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Order on Motion for Partial Summary Judgment
and O.C.G.A. 9-15-14 Motion (MAYFIELD)

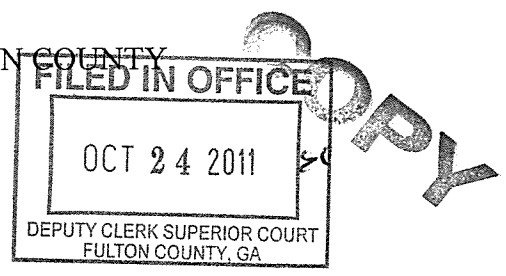
Elizabeth E. Long
Superior Court of Fulton County

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

Civil Action File No. 2007-CV-128087

**ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT
AND O.C.G.A. § 9-15-14 MOTION**

On October 5, 2011, counsel appeared before the Court to present oral argument on Marvin Heiman’s Motion for Partial Summary Judgment and O.C.G.A. § 9-15-14 Motion. 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. In 2007, Plaintiffs initiated this action against Marvin Heiman (“Heiman”) and others in connection with the administration of the Mayfield Family Trust (the “Trust”). Heiman filed a counterclaim seeking contract damages against the Plaintiffs for breach of a release and indemnification agreement (the “Release”) by the filing of the Complaint, as well as attorney fees for abusive litigation pursuant to O.C.G.A. §§ 9-15-14 and 13-6-11. Plaintiffs dismissed the Complaint on November 18, 2008, leaving only Heiman’s counterclaim. Plaintiffs moved to dismiss Heiman’s counterclaim for failure to state a claim, and the motion was granted by the trial court. In an opinion issued on October 20, 2009, the Court of Appeals reversed the trial court, holding that the Release was not a trust instrument and therefore, was not void under the limits on trust instruments imposed by statute. Heiman v.

Mayfield, 300 Ga. App. 879 (2009). The Court of Appeals further held that the Release was not void as against public policy and was effective to release claims that predated its execution and prospective claims of negligence. Id. at 883.

In light of the ruling of the Court of Appeals, Heiman seeks partial summary judgment, reserving the issue of damages for trial, on his breach of contract claim based on Plaintiffs' conduct in suing him for claims that arose before April 21, 2000, the date the Release was signed. Heiman has also filed a motion pursuant to O.C.G.A. § 9-15-14 seeking fees incurred in defending what he contends to be frivolous claims against him.

I. Motion for Partial Summary Judgment

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).

Heiman argues that he is entitled to summary judgment as a matter of law because the Plaintiffs' 2007 Complaint contains allegations concerning conduct that arose prior to April 21, 2000. In support, Heiman cites language from the Court of Appeals opinion finding that: "the beneficiaries' complaint sought damages for negligence (as well as for gross negligence and willful or wanton conduct) and for conduct that preceded (as well as followed) the execution of the Release and Indemnification Agreement." 300 Ga. App. at 883.

Plaintiffs urge the Court to adopt a different interpretation of the Court of Appeals' holding. Specifically, Plaintiffs argue that the Court of Appeals found that the Release applies only to claims for negligence that accrued prior to April 21, 2000, not gross negligence or willful

or wanton conduct. The Court disagrees. The Court of Appeals ruled that a release is not against public policy, even if that past conduct is grossly negligent or willful or wanton.

Turning to the Release itself, Plaintiffs argue that the Court of Appeals' holding was on a motion to dismiss standard and therefore, did not establish from a factual perspective whether the Release is voidable in view of the fiduciary relationship between Heiman and the Plaintiffs. The Court need not reach the factual issues because Heiman has failed to allege contract damages. Rather, he is only seeking attorneys' fees. "As a general rule, Georgia law does not provide for the award of attorney fees even to a prevailing party unless authorized by statute or by contract." Suarez v. Halbert, 246 Ga. App. 822 (2000). At oral argument, Heiman's attorney admitted that the only damages incurred for the alleged breach of the Release were attorneys' fees. He also stated that he is not seeking attorneys' fees under O.C.G.A. § 13-6-11. The request for fees pursuant to O.C.G.A. § 9-15-14 was brought in a separate motion, which the Court will address below. Because the issue of liability for a breach of contract cannot go forward without damages, Heiman's Motion for Partial Summary Judgment is **DENIED**.

II. O.C.G.A. § 9-15-14 Motion

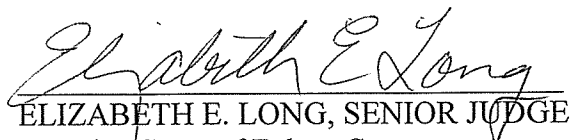
Heiman also moved for fees and expenses under O.C.G.A. § 9-15-14 arguing that Plaintiffs could have, with a minimal amount of investigation, determined that (1) they were not going to pursue their claims of conspiracy, malpractice, and fraud; (2) their insider trading claim was frivolous and lacked factual basis; (3) they had not made a request for an accounting; and (4) there was no basis on which to claim conversion.

Under O.C.G.A. § 9-15-14, a court is required to award reasonable and necessary attorneys' fees and expenses of litigation if it finds that a party "has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable

issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim.” O.C.G.A. § 9-15-14(a). A court may also award attorneys’ fees and expenses if an attorney or party “brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment.” O.C.G.A. § 9-15-14(b). The decision to grant an award of attorneys’ fees and litigation expenses, and the amount of any such award, rests solely with the court without input from a jury. O.C.G.A. § 9-15-14(f).

In his pleadings, Heiman points the Court to several portions of its June 3, 2011 Order, which granted summary judgment in his favor, to support his position that Plaintiffs’ claims lacked merit. However, a party “is not entitled to attorney fees merely because summary judgment was granted in his favor; grant of summary judgment does not per force result in an award of attorney fees for the prevailing party.” Brown v. Kinser, 218 Ga. App. 385 (1995). Heiman is required to meet the high threshold that Plaintiffs’ claims or conduct in litigating this action are so untenable that he should have his legal fees paid for having to defend it. In the Court’s view, he has failed to meet this standard. He is not entitled to fees simply because the Plaintiffs lost on summary judgment. Moreover, with regard to the argument premised on Plaintiffs’ later conduct in abandoning certain claims, the Court does not support an application of O.C.G.A. § 9-15-14 that would discourage this conduct. Instead, the threat of that statute should encourage plaintiffs to do just as they did—reevaluate the likelihood of success of certain claims after having the benefit of discovery and amending their pleadings accordingly. For the reasons set forth above, Heiman’s motion is **DENIED**.

SO ORDERED this 24th day of October, 2011.


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

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