

Universal Credit Trust 2000-A v Mayfield

2006 NY Slip Op 30238(U)

November 1, 2006

Supreme Court, New York County

Docket Number: 0601686/2005

Judge: Richard B. Lowe

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. RICHARD B. LOWE, III

PRESENT

PART 54

Index Number : 601686/2005

UNIVERSAL CREDIT TRUST 2000-A

vs
MAYFIELD, ALTHEIDA

Sequence Number : 002

DISMISS

INDEX NO. _____
MOTION DATE 1/7/06
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION

FILED
NOV 08 2005
NEW YORK
COUNTY OF ...

HON. RICHARD B. LOWE, III

Dated: 11/1/06

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 56

----- X
UNIVERSAL CREDIT TRUST 2000-A,

Plaintiff,

- against-

Index No. 601686/05

ALTHEIDA MAYFIELD, INDIVIDUALLY AND
AS A TRUSTEE UNDER THE MAYFIELD
REVOCABLE TRUST UNDER TRUST AGREEMENT
DATED OCTOBER 8, 1986, CURTIS LEE
MAYFIELD III, SHARON M. LAVIGNE,
LIBRIAN MAYFIELD, TIMFANY A. MAYFIELD,
KIRK MAYFIELD, CHEAA MAYFIELD, BLAISE
MAYFIELD, LENA MAYFIELD, MFT-1, LLC,
BROADCAST MUSIC, INC., AND WARNER/
CHAPEL MUSIC, INC.

Defendants.

----- X

RICHARD B. LOWE III, J.:

Defendants move pursuant to CPLR 3211 to dismiss the action on the ground that the court lacks both subject matter and personal jurisdiction over the Defendant, or in the alternative, they move to transfr venue to the courts in the state of Georgia.

Background

This is a declaratory judgment action arising out of a dispute involving the right to receive royalty payments from copyrights for songs written by the late great performing artist Curtis Lee Mayfield, Jr. (Mayfield). Mayfield was a rhythm & blues singer and songwriter who had been a founding member of the Impressions. His substantial list of credits includes "People Get Ready," and the album "Superfly." He died in 1999.

Plaintiff Universal Credit Trust 2000-A (Universal), a Delaware business trust, is the assignee of Mayfield's royalty rights pursuant to a securitization transaction completed in 2000, in which Universal is the lender. The securitization transaction converted a future stream of royalty payments into a lump sum, through the assignment of the royalties to UCC Lending Corp. (UCC Lending), which assigned its rights to Universal. The royalty payments pay the interest and principal of the loan, which is secured by the right to receive future royalty payments.

Universal seeks a declaration that the \$5.4 million secured loan and all the documents executed in connection with the securitization are valid and enforceable. Universal also seeks a declaration that the royalty payments should be paid to it by defendants Broadcast Music, Inc. (BMI), and Warner Chapel Music, Inc. (Warner). Warner and BMI have allegedly discontinued royalty payments to Universal in response to a Georgia consent judgment that allegedly declared that the defendant Mayfield Revocable Trust is the rightful owner of the royalty payments.

In the many documents executed in connection with the securitization, each defendant consented to the application of New York law, and jurisdiction and venue in New York. Before the court is a motion to dismiss for lack of personal and subject-matter jurisdiction, or, alternatively, to transfer venue to Fulton County, Georgia.

Defendants include Mayfield's heirs: his widow Altheida Mayfield (Altheida, and their six children, as well as Curtis L. Mayfield III (Curtis), and Sharon Lavigne (Lavigne), who are Mayfield's children with a different mother. Also named as defendants are the Mayfield Revocable Trust under trust agreement dated October 8, 1986 (the trust), and MFT-1, LLC (MFT), a Delaware limited liability corporation created by the trust to act as a bankruptcy remote contracting entity in the securitization transaction.

Altheida is currently the sole acting trustee of the trust. She is named both in her individual capacity and as trustee. Her former co-trustee, Marvin S. Heiman (Heiman), who had at one time acted as Mayfield's business manager, resigned as co-trustee in 2003. He did so in settlement of litigation charging that Heiman had defrauded the trust and misdirected trust assets. Heiman denies any wrongdoing. Heiman is not a party to this action.

The uncontroverted facts stated in the Heiman affidavit include that Mayfield appointed Heiman as trustee of the trust in 1991, and appointed Altheida co-trustee in 1995. Mayfield expressed a desire to Heiman to pursue a securitization transaction and obtain a current cash value from future "writer royalties" in order to diversify his assets and protect against a decline in their value. Heiman retained counsel to assist in this endeavor, and advised Mayfield of negotiations with UCC Lending Corp., Universal's assignor, prior to Mayfield's death.

Heiman alleges that, shortly after Mayfield's death, Altheida told Heiman that she wanted him to continue to pursue the securitization transaction on behalf of the trust. Heiman states that Altheida "authorized all material decisions" during their time as co-trustees, including the "material aspects of the securitization transaction."

According to the amended complaint, upon Mayfield's death, each of his heirs received royalty interests severally under Mayfield's will, in addition to those owned by the trust. Through a series of transactions involving numerous agreements, all of the copyright interests, present and renewal, of both the trust and the Mayfield heirs individually, were assigned as security for the \$5.4 million loan. The securitization transaction was completed in 2000, and each of the Mayfield children received \$65,000 from the securitization loan. The trust received the remaining net proceeds.

All of the individual Mayfield heirs executed the Renewal Term Acquisition Agreement, dated March 15, 2000, by which each assigned all rights to receive royalty payments to MFT. That agreement provides that New York law will govern, and that each of the Mayfield heirs submits “to the jurisdiction of the state and federal courts in New York County, which shall have exclusive jurisdiction of any dispute arising out of or relating to this agreement, and Assignors hereby irrevocably waive any claim that such courts are an inconvenient forum.”

