as those asserted in this case against these Defendants.

Plaintiffs state vehemently that they are not claiming that Harrison committed legal malpractice; they also 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 Harrison.

Harrison's Motion to Dismiss sets forth several different grounds for dismissal. He claims that this case is barred by operation of O.C.G.A. §9-11-41(a)(3). This statute provides that the second dismissal of an action operates as an adjudication on the merits. Both the 2004 Action and the 2007 Action were dismissed by the respective plaintiffs and Harrison was a defendant in both cases. However, the plaintiffs in the 2004 Action are not the same as the

plaintiffs in the 2007 action, and therefore, O.C.G.A. §9-11-41(a)(3) is not applicable because there has not been two dismissals by the same plaintiffs.

Harrison contends that the statute of limitations has run on the breach of fiduciary duty claim and the breach of trust claim. The statute of limitations for a breach of fiduciary duty is 4 years from the date Plaintiffs knew of the claim and 6 years for a breach of trust claim. 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 for the breach of fiduciary duty claim would have run for both Plaintiffs. Plaintiffs, however, 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. For Plaintiff LaVigne, the statute of limitations still bars the fiduciary duty claim. As to Plaintiff Mayfield, Harrison counters that this case cannot be a renewal of the 2007 Action because service was never proper in the 2007 Action. Under Georgia's Long Arm Statute, service upon an out-of-state defendant must conform to the law of the state where service is had. Illinois permits service by a sheriff or, for Cook County, by a special process server appointed by the court. Here a Fulton Superior Court judge issued an order appointing a special process server. Harrison argues that the appointment must be by a Cook County judge and that the number of the certificate issued to the process server must be on the order.

> [T]he core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections" Henderson v. United States, 517 U.S. 654, 671-672 (1996) (quoted in Georgia Pines Community Svc. Bd. v. Summerlin, 282 Ga. 339, 343 (2007)).

This Court will not dismiss a case upon such a technical ground where Harrison had notice. In Takiff v. Takiff, 683 So.2d 595 (Fla.App. 3 Dist 1996), the Florida appellate court made much the same decision. Thus, despite Harrison's argument regarding service, the Court finds that this case may relate back to the 2004 Action for purposes of the statute of limitations.

Harrison argues that this court has no personal jurisdiction over him. However, Harrison served as the attorney for the Trust. Although Harrison was hired by Heinman, the co-trustee and an Illinois resident, he provided services for the Trust which is a Georgia trust. If one decides to represent a Georgia trust, one should recognize the possibility of being haled into a Georgia court. Since his contacts with the Trust are the gravamen of the claims here, his representation of a Georgia Trust and his contacts with the Georgia co-trustee and former attorney for the Plaintiffs in Georgia are sufficient to determine that he was transacting business within Georgia under Section (1) of O.C.G.A. §9-10-91.

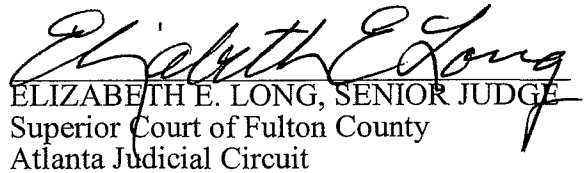
Turning to the substantive claims of Plaintiffs, neither the Complaint nor the Amended Complaint allege any roles of the co-trustee Heiman that were delegated to Harrison. Harrison performed legal services for the Trust, not trust duties. Thus, the breach of trust claim must be dismissed.

As the lawyer for the Trust, Harrison had a fiduciary relationship with the Trust. Plaintiffs argue that having a fiduciary relationship with the Trust does not necessarily equate with Harrison having a fiduciary relationship with Plaintiffs, beneficiaries of the Trust, citing Rhone v. Bolden, 270 Ga.App. 712 (2004). In Rhone, the appellate court found that the attorney defendants owed no duty to Bolden, a beneficiary of the estate, because Bolden's interests were antagonistic to their client's (the estate administrator) interests. This case is more analogous to the example the court gave of a lawyer representing the guardian ad litem of a minor where the

attorney also owes a duty to the minor, who is the real party at interest. Thus, this Court cannot at this point dismiss the breach of fiduciary claim against Harrison asserted by Plaintiff Mayfield.

The breach of trust claim is hereby **DISMISSED** as to both Plaintiffs and the breach of fiduciary claim is **DISMISSED** as to Plaintiff LaVigne only.

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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