The trust and MFT consented to jurisdiction and venue in New York in the Contribution Agreement dated May 4, 2000, by which the trust conveyed its copyright interests to MFT.

The provisions in the Renewal Term Agreement and the Contribution Agreement, as well as numerous other documents executed in connection with the securitization, are facially sufficient to constitute a waiver of any objection to personal jurisdiction and venue. There is no genuine issue as to the court’s subject-matter jurisdiction to declare the rights of parties to an agreement negotiated, executed, and performed in New York.

The Mayfield defendants argue, however, that under principles of res judicata and collateral estoppel, this court must give effect to the statements allegedly contained in both the alleged Georgia consent judgment and a Georgia default judgment entered against UCC Lending. There is no merit to defendants’ issue preclusion arguments.

The Georgia Litigation

In 2002, Altheida and all six of her children commenced an action against Heiman, alleging that Heiman wrongfully diverted millions of dollars in trust assets. That action was settled in 2003 with Heiman’s resignation as co-trustee, and the turnover to Altheida of books and records of the

trust, over which he had maintained exclusive control. Heiman states that he believed that the claims asserted against him lacked merit, but that he settled because he was experiencing serious health problems and wanted to terminate his relationship with the Mayfield family. Curtis and Lavigne were not plaintiffs in the action against Heiman. No copy of any judgment entered in connection with this litigation has been submitted.

Curtis allegedly commenced an action in Superior Court, Fulton County, Georgia, captioned Curtis Mayfield III v The TRUST. This action allegedly bears a 2004 index number. The Mayfield defendants allege that a consent judgment was entered in that action, declaring all the documents utilized in the securitization loan “void ab initio,” and further declaring that the trust is the owner of the copyright interests. No copy of this consent judgment has been provided to this court, only a reference to it in the affidavit of counsel for the Mayfield defendants, which annexes only an excerpt from an unidentified pleading that also alleges the existence of this consent judgment.

Almeida and her six children, again without the participation of Curtis or Lavigne, commenced an action against UCC Lending Corp., plaintiff’s assignor, and four law firms that were involved in the securitization. UCC Lending defaulted. In that action, it was alleged that Curtis had discovered from the records of the trust that Heiman had defrauded the trust and illegally diverted millions of dollars of trust assets. The Superior Court entered a default judgment against UCC Lending for \$3.8 million, and ordered injunctive relief requiring UCC Lending to, inter alia, “retract any representation made to third parties that the UCC DEFENDANTS have a valid or enforceable security interest in the Copyright Interests.” The default judgment also ordered that defendant UCC Lending, “and its privies are collaterally estopped from litigating the facts alleged in the Amended Complaint.” A certified copy of the default judgment is in the record. It also bears a 2004 index

[7]
number.

DISCUSSION

Movants have failed to demonstrate that either of the Georgia judgments divests this court of either the personal or subject-matter jurisdiction conferred by the contractual provisions and General Obligations Law §§ 5-1401 & 1402, which authorize actions in New York pursuant to choice of law and choice of forum clauses.

Neither the default judgment nor the alleged consent judgment meets the criteria for the application of *res judicata* or collateral estoppel against plaintiff. Collateral estoppel is a corollary of the doctrine of *res judicata*, that "bars the litigation of a claim or defense if there exists a final judgment in former litigation in which the 'parties, subject matter and causes of action are identical or substantially identical [citation omitted]" (O'Connell v Corcoran, 1 NY3d 179, 184-185 [2003]). The two requirements for invocation of collateral estoppel are "an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and [that] there must have been a full and fair opportunity to contest the decision now said to be controlling (see Lumbermens Mut. Cas. Co. v 606 Restaurant, Inc., 31 AD3d 334 [1st Dept 2006]). Also, the party seeking to invoke collateral estoppel must "demonstrate that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party." *Id.* at 335.

Here, Universal is not in privity with UCC Lending for purposes of collateral estoppel as a matter of law. In Gramatan, "the Court of Appeals squarely held . . . 'an assignee is not privy to a judgment where the succession to the rights affected thereby has taken place prior to the institution of the suit against the assignor [citations omitted]" (Aetna Cas. and Sur. Co. v Bedford-Stuyvesant

Restoration Const. Corp., 90 AD2d 474, 476 [1st Dept 1982].

There is no dispute that the assignment from UCC Lending to Universal took place years before the commencement of the action in which the default judgment was entered. Therefore, Universal is not a privy against whom the default judgment is enforceable.

In the absence of a certified copy of the actual alleged consent judgment, rather than mere allegations as to its contents, this court will not accord any preclusive effect on this motion. Counsel's statement that such a judgment exists, with nothing more than a repetition of that allegation in an unidentified pleading, is mere ipse dixit. Nonetheless, from the allegations in the amended complaint and in defendants' counsel's affidavit, it appears that Universal was not a party to that action, and thus the alleged consent judgment must fail to meet the threshold requirement that the party against whom preclusion is sought must have had a full and fair opportunity to litigate the issue (see Lumbermens Mut. Cas. Co. v 606 Restaurant, Inc., supra).

Movants have failed to establish any basis for not enforcing the contractual jurisdiction and forum selection clauses.

Accordingly, it is

ORDERED, that the motion is denied.

DATED: November 1, 2006

FILED
 NOV 08 2006
 NEW YORK
 COUNTY CLERK'S OFFICE
 ENTER
 HON. RICHARD B. LOWE, III
 JSC